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**Corporations Act 1989**

**No. 109 of 1989**

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**Corporations Act 1989**

**No. 109 of 1989**

**An Act to enact a national law about corporations, securities and the futures industry, and for other purposes**

[*Assented to 14 July 1989*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**CHAPTER 1—INTRODUCTORY**

**PART 1.1—PRELIMINARY**

**Short title**

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

**Commencement**

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

**(2)** This Chapter commences on the day on which this Act receives the Royal Assent.

**Application to the Crown**

**3.** Chapter 5 (except Part 5.8) binds the Crown in right of the Commonwealth, of each of the States, of the Northern Territory and of Norfolk Island.

**Extension to external Territories**

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

**Commission has general administration of Act**

**5.** Subject to the Commission Act, the Commission has the general administration of this Act.

**PART 1.2—INTERPRETATION**

***Division 1*—*General***

**Effect of this Part**

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

**(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.

**Location of other interpretation provisions**

**7.** **(1)** Most of the interpretation provisions for this Act 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.

**Interpretation provisions to operate distributively**

**8.** **(1)** The effect that an interpretation provision has for the purposes of a particular provision of this Act is additional to, and does not prejudice, its effect for the purposes of any other provision of this Act.

**(2)** For the purposes of subsection (1), an interpretation provision, as it has effect for the purposes (in this subsection called the “relevant purposes”) of:

(a) a particular provision of this Act; or

(b) something that is, by any other application or applications of this subsection, deemed for the purposes of that subsection to be a distinct provision of this Act;

shall be deemed to be a provision of this Act distinct from the interpretation provision as it has effect otherwise than for the relevant purposes.

**(3)** In this section:

“interpretation provision” means:

(a) a provision of this Part; or

(b) any other provision of this Act, whether in the form of a definition or not, that purports to give, or has the effect of giving, a particular meaning to an expression.

**Dictionary**

**9.** Unless the contrary intention appears:

**A**

“accounting records” includes:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry; and

(b) such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“accounting standard”, except in sections 283 and 288, means an instrument in force under section 283, or a provision of such an instrument;

“accounts”, in Parts 3.6 and 3.7, means profit and loss accounts and balance-sheets and includes statements, reports and notes, other than auditors’ reports and directors’ reports, attached to or intended to be read with any of those profit and loss accounts or balance-sheets;

“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 Chapters 6 and 7, the meaning given by subsection 51 (1); or

(c) in relation to marketable securities within the meaning of Chapter 6—has, in Chapter 6, the meaning given by subsection 51 (1) as applying by virtue of section 605;

“Act”, in the case of a reference to this Act, includes the regulations;

“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;

“affidavit” includes affirmation;

“agency” means an agency, authority, body or person;

“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” means an offence against:

(a) section 6, 7 or 7aof the *Crimes Act 1914*; or

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

“annual general meeting”, in relation to a company, means a meeting of the company that section 245 requires to be held;

“annual return” means the return that section 335 requires to be made and includes any document accompanying the return;

“applicable accounting standard”, in relation to, or in relation to accounts or group accounts forming part of, a company’s financial statements for a financial year, means an accounting standard that, when the financial statements are made out:

(a) applies to that financial year; and

(b) is relevant to the financial statements;

“approved securities organisation” means a body corporate:

(a) that is an eligible corporation; and

(b) in relation to which an approval under section 770 is in force;

“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;

“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;

“articles” means articles of association;

“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” has the meaning given by Division 2;

“Australia” includes:

(a) except in Parts 3.5 and 5.2—an external Territory to which this Act extends; and

(b) in Part 3.5 or 5.2—all the external Territories;

“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;

“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;

“available”, in relation to a name, means available by virtue of Part 4.2;

**B**

“banker’s books” means:

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

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

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

(d) documents that create or evidence futures contracts and are in an Australian bank’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);

“banning order” means:

(a) in Chapter 7—an order by the Commission in force under Division 5 of Part 7.3; or

(b) in Chapter 8—an order by the Commission in force under Division 5 of Part 8.3;

“benefit” means any benefit, whether by way of payment of cash or otherwise;

“Board” means:

(a) in Part 3.6 or 3.7—the Accounting Standards Review Board;

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

(c) in Part 9.2—the Companies Auditors and Liquidators Disciplinary Board;

“board”, in relation to a body corporate, means the committee of management, board of directors, council or other governing authority of the body corporate;

“body” includes a society or association;

“body corporate” includes:

(a) a foreign company; and

(b) a body corporate or foreign company that is being wound up or has been dissolved;

“books” includes:

(a) a register;

(b) any other record of information;

(c) accounts or accounting records, however compiled, recorded or stored; and

(d) a document;

“borrowing corporation” means a body corporate that is or will be under a liability to repay any money received or to be received by it in response to:

(a) an invitation to subscribe for or buy debentures of the body corporate or an offer of debentures of the body corporate for subscription or purchase; or

(b) an offer of debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate;

“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;

“branch register” means:

(a) in relation to a company—a branch register, kept under section 214, of members of the company; or

(b) in relation to a foreign company—except in section 351, a branch register, kept under section 352, of members of the foreign company;

“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 arrangements”, in relation to a deed relating to prescribed interests, means arrangements made to ensure that the management company can comply with a buy-back covenant contained in the deed;

“buy-back covenant”, in relation to a deed relating to prescribed interests, means a covenant binding the management company that it will, if asked by the holder of a prescribed interest to which the deed relates, buy the prescribed interest, or cause it to be bought, from the holder at a price calculated in accordance with the deed;

**C**

“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 a prescribed interest:

(a) in relation to which there is in force a deed that, for the purposes of Division 5 of Part 7.12, is an approved deed; and

(b) that relates to an undertaking, scheme, enterprise, contract or arrangement 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;

“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;

“class” has:

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

(b) in relation to shares—a meaning affected by section 57;

“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 that is an eligible corporation and in relation to which an approval as a clearing house for that futures exchange is in force under subsection 1131 (2); 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 that is an eligible corporation and in relation to which an approval as a clearing house for that futures exchange is in force under subsection 1131 (2);

“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, means an account that:

(a) is maintained by the person with an Australian bank;

(b) is designated as a clients’ segregated account; and

(c) does not contain money other than money deposited by the person in the account under section 1209 or a corresponding law;

“close corporation” means a close corporation registered under the *Close Corporations Act 1989*;

“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;

“commencement”, in relation to an accounting standard, means the time when:

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

(b) in the case of an accounting standard as varied by a particular provision of an instrument made under subsection 283 (1)— that provision took effect;

“Commission” means the Australian Securities Commission;

“Commission Act” means the *Australian Securities Commission Act 1989*;

“Commission delegate” has the same meaning as in the Commission Act;

“commodity”, except in Part 4.4, 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) except in relation to a State or Territory or in Chapter 6:

(i) a company incorporated under Division 1 of Part 2.2; or

(ii) a body corporate that is a company by virtue of subsection 150 (3);

(b) in relation to a State or Territory—a body corporate that is a company for the purposes of the company law of the State or Territory; and

(c) in Chapter 6—a body corporate that is incorporated in Australia and has a share capital;

“company having a share capital” includes an unlimited company with a share capital;

“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 by the memorandum 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) except in relation to a State or Territory—a company; or

(b) in relation to a State or Territory—a company of the State or Territory;

formed on the principle of having the liability of its members limited by the memorandum 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;

“constitution”, in relation to a body corporate or an unincorporated body, means:

(a) in the case of a company, a company of a State or Territory, or any other body that has a memorandum and articles—the memorandum and articles of the company or other body; or

(b) in any other case:

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

(ii) any other instrument or law (other than this Act or the company law of a State or Territory) constituting,

or defining the constitution of, the body or governing activities or conduct of the body or its members;

“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;

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

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

(b) in relation to a body corporate to which Part 5.7 applies:

(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; and

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

“convertible note” has the same meaning as in Division 3a of Part III of the *Income Tax Assessment Act 1936*;

“corporation” means:

(a) a foreign corporation;

(b) a trading corporation;

(c) a body corporate that is incorporated in a Territory or in an excluded Territory;

(d) a banking corporation;

(e) an insurance corporation;

(f) a company or a close corporation; or

(g) a holding company of a body corporate of a kind referred to in paragraph (a), (b), (c), (d), (e) or (f);

“corresponding”, in relation to a law, has the meaning given by section 58;

“Court” means the Federal Court of Australia or the Supreme Court of a State or Territory;

“creditors’ voluntary winding up” means a winding up under Part 5.5, other than a members’ voluntary winding up;

**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;

“deadline”, in relation to a financial year of a company, means:

(a) if, before the end of the period within which section 245 requires the company to hold an annual general meeting in relation to that financial year, the company so holds an annual general meeting notice of which was sent, at least 14 days before the last day of that period, to persons entitled to receive notice of general meetings of the company:

(i) if notice of the meeting was so sent at least 14 days before the day of the meeting—the end of the fourteenth day before that day; or

(ii) otherwise—the time when notice of the meeting was so sent; or

(b) otherwise—the end of the fourteenth day before the last day of the period within which section 245 requires the company to hold an annual general meeting in relation to that financial year;

“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 dealers licence granted under Part 7.3;

“debenture”, in relation to a body corporate, means a document issued by the body that evidences or acknowledges indebtedness of the body in respect of money that is or may be deposited with or lent

to the body, whether constituting a charge on property of the body or not, other than:

(a) a document acknowledging a debt incurred by a body corporate:

(i) in the ordinary course of carrying on so much of a business as neither comprises, nor forms part of, a business of borrowing money and providing finance; and

(ii) in respect of money that is or may be deposited with or lent to the body by a person in the ordinary course of a business carried on by the person;

(b) a document that merely acknowledges the receipt of money by a corporation where, in respect of the money, the corporation issues, in compliance with section 1023, a document prescribed by subsection 1023 (2) and complies with the other requirements of that section;

(c) a document issued by an Australian bank in the ordinary course of its banking business that evidences or acknowledges indebtedness of the bank arising in the ordinary course of that business;

(d) a cheque, order for the payment of money or bill of exchange;

(e) a promissory note having a face value of not less than $50,000; or

(f) for the purposes of the application of this definition to a provision in respect of which the regulations provide that the word “debenture” does not include a prescribed document or a’ document in a prescribed class of documents—that document or a document in that class, as the case may be;

and includes a unit of a debenture;

“deed” includes an instrument having the effect of a deed and, in relation to prescribed interests, includes an instrument amending or affecting the deed concerned;

“defalcation”, in Part 7.9, includes a contravention of subsection 870 (3);

“director” has the meaning given by section 60;

“discretionary account” has the meaning given by section 61;

“dispose of:

(a) in relation to a futures contract—has the meaning given by sections 24, 26, 27 and 28;

(b) in relation to shares—has, in Chapter 6, the meaning given by subsection 51 (2); or

(c) in relation to marketable securities within the meaning of Chapter 6—has, in Chapter 6, the meaning given by subsection 51 (2) as applying by virtue of section 605;

“Division 1 company” means a company incorporated under Division 1 of Part 2.2;

“Division 2 company” means a body corporate that, because of its registration under Division 2 of Part 2.2, is a company by virtue of subsection 150 (3);

“Division 2 or 3 company” means a Division 2 company or a Division 3 company;

“Division 3 company” means a body corporate that, because of its registration under Division 3 of Part 2.2, is a company by virtue of subsection 150 (3);

“Division 4 company” means a body corporate that, because of its registration under Division 4 of Part 2.2, is a company by virtue of subsection 150 (3);

“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;

“document of title”, in relation to securities, includes an instrument of transfer relating to the securities;

“dormant”, in relation to a body corporate, has the meaning given by section 62;

“eligible circumstances” has the meaning given by section 63;

“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 communications service” means a postal, telegraphic, telephonic or other like service, within the meaning of paragraph 51 (5) of the Constitution;

“eligible corporation” means a foreign corporation or a trading corporation;

“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 futures advice business” has the meaning given by section 71;

“eligible futures adviser” means:

(a) a corporation that holds a futures advisers licence, or is an exempt futures adviser by virtue of subsection 67 (1);

(b) a person, in so far as the person carries on a futures advice business in a capacity referred to in any of paragraphs 67 (4) (a) to (g), inclusive; or

(c) a prescribed person, in so far as is prescribed;

“eligible futures broker” means:

(a) a corporation that holds a futures brokers licence, or is an exempt futures broker by virtue of subsection 67 (1);

(b) a person, in so far as the person carries on a futures broking business in a capacity referred to in any of paragraphs 67 (4) (a) to (g), inclusive; or

(c) a prescribed person, in so far as is prescribed;

“eligible futures broking business” means, subject to subsection 25 (4):

(a) a business of dealing in futures contracts on behalf of corporations; or

(b) a business of dealing in futures contracts, in eligible circumstances, on behalf of other persons;

“eligible futures conduct” means conduct in the course of, for the purposes of, or otherwise in connection with:

(a) if the person who engages in, or proposes, or represents that the person proposes, to engage in, the conduct is a corporation:

(i) dealing in futures contracts;

(ii) advising a person about futures contracts; or

(iii) giving to a person a futures report; or

(b) in any other case, but without prejudice to the effect of this definition by virtue of paragraph (a):

(i) dealing in futures contracts on behalf of a corporation;

(ii) dealing in futures contracts in eligible circumstances;

(iii) advising a corporation, or giving to a corporation an analysis or report, about futures contracts; or

(iv) doing in eligible circumstances any of the following:

(a) advising a person about futures contracts;

(b) giving to a person a futures report;

“eligible futures contract” means a futures contract acquired, or to be acquired, in eligible circumstances or on an eligible futures market;

“eligible futures market” means:

(a) a futures market conducted by a corporation; or

(b) a futures market, in so far as it is conducted in eligible circumstances;

“eligible investment advice business” has the meaning given by section 77;

“eligible money market dealer” means a body corporate in respect of which a declaration is in force under paragraph 65 (1) (a);

“eligible 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;

“eligible securities” means:

(a) debentures, stocks or bonds issued or proposed to be issued by the Commonwealth or an authority of the Commonwealth or by the Government of a Territory or of a foreign country or an authority of such a Government;

(b) shares in, debentures of, or prescribed interests made available by, a corporation;

(c) 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 of a kind mentioned in paragraph (a) or (b), at a price specified in, or to be determined in accordance with, the contract; or

(d) a contract that is entered into on a stock market of a securities exchange within the meaning of Chapter 7 or on an exempt stock market and 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 an amount of a specified foreign currency at a price specified in, or to be determined in accordance with, the contract;

but does not include a futures contract or an excluded security;

“eligible securities business” has the meaning given by section 93;

“eligible securities conduct” means conduct in the course of, for the

purposes of, or otherwise in connection with:

(a) if the person who engages in, or proposes, or represents that the person proposes, to engage in, the conduct is a corporation:

(i) dealing in securities;

(ii) advising a person about securities; or

(iii) giving to a person a securities report; or

(b) in any other case, but without prejudice to the effect of this definition by virtue of paragraph (a):

(i) dealing in eligible securities;

(ii) dealing in securities on behalf of a corporation;

(iii) dealing in securities in eligible circumstances;

(iv) advising a person, or giving to a person an analysis or report, about eligible securities;

(v) advising a corporation, or giving to a corporation an analysis or report, about securities; or

(vi) doing in eligible circumstances any of the following:

(a) advising a person about securities;

(b) 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;

“enter into”:

(a) in relation to a futures contract—has a meaning affected by subsection 72 (2);

(b) in relation to a transaction, in relation to shares or securities, has, in section 51 and Chapter 6, the meaning given by section 64;

“event” includes any happening, circumstance or state of affairs;

“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”, in Chapter 6 or 7, means a securities exchange or stock exchange within the meaning of that Chapter that is a subsidiary of the Exchange;

**EXCLUDED**

“excluded corporation” has the meaning given by section 65;

“excluded invitation”, in relation to securities, has the meaning given by subsection 66 (3);

“excluded issue”, in relation to securities, has the meaning given by subsection 66 (2);

“excluded offer”, in relation to securities, has the meaning given by subsection 66 (3);

“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) a prescribed interest 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 officer”, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body,

who is concerned, or takes part, in the body’s management and, in the case of a close corporation, includes a member of the body;

**EXEMPT**

“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 349 (8), whether or not Division 2 of Part 4.1 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 proprietary company” has the meaning given by section 69;

“exempt public authority” means a body corporate that is incorporated within Australia and is a public authority or an authority of the Crown in right of the Commonwealth or of a State, Territory or excluded 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 official management; or

(d) that has entered into a compromise or arrangement with another person the administration of which has not been concluded;

**F**

“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 corporation” means a financial corporation within the meaning of paragraph 51 (20) of the Constitution;

“financial statements”, in relation to a financial year of a body corporate, means the accounts, and the group accounts (if any), of the body required by Part 3.6 or a corresponding law to be made out in relation to that financial year;

“financial year”, in relation to a body corporate, means any of the following, whether ending before, at or after the commencement of this section:

(a) if the body is a company—a period of 12 months, or such other period (whether longer or shorter that 12 months) of not more than 18 months as the directors (subject to the requirements of section 245 as to the holding of annual general meetings of the body) resolve (even if at the time of the resolution the body is not a company), beginning:

(i) if there has been no previous financial year of the body—on the day of the body’s incorporation; or

(ii) otherwise—at the end of the previous financial year of the body;

(b) if the body has been, but is no longer, a company—a period that:

(i) ended at a time when the body was a company; and

(ii) was a financial year of the body for the purposes of this Act as in force at that time;

(c) if the body is a close corporation—a period that is a financial year of the body for the purposes of the *Close Corporations Act 1989*;

(d) if the body has been, but is no longer, a close corporation— a period that:

(i) ended at a time when the body was a close corporation; and

(ii) was a financial year of the body for the purposes of the *Close Corporations Act 1989* as in force at that time;

(e) in any case—a period that:

(i) ended at a time when the body was not a company but was a company of a State or Territory; and

(ii) was a financial year of the body for the purposes of the company law of that State or Territory as in force at that time; or

(f) in any case—a period that:

(i) ended at a time when the body was neither a company nor a company of a State or Territory; and

(ii) in respect of which a profit and loss account of the body was made out, or was required by the law of

the body’s incorporation as at that time to be made out;

and, in relation to a deed within the meaning of Division 5 of Part 7.12, means the 12 months ending on 30 June or on such other day as the deed specifies instead of 30 June;

“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;

“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 foreign corporation;

(b) a body corporate incorporated in an excluded Territory; or

(c) an unincorporated body that:

(i) is formed in an excluded Territory or outside Australia and the external Territories;

(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;

but does not include a corporation sole or an exempt public authority;

“foreign corporation” means a foreign corporation within the meaning of paragraph 51 (20) of the Constitution;

“function” includes a duty;

“Fund” means the National Guarantee Fund established under subsection 929 (1);

**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 futures advisers licence granted under Part 8.3;

“futures association” means a body corporate:

(a) that is an eligible corporation; and

(b) in relation to which an approval under section 1132 is in force;

“futures broker” means:

(a) except in Parts 8.4 and 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 Part 8.4 or 8.5—a corporation that holds a futures brokers licence;

“futures brokers licence” means a futures brokers licence granted under Part 8.3;

“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 body corporate:

(a) that is an eligible corporation; and

(b) in relation to which an approval under section 1126 is in force;

“futures law” means a provision of, or a law corresponding to 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) except in Part 8.6—a futures exchange or a futures association; or

(b) in Part 8.6:

(i) a futures exchange; or

(ii) a futures association, other than a futures association each of whose members is also a member of a futures exchange;

“futures report” means an analysis or report about futures contracts;

“futures representative” has the meaning given by section 73;

**G**

“*Gazette* notice” means a notice published in the *Gazette*;

“group”, in relation to a company that is a group holding company at the end of a financial year, means all of the following:

(a) the company;

(b) its subsidiaries as at the end of that financial year;

“group accounts”, in relation to a body corporate, means, if the body is a group holding company at the end of the financial year concerned:

(a) a set of consolidated accounts for the group;

(b) 2 or more sets of consolidated accounts together covering the group;

(c) separate accounts for each body corporate in the group; or

(d) the combination of one or more sets of consolidated accounts, and one or more sets of separate accounts, together covering the group;

“group holding company” has the meaning given by section 74;

“guarantor body”, in relation to a borrowing corporation, means a body corporate that has guaranteed, or has agreed to guarantee, the repayment of any money received or to be received by the borrowing corporation in response to:

(a) an invitation to subscribe for or buy debentures of the borrowing corporation or an offer of debentures of the borrowing corporation for subscription or purchase; or

(b) an offer of debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate;

**h**

“have”, in relation to information, includes be in possession of the information;

“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” means:

(a) in relation to a body corporate—a body corporate of which the first-mentioned body is a subsidiary by virtue of Division 6; or

(b) in Part 3.6 or 3.7—a company of which some body corporate is a subsidiary by virtue of Division 6 of this Part;

**i**

“included”, in relation to an official list, has the meaning given by section 75;

“incorporate”, except in section 112, includes form;

“incorporated in Australia” has a meaning affected by section 76;

“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 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;

“insurance corporation” means a body corporate that carries on, as its sole or principal business, insurance (other than State insurance not extending beyond the limits of the State concerned);

“interstate”, in relation to carrying on business, has the meaning given by section 22;

“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 an investment advisers licence granted under Part 7.3;

“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 Australia 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 Australia 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 prescribed interests—make available; and

(b) otherwise—circulate, distribute and disseminate;

**J**

“Judge” means a judge of the Court;

**L**

“law”, in relation to a State or Territory, means, subject to section 58, a law of, or a law in force in, the State or Territory;

“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 Chapter 7—a securities licence; or

(b) in Chapter 8—a futures licence;

“licensee” means:

(a) in Chapter 7—a securities licensee;

(b) in Chapter 8—a futures licensee; or

(c) in relation to a licence—the person who holds the licence;

“limited company” means a company limited by shares, a company limited by guarantee or a company limited both by shares and by guarantee, but does not include a no liability company;

“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 sections 475, 531, 532 and 535 to 540, inclusive, and in Chapters 7 and 8, includes a provisional liquidator;

“listed corporation” means a body corporate that is included in an official list of a securities exchange in Australia or an external Territory;

“listing rules” has:

(a) in Chapter 6—the meaning given by section 603; or

(b) in Chapter 7—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 346 (5);

“lodge” means lodge with the Commission;

**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 from surface contact with the document or by the use of photo-sensitive material other than transparent photographic film;

“management company”, in relation to any prescribed interests made available or proposed to be made available or in relation to any deed that relates to prescribed interests made available or proposed to be made available, means the corporation by or on behalf of which the prescribed interests have been or are proposed to be made available, and includes any person for the time being exercising the functions of the management company;

“manager” has a meaning affected by section 90;

“marketable securities” means debentures, stocks, shares or bonds of any Government, of any local government authority or of any corporation, association or society, and includes any right or option in respect of shares in any corporation and any prescribed interest;

“member”:

(a) in relation to a securities exchange or stock exchange within the meaning of the provision where the expression occurs— means, except in paragraph (a) of the definition of “member organisation”, a person who is, or who is a partner in, a member organisation of the securities exchange; or

(b) in relation to a body corporate that is, or proposes to become, a futures organisation—has a meaning affected by section 56;

“member firm”, in relation to a securities exchange within the meaning of Chapter 7, 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 within the meaning of the provision where the expression occurs:

(i) a member of the securities exchange who carries on a business of dealing in securities otherwise than in partnership; or

(ii) a partnership that the securities exchange recognises as a member organisation or member firm 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;

“memorandum” means memorandum of association;

“minerals” means minerals in any form, whether solid, liquefied or gaseous and whether organic or inorganic;

“minimum subscription”, in relation to any shares offered to the public for subscription or for which the public are invited to subscribe, means the amount stated in the prospectus relating to the offer or invitation under section 1035 as the minimum amount that, in the opinion of the directors, must be raised by the issue of the shares;

“mining company” means a company:

(a) whose memorandum contains a provision stating the objects of the company; and

(b) whose sole objects are mining purposes;

“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”, in relation to a State, means:

(a) in the case of the Northern Territory—a person holding Ministerial office within the meaning of the *Northern Territory (Self-Government) Act 1978*;or

(b) in any other case—a Minister of the Crown of that State;

“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;

“modifications” includes additions, omissions and substitutions;

“money” includes a payment order;

**N**

“NCSC” means the National Companies and Securities Commission;

“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;

“new company” has the meaning given by section 81;

“no liability company” means a company that does not have under its constitution a contractual right to recover calls made on its shares from a shareholder who defaults in payment of those calls;

“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;

“notice” includes a circular and an advertisement;

“NSEGC” means the National Securities Exchanges Guarantee Corporation referred to in a law corresponding to Part 7.10;

**O**

“oath” includes affirmation;

“of”, in relation to securities, means, in the case of prescribed interests, made available by;

“offence” means an offence against a law of the Commonwealth or a State or Territory;

“officer”, in relation to a body corporate, includes:

(a) a director, secretary, executive officer or employee of the body;

(b) a receiver and manager, appointed under a power contained in an instrument, of property of the body;

(c) an official manager, or deputy official manager, of the body;

(d) a liquidator of the body appointed in a voluntary winding up of the body;

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

(f) in the case of a close corporation—a member of the body;

but does not include:

(g) a receiver who is not also a manager;

(h) a receiver and manager appointed by a court; or

(j) a liquidator appointed by a court;

“official liquidator” means a person registered as an official liquidator under section 1283 or deemed to be registered as an official liquidator under this Act;

“official manager” means a person appointed as an official manager under Part 5.3;

“on”, in relation to a stock market or futures market, includes at or by means of;

“on behalf of includes on the instructions of;

“open”, in relation to the registered office of a body corporate, means open and accessible to the public;

“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:

(i) debentures, stocks or bonds issued or proposed to be issued by a government or an authority of a government; or

(ii) shares in, debentures of, or prescribed interests made available by, a body corporate;

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 within the meaning of Chapter 7 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;

“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**

“paid up”, in Part 4.3, includes credited as paid up;

“Part 5.1 body” means:

(a) a company;

(b) a registered Australian corporation; or

(c) a foreign corporation that is a registered foreign company;

“Part 5.7 body” means a Type A body or Type B body;

“participation interest” means any right to participate, or any interest:

(a) in any profits, assets or realisation of any financial or business undertaking or scheme whether in Australia or elsewhere;

(b) in any common enterprise, whether in Australia or elsewhere, in relation to which the holder of the right or interest is led to expect profits, rent or interest from the efforts of the promoter of the enterprise or a third party; or

(c) in any investment contract;

whether or not the right or interest is enforceable, whether the right or interest is actual, prospective or contingent, whether or not the right or interest is evidenced by a formal document and whether or not the right or interest relates to a physical asset, but does not include:

(d) such a right that is a right to participate in a time-sharing scheme;

(e) any share in, unit of a share in, or debenture of, a body corporate;

(f) any interest in, or arising out of, a policy of life insurance;

(g) an interest in a partnership agreement, unless the agreement or proposed agreement:

(i) relates to an undertaking, scheme, enterprise or investment contract promoted by or on behalf of a person whose ordinary business is or includes the promotion of similar undertakings, schemes, enterprises or investment contracts, whether or not that person is, or is to become, a party to the agreement or proposed agreement; or

(ii) subject to section 85, is or would be an agreement, or is or would be within a class of agreements, prescribed by the regulations for the purposes of this paragraph;

(h) a cheque, order for the payment of money, bill of exchange or promissory note;

(j) a document issued or executed by an Australian bank in the ordinary course of its banking business, being a document that evidences or acknowledges indebtedness of the bank arising in the ordinary course of that business; or

(k) a document that is not a debenture by virtue of paragraph (a) or (f) of the definition of “debenture” in this section;

“party”, 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 order” means a cheque, bank cheque, bank draft, money order or postal order;

“place of origin” means:

(a) in relation to a registrable Australian corporation—the State or Territory in which the corporation is incorporated; or

(b) in relation to a foreign company or a Part 5.7 body—the place of incorporation of the foreign company or Part 5.7 body;

“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 this Act, by the regulations or by the rules;

“prescribed interest” means:

(a) a participation interest; or

(b) a right, whether enforceable or not, whether actual, prospective or contingent and whether or not evidenced by a formal document, to participate in a time-sharing scheme;

but does not include a right or interest, or a right or interest included in a class or kind of rights or interests, declared by the regulations to be an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Chapter 7;

“‘previous Fund” means the National Guarantee Fund that was established under a law corresponding to section 929;

“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;

“principal Australian register”, in relation to a foreign company, means a branch register, kept under section 351, of members of the foreign company;

“principal executive officer”, in relation to a company, means the principal executive officer of the company for the time being, by whatever name called, and whether or not he or she is a director;

“principal register”, in relation to a company, means the register, kept under section 209, of members of the company;

“printed” includes type-written, lithographed or reproduced by any mechanical means;

“procure” includes cause;

“profit and loss account” includes income and expenditure account, revenue account or any other account showing the results of the business of a person or body for a period and, if the person or body concerned is engaged in the development or exploration of natural resources, also includes an operations account or any like account and a development account or any like account;

“profit or loss”, in Parts 3.6 and 3.7, means:

(a) in relation to a company—the profit or loss resulting from operations of the company; and

(b) in relation to 2 or more bodies corporate—the profit or loss resulting from operations of those bodies;

“promoter”, in relation to a prospectus issued by or in connection with a body corporate, means a promoter of the body who was a party to the preparation of the prospectus or of any relevant portion of the prospectus, but does not include a person merely because of the person acting in the proper performance of the functions attaching to the person’s professional capacity or to the person’s business relationship with a promoter of the body;

“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);

“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;

“proprietary company” means:

(a) except in relation to a State or Territory:

(i) a company incorporated as a proprietary company by virtue of section 116;

(ii) a company converted into a proprietary company under subsection 168 (1); or

(iii) a body corporate registered as a proprietary company under subsection 129 (4) or 137 (4);

being a company that has not since ceased under section 168 or 170 to be a proprietary company; and

(b) in relation to a State or Territory—a body corporate:

(i) that is a proprietary company for the purposes of the company law of the State or Territory;

(ii) that has a share capital;

(iii) that has under its constitution a contractual right to recover calls made on its shares from a shareholder who defaults in payment of those calls; and

(iv) whose constitution contains proprietary company provisions;

“proprietary company provisions” means the restrictions, limitations and prohibitions that section 116 requires to be included in the constitution of a company that may be incorporated as a proprietary company;

“prospectus”, in relation to securities of a corporation, means a written notice or other instrument:

(a) inviting applications or offers to subscribe for or buy the securities; or

(b) offering the securities for subscription or purchase;

“prove” includes establish in any way;

“public company” means:

(a) except in relation to a State or Territory—a company other than a proprietary company; and

(b) in relation to a State or Territory—a company, other than a proprietary company, of the State or Territory;

“public corporation” means:

(a) a public company; or

(b) in relation to a prescribed interest that relates to an undertaking, scheme, enterprise, contract or arrangement (in this paragraph called the “relevant undertaking”)—a body corporate, other than a public company, that:

(i) is an eligible corporation or is incorporated in a Territory or in an excluded Territory; and

(ii) is declared by the Commission, by writing, to be a public corporation for the purposes of Part 7.12 in relation to the relevant undertaking or in relation to a class of undertakings, schemes, enterprises, contracts or arrangements that includes the relevant undertaking;

“public document”, in relation to a body corporate, means a business letter, statement of account, invoice, receipt, order for goods, order for services, official notice or publication of, or purporting to be issued or signed by or on behalf of, the body;

“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 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;

**R**

“receiver and manager” has a meaning affected by section 90;

“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;

“register” means:

(a) in relation to a name—register under Part 4.2;

(b) otherwise—register under this Act;

**REGISTERED**

“registered Australian corporation” means a registrable Australian corporation that is registered under Division 1 of Part 4.1;

“registered body” means a registered Australian corporation or a registered foreign company;

“registered company auditor” means a person registered as an auditor, or deemed to be registered as an auditor, under this Act 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 foreign company that is registered under Division 2 of Part 4.1;

“registered liquidator” means a person registered as a liquidator under subsection 1282 (1) or (2) or deemed to be registered as a liquidator under this Act;

“registered office”, in relation to a body corporate, means the body’s registered office under:

(a) in the case of a company—section 217; or

(b) in the case of a registered body—section 359;

“registrable Australian corporation” means a corporation incorporated in a State or Territory, but does not include:

(a) a company of that State or Territory;

(b) an exempt public authority; or

(c) a corporation sole;

“registrable body” means a registrable Australian corporation or a foreign company;

“registration application”, in relation to a company, means the application that the Commission registered in the course of registering the company under Division 1, 2, 3 or 4, as the case requires, of Part 2.2;

“registration day” means:

(a) in relation to a Division 1 company—the day specified in a certificate under section 121 as the day of commencement of the company’s registration under Division 1 of Part 2.2; or

(b) in relation to a body corporate that is, or has applied to be, registered as a company under Division 2, 3 or 4 of Part 2.2—the day that is, or will be if the application is granted, specified under subsection 148 (2) as the day of commencement of the registration;

“registration number” means:

(a) in relation to a company—the number allotted to it under subsection 120 (1), 129 (2) or 137 (2), as the case requires; or

(b) in relation to a registered body—the number allotted to it under section 341 or 344, as the case requires;

“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;

“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:

(a) in the case of a company ordered to be wound up by the Court that has not previously commenced to be wound up voluntarily—the date of the winding up order; or

(b) otherwise—the date of the commencement of the winding up;

“relevant interest”:

(a) in relation to a share—has the meaning given by Division 5 (other than section 44);

(b) in relation to securities—has the meaning given by Division 5 as it applies by virtue of section 44;

(c) in relation to marketable securities within the meaning of Chapter 6—has, in Chapter 6, the meaning given by Division 5 as applying by virtue of section 605;

“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;

“reserve”, in relation to a name, means reserve under Part 4.2;

“resolution”, in relation to a body corporate, means a resolution other than a special resolution;

“resolution for voluntary winding up” means the special resolution referred to in section 491;

“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”), in Australia, 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 rules of the Court;

**S**

“same kind”, in relation to a Chapter 8 agreement, has the meaning given by section 54;

“scrip” means documents that are, or are documents of title to, securities;

“section 229 prohibition” has the meaning given by subsection 91 (1);

“section 230 order” has the meaning given by subsection 91 (2);

“section 599 order” has the meaning given by subsection 91 (3);

“section 600 notice” has the meaning given by subsection 91 (4);

**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;

“securities exchange” means:

(a) in a provision (other than a provision of 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;

(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 Chapter 7—a stock exchange within the meaning of that Chapter or an approved securities organisation;

“securities law” means a provision of, or a law corresponding to a provision of, Chapter 6 or 7;

“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 eligible securities or a class of eligible 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 925 (1);

“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;

“share” means a share in the share capital of a body corporate, and includes stock except where a distinction between stock and shares is expressed or implied;

“sheriff” includes a person charged with the execution of a writ or other process;

“sign” has, in subsection 117 (1) or (3), 125 (1) or (4) or 153 (1) or (7), a meaning affected by section 95;

“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 within the meaning of Chapter 7;

“special resolution” has the meaning given by section 253;

“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;

“State” includes the Northern Territory;

“statement”, in Chapter 7, includes matter that is not written but conveys a message;

“statutory meeting” means the meeting referred to in section 244;

“statutory report” means the report referred to in section 244;

“stock exchange” means:

(a) in a provision (other than a provision of 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;

(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 Chapter 7—any of the following that is an eligible corporation:

(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 that is approved by the Minister under section 769;

“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;

and, in Chapter 6, has a meaning affected by the definition of “stock market” in section 603;

“subscriber”, in relation to securities, means, in the case of prescribed interests, any person accepting an offer, or making an offer pursuant to an invitation, in respect of, or subscribing for or buying, any such prescribed 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 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);

**T**

“Table A” means Table A in Schedule 1;

“Table A proprietary company” means:

(a) except in relation to a State or Territory—a company limited by shares that is a proprietary company; or

(b) in relation to a State or Territory—a company of the State or Territory that is a company limited by shares, and a proprietary company, of the State or Territory;

“Table B” means Table B in Schedule 1;

“takeover scheme” means a takeover scheme referred to in section 634;

“Territory” means:

(a) the Capital Territory; or

(b) an external Territory to which this Act extends;

“this Act” includes the regulations;

“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 activities”, in relation to an existing or proposed body corporate, includes financial activities but does not include activities that the body engages in, or will engage in, in the course of carrying on, as its sole or principal business, the business of banking or insurance;

“trading corporation” means a body corporate that is, for the purposes of paragraph 51 (20) of the Constitution, a trading corporation, or a financial corporation, formed within the limits of the Commonwealth;

“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;

“transfer day” has the meaning given by section 98;

“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;

“Type A body” means:

(a) a foreign company;

(b) a corporation (other than a company) that consists of more than 5 members; or

(c) a partnership, or an unincorporated body, that:

(i) was formed in a Territory, in an excluded Territory or outside Australia and the external Territories; and

(ii) consists of more than 5 members;

but does not include a close corporation or an exempt public authority;

“Type B body” means:

(a) a body corporate that is incorporated in a State; or

(b) a partnership, or an unincorporated body, that was formed in a State or outside Australia and the external Territories;

and consists of more than 5 members, but does not include an exempt public authority;

**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 neither a stock market of a securities exchange nor an exempt stock market;

“underlying”, in relation to securities, has the meaning given by section 99;

“underwrite” includes sub-underwrite.

“unit”, in relation to a share, debenture or other interest (whether a prescribed interest or not), 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) except in relation to a State or Territory—a company; or

(b) in relation to a State or Territory—a company of the State or Territory;

formed on the principle of having no limit placed on the liability of its members;

**V**

“value”, in relation to an asset, includes amount;

“voting share”, in relation to a body corporate, means an issued share in the body 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) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;

(b) on a proposal to reduce the body’s share capital;

(c) on a proposal that affects rights attached to the share;

(d) on a proposal to wind up the body;

(e) on a proposal for the disposal of the whole of the body’s property, business and undertaking;

(f) during the winding up of the body;

**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.

***Division 2*—*Associates***

**Effect of Division**

**10.** **(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.

**Associates of bodies corporate**

**11.** 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.

**Matters relating to voting shares**

**12.** **(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 entitlement, within the meaning of Chapter 6, to shares in a body corporate; or

(c) a takeover offer, takeover scheme, or takeover announcement, within the meaning of Chapter 6, relating to shares 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.

**References in Chapter 7**

**13.** 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.

**References in Chapter 8**

**14.** 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.

**General**

**15.** **(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.

**Exclusions**

**16.** **(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 has sent, or proposes to send, to the other a takeover offer, or has made, or proposes to make, offers under a takeover announcement, within the meaning of Chapter 6, in relation to 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 Act 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.

**Associates of composite persons**

**17.** 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***

**Carrying on business: otherwise than for profit**

**18.** 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.

**Businesses of a particular kind**

**19.** 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.

**Carrying on a business: alone or together with others**

**20.** A reference in this Act 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.

**Carrying on business in Australia or a State or Territory**

**21.** **(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.

**Carrying on business interstate**

**22.** **(1)** A registrable Australian corporation that has a place of business, or carries on business, in a State or Territory other than its place of origin carries on business interstate.

**(2)** A body corporate that engages in trade or commerce:

(a) among the States;

(b) between a State and a Territory; or

(c) among the Territories;

carries on business interstate.

**(3)** A body corporate does not carry on business interstate except as provided by this section.

***Division 4*—*Dealing in futures contracts***

**Acquiring a futures contract**

**23.** **(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.

**Disposing of a futures contract**

**24.** **(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.

**Dealing in futures contracts: general**

**25.** **(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;

(b) whether or not a person carries on, or holds himself, herself or itself out as carrying on, a futures broking business or eligible futures broking business; and

(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.

**Dealing in futures contracts through intermediaries: first step**

**26.** 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.

**Dealing in futures contracts through intermediaries: second and later steps**

**27.** **(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.

**Dealing in futures contracts, through intermediaries, on futures markets**

**28.** **(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.

**Own account dealings and transactions: futures contracts**

**29.** **(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 5***—***Relevant interests in shares and securities***

**Terminology used in this Division**

**30.** **(1)** This section applies for the purposes of this Division.

**(2)** Power to vote in respect of a share is power to exercise, or to control the exercise of, the right to vote attached to the share.

**(3)** A reference to power to dispose of a share includes a reference to power to exercise control over the disposal of the share.

**(4)** A reference to power or control includes a reference to power or control that is direct or indirect or is, or can be, exercised as a result of, by means of, in breach of, or by revocation of, trusts, relevant agreements and practices, or any of them, whether or not they are enforceable.

**(5)** Power to vote in respect of a share, or power to dispose of a share, that is exercisable by 2 or more persons jointly shall be deemed to be exercisable by either or any of those persons.

**(6)** A reference to a controlling interest includes a reference to an interest that gives control.

**(7)** A reference to the prescribed percentage is a reference to:

(a) if a percentage less than 20% is prescribed for the purposes of section 615—the percentage so prescribed; or

(b) otherwise—20%.

**Basic rules**

**31.** **(1)** Except for the purposes of sections 234, 235 and 236, a person who has power to vote in respect of a voting share in a body corporate has a relevant interest in the share.

**(2)** A person who has power to dispose of a share has a relevant interest in the share.

**Control of body corporate having power in relation to a share**

**32.** Where a body corporate has, or is by this Division deemed to have:

(a) power to vote in respect of a share; or

(b) power to dispose of a share;

a person shall be deemed for the purposes of this Division to have in relation to the share the same power as the body has, or is deemed to have, if:

(c) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of the power referred to in paragraph (a) or (b); or

(d) the person has a controlling interest in the body.

**Control of prescribed percentage of voting power in body corporate having power in relation to a share**

**33.** Where a body corporate or an associate of a body corporate has, or is by this Division (other than this section) deemed to have:

(a) power to vote in respect of a share; or

(b) power to dispose of a share;

a person shall be deemed for the purposes of this Division to have in relation to the share the same power as the body or associate has, or is deemed to have, if:

(c) the person has;

(d) an associate of the person has;

(e) associates of the person together have; or

(f) the person and an associate or associates of the person together have;

power to vote in respect of not less than the prescribed percentage of the voting shares in the body.

**Deemed relevant interest in advance of performance of agreement whose performance will give rise to a relevant interest**

**34.** Where a person:

(a) has entered into a relevant agreement with another person with respect of an issued share in which the other person has a relevant interest;

(b) has a right enforceable against another person in relation to an issued share in which the other person has a relevant interest, whether the right is enforceable presently or in the future and whether or not on the fulfilment of a condition; or

(c) has an option granted by another person, or has granted to another person an option, with respect to an issued share in which the other person has a relevant interest;

and, on performance of the relevant agreement, enforcement of the right, or exercise of the option, as the case may be, the first-mentioned person

would have a relevant interest in the share, the first-mentioned person shall be deemed for the purposes of this Division to have that relevant interest in the share.

**Control of body corporate having a relevant interest by virtue of section 34**

**35.** Where a body corporate is by section 34 deemed to have a relevant interest in a share in another body corporate, a person shall be deemed for the purposes of this Division to have a relevant interest in the share if:

(a) the first-mentioned body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of:

(i) power to vote in respect of shares in the other body; or

(ii) power to dispose of shares in the other body;

(b) the person has a controlling interest in the first-mentioned body; or

(c) the person has power to vote in respect of not less than the prescribed percentage of the voting shares in the first-mentioned body.

**Matters not affecting application of Division**

**36.** **(1)** It is immaterial for the purposes of this Division whether or not power to vote in respect of a share, or power to dispose of a share:

(a) is express or implied or formal or informal;

(b) is exercisable by a person alone or jointly with any other person or persons;

(c) cannot be related to a particular share; or

(d) is, or can be made, subject to restraint or restriction.

**(2)** A relevant interest in a share shall not be disregarded merely because of either or both of the following:

(a) its remoteness;

(b) how it arose.

**Body corporate may have a relevant interest in its own shares**

**37.** A body corporate may, by virtue of this Division, be taken or deemed to have a relevant interest in a share in the body itself.

**Exclusions: money-lenders**

**38.** A relevant interest of a person in a share shall be disregarded if the person’s ordinary business includes lending money and the person has authority to exercise powers as the holder of the relevant interest only because of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, other than a transaction entered into with an associate of the person.

**Exclusions: certain trustees**

**39.** A relevant interest of a person in a share shall be disregarded if the share is subject to a trust, the person has the relevant interest as a trustee of the trust and:

(a) a beneficiary under the trust is by section 34 deemed to have a relevant interest in the share because the beneficiary has a presently enforceable and unconditional right referred to in paragraph 34 (b); or

(b) the person is a bare trustee.

**Exclusions: instructions to securities dealer to dispose of share**

**40.** A relevant interest of a person in a share shall be disregarded if the person’s ordinary business includes dealing in securities and the person has authority to exercise powers as the holder of the relevant interest only because of instructions given to the person, by or on behalf of another person, to dispose of the share on the other person’s behalf in the ordinary course of that business.

**Exclusions: honorary proxies**

**41.** A relevant interest of a person in a share shall be disregarded if the person has it only because of having been appointed, otherwise than for valuable consideration given by the person or an associate of the person, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

**Exclusions: holders of prescribed offices**

**42.** A relevant interest of a person in a share shall be disregarded if the person has it because of holding a prescribed office.

**Prescribed exclusions**

**43.** The regulations may provide that specified relevant interests in specified shares shall, in specified circumstances and subject to the specified conditions (if any), be disregarded for the purposes of specified provisions, being any or all of the provisions of:

(a) sections 234, 235 and 236;

(b) Parts 6.7 and 6.8; and

(c) Chapter 7.

**Relevant interests in securities**

**44.** **(1)** For the purposes of determining whether or not a person has a relevant interest in securities, this Division applies as if, in this Division (other than sections 35 and 37 and this section):

(a) a reference to a share were a reference to securities;

(b) a reference to a voting share in a body corporate were a reference to securities to which a right to vote at a meeting is attached;

(c) a reference to an issued share were a reference to securities that have been issued or made available;

(d) subsection (2) of this section were substituted for section 35; and

(e) subsection (3) of this section were substituted for section 37.

**(2)** Where a body corporate is, by section 34 as it applies by virtue of this section, deemed to have a relevant interest in securities, a person shall be deemed for the purposes of this Division as it so applies to have a relevant interest in the securities if:

(a) the body is, or its directors are, accustomed or under an obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the person in relation to the exercise of:

(i) power to vote in respect of the securities; or

(ii) power to dispose of the securities;

(b) the person has a controlling interest in the body; or

(c) the person has power to vote in respect of not less than the prescribed percentage of the voting shares in the body.

**(3)** A person may, by virtue of this Division as it applies by virtue of this section, be taken or deemed to have a relevant interest in securities issued or made available by the person.

**Effect of Division**

**45.** **(1)** Nothing in this Division limits the generality of anything else in

it.

**(2)** A person does not have a relevant interest in a share or in securities except as provided in this Division.

***Division 6***—***Subsidiaries and related bodies corporate***

**What is a subsidiary**

**46.** 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.

**Control of a body corporate’s board**

**47.** 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.

**Matters to be disregarded**

**48.** **(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.

**References in this Division to a subsidiary**

**49.** 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.

**Related bodies corporate**

**50.** 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.

***Division 7*—*Interpretation of other expressions***

**Acquisition and disposal of shares**

**51.** **(1)** For the purposes of the definition of “deal” in section 9 and of Chapters 6 and 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.

**(2)** For the purposes of Chapter 6, a person disposes of shares in a body corporate if, and only if, having a relevant interest in those shares, the person ceases to have a relevant interest in those shares.

**Doing acts**

**52.** A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

**Affairs of a body corporate**

**53.** For the purposes of section 260, paragraph 461 (e), section 487 or 597, subsection 1307 (1) or section 1309, or of a prescribed provision of this Act, 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 official management;

(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 official manager or deputy official manager of the body, 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 prescribed interests 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, snares in, debentures of, or prescribed interests made available by, the body;

(j) where the body has made available prescribed interests—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.

**Chapter 8 agreements of the same kind**

**54.** 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.

**Chapter 8 obligations and rights**

**55.** **(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.

**Classes of futures organisation membership**

**56.** 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.

**Classes of shares**

**57.** The shares in a body corporate, if not divided into 2 or more classes, constitute a class.

**Corresponding laws**

**58.** **(1)** A reference, in relation to a provision of an Act, to a corresponding law, or a reference to a law corresponding to a provision of an Act, is a reference to a provision of a law, or of a previous law, of, or in force in, a State or Territory, being a provision that:

(a) corresponds to that provision of that Act; or

(b) is declared by the regulations to be a provision that so corresponds.

**(2)** A reference to the lodgment or registration of a prospectus under a corresponding 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 that corresponding law.

**Debentures as consideration for acquisition of shares**

**59.** 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.

**Directors**

**60.** **(1)** Subject to subsection (2), a reference to a director, in relation to a body corporate, includes a reference to:

(a) a person occupying or acting in the position of director of the body, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position;

(b) a person in accordance with whose directions or instructions the directors of the body are accustomed to act;

(c) in the case of a body corporate incorporated outside Australia:

(i) a member of the body’s board;

(ii) a person occupying or acting in the position of member of the body’s board, by whatever name called and whether or not validly appointed to occupy, or duly authorised to act in, the position; and

(iii) a person in accordance with whose directions or instructions the members of the body’s board are accustomed to act; and

(d) in the case of a close corporation—a member of the close corporation.

**(2)** A person shall not be regarded as a person in accordance with whose directions or instructions:

(a) a body corporate’s directors; or

(b) the members of the board of a body corporate incorporated outside Australia;

are accustomed to act merely because the directors or members act on advice given by the person in the proper performance of the functions attaching to the person’s professional capacity or to the person’s business relationship with the directors or the members of the board, or with the body.

**Discretionary accounts**

**61.** 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.

**Dormant bodies corporate**

**62. (1)** A body corporate is dormant throughout a particular period if, and only if, throughout that period, the body:

(a) did not receive or become entitled to any income or incur or become liable for any expenditure;

(b) did not purchase, sell or supply any goods or other property, or any services, or enter into any agreement or pass any resolution in relation to the purchase, sale or supply of goods or other property, or services;

(c) did not issue, sell, purchase or make available any securities, or enter into any agreement or pass any resolution in relation to the issue, sale, purchase or making available of securities;

(d) did not issue a prospectus or statement, or enter into any agreement or pass any resolution in relation to the issue of a prospectus or statement, in connection with the issue, sale, purchase or making available, or the proposed issue, sale, purchase or making available, of any securities;

(e) did not take part in any research, development or exploration activities, or enter into any agreement or pass any resolution in relation to taking part in research, development or exploration activities;

(f) was not, and did not become, a party to any lease, franchise, joint venture or partnership arrangement, and did not take part in any lease, franchise, joint venture or partnership arrangement, or enter into any agreement or pass any resolution in relation to becoming a party to, or taking part in, any lease, franchise, joint venture or partnership arrangement;

(g) did not make, receive or guarantee any loan, or enter into any agreement or pass any resolution in relation to making, receiving or guaranteeing a loan;

(h) was not, and did not become, a party to any underwriting agreement and did not enter into any agreement or pass any resolution in relation to becoming a party to any underwriting agreement;

(j) did not obtain or receive a grant of any licence or other authority, or make any application or pass any resolution in relation to obtaining a licence or other authority; and

(k) was not, and did not become, a party to any litigation or negotiations with any other person or body.

**(2)** A body corporate shall not be taken not to be dormant throughout a particular period merely because, during that period, the body:

(a) issues shares to a subscriber to the body’s memorandum;

(b) holds shares in a body corporate that is dormant throughout that period;

(c) receives or becomes entitled to income by way of a payment of a charge imposed by the body:

(i) in connection with its performance of an obligation imposed by this Act or the company law of a State or Territory; and

(ii) in accordance with this Act or that law, as the case may be; or

(d) incurs or becomes liable to a necessary expense in connection with doing an act or thing mentioned in paragraph (a) or (b) or performing an obligation imposed on the body, or an officer of the body, by this Act or the company law of a State or Territory.

**(3)** A body corporate is dormant at a particular time if, and only if, that time occurs during, or at the beginning or end of, a period throughout which the body is dormant.

**(4)** A body corporate becomes dormant at its incorporation if, and only if, the body is dormant throughout a period beginning at its incorporation.

**(5)** A body corporate becomes dormant at a particular time after its incorporation if, and only if, the body:

(a) is dormant throughout a period beginning at that time; and

(b) was dormant throughout no period ending at that time.

**(6)** A body corporate ceases at a particular time to be dormant if, and only if, the body:

(a) was dormant throughout a period ending at that time; and

(b) is dormant throughout no period beginning at that time.

**Eligible circumstances**

**63.** An act or thing is done in eligible circumstances if, and only if, it is done:

(a) in the course of trade or commerce:

(i) between Australia and places outside Australia;

(ii) among the States;

(iii) between a State and a Territory; or

(iv) among the Territories;

(b) in the course of banking (other than State banking not extending beyond the limits of the State concerned);

(c) in the course of insurance business (other than insurance business relating to State insurance not extending beyond the limits of the State concerned); or

(d) in a Territory.

**Entering into a transaction in relation to shares or securities**

**64.** 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.

**Excluded corporations**

**65.** **(1)** An excluded corporation is:

(a) a corporation that is declared by the Commission, by notice published in the *Gazette,* to be an authorised dealer in the short term money market;

(b) a corporation that:

(i) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* is in force;

(ii) is registered under the *Life Insurance Act 1945* or is a corporation the whole of the issued shares in which are held beneficially by a body corporate so registered; or

(iii) is an Australian bank, or a subsidiary of an Australian bank or of a pastoral company referred to in subparagraph (i), if the repayment of all existing and future deposits with and loans to the subsidiary are guaranteed by the Australian bank or pastoral company;

and is declared by the Commission by notice published in the *Gazette* to be an excluded corporation for the purposes of Chapter 7; or

(c) a corporation that is declared by the regulations to be an excluded corporation, or a corporation that is included in a class of corporations that are declared by the regulations to be excluded corporations, for the purposes of Chapter 7.

**(2)** The Commission may, by notice published in the *Gazette*,vary or revoke a declaration made under paragraph (1) (a).

**(3)** The Commission may, by notice published in the *Gazette*:

(a) specify terms and conditions subject to which section 1017 has effect in relation to a corporation specified in paragraph (1) (b); or

(b) vary or revoke any declaration or specification made under paragraph (1) (b) or under this subsection.

**Excluded issues, offers and invitations**

**66. (1)** In this section:

“class”, in paragraphs (2) (d) and (3) (d), has a meaning affected by subsections (4) and (5);

“listed corporation” means a corporation that is included in an official list of a stock exchange within the meaning of Chapter 7;

“prospectus” means a prospectus:

(a) that was lodged under Part 7.12 or a corresponding law; and

(b) if that Part or law, as the case may be, required the prospectus, or a copy of it, to be registered under that Part or law—that, or a copy of which, as the case may be, was so registered.

**(2)** An issue or allotment of securities is an excluded issue if, and only

if:

(a) the amount subscribed for the securities by each person to whom the securities are issued or allotted is at least $500,000;

(b) the securities are issued or allotted to an underwriter under an underwriting agreement;

(c) no consideration is paid or provided in respect of the issue or allotment;

(d) except in the case of prescribed interests or units of prescribed interests—both of the following subparagraphs apply:

(i) the securities are issued or allotted to a person as a result of the acceptance of:

(a) an offer made personally to that person; or

(b) an offer made by that person pursuant to an invitation issued personally to that person;

(ii) either:

(a) no other securities of the same class are issued or allotted at the same time, or have been issued or allotted in the preceding 12 months, to any other person; or

(b) that person, and any other person or persons to whom securities of the same class are issued or allotted at the same time or have been issued or allotted in the preceding 12 months, do not together exceed 20 in number;

(e) the securities are issued or allotted to:

(i) an executive officer of the corporation by which the securities are issued or allotted or of a related body corporate;

(ii) a person (in this paragraph called a “close relative”) who is the spouse, or is a parent, brother, sister or child, of such an executive officer; or

(iii) a body corporate in which such an executive officer or a close relative of such an executive officer has, or any 2 or

more of such an executive officer and the close relatives of that executive officer together have, a controlling interest (including any interest that gives control);

(f) the securities are issued or allotted by a listed corporation pursuant to the exercise of an option, being an exercise effected by the execution of a form of a kind that had been attached to, or to copies of, a prospectus issued in relation to the option;

(g) in the case of an issue or allotment of shares in a corporation:

(i) the shares (in this subparagraph called “new shares”) are issued or allotted to the holders of other shares (in this subparagraph called “existing shares”) in that corporation:

(a) in connection with a proposal referred to in section 507 that relates to shares in that corporation; or

(b) in satisfaction in whole or in part of dividends payable by that corporation to the holders of existing shares where those holders exercised the right to have the dividends so satisfied by the issue and allotment of new shares, or acquired that right, by the execution of a form of a kind that had been attached to, or to copies of, a prospectus issued in relation to the existing shares; or

(ii) the corporation is a listed corporation and the shares are issued or allotted under a provision contained in a convertible note, whether the note was issued by that corporation or by another body corporate;

(h) in the case of an issue of debentures (other than convertible notes) of a corporation—it is made to existing holders of debentures (other than convertible notes) of the corporation;

(j) in the case of an issue of convertible notes by a corporation—it is made to existing holders of convertible notes issued by the corporation;

(k) the securities are debentures of an excluded corporation;

(m) in the case of an issue of prescribed interests (in this paragraph called “new interests”) to which an approved deed relates:

(i) it is made to existing holders of prescribed interests (in this paragraph called “existing interests”) to which the same approved deed relates:

(a) in satisfaction in whole or in part of amounts payable to those holders in respect of their existing interests, whether the existing interests are of the same class as, or are of a different class from, the new interests; or

(b) in exchange for existing interests of a different class from the new interests; and

(ii) each person to whom a new interest is issued exercised the right to have that interest issued, or acquired that right, by

the execution of a form of a kind that had been attached to, or to copies of, a prospectus issued in relation to the existing interests; or

(n) the issue or allotment of the securities is, or is of a kind that is, declared by the regulations to be an excluded issue.

**(3)** An offer or invitation in relation to securities is an excluded offer or an excluded invitation, as the case may be, if, and only if:

(a) it is an offer for subscription of, or an invitation to subscribe, at least $500,000 by each person to whom the offer is made or the invitation is issued;

(b) it is an offer or invitation to enter into an underwriting agreement or is made or issed to an underwriter under such an agreement;

(c) no consideration is paid or provided in respect of the contract resulting from acceptance of the offer or from acceptance of an offer made pursuant to the invitation;

(d) except in the case of prescribed interests or units of prescribed interests—it is made or issued personally to a person and:

(i) no offer or invitation in relation to securities of the same class is made or issued at the same time, or has been made or issued in the preceding 12 months, to any other person; or

(ii) that person, and any other person or persons to whom offers or invitations in relation to securities of the same class are issued or made at the same time or have been issued or made in the preceding 12 months, do not together exceed 20 in number;

(e) it is made or issued to:

(i) an executive officer of the corporation to securities of which the offer or invitation relates or of a related body corporate;

(ii) a person (in this paragraph called a “close relative”) who is the spouse, or is a parent, brother, sister or child, of such an executive officer; or

(iii) a body corporate in which such an executive officer or a close relative of such an executive officer has, or any 2 or more of such an executive officer and the close relatives of that executive officer together have, a controlling interest (including any interest that gives control);

(f) in the case of an offer or invitation in relation to shares in a corporation it is made or issued to the holders of other shares in that corporation in connection with a proposal referred to in section 507 that relates to shares in that corporation;

(g) in the case of debentures (other than convertible notes) of a corporation—it is made or issued to existing holders of debentures (other than convertible notes) of the corporation;

(h) in the case of convertible notes issued, or to be issued, by a corporation—it is made or issued to existing holders of convertible notes issued by the corporation;

(j) the securities are debentures of an excluded corporation;

(k) it is an offer or invitation that is, or is of a kind that is, declared by the regulations to be an excluded offer or excluded invitation, as the case may be.

**(4)** For the purposes of paragraphs (2) (d) and (3) (d):

(a) a share in a corporation is of the same class of securities as any other share in the corporation; and

(b) a debenture of a corporation is of the same class of securities as any other debenture of the corporation.

**(5)** For the purposes of subsection (4):

(a) a unit of a share in a corporation shall be taken to be a share in the corporation; and

(b) a convertible note issued, or to be issued, by a corporation, or a unit of such a convertible note, shall be taken to be both a share in, and a debenture of, the corporation.

**Exempt brokers and exempt futures advisers**

**67. (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 a receiver, or receiver and manager, appointed by a court, of property of a corporation;

(b) as a liquidator, appointed by a court, of a corporation;

(c) as a person appointed by a court to carry on the business concerned, being a business that, at the time of the appointment, a corporation was carrying on, whether alone or not;

(d) as a receiver, or receiver and manager, appointed otherwise than by a court, of property of a corporation;

(e) as a liquidator, appointed otherwise than by a court, of a corporation;

(f) as an official manager or deputy official manager of a corporation;

(g) as a trustee or other person administering a compromise or arrangement between a corporation and any other person or persons; 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.

**Exempt dealers and exempt investment advisers**

**68. (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 official manager or deputy official manager of a body corporate;

(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.

**Exempt proprietary companies**

**69. (1)** An exempt proprietary company is a proprietary company no member of which is, and no share in which is owned by, a non-exempt person.

**(2)** An exempt proprietary company of a State or Territory is a proprietary company of the State or Territory no member of which is, and no share in which is owned by, a non-exempt person.

**(3)** For the purposes of this section, a non-exempt person is:

(a) a body corporate other than:

(i) a company;

(ii) a company of a State or Territory; or

(iii) an exempt foreign company;

(b) a public company;

(c) a public company of a State or Territory;

(d) a private company a share in which is owned by a private company a share in which is owned by a private company a share in which is owned by a person other than a natural person; or

(e) a private company (other than an exempt foreign company) a share in which is owned by a body corporate that is a non-exempt person by virtue of any other application or applications of this subsection.

**(4)** For the purposes of subsection (3), a private company is:

(a) a proprietary company;

(b) a proprietary company of a State or Territory; or

(c) an exempt foreign company.

**(5)** For the purposes of subsections (3) and (4), a company is neither a public company nor a proprietary company if a licence is in force in respect of it under section 383.

**(6)** For the purposes of subsections (3) and (4), a company of a State or Territory is neither a public company, nor a proprietary company, of that State or Territory if a licence is in force in respect of it under a law corresponding to section 383.

**(7)** For the purposes of this section, a person owns a share if, and only if:

(a) the person holds, directly or indirectly, a beneficial interest in the share;

(b) the person, either alone or together with another person or other persons, is entitled (otherwise than as trustee for, on behalf of, or on account of, another person) to receive, directly or indirectly, any dividends in respect of the share or to exercise, or to control the exercise of, any rights attaching to the share; or

(c) the person is a body corporate and owns a share in a body corporate that owns, or a subsidiary of which owns, the first-mentioned share.

**(8)** Nothing in subsection (7) limits the generality of anything else in that subsection.

**(9)** A reference in paragraph (7) (c) to a person owning a share is a reference to the person owning the share by virtue of any other application or applications of subsection (7).

**Extension of period for doing an act**

**70.** Where this Act 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.

**Futures advice business and eligible futures advice business**

**71.** **(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.

**(2)** A reference to an eligible futures advice business, in relation to a person, is a reference to:

(a) a business of advising corporations about futures contracts;

(b) a business in the course of which the person gives futures reports to corporations;

(c) a business of advising other persons, in eligible circumstances, about futures contracts; or

(d) a business in the course of which the person publishes futures reports in eligible circumstances.

**(3)** The remaining provisions of this section apply for the purposes of determining:

(a) whether or not a person carries on a futures advice business or eligible futures advice business;

(b) what constitutes a futures advice business or eligible 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.

**Futures contract**

**72. (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.

**(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 Act 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.*

**Futures representatives**

**73. (1)** Subject to subsection (2), a person is a futures representative of another person if, and only if, the first-mentioned person is employed by, or acts for or by arrangement with, the other person in connection with:

(a) if at least one of those persons is a corporation—a futures broking business or futures advice business; or

(b) in any other case, but without prejudice to the effect of this subsection by virtue of paragraph (a)—an eligible futures broking business or eligible 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:

(i) if at least one of those persons is a corporation—a futures broking business or futures advice business; or

(ii) in any other case, but without prejudice to the effect of this subsection by virtue of subparagraph (i)—an eligible futures broking business or eligible 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.

**Group holding companies**

**74.** A company is a group holding company at the end of a financial year if, and only if, at the end of the financial year:

(a) the company is a holding company of a body corporate; and

(b) there is no company of which the company is a wholly-owned subsidiary.

**Inclusion in official list**

**75.** 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 of 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.

**Incorporated in Australia**

**76.** **(1)** A body corporate that is a company, or is incorporated by or under a law of the Commonwealth, is incorporated in Australia.

**(2)** A body corporate incorporated in, or by or under a law of, a State or Territory is incorporated in Australia.

**Investment advice business and eligible investment advice business**

**77.** **(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.

**(2)** A reference to an eligible investment advice business, in relation to a person, is a reference to:

(a) a business of advising other persons about eligible securities;

(b) a business in the course of which the person publishes securities reports about eligible securities;

(c) a business of advising corporations about securities;

(d) a business in the course of which the person gives securities reports to corporations;

(e) a business of advising other persons, in eligible circumstances, about securities; or

(f) a business in the course of which the person publishes securities reports in eligible circumstances.

**(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 or eligible investment advice business;

(b) what constitutes an investment advice business or eligible 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.

**Invitations, offers and forms of application**

**78.** **(1)** A reference to an invitation to do any act or thing includes a reference to an invitation to make an offer to do that act or thing.

**(2)** An invitation to deposit money with, or lend money to, a body corporate constitutes an invitation to subscribe for or buy debentures of the body.

**(3)** An offer to accept money that is deposited with, or lent to, a body corporate constitutes an offer of debentures of the body for subscription or purchase.

**(4)** An acceptance by a body corporate of money deposited with, or lent to, the body constitutes the issue by the body of debentures of the body.

**(5)** A form to accompany a deposit of money with, or a loan of money to, a body corporate, or a body corporate that is proposed to be formed, constitutes a form of application for the issue of securities of the body or proposed body.

**Involvement in contraventions**

**79.** 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.

**Jervis Bay Territory deemed part of Australian Capital Territory**

**80.** The Jervis Bay Territory and the Australian Capital Territory constitute a single Territory.

**New companies**

**81.** **(1) A** company incorporated under Division 1 of Part 2.2 is a new company from its incorporation until the end of:

(a) if the statement that was lodged for the purposes of section 153 and relates to the company states as mentioned in subsection 153 (3) or (4)—3 months beginning on the day:

(i) if the statement also states as mentioned in subsection 153 (2) and the company becomes dormant at its incorporation— when the company first ceases to be dormant; or

(ii) otherwise—of the company’s incorporation;

(b) if the statement states as mentioned in subsection 153 (5) and the company lodges a statement in accordance with section 155:

(i) if the last-mentioned statement states to the effect that the company intends as mentioned in subsection 155 (4) or (5)— 3 months beginning on the day specified under paragraph 155 (3) (c); or

(ii) otherwise—the day on which the last-mentioned statement is lodged;

(c) if the first-mentioned statement states as mentioned in subsection 153 (5) and the company contravenes section 155—the period within which the company is required to comply with that section; or

(d) otherwise—the day of the company’s incorporation.

**(2) A** body corporate that is registered under Division 2 or 3 of Part 2.2 is a new company from the start of the body’s registration day until the end of:

(a) if the statement that was lodged for the purposes of section 154 and relates to the body states as mentioned in subsection 154 (2), (3), (5) or (6)—3 months beginning:

(i) if the statement also states as mentioned in subsection 154 (4) and the body s dormant at the start of its registration day— on the day wnen the body first ceases to be dormant after that day; or

(ii) otherwise—on the body’s registration day;

(b) if the statement states as mentioned in subsection 154 (7) and the body lodges a statement in accordance with section 155:

(i) if the last-mentioned statement states to the effect that the body intends as mentioned in subsection 155 (4) or (5)—3 months beginning on the day specified under paragraph 155 (3) (c); or

(ii) otherwise—the day on which the last-mentioned statement is lodged;

(c) if the first-mentioned statement states as mentioned in subsection 154 (7) and the body contravenes section 155—the period within which the body is required to comply with that section; or

(d) otherwise—the body’s registration day.

**Offers and invitations to the public**

**82.** A reference in this Act 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 prescribed interests, 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.

**Officers, and other persons, in default**

**83.** **(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.

**(2)** A secretary of a body corporate shall, unless the contrary is proved, be deemed to be knowingly concerned in and party to a contravention by the body of:

(a) a provision of section 217; or

(b) a provision of section 242 or 335 requiring the lodgment of a document.

**Own account dealings and transactions: securities**

**84.** 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.

**Participation interests**

**85.** A regulation made for the purposes of subparagraph (g) (ii) of the definition of “participation interest” in section 9 does not apply to an agreement or a class of agreements relating to a partnership:

(a) being a partnership for the carrying on of a profession or trade where a person carrying on that profession or trade is required by an Australian law to be registered, licensed or otherwise authorised in order to do so; and

(b) the business of which does not include any business other than the business of a partnership referred to in paragraph (a).

**Possession**

**86.** A thing that is in a person’s custody or under a person’s control is in the person’s possession.

**Proper authority from futures licensee; invalid futures authority**

**87.** **(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.

**(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.

**Proper authority from securities licensee; invalid securities authority**

**88. (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.

**(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.

**Qualified privilege**

**89.** **(1)** Where this Act 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 Act 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.

**Receivers and managers**

**90.** 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.

**Being or becoming subject to a prohibition, order or notice under section 229, 230, 599 or 600**

**91.** **(1)** For the purposes of this Act, 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 law, prohibited as mentioned in that section or corresponding law.

**(2)** For the purposes of this Act, 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 law, and a reference in this Act to a section 230 order is a reference to an order so made.

**(3)** For the purposes of this Act, 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 law, and a reference in this Act to a section 599 order is a reference to an order so made.

**(4)** For the purposes of this Act, 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 law, and a reference in this Act to a section 600 notice is a reference to a notice so 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.

**Securities**

**92. (1)** Subject to this section, “securities” means:

(a) debentures, stocks or bonds issued or proposed to be issued by a government or an authority of a government;

(b) shares in, debentures of, or prescribed interests made available by, a body corporate;

(c) units of shares in, or of prescribed interests made available by, a body corporate; or

(d) an option contract within the meaning of Chapter 7;

but does not include a futures contract or an excluded security.

**(2)** Subject to subsection (3), “securities”, where that expression is used in relation to a body corporate, means:

(a) shares in the body;

(b) debentures of the body;

(c) prescribed interests made available by the body; or

(d) units of such shares or prescribed interests;

but does not include a futures contract or an excluded security.

**(3)** In a provision of this Act:

(a) a reference to securities of a body corporate in a context that excludes a corporation includes a reference to securities issued by:

(i) a government other than:

(a) the Commonwealth;

(b) the Government of a Territory; or

(c) the Government of a foreign country;

(ii) an authority of a government other than an authority of a government excluded from subparagraph (i); or

(iii) an unincorporated body or other person not excluded from subparagraph (i) or (ii);

(b) a reference to securities of a corporation includes a reference to securities issued by the Commonwealth, an authority of the Commonwealth, the Government of a Territory or of a foreign country or an authority of such a Government; and

(c) a reference to securities of a body corporate in a context that includes a corporation includes a reference to securities issued by a government, authority of a government, unincorporated body or other person;

and an express mention of a related body corporate in such a reference does not of itself show an intention to exclude the application of this section in so far as it is capable of applying in relation to the reference.

**Securities business and eligible securities business**

**93. (1)** A securities business is a business of dealing in securities.

**(2)** An eligible securities business is:

(a) a business of dealing in eligible securities;

(b) a business of dealing in securities on behalf of corporations; or

(c) a business of dealing in securities in eligible circumstances.

**(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 or eligible 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.

**Securities representatives**

**94.** **(1)** Subject to subsection (2), a person is a securities representative of another person if, and only if, the first-mentioned person is employed by, or acts for or by arrangement with, the other person in connection with:

(a) if at least one of those persons is a corporation—a securities business or investment advice business; or

(b) in any other case, but without prejudice to the effect of this subsection by virtue of paragraph (a)—an eligible securities business or eligible 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:

(i) if at least one of those persons is a corporation—a securities business or investment advice business; or

(ii) in any other case, but without prejudice to the effect of this subsection by virtue of subparagraph (i)—an eligible securities business or eligible 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.

**Signing of certain documents by bodies corporate**

**95.** Where a body corporate’s common or official seal is affixed in accordance with the body’s constitution to a memorandum, articles or a statement, then:

(a) for the purposes of subsections 117 (1) and (3), subsections 125 (1) and (4), or subsections 153 (1) and (7), as the case may be, the body shall be deemed to have signed the memorandum, articles or statement; and

(b) in the case of a memorandum or articles—subsection 117 (2) or 125 (2), as the case may be, does not require a witness to the affixing of the seal.

**Statement in a prospectus**

**96.** A statement shall be deemed to be in a prospectus if it is contained in a report or memorandum that appears on the face of, or is issued with, the prospectus, or is incorporated by reference in the prospectus, whether the reference occurs in the prospectus or in any other document.

**Stock market not to include futures market**

**97.** 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.

**Transfer days for bodies corporate**

**98.** **(1)** The Minister may, by notice published in the *Gazette*,declare as the transfer day for specified bodies corporate a specified day that is at least 2 months after the latest of the following:

(a) the day on which the notice is so published;

(b) if the bodies are or include companies of a State or Territory—the day of commencement of Division 2 of Part 2.2;

(c) if the bodies are or include registrable Australian corporations—the day of commencement of Division 1 of Part 4.1;

(d) if the bodies are or include foreign companies—the day of commencement of Division 2 of Part 4.1.

**(2)** The Commission may by writing declare a specified day as the transfer day for specified bodies corporate to which a declaration in force under subsection (1) relates.

**(3)** A declaration that is in force under subsection (1) or (2) and specifies bodies corporate by reference to their being of a particular kind or in a particular class relates to a body of that kind or in that class even if the body did not exist when the declaration was made.

**(4)** The transfer day for a body corporate is:

(a) if only one declaration relating to the body is in force under subsection (1)—the day specified in that declaration; or

(b) if 2 or more such declarations are in force—the earliest day specified in any of those declarations;

or, if a later day is specified in a declaration, or in each of 2 or more declarations, relating to the body and in force under subsection (2), that later day, or the later or latest day specified in any of the last-mentioned declarations, as the case may be.

**(5)** As soon as practicable after a notice relating to, or to bodies including:

(a) companies of a particular State or Territory;

(b) registrable Australian corporations incorporated in a particular State or Territory; or

(c) bodies corporate that the notice specifies by reference to their carrying on business in, or being foreign companies registered under the foreign companies law of, a particular State or Territory;

is published under subsection (1), the Commission shall cause to be published in a daily newspaper circulating generally in that State or Territory a notice that sets out a copy of the first-mentioned notice and explains:

(d) the effect, in relation to those companies, of section 126;

(e) the effect, in relation to those corporations, of section 340; or

(f) the effect, in relation to such foreign companies, of section 343;

as the case may be.

**Underlying securities**

**99.** Where scrip is constituted by documents that are, or are documents of title to, securities, those securities underlie the scrip.

***Division 8***—***Miscellaneous interpretation rules***

**Address of registered office etc.**

**100.** Where a provision of this Act requires a notice to be lodged of:

(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 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—shall be accompanied by the consent, given in the prescribed form, by the person who is the occupier of those premises to the specification of that address in that notice.

**Amount of stock representing a number of shares**

**101.** 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.

**Applications to be in writing**

**102.** 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 Act shall be in writing.

**Effect of certain contraventions of this Act**

**103.** **(1)** This section has effect except so far as this Act otherwise provides.

**(2)** An act, transaction, agreement, instrument, matter or thing is not invalid merely because of:

(a) a contravention of section 112, 113, 126, 340 or 343 or of Chapter 8; or

(b) a failure to comply with a requirement of this Act that a person cause a notice, or a copy of a document, to be published in the *Gazette* or in a newspaper.

**(3)** Subsection (2) also applies in relation to the incorporation of a body corporate in contravention of section 113.

**(4)** In this section:

“invalid” includes void, voidable and unenforceable.

**(5)** Nothing in this section limits the generality of anything else in it.

**Effect of provisions empowering a person to require or prohibit conduct**

**104.** Where, in accordance with a provision of this Act, 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.

**Calculation of time**

**105.** **(1)** Where, for any purpose, this Act:

(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)** Subsection 36 (1) of the *Acts Interpretation Act 1901* does not apply in relation to this Act.

**Performance of functions by Commission delegate**

**106.** For the purpose of the performance of a function, or the exercise of a power, under this Act by a Commission delegate, a reference to the Commission in a provision of this Act relating to the performance of the function, or the exercise of the power, includes a reference to the Commission delegate.

**Headings to Chapters**

**107.** The headings of the Chapters into which this Act is divided form part of this Act.

**Parts of dollar to be disregarded in determining majority in value of creditors etc.**

**108.** 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.

**References to persons, things and matters**

**109.** **(1)** Except so far as the contrary intention appears, a provision of this Act 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.

**PART 1.3—APPLICATION**

**Application of Act in relation to certain banking and insurance**

**110.** **(1)** This section applies where a provision of this Act is expressed to have, or has, the effect of:

(a) prohibiting or permitting; or

(b) otherwise providing for, referring to, or operating by reference to;

the doing of an act, or the making of an omission, by or in relation to a corporation within the meaning of that provision.

**(2)** The provision shall be deemed also to be expressed to have, or also to have, the effect of:

(a) prohibiting or permitting; or

(b) so providing for, referring to, or operating by reference to;

the doing of that act, or the making of that omission, by, or in relation to, as the case may be, a body corporate (whether or not the body is such a corporation) in the course of:

(c) banking (other than State banking not extending beyond the limits of the State concerned); or

(d) insurance business (other than insurance business relating to State insurance not extending beyond the limits of the State concerned).

**(3)** Except so far as the provision has effect by virtue of subsection (2), it shall be deemed not to be expressed as mentioned, or to have the effect referred to, in that subsection.

**(4)** Subject to subsection (3), the effect that the provision has by virtue of subsection (2) is additional to, and does not prejudice, the effect that the provision has otherwise than by virtue of that subsection.

**Act not to apply in relation to State banking or insurance within that State**

**111.** Where, but for this section, a provision of this Act:

(a) would have a particular application; and

(b) by virtue of having that application, would be a law with respect to, or with respect to matters including:

(i) State banking not extending beyond the limits of the State concerned; or

(ii) State insurance not extending beyond the limits of the State concerned;

the provision shall not have that application.

**CHAPTER 2—CONSTITUTION OF COMPANIES**

**PART 2.1—RESTRICTIONS ON FORMING CERTAIN ENTITIES**

**Outsize partnerships and associations**

**112.** **(1)** A person shall not participate in the formation of an outsize partnership or association unless it is incorporated or formed under:

(a) this Act or another Act;

(b) letters patent; or

(c) subject to section 113, a law of a State or Territory.

**(2)** For the purposes of subsection (1), a partnership or association is outsize if, and only if, it:

(a) has for one or more of its objects the acquisition of gain by the partnership or association or any of its members;

(b) is capable of being incorporated as a company under Division 1 of Part 2.2; and

(c) consists of more than:

(i) if the partnership or association is formed to carry on a profession or calling of a kind specified in a declaration in force under subsection (3)—the number of persons specified in the declaration in relation to that kind of profession or calling; or

(ii) in any other case—20 persons.

**(3)** The Minister may, by *Gazette* notice, declare that an unincorporated partnership or association consisting of not more than a specified number of persons may carry on a profession or calling of a specified kind.

**Certain corporations not to be formed under State or Territory company law**

**113.** A person shall not incorporate, or participate in the incorporation of, a body corporate under the company law of a State or Territory if the body, on its incorporation, will be a trading corporation.

**PART 2.2—REGISTRATION OF COMPANIES**

***Division 1*—*Incorporation by registration***

**Formation of companies**

**114.** Subject to this Act, any 5 or more persons, or, where the company to be formed will be a proprietary company, any 2 or more persons, associated for any lawful purpose may, by subscribing their names to a memorandum and complying with the requirements as to registration under this Division, form an incorporated company.

**Classes of companies**

**115.** **(1)** Acompany registered under this Division may be:

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited both by shares and by guarantee; or

(d) an unlimited company.

**(2)** A mining company registered under this Division may be a no liability company.

**Proprietary companies**

**116.** A company having a share capital (other than a no liability company) may be incorporated as a proprietary company if a provision of its constitution:

(a) restricts the right to transfer its shares;

(b) limits to not more than 50 the number of its members (counting joint holders of shares as one person and not counting a person who is employed by the company or any of its subsidiaries or a person

who was, while so employed, and thereafter has continued to be, a member of the company);

(c) prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the company; and

(d) prohibits any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the company for fixed periods or payable at call, whether bearing or not bearing interest.

**Requirements as to memorandum**

**117. (1)** The memorandum of a company shall be printed, divided into numbered paragraphs, dated, and signed by the persons desiring the formation of the company, and shall, in addition to other requirements, state:

(a) the name of the company or that the company’s name on registration is to be its registration number;

(b) unless the company is an unlimited company—the amount of share capital (if any) with which the company proposes to be registered and the division of that share capital into shares of a fixed amount;

(c) if the company is a company limited by shares—that the liability of the members is limited;

(d) if the company is a company limited by guarantee or a company limited both by shares and by guarantee—that the liability of the members is limited and that each member undertakes to contribute to the company’s property if the company is wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for payment of the company’s debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to the amount (if any) unpaid on any shares held by him, her or it;

(e) if the company is an unlimited company—that the liability of the members is unlimited;

(f) if the company is a no liability company—that the acceptance of shares in the company does not constitute a contract to pay calls in respect of the shares or to make any contribution towards the company’s debts and liabilities;

(g) the full names, addresses and occupations of the subscribers to the memorandum being natural persons, and the corporate names, and the addresses of the registered or principal offices, of the subscribers to the memorandum being bodies corporate; and

(h) that those subscribers wish to form a company pursuant to the memorandum and (if the company is to have a share capital) respectively agree to take the number of shares in the capital of the company set out opposite their respective names.

**(2)** The memorandum of a company may state the objects of the company.

**(3)** Each subscriber to the memorandum shall:

(a) if the company is to have a share capital—state in words:

(i) the number of shares (being at least one) that the subscriber agrees to take; and

(ii) if the shares in the company are divided into classes—the class or the respective classes in which the shares that the subscriber agrees to take are included; and

(b) in any case—sign the memorandum in the presence of at least one witness (not being another subscriber).

**(4)** A witness to the signature of a subscriber to the memorandum shall attest the signature and add his or her address.

**(5)** A statement in the memorandum of a company limited by shares that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

**Registration application**

**118. (1)** Persons desiring the incorporation of a company may lodge an application in the prescribed form for the registration of the company under this Division.

**(2)** The application shall contain the prescribed information and matters and shall be accompanied by:

(a) in any case—the prescribed documents (if any); and

(b) unless subsection (3) applies—the memorandum, and the articles (if any), of the proposed company.

**(3)** If:

(a) the proposed company’s memorandum states the matters that it is required by virtue of paragraphs 117 (1) (a), (b), (c) and (g) to state; and

(b) the proposed company’s constitution contains proprietary company provisions;

the application shall:

(c) set out the matters stated in the memorandum pursuant to those paragraphs; and

(d) state that the constitution contains proprietary company provisions.

**(4)** The application shall be signed by:

(a) if subsection (3) applies—each subscriber; or

(b) otherwise—at least one subscriber;

to the proposed company’s memorandum, in the presence of at least one witness (not being another subscriber).

**(5)** A witness to a signature that is required by this section shall attest the signature and add his or her address.

**Power to require production of unlodged memorandum**

**119.** **(1)** Where an application under section 118:

(a) is not accompanied by the proposed company’s memorandum; and

(b) purports to comply with subsection 118 (3);

the Commission may, even if it has no reason to suspect that the application was not made in accordance with that section, refuse to register the company under this Division unless and until the memorandum has been lodged.

**(2)** Where:

(a) a memorandum is lodged under subsection (1); and

(b) the Commission registers the company but is not required to register the memorandum;

the Commission shall, when it issues a certificate to the company under section 121, give the memorandum to the company.

**Registration**

**120.** **(1)** Subject to this Act, where the Commission is satisfied that an application has been made in accordance with section 118, it shall:

(a) register the company by registering:

(i) in any case—the application; and

(ii) unless the company is registered as a company limited by shares and as a proprietary company—the company’s memorandum and articles (if any); and

(b) allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part or Part 4.1.

**(2)** Subject to subsection 372 (3), the Commission shall not register a company under this Division by a particular name unless that name is reserved under section 373 in respect of the company.

**(3)** Where an application under section 118:

(a) is not accompanied by the proposed company’s memorandum; and

(b) purports to comply with subsection 118 (3);

the Commission may, unless it has reason to suspect to the contrary, assume without inquiry that:

(c) the application does so comply; and

(d) the persons who signed the application are the subscribers to the memorandum.

**Certificate of registration**

**121.** **(1)** On registering a company under this Division, the Commission shall prepare a certificate under its common seal that complies with this section and shall issue the certificate to the company.

**(2)** The certificate shall state that the company:

(a) is registered as a company under this Division; and

(b) because of that registration, is an incorporated company;

and shall specify the day of commencement of the registration.

**(3)** The certificate shall state that the company is:

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited both by shares and by guarantee;

(d) an unlimited company; or

(e) a no liability company;

as the case requires.

**(4)** The certificate shall state that the company is a proprietary company or a public company, as the case requires.

**(5)** The Commission shall keep a copy of a certificate issued under this section, and subsections 1274 (2) and (5) apply in relation to that copy as if it were a document lodged with the Commission.

**Effect of certificate**

**122.** A certificate under the Commission’s common seal stating that a specified company has been registered under this Division is conclusive evidence that:

(a) all requirements of this Act (other than section 155) in respect of:

(i) registration of the company as a company under this Division; and

(ii) matters preceding or incidental to the registration;

have been complied with;

(b) the company is duly registered under this Division; and

(c) the day of commencement of the registration is the day (if any) specified as such in the certificate.

**Incorporation**

**123.** **(1)** Subject to this Act, on and from the day specified in a certificate under section 121 as the day of commencement of a company’s registration under this Division, the subscribers to the company’s memorandum, together with such other persons as from time to time become members of the company, are an incorporated company by the name stated in the memorandum.

**(2)** A company registered under this Division:

(a) is capable of performing all the functions of a body corporate;

(b) is capable of suing and being sued;

(c) has perpetual succession;

(d) shall have a common seal; and

(e) has power to acquire, hold and dispose of property.

**Members**

**124.** **(1)** The subscribers to a Division 1 company’s memorandum shall be deemed to have agreed to become members of the company and, on the company’s incorporation:

(a) each becomes such a member; and

(b) the name of each shall be entered in the company’s register of members.

**(2)** A Division 1 company’s members are, as such, liable to contribute in accordance with this Act to the company’s property in a winding up of the company.

**Articles of association**

**125.** **(1)** There may, in the case of a company limited by shares (other than a Table A proprietary company) or a no liability company, and there shall, in the case of a company limited by guarantee, a company limited both by shares and by guarantee or an unlimited company, be registered with the memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

**(2)** At any time before the registration under this Division of a Table A proprietary company, the subscribers to the company’s memorandum may sign articles prescribing regulations for the company.

**(3)** Where, as at the registration under this Division of a Table A proprietary company, no articles prescribing regulations for the company have been signed under subsection (2), the company may, at any time after that registration, make such articles by special resolution.

**(4)** Articles shall be:

(a) printed;

(b) divided into numbered paragraphs; and

(c) unless made under subsection (3)—signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber).

**(5)** A witness to a signature to the articles of a subscriber to the memorandum shall attest the signature and add the address of the witness.

**(6)** In the case of an unlimited company that has a share capital, the articles shall state the amount of share capital with which the company proposes to be registered and the division of that share capital into snares of a fixed amount.

***Division 2***—***Registering certain State and Territory companies as companies***

**Certain State and Territory companies not to carry on business unless registered under this Division**

**126.** A body corporate that:

(a) is a company of a State or Territory;

(b) is a trading corporation or a banking corporation; and

(c) is not an externally-administered body corporate;

shall not, on or after the transfer day for the body, carry on business within or outside Australia unless:

(d) it is registered as a company under this Division; or

(e) it has applied to be so registered but the application has not been dealt with.

**State or Territory company may apply for registration**

**127.** **(1)** A company of a State or Territory may lodge an application to be registered as a company under this Division.

**(2)** The application shall be in the prescribed form and shall be accompanied by:

(a) a certified copy of a current certificate of the company’s incorporation issued under the company law of the State or Territory;

(b) unless the company is a Table A proprietary company of the State or Territory—a certified copy of the company’s constitution; and

(c) such other documents (if any) as are prescribed.

**(3)** Regulations made for the purposes of paragraph (2) (c) may make different provision in relation to different classes of bodies corporate.

**(4)** The Commission may exempt a body corporate from lodging a document under this section if the Commission is satisfied that:

(a) it already has the information that would be contained in the document;

(b) the body cannot obtain the document; or

(c) if the document is a copy of another document—the Commission already has the other document.

**Determination of application**

**128.** Subject to Division 6, the Commission shall grant an application under this Division if, and only if:

(a) the application was made in accordance with section 127; and

(b) the Commission is satisfied that:

(i) the applicant is not an externally-administered body corporate; and

(ii) the applicant’s name is reserved in respect of it under section 374.

**Registration of applicant as a company**

**129.** **(1)** This section has effect where the Commission grants an application under this Division by a body corporate.

**(2)** The Commission shall register the body as a company by registering the application, and shall allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part or Part 4.1.

**(3)** The Commission shall register the body as a company of whichever of the following classes:

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited both by shares and by guarantee;

(d) an unlimited company;

(e) in the case of a mining company—a no liability company;

most nearly corresponds to the class in which the body is included under the law under which the body was, immediately before its registration day, registered as a company of a State or Territory.

**(4)** The Commission shall register the body:

(a) if the body is a proprietary company of a State or Territory—as a proprietary company; or

(b) in any other case—as a public company.

**Constitution of Division 2 company**

**130.** **(1)** This section applies where a company of a State or Territory is registered as a company under this Division.

**(2)** The provisions that, at the time immediately before the company’s registration day, formed part of the company’s memorandum, and any provisions that were at that time deemed by virtue of a law of that State or Territory to form part of that memorandum, shall be deemed to be, with such modifications as the circumstances require:

(a) if the company is so registered as a company limited by shares and as a proprietary company—the company’s memorandum; or

(b) otherwise—the company’s registered memorandum;

and shall bind the company and its members accordingly.

**(3)** The provisions that at that time formed part of the company’s articles, and any provisions that were at that time deemed by virtue of such a law to form part of those articles, shall be deemed to be, with such modifications as the circumstances require:

(a) if paragraph (2) (a) applies—the company’s articles; or

(b) otherwise—the company’s registered articles;

and shall bind the company and its members accordingly.

**Application of Act in relation to Division 2 companies**

**131.** **(1)** Subject to this Act, a provision of this Act that applies in relation to a company shall be taken to apply in relation to a Division 2 company in relation to:

(a) the doing of an act or thing, an act or thing done, or a matter arising, before the Division 2 company’s registration day; or

(b) acts, things or matters including such an act, thing or matter, as the case may be;

unless:

(c) before that day, an act was done for the purposes of complying with a law corresponding to that provision; and

(d) the act would, if the Division 2 company had been a company, and this Act had been in operation, when the act was done, have constituted compliance with that provision as so applying.

**(2)** A provision applies as mentioned in subsection (1):

(a) as if a reference in the provision to a provision of this Act included a reference to a law corresponding to the last-mentioned provision; and

(b) with such other modifications as the circumstances require.

**Acts preparatory to external administration of Division 2 company**

**132.** **(1)** This section applies where, as at the beginning of a Division 2 company’s registration day, an act or thing has been validly done by or in relation to the company under, or for the purposes of, a law corresponding to a provision of Chapter 5 (other than Part 5.2).

**(2)** On and after the registration day, this Act (other than this Division) applies in relation to the company, with such modifications as the circumstances require, as if:

(a) the company had been a company, and this Act had been in operation, at the time when that act or thing was so done; and

(b) that act or thing had been validly done at that time under or for the purposes of that provision of that Chapter.

**(3)** Nothing in this section makes a person guilty of a contravention of this Act in respect of an act or thing done, or an omission made, when the company was not a company.

***Division 3***—***Registering foreign companies as companies***

**Foreign company may apply for registration**

**133.** **(1)** A foreign company may lodge an application to be registered as a company under this Division.

**(2)** Subject to Division 6, the Commission shall grant an application under this Division if, and only if:

(a) the Commission is satisfied that neither of sections 134 and 135 disentitles the applicant from being registered under this Division; and

(b) the application was made in accordance with section 136.

**Externally-administered body corporate not to be registered**

**134.** A foreign company is not entitled to be registered under this Division if:

(a) it is an externally-administered body corporate; or

(b) an application has been made to a court (in Australia or elsewhere):

(i) to wind up the foreign company; or

(ii) for the approval of a compromise or arrangement between the foreign company and another person;

and has not been dealt with.

**Prerequisites to eligibility**

**135.** A foreign company is not entitled to be registered under this Division unless:

(a) under the law of its place of origin:

(i) transfer of its incorporation is authorised;

(ii) it is of a class that is the same, or substantially the same, as one of the classes of companies referred to in subsection 137 (3);

(iii) if the liability of its members is limited—the extent to which, and the manner in which, that liability is limited is defined in its constitution; and

(iv) if it has a share capital and the liability of its members is limited—its capital is of a fixed amount and is divided into shares of a fixed amount;

(b) it has complied with the requirements (if any) of that law in relation to transfer of its incorporation;

(c) if that law does not require its members, or a specified proportion of them, to consent to transfer of its incorporation—transfer of its incorporation has been consented to by at least three-quarters of such of its members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at a meeting of which at least 21 days notice is given specifying the intention to apply for the transfer; and

(d) its name is reserved under section 374 in respect of it.

**Form and content of application**

**136.** **(1)** An application by a foreign company under section 133 shall be in writing in the prescribed form and shall be accompanied by:

(a) a certified copy of a current certificate of its incorporation in its place of origin or a document of similar effect;

(b) evidence acceptable to the Commission that neither of sections 134 and 135 disentitles it from being registered under this Division;

(c) a certified printed copy of its constitution;

(d) if it is applying to be registered as a company having a share capital—a statement specifying:

(i) its nominal share capital and the number and classes into which the share capital is divided;

(ii) the number of shares taken up and the amount paid on each; and

(iii) subject to subsection (3), the full name, or the surname together with at least one given name and any other initials, and the address, of each shareholder and the number and class of shares held by each;

(e) unless it is a registered foreign company—in relation to each existing charge on its property that would be a registrable charge within the meaning of Part 3.5 if it were a company, the documents that subsection 263 (3) requires to be lodged; and

(f) such other documents and information (if any) as are prescribed or as the Commission requires by written notice given to the foreign company.

**(2)** Where a document is required by or under subsection (1) to be lodged and:

(a) the document has previously been lodged under Part 4.1; or

(b) the document has previously been lodged with a person under the foreign companies law of a State or Territory and the Commission now has the document;

the Commission may dispense with the requirement.

**(3)** Subparagraph (1) (d) (iii) does not apply in relation to a foreign company that has more than 500 members and satisfies the Commission that it will:

(a) keep its principal Australian register at a place within 25 kilometres of an office of the Commission; and

(b) provide reasonable accommodation and facilities for persons to inspect, and take copies of, its list of members and its particulars of shares transferred.

**Registration of applicant as a company**

**137. (1)** This section has effect where the Commission grants an application under this Division.

**(2)** The Commission shall register the applicant as a company by registering the application, and shall allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part or Part 4.1.

**(3)** The Commission shall register the applicant as a company of whichever of the following classes:

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited both by shares and by guarantee;

(d) an unlimited company;

(e) in the case of a mining company—a no liability company;

most nearly corresponds to the class in which the applicant is included under the law of its place of origin.

**(4)** The Commission shall register the applicant as a proprietary company

if:

(a) it has a share capital;

(b) its constitution contains proprietary company provisions; and

(c) it is not registered as a no liability company.

**(5)** Otherwise, the Commission shall register the applicant as a public company.

**Registered foreign company**

**138.** Where a registered foreign company is registered as a company under this Division, the Commission shall remove its name from the register kept under Division 2 of Part 4.1 but may keep any or all of the documents that were lodged or registered under that Division and relate to the foreign company.

**Constitution of Division 3 company**

**139.** **(1)** This section applies where a foreign company is registered as a company under this Division.

**(2)** Such of the provisions of the foreign company’s constitution as this Act would, if the foreign company had originally been incorporated under Division 1 on its registration day, have required its memorandum to include shall be deemed to be the company’s registered memorandum and bind the company and its members accordingly.

**(3)** The other provisions of the constitution shall be deemed to be the company’s registered articles and bind the company and its members accordingly.

**(4)** If the constitution, or a part of it, is in a language other than English, the translation of the constitution or part into English that was lodged with the application for registration shall, even if incorrect, be deemed for the purposes of subsections (2) and (3) to be the constitution or part, to the exclusion of the constitution or part itself.

**Alterations of constitution**

**140. (1)** A foreign company that is registered under this Division as a company of a particular class shall, within 90 days after its registration day, make by special resolution such alterations (if any) of its constitution as:

(a) are necessary to express in Australian currency any amounts of money specified in the constitution;

(b) are necessary to ensure that the constitution complies with the requirements of this Act relating to the constitutions of Division 1 companies in that class; and

(c) are necessary or expedient to give effect to, or are incidental to giving effect to, this Part.

**(2)** Where a company is required by virtue of paragraph (1) (a) to alter its constitution, the alterations shall all be made on the basis of a single rate fixed by a resolution of the company passed before the resolution making the alterations, and the resolution fixing the rate, when passed under this subsection, shall be deemed, for the purposes of section 256, to be a special resolution.

**(3)** A company that subsection (1) requires to alter its constitution shall, if the Commission so directs, apply to the Court, within a period specified by the Commission, for an order approving the constitution as altered under that subsection.

**(4)** On an application under subsection (3), the Court may, if satisfied that the resolution altering the company’s constitution has been duly passed and that the alterations comply with subsection (1), make an order approving the constitution as altered under subsection (1), or approving it with specified modifications.

**(5)** Subject to subsection (6), section 171 applies in relation to a resolution under subsection (1), or an order under subsection (4), of this section, as if a reference in subsection 171 (2), (3), (5) or (9) to the memorandum of a company were a reference to the altered constitution.

**(6)** Where, but for this subsection, subsection (5) and section 171 would require a company to lodge a printed copy of its constitution as altered by a resolution under subsection (1), or an order under subsection (4), of this section, the company may instead lodge a copy of the resolution or an office copy of the order, as the case may be, and, if its memorandum has been altered by the resolution or order, a printed copy of the memorandum as so altered.

**(7)** As from the time when alterations under this section of the constitution of a company having a share capital take effect:

(a) the amount of the nominal share capital, and the nominal value of each share, shall be taken to be the amount and value respectively specified in the altered constitution;

(b) a person who, immediately before that time, held shares in the company in a particular class holds the same number of shares in that class as immediately before that time; and

(c) the amount paid up on a share in the company shall be deemed to be an amount in Australian currency that bears to the nominal value of the share under the altered constitution the same proportion as, immediately before that time, the amount paid up on the share bore to the share’s nominal value, and the amount of the share capital paid up shall be calculated accordingly.

**Share warrants**

**141.** **(1)** The bearer of a share warrant issued by a Division 3 company before its registration day is entitled, on surrendering the share warrant to the company for cancellation, to have the bearer’s name entered as a member in the company’s register of members.

**(2)** A Division 3 company is liable to compensate a person for any loss incurred by the person because of the company entering in its register of members the name of the bearer of a share warrant issued by the company, before its registration day, in respect of shares specified in the share warrant, without the share warrant being surrendered and cancelled.

**(3)** Subject to this section, the articles of a Division 3 company may provide that the bearer of a share warrant in relation to shares in the company is to be deemed to be a member of the company for all purposes or for specified purposes.

***Division 4***—***Registering close corporations as companies***

**Conversion of a close corporation into a company**

**142.** **(1)** Subject to this Act, all the members of a close corporation may, by:

(a) subscribing their names to a memorandum; and

(b) complying with the requirements as to registration of the close corporation as a company under this Division;

convert the close corporation into:

(c) if the close corporation has 5 or more members—a company; or

(d) if the close corporation has 2 or more members—a proprietary company.

**(2)** A close corporation may be registered under this Division as:

(a) a company limited by shares;

(b) a company limited both by shares and by guarantee; or

(c) an unlimited company.

**(3)** A close corporation may be registered under this Division as a proprietary company if the proposed company’s constitution includes proprietary company provisions.

**(4)** A close corporation is not entitled to be registered under this Division if:

(a) it is an externally-administered body corporate; or

(b) an application has been made to a court (in Australia or elsewhere):

(i) to wind up the close corporation; or

(ii) for the approval of a compromise or arrangement between the close corporation and another person;

and has not been dealt with.

**Requirements as to memorandum**

**143. (1)** The memorandum of a close corporation that it is proposed to register as a company under this Division shall be printed, divided into numbered paragraphs, dated, and signed by all the members of the close corporation, and shall, in addition to other requirements, state:

(a) the name of the company;

(b) the amount of the share capital of the company and the division of that share capital into shares of a fixed amount;

(c) if the close corporation is to be so registered as a company limited by shares—that the liability of the members is limited;

(d) if the close corporation is to be so registered as a company limited both by shares and by guarantee—that the liability of the members is limited and that each member undertakes to contribute to the company’s property if the company is wound up while he, she or it is a member or within one year after he, she or it ceases to be a member, for payment of the company’s debts and liabilities contracted before he, she or it ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding a specified amount in addition to the amount (if any) unpaid on any shares held by him, her or it;

(e) if the close corporation is to be so registered as an unlimited company—that the liability of the members is unlimited;

(f) the full names, addresses and occupations of the subscribers to the memorandum being natural persons, and the corporate names, and the addresses of the registered or principal offices, of the subscribers to the memorandum being bodies corporate; and

(g) that those subscribers wish to form a company pursuant to the memorandum by the registration of the close corporation as a company under this Division.

**(2)** The memorandum of a close corporation that it is proposed to register as a company under this Division may state the objects of the company.

**(3)** Each subscriber to the memorandum of a close corporation that it is proposed to register as a company under this Division shall sign the

memorandum in the presence of at least one witness (not being another subscriber).

**(4)** A witness to a signature required by this section shall attest the signature and add his or her address.

**(5)** A statement in the memorandum of a Division 4 company, being a company limited by shares, that the liability of members is limited means that the liability of the members is limited to the amount (if any) unpaid on the shares respectively held by them.

**Registration application**

**144.** **(1)** Persons desiring the conversion of a close corporation into a company may lodge an application in the prescribed form for the registration of the close corporation under this Division.

**(2)** The application shall contain the prescribed information and matters and shall be accompanied by:

(a) in any case—the prescribed documents (if any); and

(b) unless subsection (3) applies—the memorandum, and the articles (if any), of the proposed company.

**(3)** If:

(a) the proposed company’s memorandum states the matters that it is required by virtue of paragraphs 143 (1) (a), (b), (c) and (f) to state; and

(b) the proposed company’s constitution contains proprietary company provisions;

the application shall:

(c) set out the matters stated in the memorandum pursuant to those paragraphs; and

(d) state that the constitution contains proprietary company provisions.

**(4)** The application shall be signed by:

(a) if subsection (3) applies—each subscriber; or

(b) otherwise—at least one subscriber;

to the proposed company’s memorandum, in the presence of at least one witness (not being another subscriber).

**(5)** A witness to a signature that is required by this section shall attest the signature and add his or her address.

**Power to require production of unlodged memorandum**

**145.** **(1)** Where an application under section 144:

(a) is not accompanied by the proposed company’s memorandum; and

(b) purports to comply with subsection 144 (3);

the Commission may, even if it has no reason to suspect that the application was not made in accordance with that section, refuse to register the close

corporation under this Division unless and until the memorandum has been lodged.

**(2)** Where:

(a) a memorandum is lodged under subsection (1); and

(b) the Commission registers the close corporation as a company but is not required to register the memorandum;

the Commission shall, when it issues a certificate to the company under section 148, give the memorandum to the company.

**Registration**

**146. (1)** Subject to this Act, where the Commission is satisfied that:

(a) an application has been made in accordance with section 144;

(b) the close corporation is not in default in respect of any of its obligations under the *Close Corporations Act 1989*;and

(c) subsection 142 (4) does not disentitle the close corporation from being registered under this Division;

the Commission shall:

(d) register the close corporation as a company by registering:

(i) in any case—the application; and

(ii) unless the close corporation is registered as a company limited by shares and as a proprietary company—the company’s memorandum and articles (if any); and

(e) allot to the company a registration number distinct from the registration number of each body corporate (other than the company) already registered under this Part or Part 4.1.

**(2)** The Commission shall not register a close corporation under this Division by a particular name unless that name is reserved under section 374 in respect of the close corporation.

**(3)** Where an application under section 144:

(a) is not accompanied by the proposed company’s memorandum; and

(b) purports to comply with subsection 144 (3);

the Commission may, unless it has reason to suspect to the contrary, assume without inquiry that:

(c) the application does so comply; and

(d) the persons who signed the application are the subscribers to the memorandum.

**(4)** Where a body corporate is registered under this Division, the body ceases to be registered under the *Close Corporations Act 1989*,but the Commission may keep any or all of the documents that were lodged or registered under that Act and relate to the body.

**Articles of association**

**147.** **(1)** There may, in the case of a close corporation that is registered under this Division as a company limited by shares but not as a proprietary company, and there shall, in the case of a close corporation that is registered under this Division as a company limited both by shares and by guarantee or as an unlimited company, be registered with the company’s memorandum, articles signed by the subscribers to the memorandum prescribing regulations for the company.

**(2)** At any time before the registration of a close corporation under this Division as a company limited by shares and as a proprietary company, the subscribers to the company’s memorandum may sign articles prescribing regulations for the company.

**(3)** Where, as at the registration of a close corporation under this Division as a company limited by shares and as a proprietary company, no articles prescribing regulations for the company have been signed under subsection (2), the company may, at any time after that registration, make such articles by special resolution.

**(4)** Articles shall be:

(a) printed;

(b) divided into numbered paragraphs; and

(c) unless made under subsection (3)—signed by each subscriber to the memorandum in the presence of at least one witness (not being another subscriber).

**(5)** A witness to a signature to the articles of a subscriber to the memorandum shall attest the signature and add his or her address.

***Division*** 5—***Companies registered under Division 2, 3 or 4***

**Certificate of registration**

**148.** **(1)** On registering a body corporate as a company under Division 2, 3 or 4,the Commission shall prepare a certificate under its common seal that complies with this section and shall issue the certificate to the body.

**(2)** The certificate shall state that the body:

(a) is registered as a company under that Division; and

(b) because of that registration, is an incorporated company;

and shall specify the day of commencement of the registration.

**(3)** The certificate shall state that the body is:

(a) a company limited by shares;

(b) a company limited by guarantee;

(c) a company limited both by shares and by guarantee;

(d) an unlimited company; or

(e) a no liability company;

as the case requires.

**(4)** The certificate shall state that the body is a proprietary company or a public company, as the case requires.

**(5)** The Commission shall keep a copy of a certificate issued under this section, and subsections 1274 (2) and (5) apply in relation to that copy as if it were a document lodged with the Commission.

**Effect of certificate**

**149.** A certificate under the Commission’s common seal stating that a specified body corporate has been registered as a company under Division 2, 3 or 4 is conclusive evidence that:

(a) all requirements of this Act (other than section 155) in respect of:

(i) registration of the body under that Division; and

(ii) matters preceding or incidental to the registration; have been complied with;

(b) the body is duly registered as a company under that Division; and

(c) the day of commencement of the registration is the day (if any) specified as such in the certificate.

**Effect of registration under Division 2, 3 or 4**

**150.** **(1)** Where a body corporate is registered under Division 2, 3 or 4, this section has effect during the period beginning at the start of the body’s registration day and ending when the body ceases to be registered under that Division.

**(2)** The body continues in existence, by force of this subsection, as a body corporate.

**(3)** The body is a company for the purposes of this Act.

**(4)** Except as prescribed, a law of the Commonwealth (other than this Act), or a law of a State or Territory (other than a continuing law), does not apply in relation to the body merely because of either or both of the following:

(a) it was incorporated, or has at any time been registered, in a State or Territory or under a law, or a previous law, of a State or Territory;

(b) it has at any time been domiciled in a State or Territory.

**(5)** In subsection (4):

“continuing law” means a prescribed law or a law corresponding to section 164 or 166, subsection 182 (3) or section 183.

**(6)** The body:

(a) is capable of performing all the functions of a body corporate;

(b) is capable of suing and being sued;

(c) has perpetual succession;

(d) shall have a common seal; and

(e) has power to acquire, hold and dispose of property.

**(7)** The body’s members have such liability to contribute to the body’s property if the body is wound up under this Act as is provided for by this Act as it applies in relation to the body by virtue of this Division.

**(8)** Nothing in this section:

(a) creates a new legal entity;

(b) prejudices or affects the body’s identity or its continuity as a body corporate; or

(c) changes the body’s membership.

**(9)** Nothing in this section affects any act or thing done (including, for example, an appointment made or a resolution passed) before the body’s registration day under a power conferred by:

(a) the body’s constitution; or

(b) a law under which the body was incorporated or registered before that day.

**(10)** Nothing in this section or in subsection 139 (4):

(a) affects the body’s property; or

(b) affects, except as provided by this Part (other than this section and that subsection), any rights, privileges, powers, authorities, duties, functions, liabilities (including liabilities in respect of offences) or obligations of the body, or of any other person, existing immediately before the body’s registration day.

**(11)** Nothing in this section:

(a) renders defective any legal proceedings; or

(b) prevents legal proceedings from being begun or continued by or against the body.

**Application of Act to Division 2, 3 or 4 company**

**151. (1)** Subsection 175 (1) does not apply in relation to a Division 2 or 3 company unless its members, by special resolution, resolve that the subsection should apply to the company.

**(2)** Section 244 does not apply in relation to a Division 2, 3 or 4 company.

**(3)** Section 245 applies in relation to a Division 2, 3 or 4 company as if:

(a) subsection 245 (2) were omitted; and

(b) there were omitted from paragraph 245 (5) (a) “or the period of 18 months referred to in subsection (2)”.

**(4)** Section 290 applies in relation to a Division 2 or 3 company in relation to the bodies corporate that were its subsidiaries at the start of its registration day and, despite subsection 290 (2), subsection 290 (1) shall be

complied with in relation to those bodies corporate within 12 months after that day.

**(5)** Division 2 of Part 5.6 applies in relation to a Division 3 or 4 company as if a reference in that Division to a past member of the company included a reference to a person who had been a member of the company but had ceased to be such a member before the company’s registration day, but such a person is liable to contribute to the company’s property only to an amount sufficient for:

(a) payment of debts and liabilities contracted by the company before that day;

(b) payment of the costs, charges and expenses of winding up the company, in so far as those costs, charges and expenses relate to the debts and liabilities referred to in paragraph (a); and

(c) the adjustment of the rights of the contributories among themselves, in so far as the adjustment relates to the debts and liabilities referred to in paragraph (a).

**(6)** The regulations may make modifications of this Act (other than this Part) as it applies in relation to a Division 3 or 4 company.

**Establishment of registers and minute books**

**152. (1)** Within 14 days after its registration day, a Division 2, 3 or 4 company shall:

(a) establish the registers that sections 209, 215, 235, 242, 271, 715, 724, 1047 and 1070 require to be kept;

(b) include in those registers such of the information that this Act requires to be included in those registers as is available to the company at that day;

(c) establish books to be used for the entry of minutes of proceedings of meetings for the purpose of compliance with section 258; and

(d) comply with subsection 259 (1) in relation to those books.

**(2)** A Division 2 company that, immediately before its registration day:

(a) kept a register in accordance with a law corresponding to a provision referred to in paragraph (1) (a); or

(b) kept books for the purpose of complying with a law corresponding to section 258;

shall be deemed to have complied with paragraph (1) (a) or (c) in relation to that register or those books, as the case may be.

**(3)** Without limiting the generality of paragraph (1) (b), a Division 2 company that, immediately before its registration day:

(a) kept a register as mentioned in paragraph (2) (a); and

(b) was required by a law corresponding to a provision of this Act to include particular information in that register;

shall so include the information within 14 days after that day.

**(4)** Where, before the end of the period of 14 days referred to in subsection (1):

(a) under subsection 210 (3), 215 (5), 235 (8), 242 (6), 271 (4), 715 (3), 724 (4), 1047 (5) or 1070 (2), a person requests a Division 2, 3 or 4 company to give to the person, or to make available for inspection by the person, a copy of, or of a part of, a register kept under this Act; or

(b) under subsection 259 (2), a person requests a Division 2, 3 or 4 company to give to the person a copy of minutes of a general meeting;

the period within which the company is required to comply with the request shall be deemed to begin at the end of that period of 14 days.

***Division 6—Activities statements***

**Division 1 company**

**153. (1)** The Commission shall not register a company under Division 1 unless:

(a) a written statement in the prescribed form has been lodged;

(b) the statement is signed by the subscribers to the proposed company’s memorandum;

(c) the statement specifies the day on which it was so signed, or the-first day on which it was signed by any of the subscribers, as the case requires;

(d) the day specified is not more than 7 days before the application for registration was lodged and not more than 28 days before the company is so registered; and

(e) the statement, whether or not it also states as mentioned in subsection (2), states as mentioned in subsection (3), (4) or (5).

**(2)** The statement may state to the effect that the subscribers intend the proposed company to be dormant throughout a substantial period beginning at its incorporation.

**(3)** The statement may state to the effect that the subscribers intend that, within 3 months after:

(a) the day of the proposed company’s incorporation; or

(b) the period referred to in subsection (2);

as the case requires, trading activities within the meaning of this Act will be the whole or a substantial part of the company’s activities.

**(4)** The statement may state to the effect that the subscribers intend that, within 3 months after:

(a) the day of the proposed company’s incorporation; or

(b) the period referred to in subsection (2);

as the case requires, the company will carry on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned).

**(5)** The statement may state to the effect that the subscribers intend that within:

(a) 21 days after the day of the proposed company’s incorporation; or

(b) the period referred to in subsection (2);

as the case requires, persons other than the subscribers will be members of the company and have interests in it that together constitute a controlling interest in it.

**(6)** A statement may state as mentioned in subsection (5) even if, when the statement is signed by any of the subscribers, it is not known who the persons referred to in that subsection will be.

**(7)** Where a statement is lodged for the purposes of this section, each person who has signed the statement shall be taken to have stated in it that that person had, when signing the statement, the intention described in it.

**Division 2, 3 or 4 company**

**154. (1)** The Commission shall not grant an application to register a body corporate under Division 2, 3 or 4 unless:

(a) the body has lodged a written statement in the prescribed form;

(b) the statement is signed by at least 2 directors of the body;

(c) the statement specifies the day on which it was so signed, or the first day on which it was signed by a director of the body, as the case requires;

(d) the specified day is not more than 7 days before the statement was lodged; and

(e) the statement states as mentioned in:

(i) subsection (2), (3), (5), (6) or (7);

(ii) subsection (2) and subsection (3) or (6);

(iii) subsections (3) and (5);

(iv) subsection (4) and subsection (5), (6) or (7);

(v) subsections (4), (5) and (6); or

(vi) subsections (5) and (6).

**(2)** The statement may state to the effect that:

(a) as at the specified day, trading activities within the meaning of this Act were the whole or a substantial part of the body’s activities; and

(b) the body intends that such trading activities will be the whole or a substantial part of the activities in which the body will engage during a period beginning on the specified day and ending at least 3 months after the body’s registration day.

**(3)** The statement may state to the effect that:

(a) as at the specified day, the body carried on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned); and

(b) the body intends to carry on that business as its sole or principal business throughout a period beginning on the specified day and ending at least 3 months after the body’s registration day.

**(4)** The statement may state to the effect that the body intends to be dormant throughout a substantial period beginning at the start of the body’s registration day.

**(5)** The statement may state to the effect that the body intends that, within 3 months after:

(a) the body’s registration day; or

(b) the period referred to in subsection (4);

as the case requires, trading activities within the meaning of this Act will be the whole or a substantial part of the body’s activities.

**(6)** The statement may state to the effect that the body intends that, within 3 months after:

(a) the body’s registration day; or

(b) the period referred to in subsection (4);

as the case requires, the body will carry on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned).

**(7)** The statement may state to the effect that the directors signing it expect that, within:

(a) 21 days after the body’s registration day; or

(b) the period referred to in subsection (4);

as the case requires, persons who were not members of the body at the start of the specified day will be such members and have interests in the body that together constitute a controlling interest in it.

**(8)** A statement may state as mentioned in subsection (7) even if it is not known when the statement is signed by any of the body’s directors who the persons referred to in that subsection will be.

**(9)** Where a statement lodged for the purposes of this section states as mentioned in subsection (7), each director who has signed the statement shall be taken to have stated in it that that director had, when signing the statement, the expectation described in it.

**Further activities statement in certain cases where control of company is to change**

**155. (1)** Where:

(a) a company is registered under Division 1; and

(b) the statement that was lodged for the purposes of section 153 and relates to the company states as mentioned in subsection 153 (5);

the company shall:

(c) if the statement states as mentioned in subsection 153 (2) and the company becomes dormant at its incorporation—within 14 days after the company first ceases to be dormant; or

(d) in any other case—within 35 days after the company’s incorporation;

lodge a statement that complies with this section.

**(2)** Where:

(a) a body corporate is registered as a company under Division 2, 3 or 4; and

(b) the statement that was lodged for the purposes of section 154 and relates to the body states as mentioned in subsection 154 (7);

the body shall:

(c) if the statement states as mentioned in subsection 154 (4) and the body is dormant at the start of its registration day—within 14 days after the body first ceases to be dormant after the start of that day; or

(d) in any other case—within 35 days after the body’s registration day; lodge a statement that complies with this section.

**(3)** The statement shall:

(a) be in writing in the prescribed form;

(b) be signed by at least 2 directors of the company or body; and

(c) specify the day on which it was so signed, or the first day on which it was signed by a director of the company or body, as the case requires, being a day not more than 7 days before the statement is lodged.

**(4)** The statement shall state whether or not the company or body intends that, within 3 months after the specified day, trading activities within the meaning of this Act will be the whole or a substantial part of the activities of the company or body.

**(5)** If the company or body intends that, within 3 months after the specified day, it will carry on as its sole or principal business the business of banking (other than State banking not extending beyond the limits of the State concerned), the statement shall state to that effect.

**(6)** Neither section 1314 of this Act nor section 4k of the *Crimes Act 1914* applies in relation to this section.

***Division 7***—***Companies ceasing to be trading or banking corporations***

**Commission to take action**

**156.** Where it is satisfied that a company is neither a trading corporation nor a banking corporation, the Commission shall, unless the company is a new company or an application for an order to wind up the company on

the ground provided for by subsection 459 (1) has been made already and not yet dealt with, do either or both of the following:

(a) make such an application;

(b) take action in relation to the company under section 572.

**Presumptions about loss of trading or banking corporation status**

**157. (1)** This section has effect for the purposes of section 156.

**(2)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a company is, at a particular time, neither a trading corporation nor a banking corporation if, as at that time:

(a) the company:

(i) has contravened section 155; and

(ii) has lodged no annual return; or

(b) the company has lodged a notice under subsection 158 (3).

**(3)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a company is, at a particular time, neither a trading corporation nor a banking corporation if, as at that time:

(a) the company has contravened section 335 in relation to a particular financial year;

(b) the Commission has given to the company a written notice requiring the company to lodge its annual return for that financial year within a specified period of at least 28 days after the notice is so given; and

(c) that period has ended and the company has not lodged an annual return for that financial year that includes a statement complying with section 336.

**(4)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a company is not a trading corporation at a particular time if:

(a) as at that time, the company:

(i) has lodged for the purposes of section 155 a statement stating to the effect that the company does not intend as mentioned in subsection 155 (4); and

(ii) has lodged no annual return; or

(b) a statement included under section 336 in the last annual return lodged by the company before that time states to the effect that:

(i) as at a particular day, trading activities were not a substantial part of the company’s activities;

(ii) the company does not intend as mentioned in paragraph 336 (5) (b);

(iii) the company became dormant on a particular day that is not less than 3 months before that time;

(iv) trading activities were not a substantial part of the activities in which the company engaged during a particular period; or

(v) the company does not intend as mentioned in paragraph 336 (8) (c).

**(5)** Unless it is satisfied to the contrary, the Commission shall be deemed to be satisfied that a company is not a banking corporation at a particular time if, as at that time:

(a) the company:

(i) has lodged for the purposes of section 155 a statement that does not state to the effect that the company intends as mentioned in subsection 155 (5); and

(ii) has lodged no annual return; or

(b) the statement included under section 336 in the last annual return lodged by the company before that time:

(i) does not state as mentioned in subsection 336 (6); or

(ii) states to the effect that the company does not intend as mentioned in paragraph 336 (7) (b).

**Company to take action**

**158.** **(1)** This section has effect where:

(a) on a particular day, a company ceases to be a trading corporation; and

(b) the company is not a banking corporation.

**(2)** This section also has effect where:

(a) on a particular day, a company ceases to be a banking corporation; and

(b) the company is not a trading corporation.

**(3)** Within 14 days after that day, the company shall lodge a written notice stating that the company has ceased to be:

(a) if subsection (1) applies—a trading corporation; or

(b) if subsection (2) applies—a banking corporation.

**(4)** Within 28 days after that day, the company shall, unless an application for an order to wind up the company on the ground provided for by subsection 459 (1) has been made already and not yet dealt with, make such an application.

**PART 2.3—LEGAL CAPACITY, POWERS AND STATUS**

***Division 1—Legal capacity and powers***

**Interpretation**

**159.** In sections 160, 161 and 162:

(a) a reference to the doing of an act by a company includes a reference to the making of an agreement by the company and a reference to a transfer of property to or by the company; and

(b) a reference to legal capacity includes a reference to powers.

**Object of sections 161 and 162**

**160.** The object of sections 161 and 162 is:

(a) to abolish the doctrine of *ultra vires* in its application to companies; and

(b) without affecting the validity of a company’s dealings with outsiders, to ensure that the company’s officers and members give effect to provisions of the company’s constitution relating to objects or powers of the company;

and those sections shall be construed, and have effect, accordingly.

**Legal capacity**

**161.** **(1)** A company has, both within and outside Australia, the legal capacity of a natural person and, without limiting the generality of the foregoing, has, both within and outside Australia, power:

(a) to issue and allot fully or partly paid shares in the company;

(b) to issue debentures of the company;

(c) to distribute any of the property of the company among the members, in kind or otherwise;

(d) to give security by charging uncalled capital;

(e) to grant a floating charge on property of the company;

(f) to procure the company to be registered or recognised as a body corporate in any place outside Australia; and

(g) to do any other act that it is authorised to do by any other law (including a law of a foreign country).

**(2)** Subsection (1) has effect in relation to a company:

(a) subject to this Act (other than subsection 162 (1) );

(b) in a case where the company’s constitution contains an express or implied restriction on, or an express or implied prohibition of, the exercise by the company of any of its powers—despite any such restriction or prohibition;

(c) in a case where the memorandum of the company contains a provision stating the objects of the company—despite that fact; and

(d) despite subsection 162 (1).

**(3)** The fact that the doing of an act by a company would not be, or is not, in its best interests does not affect its legal capacity to do the act.

**Restrictions on companies**

**162.** **(1)** A company’s constitution may contain an express restriction on, or an express prohibition of, the exercise by the company of a power of the company.

**(2)** Where:

(a) a company exercises a power contrary to an express restriction on, or an express prohibition of, the exercise of that power, being a restriction or prohibition contained in the company’s constitution; or

(b) the memorandum of a company contains a provision stating the objects of the company and the company does an act otherwise than in pursuance of those objects;

the company contravenes this subsection.

**(3)** An officer of a company who is involved in a contravention by the company of subsection (2) contravenes this subsection.

**(4)** A person who contravenes subsection (2) or (3) is not guilty of an offence.

**(5)** Where, by exercising a power as mentioned in paragraph (2) (a), or by doing an act as mentioned in paragraph (2) (b), a company contravenes subsection (2), the exercise of the power, or the act, as the case may be, is not invalid merely because of the contravention.

**(6)** An act of an officer of a company is not invalid merely because, by doing the act, the officer contravenes subsection (3).

**(7)** The fact that:

(a) by exercising a power as mentioned in paragraph (2) (a), or by doing an act as mentioned in paragraph (2) (b), a company contravened, or would contravene, subsection (2); or

(b) by doing a particular act, an officer of a company contravened, or would contravene, subsection (3);

may be asserted or relied on only in:

(c) a prosecution of a person for an offence against this Act;

(d) an application for an order under section 230;

(e) an application for an order under section 260;

(f) an application for an injunction under section 1324 to restrain the company from entering into an agreement;

(g) proceedings (other than an application for an injunction) by the company, or by a member of the company, against the present or former officers of the company; or

(h) an application by the Commission or by a member of the company for the winding up of the company.

**(8)** Where, if subsection (7) had not been enacted, the Court would have power under section 1324 to grant, on the application of a person, an injunction restraining a company, or an officer of a company, from engaging in particular conduct constituting a contravention of subsection (2) or (3), as the case may be, the Court may, on the application of that person, order the first-mentioned company, or the officer, as the case may be, to pay damages to that person or any other person.

**Application of certain State and Territory laws**

**163.** **(1)** Despite the foreign companies law of a State or Territory, a company may carry on business in any State or Territory.

**(2)** Except as expressly provided in this Act, nothing in this Act is intended to exclude or limit the application, in relation to a company, of a law of a State or Territory, in so far as that law is capable of so applying concurrently with this Act.

**Persons having dealings with companies etc.**

**164.** **(1)** A person having dealings with a company is, subject to subsection (4), entitled to make, in relation to those dealings, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company that the matters that the person is so entitled to assume were not correct shall be disregarded.

**(2)** A person having dealings with a person who has acquired or purports to have acquired title to property from a company (whether directly or indirectly) is, subject to subsection (5), entitled to make, in relation to the acquisition or purported acquisition of title from the company, the assumptions referred to in subsection (3) and, in any proceedings in relation to those dealings, any assertion by the company or by the second-mentioned person that the matters that the first-mentioned person is so entitled to assume were not correct shall be disregarded.

**(3)** The assumptions that a person is, by virtue of subsection (1) or (2), entitled to make in relation to dealings with a company, or in relation to an acquisition or purported acquisition from a company of title to property, as the case may be, are:

(a) that, at all relevant times, the company’s constitution has been complied with;

(b) that a person who appears, from returns lodged under section 242 or 335 or with a person under a law corresponding to section 242 or 335, to be a director, the principal executive officer or a secretary of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by a director, by the principal executive officer or by a secretary, as the case may be, of a company carrying on a business of the kind carried on by the company;

(c) that a person who is held out by the company to be an officer or agent of the company has been duly appointed and has authority to exercise the powers and perform the duties customarily exercised or performed by an officer of the kind concerned;

(d) that an officer or agent of the company who has authority to issue a document on behalf of the company has authority to warrant that the document is genuine and that an officer or agent of the company who has authority to issue a certified copy of a document on behalf

of the company has authority to warrant that the copy is a true copy;

(e) that a document has been duly sealed by the company if:

(i) it bears what appears to be an impression of the seal of the company; and

(ii) the sealing of the document appears to be attested by 2 persons, being persons one of whom, by virtue of paragraph (b) or (c), may be assumed to be a director of the company and the other of whom, by virtue of paragraph (b) or (c), may be assumed to be a director or to be a secretary of the company; and

(f) that the directors, the principal executive officer, the secretaries, the employees and the agents of the company properly perform their duties to the company.

**(4)** Despite subsection (1), a person is not entitled to make an assumption referred to in subsection (3) in relation to dealings with a company if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person’s connection or relationship with the company is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a company, subsection (1) has no effect in relation to any assertion by the company in relation to the assumption.

**(5)** Despite subsection (2), a person is not entitled to make an assumption referred to in subsection (3) in relation to an acquisition or purported acquisition from a company of title to property if:

(a) the person has actual knowledge that the matter that, but for this subsection, the person would be entitled to assume is not correct; or

(b) the person’s connection or relationship with the company is such that the person ought to know that the matter that, but for this subsection, the person would be entitled to assume is not correct;

and where, by virtue of this subsection, a person is not entitled to make a particular assumption in relation to dealings with a company, subsection (2) has no effect in relation to any assertion by the company or by any other person in relation to the assumption.

**Lodgment of documents etc. not to constitute constructive notice**

**165. (1)** Subject to subsection (2), a person shall not be taken to have knowledge of:

(a) a company’s memorandum or articles or any of the contents of a company’s memorandum or articles;

(b) a document or the contents of a document; or

(c) any particulars;

merely because of either or both of the following:

(d) the memorandum, the articles, the document or the particulars has or have been lodged with the Commission, or lodged with a person under a law corresponding to a provision of this Act;

(e) the memorandum, the articles, the document or the particulars is or are referred to in any other document that has been lodged with the Commission, or lodged with a person under a law corresponding to a provision of this Act.

**(2)** Subsection (1) does not apply in relation to a document, or in relation to the contents of a document, that has been lodged under Division 2 of Part 3.5, or with a person under a law corresponding to that Division, to the extent that the document relates to a charge that is registrable under that Division or law.

**Effect of fraud**

**166.** Section 164 operates:

(a) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to dealings with a company; or

(b) to entitle a person to make the assumptions referred to in subsection (3) of that section in relation to an acquisition or purported acquisition (whether direct or indirect) of title to property from a company;

even if a person referred to in paragraph 164 (3) (b), (c) or (e) or an officer, agent or employee of the company referred to in paragraph 164 (3) (d) or (f):

(c) has acted or is acting fraudulently in relation to the dealings, or in relation to the acquisition or purported acquisition of title to property from the company, as the case may be; or

(d) has forged a document that appears to have been sealed on behalf of the company;

unless the person referred to in paragraph (a) or (b) of this section has actual knowledge that the person referred to in paragraph 164 (3) (b), (c) or (e), or the officer, agent or employee of the company referred to in paragraph 164 (3) (d) or (f), has acted or is acting fraudulently, or has forged a document, as mentioned in paragraph (c) or (d) of this section.

***Division 2—Changes of status***

**Change of status**

**167.** **(1)** Subject to this section:

(a) an unlimited company may convert to a limited company if:

(i) in any case—it was not, within the previous 3 years, a limited company that became an unlimited company under paragraph (e); and

(ii) in the case of a Division 2 company—it was not, within the previous 3 years, a limited company within the meaning of a

law corresponding to paragraph (e) that became under that law an unlimited company within the meaning of that law;

(b) a no liability company all the issued shares in which are fully paid up may convert to a company limited by shares;

(c) a company limited by shares may convert to a company limited both by shares and by guarantee;

(d) a company limited by guarantee may convert to a company limited both by shares and by guarantee; and

(e) a limited company may convert to an unlimited company.

**(2)** Where a company lodges a written application for a change of status as provided by subsection (1) and, subject to subsections 173 (1), (2) and (3) as applied by subsection (7) of this section, lodges with the application the necessary documents, the Commission shall issue to the company a certificate of registration:

(a) appropriate to the change of status applied for; and

(b) specifying, in addition to the particulars prescribed in respect of a certificate of registration of a company of that status, that the certificate is issued under this section;

and, on the issue of such a certificate, the company is a company having the status specified in the certificate.

**(3)** In subsections (2) and (5), “necessary documents”, in relation to an application under that subsection, means:

(a) a printed copy of a special resolution of the company:

(i) resolving to change the status of the company and specifying the status sought;

(ii) making such alterations to the memorandum of the company as are necessary to bring the memorandum into conformity with the requirements of this Act relating to the memorandum of a Division 1 company of the status sought;

(iii) if the company has articles otherwise than by virtue of subsection 175 (2)—making such alterations and additions (if any) to the articles as are necessary to bring the articles into conformity with the requirements of this Act relating to the articles of a Division 1 company of the status sought;

(iv) otherwise—adopting such articles (if any) as are required by this Act to be registered in respect of a Division 1 company of the status sought or are proposed by the company as the registered articles of the company upon the change in its status; and

(v) changing the name of the company to a name by which it could be registered as a Division 1 company of the status sought;

(b) if, by a special resolution of a kind referred to in paragraph (a), the memorandum of the company is altered or the articles of the

company are altered or added to, or articles are adopted by the company—a printed copy of the memorandum as altered, the articles as altered or added to, or the articles adopted, as the case may be;

(c) if the application is by a Table A proprietary company and:

(i) the articles of the company are neither altered nor added to; and

(ii) no articles are adopted;

by a special resolution of a kind referred to in paragraph (a)—a printed copy of the company’s articles; and

(d) in the case of an application by a limited company to convert to an unlimited company:

(i) the prescribed form of assent to the application subscribed by or on behalf of all the members of the company; and

(ii) a statement in writing by a director or secretary of the company verifying that the persons by whom or on whose behalf such a form of assent is subscribed constitute the whole membership of the company and, if a member has not subscribed the form in person, that the director or secretary making the statement has taken all reasonable steps to satisfy himself or herself that each person who subscribed the form was lawfully empowered so to do.

**(4)** Where the status of a company is changed under to this section, notice of the change of status shall be published by the company in such manner (if any) as the Commission directs.

**(5)** The provisions of subsections 171 (2) to (10), inclusive, do not apply in relation to an application under this section or in relation to necessary documents in relation to such an application.

**(6)** A special resolution passed for the purposes of an application under this section takes effect only on the issue under this section of a certificate of registration of the company to which the resolution relates.

**(7)** With such modifications as are necessary, subsections 172 (6) to (10), inclusive, and section 173 apply to and in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to a change of status as if it were a special resolution under section 172.

**(8)** A change in the status of a company under this section does not operate:

(a) to create a new legal entity;

(b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) to affect the property, or the rights or obligations, of the company; or

(d) to render defective any legal proceedings by or against the company;

and any legal proceedings that could have been continued or commenced by or against the company before the change in its status may, notwithstanding the change in its status, be continued or commenced by or against it after the change in its status.

**Change from public to proprietary company or vice versa**

**168. (1)** A public company having a share capital (other than a no liability company) may convert to a proprietary company by lodging a copy of a special resolution:

(a) determining to convert to a proprietary company and specifying an appropriate alteration to its name; and

(b) altering its constitution so far as is necessary to ensure that the constitution includes proprietary company provisions.

**(2)** A proprietary company may, subject to its constitution, convert to a public company by lodging:

(a) a copy of a special resolution determining to convert to a public company and specifying an appropriate alteration to its name; and

(b) in the case of a Table A proprietary company—a copy of its memorandum and of its articles (if any);

and thereupon the proprietary company provisions included, or deemed to be included, in its constitution, cease to form part of its constitution.

**(3)** On compliance by a company with subsection (1) or (2) and on the issue of a certificate of registration of the company altered accordingly, the company is a proprietary company or a public company, as the case requires.

**(4)** With such modifications as are necessary, subsections 172 (6) to (10), inclusive, and section 173 apply in respect of the proposal, passing and lodging, and the cancellation or confirmation by the Court, of a special resolution relating to the conversion of a company under subsection (1) or (2) of this section as if it were a special resolution under section 172.

**(5)** A conversion of a company under subsection (1) or (2) does not operate:

(a) to create a new legal entity;

(b) to prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) to affect the property, or the rights or obligations, of the company; or

(d) to render defective any legal proceedings by or against the company;

and any legal proceedings that could have been continued or commenced by or against the company before the conversion may, despite the conversion, be continued or commenced by or against it after the conversion.

**Registration of Table A proprietary company’s constitution after change of status**

**169.** Where a Table A proprietary company changes its status under section 167 or 168, the Commission shall register the memorandum, and the articles, of the company that were lodged under that section.

**Default in complying with requirements as to proprietary companies**

**170.** **(1)** Where, on application by the Commission with respect to a proprietary company or by a member or creditor of a proprietary company, the Court is satisfied that default has been made in relation to the company in complying with a prohibition of a kind specified in paragraph 116 (c) or (d) that is included, or is deemed to be included, in the company’s constitution, the Court may, by order, determine that, on such date as the Court specifies in its order, the company ceased to be a proprietary company.

**(2)** Where:

(a) default has been made in relation to a proprietary company in complying with a limitation of a kind specified in paragraph 116 (b) that is included, or is deemed to be included, in the company’s constitution;

(b) a proprietary company has been convicted of an offence under subsection (7) of this section;

(c) a proprietary company purports to alter its constitution in such a way that the constitution would no longer include proprietary company provisions; or

(d) a proprietary company has ceased to have a share capital;

the Commission may, by notice in writing served on the company, determine that, on such date as is specified in the notice, the company ceased to be a proprietary company.

**(3)** Where, under this section, the Court or the Commission determines that a company has ceased to be a proprietary company:

(a) the company is a public company and shall be deemed to have been a public company on and from the date specified in the order or notice;

(b) the company shall, on the date so specified, be deemed to have changed its name by the omission from the name of the word “Proprietary” or the abbreviation “Pty.”, as the case requires; and

(c) if an order has been made under subsection (1)—the company shall, within 14 days after the date of the order, lodge an office copy of the order.

**(4)** Where the Court is satisfied that a default or alteration referred to in subsection (1) or (2) has occurred but that it was accidental or due to inadvertence or to some other sufficient cause or that on other grounds it is just and reasonable to grant relief, the Court may, on such terms and conditions as to the Court seem just and expedient, determine that the company has not ceased to be a proprietary company.

**(5)** A company that, by virtue of a determination made under this section, has become a public company shall not convert to a proprietary company without the leave of the Court.

**(6)** Where a subscription for shares in or debentures of, or a deposit of money with, a proprietary company is arranged by or through a solicitor, broker, agent or any other person (whether an officer of the company or not) who invites the public to make use of his, her or its services in arranging investments or holds himself, herself or itself out to the public as being in a position to arrange investments, the company and any person, including any officer of the company, who is a party to the arrangement each contravene this subsection.

**(7)** Where default is made in relation to a proprietary company in complying with any of the proprietary company provisions that are included, or deemed to be included, in the company’s constitution, the company contravenes this subsection.

**(8)** An act or transaction is not invalid merely because of contravention of either or both of subsections (6) and (7).

***Division 3—Memorandum and articles***

**General provisions as to alteration of memorandum**

**171. (1)** The memorandum of a company may be altered to the extent, and in the manner, provided by this Act but not otherwise.

**(2)** Subject to any other provision of this Act requiring a resolution of a company, an order of the Court, or any other document, affecting the memorandum of a company to be lodged, the company shall, within 14 days after the passing of any such resolution, the making of any such order or the execution of any such document, lodge a copy of the resolution, an office copy of the order or a copy of the document, as the case may be.

**(3)** Subsection (2) does not apply in relation to a Table A proprietary company in relation to a resolution, order or document unless it affects the company’s memorandum in relation to the company’s name, share capital, or status as a proprietary company.

**(4)** On being required by the Commission to do so, a Table A proprietary company shall lodge a printed copy of its memorandum, even if the memorandum has not been altered.

**(5)** Where an alteration or alterations in the memorandum of a company has or have been made, the company shall, on being required by the Commission to do so, lodge a printed copy of the memorandum as altered by the alteration or alterations.

**(6)** In subsection (5):

“alteration”, in relation to a company’s memorandum, includes, in the case of a Division 2 or 3 company, an alteration made before the company’s registration day.

**(7)** The Commission shall register a resolution, order or other document lodged under this Act that affects the memorandum of a company.

**(8)** Subject to this Act, where a resolution of a company, an order of the Court, or any other document, affects a company’s memorandum, the alteration of the memorandum to which the resolution, order or document relates shall take effect:

(a) if this Act requires the resolution, order or document to be lodged— on, and not before, the resolution, order or document is registered under subsection (7); or

(b) otherwise—on the day on which the resolution is passed, the order is made or the document is executed, as the case may be, or on such later day as the resolution, order or document specifies.

**(9)** Where a resolution, order or other document has been registered by the Commission under subsection (7), the Commission shall:

(a) in the case of an order—certify the registration of the order; and

(b) in the case of a resolution or other document—if so requested by the company, certify the registration of the resolution or document.

**(10)** A certificate of the Commission as to the registration of an order is conclusive evidence that all the requirements of this Act with respect to the alteration to which the order relates and any confirmation of that alteration have been complied with.

**(11)** Notice of the registration shall be published in such manner (if any) as the Court or the Commission directs.

**(12)** The Commission shall, where appropriate, issue a certificate of registration of the company in accordance with the alteration made to the memorandum.

**(13)** The Commission shall keep a copy of a certificate issued under subsection (12), and subsections 1274 (2) and (5) apply to that copy as if it were a document lodged with the Commission.

**Alterations of memorandum**

**172. (1)** Subject to this section, a company may, by special resolution, alter the memorandum of the company:

(a) if the memorandum contains a provision stating the objects of the company—by altering or omitting that provision;

(b) if the memorandum does not contain a provision stating the objects of the company—by inserting in the memorandum a provision stating the objects of the company; or

(c) in any case—by altering, omitting or inserting any other provision with respect to the objects of the company or any provision with respect to the powers of the company.

**(2)** Subject to this section, subsection 180 (3) and section 260, if a provision of the memorandum of a company could lawfully have been

contained in the articles of the company, the company may, by special resolution, alter the memorandum:

(a) unless the memorandum prohibits the alteration of that provision— by altering that provision; or

(b) unless the memorandum prohibits the omission of that provision— by omitting that provision.

**(3)** The memorandum of a company may provide that a special resolution altering, adding to or omitting a provision contained in the memorandum, being a provision that could lawfully have been contained in the articles of the company, does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

**(4)** Without limiting the generality of subsection (3), the further requirement referred to in that subsection may be a requirement:

(a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) that the consent or approval of a particular person be obtained; or

(c) that a particular condition be fulfilled.

**(5)** Nothing in subsection (2) permits the alteration or omission of a provision of the memorandum of a company that relates to rights to which only members in a particular class of members are entitled.

**(6)** Notice of a general meeting specifying the intention to propose, as a special resolution, a resolution for the alteration of the memorandum of a company, being an alteration provided for by subsection (1), shall be given:

(a) to all members;

(b) to all trustees for debenture holders; and

(c) if there are no trustees for, or for a particular class of, debenture holders—to all debenture holders, or all debenture holders in that class, as the case may be, whose names are, at the time of the posting of the notice, known to the company.

**(7)** The Court may, in the case of any person or class of persons, for such reasons as seem sufficient to the Court, dispense with the notice referred to in subsection (6).

**(8)** If an application for the cancellation of an alteration of the memorandum of a company is made to the Court in accordance with this section by:

(a) in the case of an alteration provided for by subsection (1)—the holders of not less than 10% in nominal value of the company’s debentures; or

(b) in any case—the holders of not less, in the aggregate, than 10% in nominal value of the company’s issued share capital or any class of that capital or, if the company is not limited by shares, not less than 10% of the company’s members;

the alteration does not have any effect except so far as it is confirmed by the Court.

**(9)** The application shall be made within 21 days after the date on which the resolution altering the memorandum of the company was passed, and may be made, on behalf of the persons entitled to make the application, by such one or more of their number as they appoint in writing for the purpose.

**(10)** On the application, the Court shall have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors and may do any or all of the following:

(a) adjourn the proceedings so that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or a subsidiary of the company) of the interests of dissentient members;

(b) give directions and make orders for facilitating or carrying into effect any such arrangement;

(c) make an order cancelling the alteration or confirming the alteration either wholly or in part and on specified terms and conditions.

**(11)** A reference in this section to a provision of the memorandum of a company that could lawfully have been contained in the articles of the company is, in the case of a memorandum of a Division 2 or 3 company, a reference to a provision of the memorandum of the company that could lawfully have been contained in the articles of the company if the memorandum and articles of the company had originally been registered under this Act.

**Lodging, and taking effect, of resolutions passed under section 172**

**173. (1)** Where a resolution altering a company’s memorandum as provided by subsection 172 (1) or (2) is passed, this section has effect despite any other provision of this Act.

**(2)** If this Act requires a copy of the resolution to be lodged, the company shall:

(a) if no application is made to the Court in accordance with section 172—lodge such a copy within 14 days after the end of the period of 21 days after the day on which the resolution is passed; or

(b) otherwise—lodge such a copy, together with an office copy of the order of the Court, within 14 days after:

(i) the end of that period of 21 days; or

(ii) the Court determines the application; whichever happens later.

**(3)** Otherwise, the resolution shall not take effect before the end of 21 days after the day on which the resolution is passed.

**Effect of memorandums of certain Division 2 companies**

**174.** **(1)** In this section:

“entrenchable provision”, in relation to the memorandum of a body corporate, means a provision of the memorandum that could lawfully have been contained in the body’s articles;

“translation day”, in relation to a company of a State or Territory, means:

(a) except in the case of a company of the Northern Territory or an external Territory—1 January 1984;

(b) in the case of a company of the Northern Territory— 1 January 1984 or, if another day is prescribed, that other day; or

(c) in the case of a company of an external Territory—the day prescribed in relation to that Territory.

**(2)** Where:

(a) a company of a State or Territory is registered as a company under Division 2 of Part 2.2; and

(b) throughout the period beginning immediately before the company’s translation day and ending immediately before its registration day, the company’s memorandum:

(i) prohibited the alteration of an entrenchable provision; or

(ii) provided as mentioned in a law corresponding to subsection 172 (3) in respect of a special resolution altering or adding to an entrenchable provision;

then, so long as it continues so to prohibit, or so to provide, the company’s memorandum shall be deemed:

(c) also to prohibit the omission of the entrenchable provision; or

(d) also to provide to the same effect in respect of a special resolution omitting the entrenchable provision;

as the case may be.

**(3)** Subsection (2) has effect in relation to a memorandum except so far as the memorandum expressly provides to the contrary.

**Articles adopting Table A or B**

**175.** **(1)** Articles may:

(a) in the case of a company other than a no liability company—adopt all or any of the regulations contained in Table A; or

(b) in the case of a no liability company—adopt all or any of the regulations contained in Table B.

**(2)** Where a Division 1 company is a company limited by shares, the regulations contained in Table A, except in so far as they are excluded or modified by articles of the company that are registered, or signed or made, as the case requires, under section 125, shall be, so far as applicable, the

company’s articles in the same manner, and to the same extent, as if they were contained in registered articles.

**(3)** Except in so far as the regulations contained in Table A are excluded or modified by, or are otherwise inconsistent with, provisions that are proved for the purposes of a proceeding in an Australian court to be included (otherwise than by virtue of subsection (2)) at a particular time in the articles of a Table A proprietary company, those regulations shall be deemed for the purposes of that proceeding to have been included in the company’s articles at that time.

**(4)** In the case of a Division 1 company that is a no liability company, if articles are not registered, or if articles are registered then in so far as they do not exclude or modify the regulations contained in Table B, those regulations shall, so far as applicable, be the articles of the company in the same manner, and to the same extent, as if they were contained in registered articles.

**Alteration of articles**

**176. (1)** Subject to this Act, a company may by special resolution alter or add to its articles.

**(2)** The memorandum of a company may provide that a special resolution altering or adding to the articles of the company does not have any effect unless and until a further requirement specified in the memorandum has been complied with.

**(3)** Without limiting the generality of subsection (2), the further requirement referred to in that subsection may be a requirement:

(a) that the relevant special resolution be passed by a majority consisting of a greater number of members than is required to constitute the resolution as a special resolution;

(b) that the consent or approval of a particular person be obtained; or

(c) that a particular condition be fulfilled.

**(4)** Subject to this Act, an alteration or addition so made in the articles is, on and from the date of the special resolution or such later date as is specified in the resolution, as valid as if originally contained in the articles and is subject in like manner to alteration by special resolution.

**(5)** Subject to this section, a company has the power, and shall be deemed always to have had the power, to amend its articles:

(a) unless it is a no liability company—by the adoption of all or any of the regulations contained in Table A; or

(b) if it is a no liability company—by the adoption of all or any of the regulations contained in Table B;

by reference only to the regulations in the Table or to the numbers of particular regulations contained in the Table, without being required in the special resolution effecting the amendment to set out the text of the regulations so adopted.

**Deemed proprietary company provisions**

**177.** **(1)** Where, but for this section, a proprietary company’s constitution would not include proprietary company provisions, the company’s articles shall be deemed to include:

(a) if no provision of the constitution restricts the right to transfer shares in the company—a provision prohibiting the transfer of such shares except to a person approved by the directors; and

(b) in any case—such other restrictions, limitations and prohibitions as are necessary for the articles to include proprietary company provisions.

**(2)** A restriction, limitation or prohibition that is deemed by subsection (1) to be included in a company’s articles shall, in so far as it is inconsistent with another provision of the company’s constitution, prevail.

**Alteration of proprietary company provisions**

**178.** A proprietary company may, by special resolution, alter any of the proprietary company provisions included, or deemed to be included, in its constitution, but not so that the constitution ceases to contain proprietary company provisions.

**Constitution of companies limited by guarantee**

**179.** **(1)** In the case of a company limited by guarantee and not having a share capital, a provision in the constitution, or in a resolution, of the company purporting to give a person a right to participate in the divisible profits of the company otherwise than as a member is void.

**(2)** For the purposes of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, a provision in the constitution, or in a resolution, of a company limited by guarantee purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital even if the nominal amount or number of the shares or interests is not specified.

**(3)** This section does not apply in relation to a Division 2 company that was originally incorporated:

(a) before 1 October 1954 under the company law of the Capital Territory;

(b) before 1 January 1937 under the company law of New South Wales;

(c) before 31 January 1911 under the company law of Victoria;

(d) before 21 March 1932 under the company law of Queensland;

(e) before 1 March 1935 under the company law of South Australia;

(f) before 5 October 1962 under the company law of Western Australia;

(g) before 1 February 1921 under the company law of Tasmania;

(h) before 1 March 1935 under the company law of the Northern Territory; or

(j) before the prescribed day in relation to an external Territory under the company law of that Territory.

**Operation of memorandum and articles**

**180.** **(1)** Subject to this Act, the constitution of a company has the effect of a contract under seal:

(a) between the company and each member;

(b) between the company and each eligible officer; and

(c) between a member and each other member;

under which each of the above-mentioned persons agrees to observe and perform the provisions of the constitution as in force for the time being so far as those provisions are applicable to that person.

**(2)** Subject to section 385, any money payable by a member of a company to the company under the company’s constitution is a debt from the member to the company and is of the nature of a specialty debt according to the law of the Capital Territory.

**(3)** A member of a company, unless either before or after the alteration is made the member agrees in writing to be bound by it, is not bound by an alteration of the constitution made after the date on which the member became a member so far as the alteration:

(a) requires the member to take or subscribe for more shares than the number held by the member at the date of the alteration;

(b) in any way increases the member’s liability as at the date of the alteration to contribute to the share capital of, or otherwise to pay money to, the company; or

(c) increases, or imposes, restrictions on the right to transfer the shares held by the member at the date of the alteration.

**(4)** Subsection (3) does not apply in relation to an alteration of the constitution of a public company having a share capital (other than a no liability company) if the alteration:

(a) is made by virtue of a special resolution of the kind referred to in subsection 168 (1); and

(b) is necessary to ensure that the constitution includes proprietary company provisions.

**(5)** In this section, “eligible officer”, in relation to a company, means a director, the principal executive officer or a secretary of the company.

**Copies of memorandum and articles**

**181.** **(1)** A company shall, on being so required by a member, send to the member a copy of the memorandum and of the articles (if any) of the company:

(a) if the company requires the payment of an amount not exceeding the prescribed amount—within the period of 21 days after the payment is received by the company; or

(b) otherwise—within the period of 21 days after the request was made;

or within that period as extended by the Commission.

**(2)** On being required by the Commission to do so, a Table A proprietary company shall lodge a printed copy of its articles (if any), even if they have not been altered.

**(3)** Where an alteration of the memorandum or articles of a company has been made, the company shall not issue a copy of the memorandum or articles after the date of alteration unless:

(a) the copy is in accordance with the memorandum or articles as altered by the alteration; or

(b) a printed copy of the order or resolution making the alteration is annexed to the copy of the memorandum or articles and the particular clauses or articles affected are indicated in ink.

**(4)** Where an alteration or alterations in the articles of a company has or have been made, the company shall, on being required by the Commission to do so, lodge a printed copy of the articles as altered by the alteration or alterations.

**(5)** In subsections (3) and (4):

“alteration”, in relation to a company’s memorandum or articles, includes, in the case of a Division 2 or 3 company, an alteration made before the company’s registration day.

**(6)** Where an agreement a copy of which:

(a) is required, or would but for subsection 256 (2) be required, to be lodged under section 256; or

(b) was required to be lodged with a person under a law corresponding to section 256;

affects the memorandum or articles of a company, the company shall not, after the agreement is entered into, issue or lodge a copy of the memorandum or articles unless a copy of the agreement is annexed to the copy of the memorandum or articles.

***Division 4*—*Transactions on a company’s behalf***

**Confirmation of contracts and authentication and execution of documents**

**182. (1)** So far as concerns the formalities of making, varying or discharging a contract, a person acting under the express or implied authority of a company may make, vary or discharge a contract in the name of, or on behalf of, the company in the same manner as if that contract were made, varied or discharged by a natural person.

**(2)** The making, variation or discharging of a contract in accordance with subsection (1) is effectual in law and binds the company and other parties to the contract.

**(3)** A contract or other document executed, or purporting to have been executed, under the common seal of a company is not invalid merely because a person attesting the affixing of the common seal was in any way, whether directly or indirectly, interested in that contract or other document or in the matter to which that contract or other document relates.

**(4)** This section does not prevent a company from making, varying or discharging a contract under its common seal.

**(5)** This section does not apply in relation to a Division 2, 3 or 4 company in relation to the making, variation or discharging of a contract before the company’s registration day, but applies otherwise in relation to such a company whether it gives its authority before, on or after that day.

**(6)** This section does not affect the operation of a law that requires some consent or sanction to be obtained, or some procedure to be complied with, in relation to the making, variation or discharge of a contract.

**(7)** A document or proceeding requiring authentication by a company may be authenticated by the signature of an officer of the company and need not be authenticated under the common seal of the company.

**(8)** A company may, by writing under its common seal, empower a person, either generally or in respect of a specified matter or specified matters, as its agent or attorney to execute deeds on its behalf, and a deed signed by such an agent or attorney on behalf of the company and under his, her or its seal or, subject to subsections (10) and (11), under the appropriate official seal of the company, binds the company and has the same effect as if it were under the common seal of the company.

**(9)** The authority of an agent or attorney empowered under subsection (8), as between the company and a person dealing with him, her or it, continues during the period (if any) mentioned in the instrument conferring the authority or, if no period is so mentioned, until notice of the revocation or termination of his, her or its authority has been given to the person dealing with him, her or it.

**(10)** A company may, if authorised by its articles, have for use in place of its common seal outside the State or Territory where its common seal is kept one or more official seals, each of which shall be a facsimile of the common seal of the company with the addition on its face of the name of every place where it is to be used.

**(11)** The person affixing such an official seal shall, in writing signed by the person, certify on the instrument to which it is affixed the date on which and the place at which it is affixed.

**(12)** A document sealed with such an official seal shall be deemed to be sealed with the common seal of the company.

**Ratification of contracts made before formation of company**

**183. (1)** In this section:

(a) a reference to a non-existent company purporting to enter into a contract is a reference to:

(i) a person executing a contract in the name of a company, where no such company exists; or

(ii) a person purporting to enter into a contract as agent or trustee for a proposed company;

(b) a reference to a person who purports to execute a contract on behalf of a non-existent company shall be construed as a reference to a person who executes a contract or purports to enter into a contract as mentioned in subparagraph (a) (i) or (ii);

(c) a reference, in relation to the purported entry into a contract by a non-existent company, to the formation of the company is a reference to:

(i) if a person has executed a contract in the name of a company and no such company exists—the registration, under Division 1 of Part 2.2, of a company that, having regard to all the circumstances, is reasonably identifiable with the company in the name of which the person executed the contract; or

(ii) if a person has purported to enter into a contract as agent or trustee for a proposed company—the registration, under Division 1 of Part 2.2, of a company that, having regard to all the circumstances, is reasonably identifiable with the proposed company.

**(2)** Where:

(a) a non-existent company purports to enter into a contract; and

(b) the company is formed within a reasonable time after the contract is purported to be entered into;

the company may, within a reasonable time after it is formed, ratify the contract.

**(3)** Where a company ratifies a contract as provided by subsection (2), the company is bound by, and entitled to the benefit of, that contract as if the company had been formed before the contract was entered into and had been a party to that contract.

**(4)** Where a non-existent company purports to enter into a contract and:

(a) the company is not formed within a reasonable time after the contract is purported to be entered into; or

(b) the company is formed within such a reasonable time but does not ratify the contract within a reasonable time after the company is formed;

the other party or each of the other parties to the contract may, subject to subsection (6) and (9), recover from the person or any one or more of the persons who purported to execute the contract on behalf of the non-existent company an amount of damages equivalent to the amount of damages for which that party could have obtained a judgment against the company if:

(c) where the company has not been formed as mentioned in paragraph (a)—the company had been formed, and had ratified the contract as provided by subsection (2); or

(d) where the company has been formed as mentioned in paragraph (b)—the company had ratified the contract as provided by subsection (2);

and the contract had been discharged by a breach constituted by the refusal or failure of the company to perform any obligations under the contract.

**(5)** Where:

(a) proceedings are brought to recover damages under subsection (4) in relation to a contract purported to be entered into by a nonexistent company; and

(b) the company has been formed;

the court in which the proceedings are brought may, if it thinks it just and equitable to do so, make either or both of the following:

(c) an order directing the company to transfer or pay to a specified party to the contract a specified property, or specified amount not exceeding the value of any benefit, received by the company as a result of the contract;

(d) an order that the company pay the whole or a specified portion of any damages that, in those proceedings, the defendant has been, or is, found liable to pay.

**(6)** Where, in proceedings to recover damages under subsection (4) in relation to a contract purported to be entered into by a non-existent company, the court in which the proceedings are brought makes an order under paragraph (5) (c), the court may refuse to award any damages in the proceedings or may award an amount of damages that is less than the amount that the court would have awarded if the order had not been made.

**(7)** Where:

(a) a non-existent company purports to enter into a contract;

(b) the company is formed, and ratifies the contract as provided by subsection (2);

(c) the contract is discharged by a breach of the contract constituted by a refusal or failure of the company to perform all or any of its obligations under the contract; and

(d) the other party or any one or more of the other parties to the contract brings or bring proceedings against the company for damages for breach of the contract;

the court in which the proceedings are brought may, subject to subsection (9), if it thinks it just and equitable to do so, order the person or any one or more of the persons who purported to execute the contract on behalf of the company to pay to the person or persons by whom the proceedings are brought the whole or a specified portion of any damages that the company has been, or is, found liable to pay to the person or persons by whom the proceedings are brought.

**(8)** Where a person purports, whether alone or together with another person or other persons, to execute a contract on behalf of a non-existent company, the other party to the contract, or any of the other parties to the contract, may, by writing signed by that party, release the first-mentioned person from any liability in relation to the contract.

**(9)** Where a person has, as provided by subsection (8), released another person from liability in relation to a contract that the other person purported to execute on behalf of a non-existent company, then:

(a) notwithstanding subsection (4), the first-mentioned person is not entitled to recover damages from the other person in relation to that contract; and

(b) a court shall not, in proceedings under subsection (7), order the other person to pay to the first-mentioned person any damages, or any proportion of the damages, that the company has been, or may be, found liable to pay to that first-mentioned person.

**(10)** Where:

(a) a non-existent company purports to enter into a contract;

(b) the company is formed; and

(c) the company and the other party or other parties to the contract enter into a contract in substitution for the first-mentioned contract;

any liabilities to which the person who purported to execute the first-mentioned contract on behalf of the company is subject under this section in relation to the first-mentioned contract (including liabilities under an order made by a court under this section) are, by force of this subsection, discharged.

**(11)** Any rights or liabilities of a person under this section (including rights or liabilities under an order made by a court under this section) in relation to a contract are in substitution for any rights that the person would have, or any liabilities to which the person would be subject, as the case may be, apart from this section, in relation to the contract.

**(12)** Where:

(a) a person purports to enter into a contract as trustee for a proposed company; and

(b) the company is formed within a reasonable time after the person purports to enter into the contract but does not ratify the contract within a reasonable time after the company is formed;

then, despite any rule of law or equity, the trustee does not have any right or indemnity against the company in respect of the contract.

**(13)** For the purposes of this section, a contract may be ratified by a company in the same manner as a contract may be made by a company under section 182, and section 182 has effect as if:

(a) a reference in that section to making a contract were a reference to ratifying a contract; and

(b) the reference in subsection 182 (3) to a contract executed, or purporting to have been executed, under the common seal of a company were a reference to a contract ratified, or purporting to have been ratified, under the common seal of a company.

**PART 2.4—MEMBERSHIP AND SHARE CAPITAL**

***Division 1*—*Membership generally***

**Membership of company**

**184.** A person who agrees to become a member of a company and whose name is entered in the company’s register of members becomes a member of the company.

**Membership of holding company**

**185.** **(1)** This section applies where a body corporate (in this section called the “subsidiary”) is a subsidiary of a company (in this section called the “holding company”).

**(2)** The subsidiary cannot be a member of the holding company.

**(3)** An allotment or transfer to the subsidiary of shares in the holding company is void.

**(4)** A purported acquisition by the subsidiary of units of shares in the holding company is void.

**(5)** None of subsections (2), (3) and (4) applies where the subsidiary is concerned as a personal representative.

**(6)** None of subsections (2), (3) and (4) applies where the subsidiary is concerned as a trustee and neither the holding company nor any of its subsidiaries is beneficially interested under the trust except by way of a security given for the purposes of a transaction entered into in the ordinary course of business in connection with the lending of money, other than a transaction entered into with an associate of the holding company or of any of its subsidiaries.

**(7)** If:

(a) the holding company is a Division 2 company that was originally incorporated under the company law of a State or Territory;

(b) the subsidiary was a subsidiary, and a member, of the holding company at the commencement of:

(i) if that Territory is the Capital Territory—the *Companies Ordinance 1962* of that Territory;

(ii) if the State is New South Wales—the *Companies Act,* 1961 of that State;

(iii) if that State is Victoria—the *Companies Act* 1961 of that State;

(iv) if that State is Queensland—*The Companies Act of* 1961 of that State;

(v) if that State is South Australia—the Companies Act 1962-1981 of that State;

(vi) if that State is Western Australia—the *Companies Act* 1961 of that State;

(vii) if that State is Tasmania—the *Companies Act* 1962 of that State;

(viii) if that State is the Northern Territory—the *Companies Act* 1961 of that State; or

(ix) if that Territory is an external Territory—a prescribed law, or a prescribed previous law, of that Territory; and

(c) the subsidiary has been a subsidiary, and a member, of the holding company ever since that commencement;

this section does not prevent the subsidiary from continuing to be such a member but, subject to subsections (5) and (6), the subsidiary does not have a right to vote at meetings of the holding company or of a class of members of the holding company.

**(8)** If subsection (7) does not apply but the subsidiary already held shares in the holding company at the time when it became a subsidiary of the holding company, this section does not prevent it from continuing to be a member of the holding company but, subject to subsections (5) and (6):

(a) the subsidiary does not have a right to vote at meetings of the holding company or of a class of members of the holding company; and

(b) within the period of 12 months after that time or within that period as extended by the Court, the subsidiary shall dispose of all its shares in the holding company.

**(9)** Subject to subsections (5) and (6), a reference in subsection (2), (3), (4), (7) or (8) to the subsidiary includes a reference to a nominee for the subsidiary.

**(10)** If the holding company is a company limited by guarantee or an unlimited company, a reference in this section to shares includes a reference to the interest of a member of the holding company as such a member, whatever the form of that interest and whether or not the holding company has a share capital.

**Prohibition of carrying on business with fewer than statutory minimum number of members**

**186.** **(1)** Where the number of members of a company (counting joint holders of shares as one person) is reduced:

(a) in the case of a proprietary company—below 2; or

(b) in the case of any other company—below 5;

and the company carries on business for more than 6 months while the number is so reduced, a person who, at any time when the company so carries on business after those 6 months, is a member of the company and is aware that the company is carrying on business with fewer than 2 or 5 members, as the case may be:

(c) is severally liable for the payment of any debt of the company contracted at a time when:

(i) the company so carries on business after those 6 months; and

(ii) the person is a member;

and may be severally sued for payment of that debt; and

(d) contravenes this subsection.

**(2)** Subsection (1) does not apply in relation to a company the whole of the issued shares of which are held by a holding company that is a company.

***Division 2*—*Shares generally***

**Return as to allotments**

**187.** **(1)** Where a company makes an allotment of its shares, or shares in a company are deemed to have been alloted under subsection (6), the company shall, within one month after the allotment is made or deemed to have been made, lodge a return of the allotment stating:

(a) the number and nominal amounts of the shares comprised in the allotment;

(b) the amount (if any) paid, deemed to be paid or due and payable on the allotment of each share;

(c) if the capital of the company is divided into shares of different classes—the class of shares to which each share comprised in the allotment belongs; and

(d) subject to subsection (2), the full name, or the surname together with at least one given name and the other initials, and the address of each of the allottees and the number and class of shares allotted to him, her or it.

**(2)** The particulars mentioned in paragraph (1) (d) need not be included in a return:

(a) where shares have been allotted for cash by a no liability company;

(b) where a company to which subsection 337 (1) applies has allotted shares for cash; or

(c) where a company to which subsection 337 (1) applies has allotted shares for a consideration other than cash and the number of persons to whom the shares have been allotted exceeds 500.

**(3)** Where shares in a company are allotted, or deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made under a contract in writing, the company shall lodge with the return the contract evidencing the entitlement of the allottee or a certified copy of the contract.

**(4)** If a certified copy of a contract is lodged in accordance with subsection (3), the company shall produce to the Commission at the same time the original contract duly stamped.

**(5)** Where shares in a company are allotted, or are deemed to have been allotted, as fully or partly paid up otherwise than in cash and the allotment is made:

(a) under a contract not reduced to writing;

(b) under a provision of the company’s constitution;

(c) in satisfaction of a dividend declared in favour of, but not payable in cash to, the shareholders; or

(d) pursuant to the application of money held by the company in an account or reserve in paying up or partly paying up unissued shares to which the shareholders have become entitled;

the company shall lodge with the return a statement containing such particulars as are prescribed.

**(6)** For the purposes of this section, shares in a company that the subscribers to the memorandum have agreed in the memorandum to take shall be deemed to have been allotted to those subscribers on the date of the incorporation of the company.

**Differences in calls and payments, reserve liability etc.**

**188. (1)** A company, if so authorised by its articles, may:

(a) make arrangements on the issue of shares for varying the amounts and times of payment of calls as between shareholders;

(b) accept from a member the whole or a part of the amount remaining unpaid on any shares although no part of that amount has been called up; and

(c) unless it is a no liability company—pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

**(2)** A limited company may, by special resolution, determine that any portion of its share capital that has not been already called up is not capable of being called up except in the event, and for the purposes, of the company being wound up, and thereupon that portion of the company’s share capital

is not capable of being called up except in the event, and for the purposes, of the company being wound up, but no such resolution prejudices any rights acquired by a person before the passing of the resolution.

**Share warrants**

**189.** A company shall not issue a share warrant.

**Power to issue shares at a discount**

**190.** **(1)** A no liability company may issue shares at a discount.

**(2)** Subject to this section, a company other than a no liability company may issue at a discount shares in a class of shares already issued if:

(a) the issue of the shares at a discount:

(i) is authorised by resolution passed in general meeting of the company; and

(ii) is confirmed by order of the Court;

(b) the resolution specifies the maximum rate of discount at which the shares are to be issued;

(c) the shares are issued within the period of one month after the day on which the issue is confirmed by order of the Court or within that period as extended by the Court; and

(d) the shares are first offered to every holder of shares in that class in proportion to the number of shares in that class already held.

**(3)** The Court may, if having regard to all the circumstances of the case it thinks proper to do so, make an order confirming the issue on such terms and conditions as it thinks fit.

**(4)** If there is a prospectus relating to the issue of the shares, the company shall set out in the prospectus particulars of the discount allowed or of so much of that discount as has not been written off as at the day of the issue of the prospectus.

**(5)** An offer made for the purposes of paragraph (2) (d) shall be made by notice specifying the number of shares to which the member is entitled, and specifying a period, being not less than 21 days from the date of the notice, within which the offer may be accepted.

**(6)** If an offer in respect of shares made in accordance with subsection (5) is not accepted within the period specified by the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

**Issue of shares at a premium**

**191.** **(1)** Where a company issues shares for which it receives a premium, whether in cash or in the form of other valuable consideration, a sum equal to the aggregate amount or value of the premiums on those shares shall be transferred to an account to be called the “share premium account”, and the provisions of this Act relating to the reduction of the share capital of a

company, other than subsection 195 (6) apply, subject to this section, as if the share premium account were paid-up share capital of the company.

**(2)** The share premium account may be applied:

(a) in paying up unissued shares to be issued to members of the company as fully paid bonus shares;

(b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company;

(c) in the payment of dividends, if those dividends are satisfied by the issue of shares to members of the company;

(d) in the case of a company that carries on life insurance business in Australia—by appropriation or transfer to any statutory fund established and maintained under the *Life Insurance Act 1945*;

(e) in writing off:

(i) the preliminary expenses of the company; or

(ii) the expenses of, or the payment made in respect of or discount allowed on, any issue of shares in, or debentures of, the company; or

(f) in providing for the premium payable on redemption of debentures or redeemable preference shares.

**Redeemable preference shares**

**192. (1)** Subject to this section, a company having a share capital may, if so authorised by its articles, issue preference shares that are, or at the option of the company are to be, liable to be redeemed.

**(2)** The redemption shall not be taken to reduce the authorised share capital of the company.

**(3)** The company shall not redeem the shares:

(a) except on such terms, and in such manner, as are provided by the articles;

(b) except out of profits that would otherwise be available for dividends or out of the proceeds of a fresh issue of shares made for the purposes of the redemption; and

(c) unless they are fully paid-up.

**(4)** The premium (if any) payable on redemption shall be provided for out of profits or out of the share premium account.

**(5)** Where redeemable preference shares are redeemed otherwise than out of the proceeds of a fresh issue of shares, there shall, out of profits that would otherwise have been available for dividends, be transferred to a reserve called the “capital redemption reserve” a sum equal to the nominal amount of the shares redeemed, and the provisions of this Act relating to the reduction of the share capital of a company, other than subsection 195 (6), apply, except as provided by this section, as if the capital redemption reserve were paid-up share capital of the company.

**(6)** Where, under this section, a company has redeemed or is about to redeem preference shares, it may issue shares up to the sum of the nominal values of the shares redeemed or to be redeemed as if those preference shares had never been issued.

**(7)** The capital redemption reserve may be applied in paying up unissued shares of the company to be issued to members of the company as fully-paid bonus shares.

**(8)** Where a company redeems any redeemable preference shares, it shall, within 14 days after so doing, lodge a notice in the prescribed form relating to the shares redeemed.

**(9)** Shares shall be taken to have been redeemed even if a cheque given in payment of the amount payable upon redemption of the shares has not been presented for payment.

**(10)** If default is made in complying with this section, the company contravenes this subsection.

**Power of company to alter its share capital**

**193. (1)** A company may, if so authorised by its articles, by resolution passed in general meeting alter the provisions of its memorandum in any one or more of the following ways:

(a) by increasing its share capital by the creation of new shares of such amount as it thinks expedient;

(b) by consolidating and dividing all or any of its share capital into shares of larger amount than its existing shares;

(c) by converting, or providing for the conversion of, all or any of its paid-up shares into stock or re-converting, or providing for the reconversion of, that stock into paid-up shares of any denomination;

(d) by subdividing its shares or any of them into shares of smaller amount than is fixed by the memorandum, but so that, in the subdivision, the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived;

(e) by cancelling shares that, at the date of the passing of the resolution to that effect, no person has taken or agreed to take or that have been forfeited and by reducing the amount of the company’s share capital by the amount of the shares so cancelled.

**(2)** An alteration made in the memorandum in accordance with subsection (1) takes effect on the date of the resolution or such later date as is specified in the resolution.

**(3)** A cancellation of shares under this section is not a reduction of share capital within the meaning of this Act.

**(4)** An unlimited company having a share capital may, by any resolution passed for the purposes of subsection 167 (1), do either or both of the following:

(a) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the increased capital may be called up except in the event, and for the purposes, of the company being wound up;

(b) provide that a specified portion of its uncalled share capital may not be called up except in the event, and for the purposes, of the company being wound up.

**Validation of shares improperly issued**

**194.** **(1)** Where a company has purported to issue or allot shares and:

(a) the creation, issue or allotment of those shares is invalid by reason of any provision of this or any other Act or of the memorandum or articles of the company or for any other reason; or

(b) the terms of the purported issue or allotment are inconsistent with or are not authorised by any such provision;

the Court may, on application by the company, by a holder or mortgagee of any of those shares or by a creditor of the company and on being satisfied that in all the circumstances it is just and equitable so to do, make an order:

(c) validating the purported issue or allotment of those shares; or

(d) confirming the terms of the purported issue or allotment of the shares;

or both.

**(2)** On the lodging of an office copy of an order made under subsection (1), the shares to which the order relates shall be deemed to have been validly issued or allotted on the terms of the issue or allotment of the shares.

**Special resolution for reduction of share capital**

**195.** **(1)** Subject to confirmation by the Court, a company may, if so authorised by its articles, by special resolution reduce its share capital in any way and in particular, without limiting the generality of the foregoing, may do all or any of the following:

(a) extinguish or reduce the liability on any of its shares in respect of share capital not paid up;

(b) cancel any paid-up share capital that is lost or is not represented by available assets; or

(c) pay off any paid-up share capital that is in excess of the needs of the company;

and may, so far as necessary, alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

**(2)** A reduction in the paid-up share capital of a company does not of itself operate to reduce the nominal share capital of the company.

**(3)** Where the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs:

(a) every creditor of the company who, at the date fixed by the Court, is entitled to any debt or claim that, if that date were the date of commencement of the winding up the company, would be admissible in proof against the company, is entitled to object to the reduction;

(b) the Court, unless satisfied on affidavit that there are no such creditors, shall settle a list of the names of creditors entitled to object and, for that purpose, shall ascertain as far as possible, without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a final day on or before which creditors whose names are not entered on the list may claim to be so entered; and

(c) where a creditor whose name is entered on the list, and whose debt has not been discharged or whose claim has not determined, does not consent to the reduction, the Court may dispense with the consent of that creditor on the company securing payment of his debt or claim by appropriating as the Court directs:

(i) if the company admits the full amount of the debt or claim or, through not admitting it, is willing to provide for it—the full amount of the debt or claim; or

(ii) if the company does not admit and is not willing to provide for the full amount of the debt or claim or if the amount is contingent or not ascertained—an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

**(4)** The Court may, having regard to any special circumstances of any case, direct that all or any of the provisions of subsection (3) shall not apply in respect of creditors included in a class of creditors.

**(5)** The Court may, if satisfied with respect to each creditor who under subsection (3) is entitled to object, that:

(a) the creditor’s consent to the reduction has been obtained;

(b) the creditor’s debt has been discharged or secured; or

(c) the creditor’s claim has determined or has been secured;

make an order confirming the reduction on such terms and conditions as it thinks fit.

**(6)** An order made under subsection (5) shall show:

(a) the amount of the share capital of the company as altered by the order;

(b) the number of shares into which the share capital is to be divided;

(c) the amount of each share; and

(d) the amount (if any) that at the date of the order is deemed to be paid up on each share.

**(7)** A company shall not act upon a resolution for the reduction of share capital before the date on which a certified copy of the resolution and an office copy of the order of the Court have been lodged with the Commission but such a resolution may specify a date, earlier than the first-mentioned date but not earlier than the date of the resolution, as the date from which the reduction of capital is to have effect.

**(8)** A certificate of the Commission stating that a certified copy of the resolution and an office copy of the order made under subsection (5) have been registered by the Commission is conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with in respect of the company and that the share capital of the company is such amount as is stated in the order.

**(9)** Upon lodgment of a copy of an order as mentioned in subsection (7), the particulars shown in the order pursuant to subsection (6) shall be deemed to be substituted for the corresponding particulars in the memorandum and the substitution shall be deemed to be an alteration of the memorandum for the purposes of this Act.

**(10)** A member of a company, past or present, is not liable in respect of any share in the company to any call or contribution exceeding in amount the difference (if any) between the amount of the share as fixed by an order made under subsection (5) and the amount paid, or the reduced amount (if any) that is deemed to have been paid, on the share (as the case may be) but, where the name of a creditor who is entitled under subsection (3) to object to a reduction is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, not entered on the list of creditors, and after the reduction the company is unable, within the meaning of the provisions of this Act with respect to winding up by the Court, to pay the amount of his debt or claim:

(a) every person who was a member of the company at the date of the registration of the copy of the order for reduction is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that he would have been liable to contribute if the company had commenced to be wound up on the day before that date; and

(b) if the company is wound up, the Court, on the application of any such creditor and proof of his ignorance of the proceedings for reduction or of their nature and effect with respect to his claim, may, if it thinks fit, settle accordingly a list of the names of persons liable to contribute by reason of paragraph (a) and make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up;

but nothing in this subsection affects the rights of the contributories among themselves.

**(11)** An officer of a company shall not:

(a) knowingly conceal the name of a creditor entitled to object to a reduction in the share capital of the company; or

(b) knowingly misrepresent the nature or amount of the debt or claim of any creditor of the company.

**(12)** This section does not apply to an unlimited company, but nothing in this Act precludes an unlimited company from reducing in any way its share capital, including any amount in its share premium account.

**(13)** The granting by a company to a member of the company of a right to occupy or use land, or a building or a part of a building, owned or held under lease by the company, whether for consideration or not, shall not be regarded as being a reduction of the share capital of the company if it is made pursuant to a provision of the memorandum or articles of the company under which a member of the company may, by virtue of his being such a member, be granted such a right, whether the provision provides for consideration to be given for it or not.

**(14)** Subsection (13) applies whether the grant is by way of lease, under-lease, licence or otherwise, and whether or not, in the case of a grant in respect of a building or part of a building, the grant also entitles the member to a right of use of a garage, outbuilding or other structure or of a passage, stairway or convenience of a building or of land appurtenant to the building or part of the building.

**(15)** This section does not apply in relation to a reduction of capital, or to a cancellation of shares that have been allotted, where the reduction or cancellation results from, or is necessary because of, the operation of:

(a) Chapter 6;

(b) regulations made for the purposes of that Chapter; or

(c) a law corresponding to that Chapter or to such regulations;

and nothing in this Act operates to invalidate any such reduction of capital or cancellation of shares.

***Division 3***—***Class rights***

**Commission to be informed of special rights carried by, or division or conversion of, shares**

**196. (1)** Where a company allots shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 256 applies, the company shall, unless the rights attached to the shares are in all respects the same as the rights attached to shares previously allotted, lodge with the Commission, within one month after the allotment of the shares, a statement in the prescribed form relating to those rights.

**(2)** Where:

(a) shares in a company that were not previously divided into classes are so divided; or

(b) shares in a company that are of one class are converted into shares of another class;

the company shall, within one month after the division or conversion, lodge with the Commission a return in the prescribed form showing particulars of the division or conversion.

**(3)** If a company contravenes this section, the company and any officer of the company who is in default each contravene this subsection.

**Rights of holders of classes of shares**

**197. (1)** This section applies to a company having a share capital that is divided into classes of shares.

**(2)** Where:

(a) rights are attached to shares included in a class of shares;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

the company may, with the consent in writing of the holders of three-quarters of the issued shares included in that class or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

**(3)** Where:

(a) rights are attached to shares included in a class of shares; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

**(4)** Where rights are attached to shares included in a class of shares and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

the holders of not less in the aggregate than 10% of the issued shares included in that class may apply to the Court to have the variation or

abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

**(5)** An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

**(6)** On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

**(7)** A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

**(8)** For the purposes of this section, the allotment by a company of preference shares ranking equally with existing preference shares shall be deemed to be a variation of the rights attached to those existing preference shares unless the allotment of the first-mentioned shares was authorised by the terms of allotment of the existing preference shares or by the memorandum or articles in force at the time when the existing preference shares were allotted.

**(9)** Nothing in section 172 or 176 affects the operation of this section.

**Rights of holders of shares**

**198. (1)** This section applies to a company having a share capital that is not divided into classes of shares.

**(2)** Where:

(a) rights are attached to shares in a company;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

the company may, with the consent in writing of the holders of three-quarters of the issued shares in the company or with the sanction of a special resolution passed at a meeting of the holders of those shares, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

**(3)** Where:

(a) rights are attached to shares in a company; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the holders of the issued shares in the company or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the holders of those shares;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the holders of those shares or with the sanction of such a resolution passed at a meeting of the holders of those shares.

**(4)** Where rights are attached to shares in a company and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

the holders of not less in the aggregate than 10% of the issued shares in the company may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

**(5)** An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the shareholders entitled to make the application, by such one or more of their number as they appoint in writing.

**(6)** On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the shareholders of the company, set aside the variation, abrogation or alteration, as the case may be, and shall, if not so satisfied, confirm it.

**(7)** A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge an office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

**(8)** For the purposes of this section:

(a) the allotment by a company of shares to which are attached rights that are not provided for in the memorandum or articles of the company or in a resolution or document to which section 256 applies shall be deemed to be a variation of the rights attached to shares previously issued unless the rights attached to the first-mentioned shares are in all respects the same as the rights attached to shares previously issued; and

(b) the division of shares in a company into classes of shares shall be deemed to be a variation of the rights attached to those shares unless, in relation to each share in the company, the rights attached to that share are in all respects the same after the division as they were before the division.

**(9)** Nothing in section 172 or 176 affects the operation of this section.

**Rights of classes of members**

**199. (1)** This section applies to a company not having a share capital.

**(2)** Where:

(a) members of the company included in a class of members have special rights;

(b) no provision is made by the memorandum or articles for the variation or abrogation of those rights; and

(c) neither the memorandum nor the articles declares or declare those rights to be unalterable;

the company may, with the consent in writing of three-quarters of the members included in that class or with the sanction of a special resolution passed at a meeting of members included in that class, vary or abrogate those rights or alter the memorandum or articles so as to authorise the variation or abrogation of those rights.

**(3)** Where:

(a) members of the company included in a class of members have special rights; and

(b) provision is made by the memorandum or articles authorising the variation or abrogation of those rights with the consent of a specified proportion of the members included in that class or with the sanction of a resolution of a kind specified in the memorandum or articles passed at a meeting of the members included in that class;

the memorandum or articles shall not be altered so as to vary or abrogate, or to authorise the variation or abrogation of, those rights, except with the consent of that proportion of the members included in that class or with the sanction of such a resolution passed at a meeting of those members.

**(4)** Where members of the company included in a class of members have special rights and:

(a) those rights are at any time varied or abrogated; or

(b) the memorandum or articles is or are altered so as to authorise the variation or abrogation of those rights;

members included in that class who constitute not less than 10% of the members included in that class may apply to the Court to have the variation or abrogation of the rights, or the alteration of the memorandum or articles, as the case may be, set aside and, if such an application is made, the variation or abrogation, or the alteration, does not have effect until confirmed by the Court.

**(5)** An application under subsection (4) shall be made within 28 days after the variation, abrogation or alteration referred to in that subsection was made and may be made, on behalf of the members entitled to make the application, by such one or more of their number as they appoint in writing.

**(6)** On the application, the Court may, after hearing the applicant and any other persons who apply to the Court to be heard and appear to the Court to be interested, if it is satisfied that the variation, abrogation or alteration would unfairly prejudice the members of the class represented by the applicant, set aside the variation, abrogation or alteration, as the case may be, and shall, if not satisfied, confirm it.

**(7)** A company shall, within 14 days after the making of an order by the Court on an application under this section, lodge and office copy of the order with the Commission and, if the company fails to comply with this provision, the company and any officer of the company who is in default are each guilty of an offence.

**(8)** Nothing in section 172 or 176 affects the operation of this section.

**Rights of holders of preference shares to be set out in memorandum or articles**

**200.** A company shall not allot any preference shares or convert any issued shares into preference shares unless there are set out in the memorandum or articles of the company the rights of the holders of those shares with respect to repayment of capital, participation in surplus assets and profits, cumulative or non-cumulative dividends, voting, and priority of payment of capital and dividend in relation to other shares or other classes of preference shares.

***Division 4—Maintenance of capital***

**Dividends payable from profits only**

**201.** **(1)** No dividend shall be payable to a shareholder of a company except out of profits or under section 191.

**(2)** A director or executive officer of a company who, wilfully pays, or permits to be paid, except under section 191, a dividend out of what he or she knows not to be profits:

(a) without prejudice to any other liability, contravenes this subsection; and

(b) is also liable to the company’s creditors for the amount of the debts due by the company to them respectively to the extent by which the dividends so paid have exceeded the profits;

and the creditors, or the liquidator suing on behalf of the creditors, may recover the amount for which a director or executive officer is liable under this subsection.

**(3)** If the whole amount is recovered from a particular director or executive officer, he or she may recover contribution against any other person liable who has directed, or consented to, the payment.

**(4)** A liability imposed by this section on a person does not, on the person’s death, extend or pass to his or her executors or administrators, nor is his or her estate liable under this section.

**(5)** Proceedings may be brought under subsection (2) for the recovery of an amount even if a person has not been convicted of an offence under that subsection.

**(6)** In proceedings under subsection (2) for the recovery of an amount, the liability of a person under that subsection in respect of the amount may be established on the balance of probabilities.

**(7)** In this section:

“dividend” includes a bonus and a payment by way of bonus.

**Company may pay interest out of capital in certain cases**

**202.** Where any shares in a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant that cannot be made profitable for a long period, the company may pay interest on so much of that share capital as is for the time being paid up and charge the interest so paid to capital as part of the construction or provision, but:

(a) no such payment shall be made unless it is:

(i) authorised by the articles of the company or by special resolution; and

(ii) approved by the Court;

(b) before approving any such payment, the Court may, at the expense of the company, appoint a person to inquire and report as to the circumstances of the case, and may require the company to give security for the payment of the costs of the inquiry;

(c) the payment shall be made for such period only as is determined by the Court, but that period shall not in any case extend beyond a period of 12 months after the works or buildings have been completed or the plant has been provided;

(d) the rate of interest shall not exceed 8% per annum or, if another rate is prescribed, that other rate; and

(e) the payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

**Restriction on application of capital of company**

**203.** **(1)** Subject to section 204, a company shall not apply any of its shares or capital money either directly or indirectly in making a payment to a person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, or procuring or agreeing to procure

subscriptions, whether absolute or conditional, for shares in the company, whether the shares are or the money is so applied by being added to the purchase price of property acquired by the company or to the contract price of work to be executed for the company or the money is paid out of the nominal purchase price or contract price or otherwise.

**(2)** Without limiting the generality of subsection (1), but subject to section 190, a company shall not issue shares at a discount.

**(3)** A company that contravenes this section is not guilty of an offence by virtue of this section or section 1311, but each officer of the company who is involved in the contravention contravenes this subsection.

**(4)** Where:

(a) a person is convicted by a court of an offence under this section in relation to a company; and

(b) the court is satisfied that the company has suffered loss or damage as a result of the act that constituted the offence;

the court may, in addition to imposing a penalty, order the person to pay compensation to the company of such amount as the court specifies, and any such order may be enforced as if it were a judgment of that court.

**(5)** Where a contravention of this section takes place:

(a) if a person other than the company concerned, being a person who was, at the time of the contravention, aware of the matters constituting the contravention, has made a profit as a result of the contravention, the company may, whether or not that person or any other person has been convicted of an offence under subsection (3) in relation to that contravention, recover from the person as a debt due to the company by action in any court of competent jurisdiction an amount equal to the profit; and

(b) where the company concerned has suffered loss or damage as a result of the contravention—the company may recover an amount equal to the loss or damage from any person involved in the contravention, whether or not that person or any other person has been convicted of an offence under subsection (3) in relation to that contravention, as a debt due to the company by action in any court of competent jurisdiction.

**Power to make certain payments**

**204. (1)** Subject to subsection (2), a company may make a payment by way of brokerage or commission to a person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for shares in the company if, and only if:

(a) the payment is not prohibited by the constitution;

(b) the amount of the proposed payment, or the rate at which the payment is proposed to be made, is disclosed in the prospectus in

respect of the shares or, if there is no such prospectus, in a statement lodged before the company becomes liable to make the payment; and

(c) the number of shares for which persons have agreed, for a payment by way of brokerage or commission, to subscribe absolutely is set out in that prospectus or statement.

**(2)** Subsection (1) does not permit a company to make a payment by way of brokerage or commission in respect of shares in the company if the amount of the payment, or, if another payment or other payments by way of brokerage or commission has or have been made by the company in respect of those shares, the sum of the amount of the first-mentioned payment and the other payment or payments, exceeds:

(a) 10% of the total of the amount payable in respect of the shares upon their allotment; or

(b) such amount (if any), or an amount calculated at such rate (if any), as is authorised by the articles;

whichever is the lesser.

**(3)** A vendor to, promoter of, or person who receives payment in money or shares from, a company may apply any part of the money or shares so received in making any payment that would, if it were made directly by the company, be lawful under this section.

**Company financing dealings in its shares etc.**

**205. (1)** Except as otherwise expressly provided by this Act, a company shall not:

(a) whether directly or indirectly, give any financial assistance for the purpose of, or in connection with:

(i) the acquisition by any person, whether before, or at the same time as, the giving of financial assistance, of:

(a) shares or units of shares in the company; or

(b) shares or units of shares in a holding company of the company; or

(ii) the proposed acquisition by any person of:

(a) shares or units of shares in the company; or

(b) shares or units of shares in a holding company of the company;

(b) whether directly or indirectly, in any way:

(i) acquire shares or units of shares in the company; or

(ii) purport to acquire shares or units of shares in a holding company of the company; or

(c) whether directly or indirectly, in any way, lend money on the security of:

(i) shares or units of shares in the company; or

(ii) shares or units of shares in a holding company of the company.

**(2)** A reference in this section to the giving of financial assistance includes a reference to the giving of financial assistance by means of the making of a loan, the giving of a guarantee, the provision of security, the release of an obligation or the forgiving of a debt or otherwise.

**(3)** For the purposes of this section, a company shall be taken to have given financial assistance for the purpose of an acquisition or proposed acquisition referred to in paragraph (1) (a) (in this subsection called the “relevant purpose”) if:

(a) the company gave the financial assistance for purposes that included the relevant purpose; and

(b) the relevant purpose was a substantial purpose of the giving of the financial assistance.

**(4)** For the purposes of this section, a company shall be taken to have given financial assistance in connection with an acquisition or proposed acquisition referred to in paragraph (1) (a) if, when the financial assistance was given to a person, the company was aware that the financial assistance would financially assist:

(a) the acquisition by a person of shares or units of shares in the company; or

(b) where shares in the company had already been acquired—the payment by a person of any unpaid amount of the subscription payable for the shares or of any premium payable in respect of the shares, or the payment of any calls on the shares.

**(5)** A company that contravenes this section is not guilty of an offence by virtue of this section or section 1311, but each officer of the company who is involved in the contravention contravenes this subsection.

**(6)** Where:

(a) a person is convicted by a court of an offence under subsection (5) (including an offence under that subsection that is deemed to have been committed by virtue of section 5 of the *Crimes Act 1914*);and

(b) the court is satisfied that the company or another person has suffered loss or damage as a result of the contravention that constituted the offence;

the court may, in addition to imposing a penalty under that subsection, order the convicted person to pay compensation to the company or other person, as the case may be, of such amount as the court specifies, and any such order may be enforced as if it were a judgment of the court.

**(7)** The power of a court under section 1318 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (6) of this section from the liability to have such an order made against him.

**(8)** Nothing in subsection (1) prohibits:

(a) the payment of a dividend by a company in good faith and in the ordinary course of commercial dealing;

(b) a payment made by a company pursuant to a reduction of capital in accordance with section 195;

(c) the discharge by a company of a liability of the company that was incurred in good faith as a result of a transaction entered into on ordinary commercial terms;

(d) where a corporation is a borrowing corporation by reason that it is or will be under a liability to repay moneys received or to be received by it:

(i) the giving, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of a guarantee in relation to the repayment of those moneys, whether or not the guarantee is secured by any charge over the property of that company; or

(ii) the provision, in good faith and in the ordinary course of commercial dealing, by a company that is a subsidiary of the borrowing corporation, of security in relation to the repayment of those moneys;

(e) an aquisition by a company of an interest (other than a legal interest) in fully-paid shares in the company where no consideration is provided by the company, or by any corporation that is related to the company, for the acquisition;

(f) the purchase by a company of shares in the company pursuant to an order of a court;

(g) the creation or acquisition, in good faith and in the ordinary course of commercial dealing, by a company of a lien on shares in the company (other than fully-paid shares) for any amount payable to the company in respect of the shares; or

(h) the entering into, in good faith and in the ordinary course of commercial dealing, of an agreement by a company with a subscriber for shares in the company permitting the subscriber to make payments for the shares (including payments in the respect of any premium) by instalments;

but nothing in this subsection:

(j) shall be construed as implying that a particular act of a company would, but for this subsection, be prohibited by subsection (1); or

(k) shall be construed as limiting the operation of any rule of law permitting the giving of financial assistance by a company, the acquisition of shares or units of shares by a company or the lending of money by a company on the security of shares.

**(9)** Nothing in subsection (1) prohibits:

(a) the making of a loan, the giving of a guarantee or the provision of security by a company in the ordinary course of its ordinary business where:

(i) that business includes the lending of money, or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company, or, where the guarantee is given or the security is provided in respect of a loan, that loan, is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise; or

(b) the giving by a company of financial assistance for the purpose of, or in connection with, the acquisition or proposed acquisition of fully-paid shares or units of fully-paid shares in the company or in a holding company of the company to be held by or for the benefit of employees of the company or of a corporation that is related to the company, including any director holding a salaried employment or office in the company or in the corporation, as the case may be, where:

(i) in the case where neither subparagraph (ii) nor subparagraph (iii) applies—the company has at a general meeting;

(ii) in the case where the company is a subsidiary of a listed corporation or listed corporations—the company and the listed corporation or listed corporations have at general meetings; or

(iii) in the case where the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings;

approved a scheme for the provision of money for such acquisitions and the financial assistance is given in accordance with the scheme.

**(10)** Nothing in subsection (1) prohibits the giving by a company of financial assistance for the purpose of, or in connection with, an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company if:

(a) the company, by special resolution, resolves to give financial assistance for the purpose of or in connection with, that acquisition;

(b) where:

(i) the company is a subsidiary of a listed corporation; or

(ii) the company is not a subsidiary of a listed corporation but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory;

the listed corporation or the ultimate holding company, as the case may be, has, by special resolution, approved the giving of the financial assistance;

(c) the notice specifying the intention to propose the resolution referred to in paragraph (a) as a special resolution sets out:

(i) particulars of the financial assistance proposed to be given and the reasons for the proposal to give that assistance; and

(ii) the effect that the giving of the financial assistance would have on the financial position of the company and, where the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries, the effect that the giving of the financial assistance would have on the financial position of the group of corporations;

and is accompanied by a copy of a statement made in accordance with a resolution of the directors, setting out the names of any directors who voted against the resolution and the reasons why they so voted, and signed by not less than 2 directors, stating whether, in the opinion of the directors who voted in favour of the resolution, after taking into account the financial position of the company (including future liabilities and contingent liabilities of the company), the giving of the financial assistance would be likely to prejudice materially the interests of the creditors or members of the company or any class of those creditors or members;

(d) the notice specifying the intention to propose the resolution referred to in paragraph (b) as a special resolution is accompanied by a copy of the notice, and a copy of the statement, referred to in paragraph (c);

(e) not later than the day next following the day when the notice referred to in paragraph (c) is dispatched to members of the company there is lodged with the Commission a copy of that notice and a copy of the statement that accompanied that notice;

(f) the notice referred to in paragraph (c) and a copy of the statement referred to in that paragraph are given to:

(i) all members of the company;

(ii) all trustees for debenture holders of the company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the company—all debenture holders, or all debenture holders of that class, as the case may be, of the company whose names are, at the time when the notice is dispatched, known to the company;

(g) the notice referred to in paragraph (d) and the accompanying documents are given to:

(i) all members of the listed corporation or of the ultimate holding company;

(ii) all trustees for debenture holders of the listed corporation or of the ultimate holding company; and

(iii) if there are no trustees for, or for a particular class of, debenture holders of the listed corporation or of the ultimate holding company—all debenture holders or debenture holders of that class, as the case may be, of the listed corporation or of the ultimate holding company whose names are, at the time when the notice is dispatched, known to the listed corporation or the ultimate holding company;

(h) within 21 days after the general meeting of the company at which the resolution referred to in paragraph (a) is passed or, in a case to which paragraph (b) applies, the general meeting of the listed corporation or ultimate holding company at which the resolution referred to in that paragraph is passed, whichever is the later, a notice:

(i) setting out the terms of the resolution referred to in paragraph (a); and

(ii) stating that any of the persons referred to in subsection (12) may, within the period referred to in that subsection, make an application to the Court opposing the giving of the financial assistance;

is published, in each State and Territory in which the company is carrying on business, in a daily newspaper circulating generally in that State or Territory;

(j) no application opposing the giving of the financial assistance is made within the periods referred to in subsection (12) or, if such an application or applications has or have been made, the application or each of the applications has been withdrawn or the Court has approved the giving of the financial assistance; and

(k) the financial assistance is given in accordance with the terms of the resolution referred to in paragraph (a) and not earlier than:

(i) in a case to which subparagraph (ii) does not apply—the expiration of the period referred to in subsection (12); or

(ii) if an application or applications has or have been made to the Court within that period:

(a) where the application or each of the applications has been withdrawn—the withdrawal of the application or of the last of the applications to be withdrawn; or

(b) in any other case—the decision of the Court on the application or applications.

**(11)** Where, on application to the Court by a company, the Court is satisfied that the provisions of subsection (10) have been substantially complied with in relation to a proposed giving by the company of financial assistance of a kind mentioned in that subsection, the Court may, by order,

declare that the provisions of that subsection have been complied with in relation to the proposed giving by the company of financial assistance.

**(12)** Where a special resolution referred to in paragraph (10) (a) is passed by a company, an application to the Court opposing the giving of the financial assistance to which the special resolution relates may be made, within the period of 21 days after the publication of the notice referred to in paragraph (10) (h), by:

(a) a member of the company;

(b) a trustee for debenture holders of the company;

(c) a debture holder of the company;

(d) a creditor of the company;

(e) if the company is included in a group of corporations consisting of a holding company and a subsidiary or subsidiaries:

(i) a member of that subsidiary or of any of those subsidiaries;

(ii) a trustee for debenture holders of that subsidiary or of any of those subsidiaries;

(iii) a debenture holder of that subsidiary or of any of those subsidiaries; or

(iv) a creditor of that subsidiary or of any of those subsidiaries;

(f) if paragraph (10) (b) applies:

(i) a member of the listed corporation or ultimate holding company that passed a special resolution referred to in that paragraph;

(ii) a trustee for debenture holders of that listed corporation or ultimate holding company;

(iii) a debenture holder of that listed corporation or ultimate holding company; or

(iv) a creditor of that listed corporation or ultimate holding company; or

(g) the Commission.

**(13)** Where an application or applications opposing the giving of financial assistance by a company in accordance with a special resolution passed by the company is or are made to the Court under subsection (12), the Court:

(a) shall, in determining what order or orders to make in relation to the application or applications, have regard to the rights and interests of the members of the company or of any class of them as well as to the rights and interests of the creditors of the company or of any class of them; and

(b) shall not make an order approving the giving of the financial assistance unless the Court is satisfied that:

(i) the company has disclosed to the members of the company all material matters relating to the proposed financial assistance; and

(ii) the proposed financial assistance would not, after taking into account the financial position of the company (including any future or contingent liabilities), be likely to prejudice materially the interests of the creditors or members of the company or of any class of those creditors or members;

and may do all or any of the following:

(c) if it thinks fit, make an order for the purchase by the company of the interests of dissentient members of the company and for the reduction accordingly of the capital of the company;

(d) if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase (otherwise than by the company or by a subsidiary of the company) of the interests of dissentient members;

(e) give such ancillary or consequential directions and make such ancillary or consequential orders as it thinks expedient;

(f) make an order disapproving the giving of the financial assistance or, subject to paragraph (b), an order approving the giving of the financial assistance.

**(14)** Where the Court makes an order under this section in relation to the giving of financial assistance by a company, the company shall, within 14 days after the order is made, lodge with the Commission an office copy of the order.

**(15)** The passing of a special resolution by a company for the giving of financial assistance by the company for the purpose of, or in connection with, an acquisition or proposed acquisition of shares or units of shares in the company, and the approval by the Court of the giving of the financial assistance, do not relieve a director of the company of any duty to the company under section 232 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the financial assistance.

**(16)** A reference in this section to an acquisition or proposed acquisition of shares or units of shares is a reference to any acquisition or proposed acquisition whether by way of purchase, subscription or otherwise.

**(17)** This section does not apply in relation to the doing of any act or thing pursuant to a contract entered into before the commencement of this Act if the doing of that act or thing would have been lawful if this Act had not been enacted.

**Consequences of company financing dealings in its shares etc.**

**206. (1)** Except as provided by this section:

(a) the validity of a contract or transaction is not affected by a contravention of paragraph 205 (1) (a);

(b) the validity of a contract or transaction is not affected by a contravention of paragraph 205 (1) (b) unless the contract or transaction effects the acquisition that constitutes the contravention; and

(c) the validity of a contract or transaction is not affected by a contravention of paragraph 205 (1) (c) unless the contract or transaction effects the loan that constitutes the contravention.

**(2)** Where a company makes or performs a contract, or engages in a transaction, that would, but for subsection (1), be invalid by reason that:

(a) the contract was made or performed, or the transaction was engaged in, in contravention of section 205; or

(b) the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section;

the first-mentioned contract or transaction is, subject to the following provisions of this section, voidable at the option of the company by notice in writing given to the other party, or by notices in writing given to each of the other parties, to that contract or transaction.

**(3)** The Court may, on the application of a member of a company, a holder of debentures of a company, a trustee for the holders of debentures of a company or a director of a company, by order, authorise the member, holder of debentures, trustee or director to give a notice or notices under subsection (2) in the name of the company.

**(4)** Where:

(a) a company makes or performs a contract, or engages in a transaction;

(b) the contract is made or performed, or the transaction is engaged in, in contravention of section 205 or the contract or transaction is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section; and

(c) the Court is satisfied, on the application of the company or of any other person, that the company or that other person has suffered, or is likely to suffer, loss or damage as a result of:

(i) the making or performance of the contract or the engaging in of the transaction;

(ii) the making or performance of a related contract or the engaging in of a related transaction;

(iii) the contract or transaction being void by reason of section 205 or having become void, or becoming void, under this section; or

(iv) a related contract or transaction being void by reason of section 205 or having become void, or becoming void, under this section;

the Court may make such order or orders as it thinks just and equitable (including, without limiting the generality of the foregoing, all or any of the orders mentioned in subsection (5)) against any party to the contract or transaction or to the related contract or transaction, or against the company or against any person who aided, abetted, counselled or procured, or was,

by act or omission, in any way, directly or indirectly, knowingly concerned in or party to the contravention.

**(5)** The orders that may be made under subsection (4) include:

(a) an order directing a person to refund money or return property to the company or to another person;

(b) an order directing a person to pay to the company or to another person a specified amount not exceeding the amount of the loss or damage suffered by the company or other person; and

(c) an order directing a person to indemnify the company or another person against any loss or damage that the company or other person may suffer as a result of the contract or transaction or as a result of the contract or transaction being or having become void.

**(6)** If a certificate signed by not less than 2 directors, or by a director and a secretary, of a company stating that the requirements of paragraphs 205 (10) (a) to (j), inclusive, have been complied with in relation to the proposed giving by the company of financial assistance for the purposes of an acquisition or proposed acquisition by a person of shares or units of shares in the company or in a holding company of the company is given to a person:

(a) the person to whom the certificate is given is not under any liability to have an order made against him under subsection (4) by reason of any contract made or performed, or any transaction engaged in, by him in reliance on the certificate, and

(b) any such contract or transaction is not invalid, and is not voidable under subsection (2), by reason that the contract is made or performed, or the transaction is engaged in, in contravention of section 205 or is related to a contract that was made or performed, or to a transaction that was engaged in, in contravention of that section.

**(7)** Subsection (6) does not apply in relation to a person to whom a certificate is given under that subsection in relation to a contract or transaction if the Court, on application by the company concerned or any other person who has suffered, or is likely to suffer, loss or damage as a result of the making or performance of the contract or the engaging in of the transaction, or the making or performance of a related contract or the engaging in of a related transaction, by order, declares that it is satisfied that the person to whom the certificate was given became aware before the contract was made or the transaction was engaged in that the requirements of subsection 205 (10) had not been complied with in relation to the financial assistance to which the certificate related.

**(8)** For the purposes of subsection (7), a person shall, in the absence of proof to the contrary, be deemed to have been aware at a particular time of any matter of which an employee or agent of the person having duties or acting on behalf of the person in relation to the relevant contract or transaction was aware at the time.

**(9)** In any proceeding, a document purporting to be a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be such a certificate and to have been duly given.

**(10)** A person who has possession of a certificate given under subsection (6) shall, in the absence of proof to the contrary, be deemed to be the person to whom the certificate was given.

**(11)** If a person signs a certificate stating that the requirements of subsection 205 (10) have been complied with in relation to the proposed giving by a company of financial assistance and any of those requirements had not been complied with in respect of the proposed giving of that assistance at the time when the certificate was signed by that person, the person is guilty of an offence.

**(12)** It is a defence to a prosecution for an offence against subsection (11) if the defendant proves that at the time when he or she signed the certificate he or she believed on reasonable grounds that all the requirements of subsection 205 (10) had been complied with in respect of the proposed giving of financial assistance to which the certificate related.

**(13)** The power of a court under section 1318 to relieve a person to whom that section applies, wholly or partly and on such terms as the court thinks fit, from a liability referred to in that section extends to relieving a person against whom an order may be made under subsection (4) of this section from the liability to have such an order made against him.

**(14)** If a company makes a contract or engages in a transaction under which it gives financial assistance as mentioned in paragraph 205 (1) (a) or lends money as mentioned in paragraph 205 (1) (c), any contract or transaction made or engaged in as a result of or by means of, or in relation to, that financial assistance or money shall be deemed for the purposes of this section to be related to the first-mentioned contract or transaction.

**(15)** Any rights or liabilities of a person under this section (including rights or liabilities under an order made by the Court under this section) are in addition to and not in derogation of any rights or liabilities of that person apart from this section but, where there would be any inconsistency between the rights and liabilities of a person under this section or under an order made by the Court under this section and the rights and liabilities of that person apart from this section, the provisions of this section or of the order made by the Court prevail.

***Division 5*—*Register of members***

**Division not to apply to mutual life assurance companies**

**207.** Nothing in this Division (other than subsection 210 (5)) applies to a company to which section 140 of the *Life Insurance Act 1945* applies so long as the company complies with that section.

**Notices relating to non-beneficial and beneficial ownership of shares**

**208. (1)** Where, at a particular time:

(a) an instrument of transfer of shares in a company is lodged, by or on behalf of the transferee, with the company for registration of the transfer;

(b) having regard to all relevant circumstances, it may reasonably be expected that, upon registration of the transfer, the transferee will hold non-beneficially particular shares (in this subsection called the “relevant shares”), being any of the shares to which the instrument of transfer relates; and

(c) the instrument of transfer does not include a notice that:

(i) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially;

(ii) sets out particulars of the relevant shares; and

(iii) is signed by or on behalf of the transferee,

the transferee contravenes this subsection.

**(2)** The fact that a person has contravened subsection (1) does not affect the validity of the registration of a transfer of shares in a company.

**(3)** Where:

(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1) (c) and is lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds beneficially particular shares (in this subsection called the “relevant shares”), being any of the shares particulars of which are set out in the notice;

then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares non-benefically, give to the company a notice that:

(c) sets out the name and address of the transferee;

(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

**(4)** Where:

(a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this subsection called the “relevant shares”), being any of the shares to which the instrument of transfer relates (other than, in a case where the instrument of transfer includes a

notice of the kind referred to in paragraph (1) (c), the shares particulars of which are set out in the notice);

then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the transferee;

(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

**(5)** Where:

(a) at a particular time, a person holds beneficially shares in a company; and

(b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the “relevant shares”), being any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the person;

(d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

**(6)** Where:

(a) at a particular time, a person holds non-beneficially shares in a company; and

(b) immediately after that time, the person holds beneficially particular shares (in this subsection called the “relevant shares”), being any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:

(c) sets out the name and address of the person;

(d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

**(7)** In proceedings under this section, a person shall, unless the contrary is established, be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.

**(8)** In this section, unless the contrary intention appears:

“any” includes all;

“company” means a company as defined in section 9, but does not include a body corporate that is a company for the purposes of Part 6.7.

**(9)** For the purposes of this section and of section 209:

(a) where, at a particular time, a person:

(i) holds shares in a capacity other than that of sole beneficial owner; or

(ii) without limiting the generality of subparagraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person;

the first-mentioned person shall be taken to hold the shares non-beneficially at that time; and

(b) a person who holds shares at a particular time shall be taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

**Register and index of members**

**209. (1)** A company shall keep a register of its members and enter in that register:

(a) the names and addresses of the members;

(b) in the case of a non-listed company having a share capital—in relation to each member:

(i) if the member holds shares in the company beneficially—a statement of the shares that the member so holds; and

(ii) if the member holds shares in the company non-beneficially— a statement of the shares that the member so holds and, in relation to that statement, a notation to the effect that the member holds the shares non-beneficially within the meaning of this section;

(c) in the case of a listed company having a share capital—a statement of the shares held by each member;

(d) the date at which the name of each person was entered in the register as a member;

(e) the date at which any person who ceased to be a member during the previous 7 years so ceased to be a member; and

(f) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment.

**(2)** A statement in the register of members of a company, being a statement of shares held by a member, shall:

(a) distinguish each share by its number (if any) or by the number (if any) of the certificate evidencing the member’s holding; and

(b) set out the amount paid, or agreed to be considered as paid, on the shares.

**(3)** Notwithstanding subsections (1) and (2), where a company has converted any of its shares into stock and given notice of the conversion to the Commission, the company shall enter in its register of members:

(a) in the case of a non-listed company—in relation to each member who holds stock:

(i) if the member holds stock beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds; and

(ii) if the member holds stock non-beneficially—a statement of the amount of stock, or of the number of stock units, as the case requires, that the member so holds and a notation to the effect that the member holds the stock non-beneficially within the meaning of this section; or

(b) in the case of a listed company—a statement of the amount of stock, or of the number of stock units, as the case requires, held by each member who holds stock;

and shall alter or delete accordingly the statements in the register that relate to shares held by members.

**(4)** For the purposes of paragraphs (1) (b) and (c) and of subsections (2) and (3), where 2 or more persons jointly hold shares in a company, whether or not any of the persons holds any other shares in the company, the persons shall together be deemed, in relation to the first-mentioned shares, to be a member of the company.

**(5)** In determining for the purposes of subsections (1) and (3) whether a member of a non-listed company holds shares in the company beneficially or non-beneficially, regard shall be had only to prescribed information in relation to the company.

**(6)** Where:

(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph 208 (1) (c) and is lodged with the company for registration of the transfer; and

(b) the company registers the transfer;

the information contained in the notice shall be taken, for the purposes of subsection (5) of this section, to be prescribed information in relation to the company.

**(7)** Information contained in a notice given to a non-listed company under subsections 208 (3), (4), (5) and (6), or in a statement furnished to a non-listed company pursuant to a notice given to a person under section 718 or 719, shall be taken, for the purposes of subsection (5) of this section, to be prescribed information in relation to the company.

**(8)** Notwithstanding anything in subsection (1), a company may keep the names and particulars relating to persons who have ceased to be members of the company separately, and the names and particulars relating to former members need not be supplied to a person who applies for a copy of the register unless he specifically requests the names and particulars of former members.

**(9)** The register of members is *prima facie* evidence of any matters inserted in that register as required or authorised by this Act.

**(10)** A company having more than 50 members shall, unless the register of members is in such a form as to constitute in itself an index, keep an index in convenient form of the names of the members and shall, within 14 days after the day on which any alteration is made in the register of members, make any necessary alteration in the index.

**(11)** The index shall, in respect of each member, contain a sufficient indication to enable the account of that member in the register to be found readily.

**(12)** If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

**(13)** In this section:

“listed company” means a company that is a company for the purposes of Part 6.7;

“non-listed company” means a company other than a listed company.

**Inspection and closing of register**

**210. (1)** A company may close the register of members or part of that register for any time or times, but so that no part of the register shall be closed for more than 30 days in the aggregate in any calendar year.

**(2)** The register and index shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(3)** A person may request a company for a copy of the register or any part of the register (but only so far as it relates to names, addresses, number of shares held and amounts paid on shares) and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

**(4)** If default is made in complying with subsection (2) or (3), the company and any officer of the company who is in default are each guilty of an offence.

**(5)** Any member of a company to which section 140 of the *Life Insurance Act 1945* applies is entitled to inspect any register, index, or other record of the company that relates to the members of the company, but may make copies of or take extracts from such a register, index or record only in relation to names, addresses and voting entitlements of the members of the company.

**(6)** This section has effect subject to Part 6.8.

**Consequences of default by agent**

**211.** Where, by virtue of paragraph 1302 (1) (b), the register of members is kept at the office of a person other than the company, and by reason of any default of that other person, the company contravenes section 210 or subsection 1302 (1) or (4) or a requirement of this Act in relation to the production of the register, that other person is liable to the same penalties as if the person were an officer of the company who was in default, and the power of the Court under section 1303 extends to the making of orders against that other person and the person’s officers and employees.

**Power of Court to rectify register**

**212.** **(1)** If:

(a) an entry is omitted from the register;

(b) an entry is made in the register without sufficient cause;

(c) an entry wrongly exists in the register;

(d) there is an error or defect in an entry in the register; or

(e) default is made or unnecessary delay takes place in entering in the register the fact of any person having ceased to be a member;

a person aggrieved, a member or the company may apply to the Court for rectification of the register.

**(2)** On an application under subsection (1), the Court may:

(a) refuse the application; or

(b) order:

(i) rectification of the register; and

(ii) payment by the company of any damages sustained by any party to the application.

**(3)** On any application under subsection (1), the Court may decide:

(a) any question relating to the right of a person who is a party to the application to have the person’s name entered in or omitted from the register, whether the question arises between:

(i) a member or alleged member on the one hand and another member or alleged member on the other hand; or

(ii) a member or alleged member on the one hand and the company on the other hand; and

(b) generally any question necessary or expedient to be decided with respect to the rectification of the register.

**(4)** Where a company is required by this Act to lodge a return containing a list of its members with the Commission, the Court, when making an order for rectification of the register, shall by its order direct a notice of the rectification to be so lodged.

**Trustee etc. may be registered as owner of shares**

**213. (1)** In this section:

“share”, in relation to a body corporate, means a share in the body that is registered in a register or branch register kept in Australia.

**(2)** A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be registered as the holder of that share as trustee, executor or administrator of that estate.

**(3)** A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

**(4)** Where:

(a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is the registered holder of a share in a corporation;

the first-mentioned person may be registered as the holder of that share as administrator of that estate.

**(5)** Where:

(a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of a person who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is entitled in equity to a share in a corporation;

the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.

**(6)** Where:

(a) by virtue of the *Bankruptcy Act 1966*,a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is the registered holder of that share;

the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

**(7)** Where:

(a) by virtue of the *Bankruptcy Act 1966*,a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is entitled in equity to that share;

the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

**(8)** A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection, subject:

(a) to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and

(b) to no other liabilities in respect of the share.

**(9)** Shares in a corporation registered in a register or branch register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register or branch register in such a way as to identify them as being held in respect of the trust.

**(10)** Except as provided in this section and section 209:

(a) no notice of a trust, whether express, implied or constructive, shall be entered on a register or a branch register kept in Australia or be receivable by the Commission;

(b) no liabilities are affected by anything done under a preceding subsection of this section or under section 209; and

(c) nothing so done affects the body corporate concerned with notice of a trust.

**(12)** Except as provided in a law corresponding to this section or to section 209:

(a) no liabilities are affected by anything done:

(i) at a time when a Division 2 company was a company of a State or Territory; and

(ii) under a law corresponding to subsection (2), (3), (4), (5), (6), (7) or (9) of this section or to section 209, as that law applied in relation to the company at that time; and

(b) nothing so done affects the company with notice of a trust.

**(13)** A person shall, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so hold the shares.

**Branch registers**

**214. (1)** A company that has a share capital may cause a branch register of members to be kept at a place within or outside Australia but outside the State or Territory where its principal register is kept.

**(2)** Where a member of a company that keeps its principal register in a. particular State or Territory is resident in another State or Territory and requests the company in writing to register in a branch register in that other State or Territory shares held by the member, then, if the company keeps a branch register in that other State or Territory, the company shall register in that branch register the shares held by that member.

**(3)** A branch register of a company shall be deemed to be part of the company’s register of members.

**(4)** A company that keeps a branch register shall keep it in the same manner as this Act requires the company to keep its principal register.

**(5)** A company shall keep, at the place where its principal register is kept, a duplicate of each of its branch registers, properly entered up from time to time.

**(6)** A duplicate kept under subsection (5) shall be deemed to be part of the principal register.

**(7)** Within 28 days after an entry is made in a branch register of a company, the company shall send a copy of the entry to the place where its principal register is kept.

**(8)** Subject to subsections (5), (6) and (7), a company shall distinguish shares in the company that are registered in a branch register from the shares registered in its principal register.

**(9)** Subject to subsections (5), (6) and (7), while shares in a company are registered in a branch register, the company shall not register in any other register a transaction in relation to the shares.

**(10)** A company may discontinue a branch register and shall, if it does so, transfer all entries in that register:

(a) if that register was in a State or Territory where the company keeps another branch register—to that other branch register; or

(b) otherwise—to the principal register.

***Division 6—Options***

**Register of options**

**215. (1)** A company shall keep a register of options granted to persons to take up unissued shares in the company.

**(2)** The company shall, within 14 days after the grant of an option to take up unissued shares in the company, enter in the register the following particulars:

(a) the name and address of the holder of the option;

(b) the date on which the option was granted;

(c) the number and description of the shares in respect of which the option was granted;

(d) the period during which, the time at which or the occurrence upon the happening of which the option may be exercised;

(e) the consideration (if any) for the grant of the option;

(f) the consideration (if any) for the exercise of the option or the manner in which that consideration is to be ascertained or determined;

(g) such other particulars as are prescribed.

**(3)** The register is *prima facie* evidence of any matters inserted in the register as required or authorised by this Act.

**(4)** The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(5)** A person may request a company to furnish him with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

**(6)** A company shall keep, at the place where the register referred to in subsection (1) is kept, a copy of every instrument by which an option to take up unissued shares in the company is granted and, for the purposes of subsections (4) and (5), those copies shall be deemed to be part of the register referred to in subsection (1).

**(7)** Notwithstanding subsection (6), a company is not required to keep a copy of any instrument by which an option has been granted if the option has been granted official quotation by a securities exchange.

**(8)** Failure by a company to comply with any of the provisions of this section in relation to an option does not affect any rights in respect of the option.

**(9)** If default is made in complying with this section, the company and any officer of the company who is in default are each guilty of an offence.

**Options over unissued shares**

**216.** **(1)** An option granted after the commencement of this section by a public company that enables any person to take up unissued shares in the company after a period of 5 years has elapsed from the date on which the option was granted is void.

**(2)** Subsection (1) does not apply in a case where the holders of debentures of a company have an option to take up shares in the company by way of redemption of the debentures.

**CHAPTER 3—INTERNAL ADMINISTRATION**

**PART 3.1—REGISTERED OFFICE AND NAME**

**Registered office of company**

**217.** A company shall, as from its registration day, have a registered office within Australia to which all communications and notices may be addressed and which shall be open:

(a) where a notice has been lodged by the company under subsection 218 (2)—for such hours (being not less than 3) between the hours of 9 a.m. and 5 p.m. of each business day as are specified in the later of that notice or a notice lodged by the company under subsection 218 (4); or

(b) otherwise—for not less than 5 hours between 10 a.m. and 4 p.m. of each business day.

**Notice of address of registered office and office hours**

**218.** **(1)** On the lodging of:

(a) an application for the registration of a company under Division 1 of Part 2.2; or

(b) an application for a body corporate to be registered as a company under Division 2, 3 or 4 of Part 2.2;

there shall be lodged a notice in the prescribed form of the address of the proposed registered office of the company.

**(2)** On the lodging of a notice under subsection (1) or at any later time, notice in the prescribed form of the hours (being not less than 3) between

the hours of 9 a.m. and 5 p.m. of each business day during which the company’s registered office is to be open may be lodged.

**(3)** A company shall lodge notice in the prescribed form of a change in the situation of its registered office not later than 7 days after the day on which the change occurred.

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

**Publication of company’s name and registration number**

**219. (1)** A company shall set out in legible characters on its common seal, and on each of its other seals, its name followed by, unless its registration number is part of its name, the expression “Australian Company Number” and its registration number.

**(2)** A company shall set out its name, in legible characters, on:

(a) every public document of the company that is signed, issued or published; and

(b) every eligible negotiable instrument of the company that is signed or issued.

**(3)** On:

(a) every public document of a company that is signed, issued or published; and

(b) every eligible negotiable instrument of a company that is signed or issued;

the company shall, unless its registration number is part of its name, set out in legible characters, after the company’s name where it first appears, the expression “Australian Company Number” and the company’s registration number.

**(4)** A company may comply with subsection (1), (2) or (3) by setting out:

(a) the abbreviation “Aust.” instead of the word “Australian”;

(b) the abbreviation “Co.” instead of the word “Company”;

(c) the abbreviation “No.” instead of the word “Number”; or

(d) the abbreviation “A.C.N.” instead of the expression “Australian Company Number”.

**(5)** A person (whether or not an officer of the company) shall not, on a company’s behalf:

(a) use, or authorise the use of, a seal that purports to be a seal of the company but contravenes subsection (1); or

(b) issue, sign or publish a public document of the company that contravenes subsection (2) or (3).

**(6)** A person (whether an officer of the company or not) shall not sign or issue, or authorise to be signed or issued, on a company’s behalf, an

eligible negotiable instrument of the company that contravenes subsection (2).

**(7)** A person who contravenes subsection (6) is liable to the holder of the eligible negotiable instrument for the amount due on it unless that amount is paid by the company.

**(8)** A company shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of its registered office and of every office and place at which its business is carried on and that is open and accessible to the public:

(a) its name; and

(b) in the case of its registered office—the expression “Registered Office”.

**Service of documents on company**

**220. (1)** A document may be served on a company by leaving it at, or. by sending it by post to, the registered office of the company.

**(2)** For the purposes of subsection (1), the situation of the registered office of a company:

(a) in a case to which neither paragraph (b) nor paragraph (c) applies— shall be deemed to be the place notice of the address of which has been lodged under subsection 218 (1);

(b) if only one notice of a change in the situation of the registered office has been lodged under subsection 218 (3)—shall, on and from:

(i) the day that is 7 days after the day on which the notice was lodged; or

(ii) the day that is specified in the notice as the day from which the change is to take effect;

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

(c) if 2 or more notices of a change in the situation of the registered office have been lodged under subsection 218 (3)—shall, on and from:

(i) the day that is 7 days after the day on which the later or latest of those notices was lodged; or

(ii) the day that is specified in the later or latest of those notices as the day from which the change is to take effect;

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

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the company in a return or other document (not being a notice under subsection 218 (3)) lodged after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

**(3)** For the purposes of subsection (1), the situation of the registered office of a Division 2 company shall, unless and until a notice is lodged in relation to the company under section 218, be deemed to be the place that was, immediately before the company’s registration day, deemed, for the purposes of a law corresponding to subsection (1) of this section, to be the situation of the company’s registered office within the meaning of that law.

**(4)** Without limiting the operation of subsection (1), a document may be served on a company by delivering a copy of the document personally to each of 2 directors of the company who reside in Australia or an external Territory.

**(5)** Where a liquidator of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.

**(6)** Where an official manager of a company has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the official manager notice of which has been lodged.

**(7)** Nothing in this section affects:

(a) the power of the Court to authorise a document to be served on a company in a manner not provided for by this section; or

(b) the operation of an Australian law authorising a document to be served on a company in a manner not provided for by this section.

**PART 3.2—OFFICERS**

**Directors**

**221.** **(1)** A public company shall have at least 3 directors and a proprietary company shall have at least 2 directors.

**(2)** A body corporate is incapable of being appointed as a director of a company.

**(3)** In the case of a public company, at least 2 directors shall be persons who ordinarily reside within Australia and, in the case of a proprietary company, at least one director shall be a person who ordinarily so resides.

**(4)** Where the articles of a company incorporated before 1 July 1982 provide for the appointment of one director only, the articles shall be deemed to provide for the appointment of 2 directors.

**Restrictions on appointment or advertisement of director**

**222.** **(1)** A person shall not be named as a director or proposed director in the memorandum or articles of a company, or in a prospectus issued by or on behalf of a company, unless, before the registration of the memorandum or articles or the issue of the prospectus, as the case may be, the person

has, either personally or by an agent authorised in writing for the purpose, signed and lodged with the Commission a consent in writing to act as a director and:

(a) signed the memorandum for a number of shares not less than the person’s qualification (if any);

(b) signed and lodged with the Commission a written undertaking to take from the company, and pay for, the person’s qualification shares (if any);

(c) made and lodged with the Commission a written statement to the effect that a number of shares, not less than the person’s qualification (if any), are registered in the person’s name; or

(d) in the case of a company formed, or intended to be formed, by way of reconstruction of another body corporate or group of bodies corporate or to acquire the shares in another body corporate or group of bodies corporate—made and lodged with the Commission a written statement that the person was a shareholder in that other body corporate or in one or more of the bodies corporate of that group and that, as a shareholder, the person will be entitled to receive and have registered in the person’s name a number of shares not less than the person’s qualification by virtue of the terms of an agreement relating to the reconstruction.

**(2)** Where a person has signed and lodged an undertaking to take, and pay for, the person’s qualification shares, the person is, as regards those shares, in the same position as if the person had signed the memorandum for that number of shares.

**(3)** The preceding provisions of this section (other than the provisions relating to the signing of a consent to act as director) do not apply to:

(a) a company that does not have a share capital;

(b) a proprietary company; or

(c) a prospectus issued by or on behalf of a company, or the articles adopted by a company, after the end of one year after the date of incorporation of the company.

**(4)** On the lodging of the memorandum of a company for registration, the persons desiring the incorporation of the company shall also lodge with the Commission a list, certified by one of those persons to be correct, of the persons who have consented to be directors of the company, and, if the list contains the name of any person who has not so consented, the person who certified the list to be correct contravenes this subsection.

**Qualification of director**

**223. (1)** Without affecting the operation of any of the preceding provisions of this Part, a director of a company who is by the articles required to hold a specified share qualification and is not already qualified shall obtain the qualification within 2 months after the person’s appointment or such shorter period as is fixed by the articles.

**(2)** Unless otherwise provided by the articles, the qualification of a director of a company must be held by the director solely and not as one of several joint holders.

**Vacation of office**

**224. (1)** The office of a director of a company is, by force of this section, vacated if the person holding the office:

(a) has not within the period referred to in subsection 223 (1) obtained the person’s qualification;

(b) after so obtaining that qualification ceases at any time to hold the qualification;

(c) becomes an insolvent under administration;

(d) is convicted of an offence in respect of a contravention of subsection 229 (2);

(e) becomes subject to a section 230 order;

(f) becomes subject to a section 599 order; or

(g) becomes subject to a section 600 notice.

**(2)** A person whose office is vacated because of paragraph (1) (a) or (b) or was vacated because of a corresponding law is incapable of being reappointed as a director until the person has obtained the person’s qualification.

**(3)** A person whose office is vacated because of paragraph (1) (c) or was vacated because of a corresponding law is incapable, without the leave of the Court, of being re-appointed as a director until the person ceases to be an insolvent under administration.

**(4)** A person whose office is vacated because of paragraph (1) (d) or was vacated because of a corresponding law is incapable, without the leave of the Court, of being re-appointed as a director until the end of the period of 5 years referred to in subsection 229 (2) or in a corresponding law, as the case may be.

**(5)** A person whose office is vacated because of paragraph (1) (e) or (f) or was vacated because of a corresponding law is incapable of being reappointed as a director until the end of the period specified in the order referred to in that paragraph or in the order referred to in that corresponding law, as the case may be.

**(6)** A person whose office is vacated because of paragraph (1) (g) or was vacated because of a corresponding law is incapable, without the leave of the Court, of being re-appointed as a director until the end of the period specified in the notice referred to in that paragraph or in the notice referred to in that corresponding law, as the case may be.

**(7)** A person whose office is vacated because of paragraph (1) (a) or (b) or was vacated because of a corresponding law shall not purport to act as a director of the company unless the person has been validly re-appointed as a director.

**Appointment of directors of public company to be voted on individually**

**225.** **(1)** At a general meeting of a public company, a motion for the appointment of 2 or more persons as directors by a single resolution shall not be moved unless a resolution that it be moved has first been agreed to by the meeting without any vote being cast against it.

**(2)** A resolution passed pursuant to a motion moved in contravention of this section is void, whether or not the moving of the motion was objected to at the time.

**(3)** Where a resolution pursuant to a motion moved in contravention of this section is passed, no provision for the automatic re-appointment of retiring directors in default of another appointment applies.

**(4)** For the purposes of this section, a motion for approving a person’s appointment or for nominating a person for appointment shall be treated as a motion for the person’s appointment.

**(5)** Nothing in this section applies to a resolution altering the company’s articles.

**(6)** Nothing in this section prevents the election of 2 or more directors by ballot or poll.

**Validity of acts of directors and secretaries**

**226.** **(1)** The acts of a director or secretary of a company are valid notwithstanding any defect that may afterwards be discovered in his or her appointment or qualification.

**(2)** Where a person whose office as director of a company is vacated pursuant to subsection 224 (1) or was vacated pursuant to a corresponding law purports to do an act as a director of the company, that act is as valid, in relation to a person dealing with the company in good faith and for value and without actual knowledge of the matter because of which the office of the first-mentioned person was vacated, as if that office had not been vacated.

**Removal of directors**

**227.** **(1)** A public company may, by resolution, remove a director before the end of the director’s period of office, notwithstanding anything in its articles or in any agreement between it and the director.

**(2)** Where a director so removed was appointed to represent the interests of a particular class of shareholders or debenture holders, the resolution to remove the director does not take effect until a successor has been appointed.

**(3)** Special notice is required of:

(a) a resolution to remove a director under this section; or

(b) a resolution to appoint a person in place of a director so removed at the meeting at which the director is removed.

**(4)** As soon as practicable after receiving notice of an intended resolution to remove a director under this section, the company shall send a copy of the notice to the director concerned, and the director (whether or not a member of the company) is entitled to be heard on the resolution at the meeting.

**(5)** Where notice is given in accordance with subsection (1) and the director concerned makes with respect to the notice written representations to the company (not exceeding a reasonable length) and requests that the representations be notified to members of the company, the company shall, unless the representations are received by it too late for it to do so:

(a) state, in any notice of the resolution given to members of the company, that the representations have been made; and

(b) send a copy of the representations to every member of the company to whom notice of the meeting has been or is sent.

**(6)** If a copy of the representations is not so sent because they were received too late or because of the company’s default, the director may, without prejudice to any right to be heard orally, require that the representations be read out at the meeting.

**(7)** Notwithstanding the preceding provisions of this section, copies of the representations need not be sent out and the representations need not be read out at the meeting if, on the appliction either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter.

**(8)** On an application under subsection (7), the Court may order that the costs of the applicant be paid in whole or in part by the director, even if the director is not a party to the application.

**(9)** A vacancy created by the removal of a director under this section, if not filled at the meeting at which the director is removed, may be filled as a casual vacancy.

**(10)** A person appointed as a director in place of a person removed under this section shall be treated, for the purpose of determining the time at which that person or any other director is to retire, as if that person had become a director on the day on which the person in whose place that person is appointed was last appointed a director.

**(11)** Nothing in the preceding provisions of this section:

(a) deprives a person removed under those provisions of compensation or damages payable to the person in respect of the termination of the person’s appointment as director or of any appointment terminating with that as director; or

(b) derogates from any power to remove a director that may exist apart from this section.

**(12)** A director of a public company shall not be removed by, or be required to vacate his or her office because of, any resolution, request or notice of the directors or any of them notwithstanding anything in the articles or any agreement.

**Age of directors**

**228. (1)** Subject to this section, a person who has obtained the age of 72 years shall not be appointed or act as a director of:

(a) a public company; or

(b) a company that is a subsidiary of a public company.

**(2)** Nothing in subsection (1) prevents a person from acting as a director of a company during the period beginning on the day on which the person attains the age of 72 years and ending at the conclusion of the annual general meeting beginning next after that day.

**(3)** The office of a director of a public company or of a subsidiary of a public company becomes vacant at the conclusion of the annual general meeting of that public company or that subsidiary, as the case may be, beginning next after the director attains the age of 72 years.

**(4)** An act done by a person as a director is valid notwithstanding that it is afterwards discovered that he or she had attained the age of 72 years at the time of his or her appointment or that his or her appointment had terminated by virtue of subsection (3).

**(5)** Where the office of a director has become vacant by virtue of subsection (3), no provision for the automatic re-appointment of retiring directors in default of another appointment applies in relation to that director.

**(6)** If a vacancy created by virtue of subsection (3) is not filled at the meeting at which the office became vacant, the office may be filled as a casual vacancy.

**(7)** Subject to subsection (8), a person who has attained the age of 72 years may, by a resolution stating the age of that person, being a resolution:

(a) of which not less than 14 days’ written notice has been given to the members of the company entitled to vote stating that the person is a candidate for election who has attained the age of 72 years and stating the person’s age; and

(b) which is passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or where proxies are allowed, by proxy, at a general meeting of that company;

be appointed or re-appointed as a director of that company to hold office until the conclusion of the next annual general meeting of the company.

**(8)** Where the company is a subsidiary of a public company, the appointment or re-appointment referred to in subsection (7) does not have effect unless:

(a) the person appointed or re-appointed is a director of the holding company; or

(b) the appointment or re-appointment of the person as a director of the company has been approved by a resolution of the holding company:

(i) of which not less than 14 days’ written notice was given to the members of the holding company entitled to vote stating that the person was a candidate for election as a director of the company who had attained the age of 72 years and stating the person’s age; and

(ii) which was passed by a majority of not less than three-quarters of such members of the holding company as, being entitled so to do, voted in person or, where proxies were allowed, by proxy at a general meeting of the holding company.

**(9)** Where:

(a) the articles of a company limited by guarantee provide for the holding of postal ballots for the election of a director or directors; and

(b) a postal ballot for the election of a director or directors is held, being a postal ballot in which:

(i) the members entitled to vote have been given notice in writing by the company stating that a candidate for election has attained the age of 72 years and stating the age of the candidate; and

(ii) that candidate is elected by a majority of not less than three-quarters of the members who, being entitled to vote, vote in the ballot;

that candidate may be appointed or re-appointed as a director to hold office until the conclusion of the next annual general meeting of the company.

**(10)** Where the articles of a company limited by guarantee provide for the election or appointment of a director or directors otherwise than by members at a general meeting or by postal ballot of members and the Commission declares in writing that this section does not apply to the company or its directors, then, subject to such conditions (if any) as the Commission specifies in the declaration, this section does not so apply.

**(11)** A vacancy in the office of a director occurring by virtue of subsection (3) shall not be taken into account in determining when other directors are to retire.

**(12)** Nothing in this section limits or affects the operation of any provision of the memorandum or articles of a company preventing any person from being appointed a director or requiring any director to vacate his or her office at any age less than 72 years.

**(13)** A person is incapable of being appointed as a director of a company unless the person has attained the age of 18 years.

**Certain persons not to manage certain bodies corporate**

**229. (1)** In this section:

“relevant body corporate” means:

(a) a company;

(b) a foreign corporation; or

(c) a prescribed corporation.

**(2)** A person who is an insolvent under administration shall not be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a relevant body corporate without the leave of the Court.

**(3)** A person who has, whether before or after the commencement of this Part, been convicted:

(a) on indictment of any offence in connection with the promotion, formation or management of a body corporate;

(b) of any offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months; or

(c) of any offence for a contravention of section 232, 590, 591, 592, 595, 996 or 1307, of Part 6.6, of Division 2 of Part 7.11, or of a corresponding law;

shall not, within 5 years after the conviction or, if the person was sentenced to imprisonment, after release from prison, without the leave of the Court, be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a relevant body corporate.

**(4)** In any proceeding for a contravention of subsection (3), a certificate by a prescribed authority stating that a person was released from prison on a specified date is *prima facie* evidence that that person was released from prison on that date.

**(5)** When granting leave under this section, the Court may impose such conditions or restrictions as it thinks fit and a person shall not contravene any such condition or restriction.

**(6)** A person intending to apply for leave of the Court under this section shall give to the Commission not less than 21 days notice of the person’s intention so to apply.

**(7)** The Court may at any time, on the application of the Commission, revoke leave granted by the court under this section.

**(8)** Any leave granted by a court under a corresponding law before the commencement of this Part has effect for the purposes of this section as if it had been granted by the Court under this section.

**Court may order persons not to manage certain bodies corporate**

**230. (1)** Where, on application by the Commission or a person who is a prescribed person in relation to the body corporate concerned, or any of the bodies corporate concerned, the Court is satisfied:

(a) that:

(i) a relevant body corporate has, during a period in which a person (in this subsection called the “relevant person”) was a relevant officer of the company repeatedly breached relevant legislation; and

(ii) the relevant person failed to take reasonable steps to prevent the body corporate so breaching relevant legislation;

(b) that:

(i) each of 2 or more relevant bodies corporate has, at a time when a person (in this subsection also called the “relevant person”) was a relevant officer of the body corporate, breached relevant legislation; and

(ii) in each case the relevant person failed to take relevant steps to prevent the body corporate from breaching relevant legislation;

(c) that:

(i) a person (in this subsection also called the “relevant person”) has repeatedly breached relevant legislation; and

(ii) on 2 or more of the occasions when the relevant person breached relevant legislation, the relevant person was a relevant officer of a relevant body corporate (whether or not the relevant person was a relevant officer of the same relevant body corporate on each of those occasions); or

(d) that, at any time during a period in which a person (in this subsection also called the “relevant person”) has been or was a relevant officer of a relevant body corporate, the relevant person acted dishonestly, or failed to exercise a reasonable degree of care and diligence, in the performance of the relevant person’s duties as an officer of the body corporate;

the Court may by order prohibit the relevant person, for such period as is specified in the order, from managing a relevant body corporate.

**(2)** Where an order has been made under subsection (1) on the application of a person other than the Commission, the person shall, within 7 days after the making of the order, lodge an office copy of the order.

**(3)** A person who is subject to a section 230 order (whether made before or after the commencement of this section) shall not be a director or

promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a relevant body corporate.

**(4)** In this section:

(a) a reference to a contravention of a provision of a corresponding law includes a reference to such a contravention that occurred before the commencement of this Part; and

(b) a reference to a period in which a person has been or was a relevant officer of a body corporate includes a reference to such a period that elapsed, or part of which elapsed, before that commencement.

**(5)** For the purposes of this section:

(a) a body corporate or other person shall be taken to have breached relevant legislation if the body corporate or other person has contravened a provision of a relevant enactment; and

(b) a body corporate or another person may be taken to have repeatedly breached relevant legislation if the body corporate or the other person has:

(i) on 2 or more occasions, contravened a particular provision of a relevant enactment;

(ii) contravened 2 or more provisions of a relevant enactment; or

(iii) contravened provisions of 2 or more relevant enactments.

**(6)** In this section:

“prescribed person”, in relation to a body corporate, means:

(a) an official manager, liquidator or provisional liquidator of the body corporate;

(b) a member of the body corporate;

(c) a creditor of the body corporate; or

(d) a person who is authorised by the Commission to make applications under this section, or to make an application under this section in relation to the body corporate;

“relevant body corporate” means:

(a) a company;

(b) a foreign corporation; or

(c) a prescribed corporation;

“relevant enactment” means this Act or a law corresponding to a provision of this Act;

“relevant officer”, in relation to a body corporate, means a director, secretary or executive officer of the body corporate.

**Disclosure of interests in contracts, property, offices etc.**

**231. (1)** Subject to this section, a director of a company who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the company shall, as soon a practicable after the relevant

facts have come to the director’s knowledge, declare the nature of the interest at a meeting of the directors.

**(2)** The requirements of subsection (1) do not apply in respect of an interest of a director of a company that consists only of being a member or creditor of a company that is interested in a contract or proposed contract with the first-mentioned company if the interest of the director may properly be regarded as not being a material interest.

**(3)** A director of a company shall not be taken to be, or to have been at any time, interested in a contract or proposed contract merely because:

(a) where the contract or proposed contract relates to a loan to the company—the director has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan; or

(b) where the contract or proposed contract has been or will be made with or for the benefit of or on behalf of a body corporate that is related to the company—the director is a director of that body corporate.

**(4)** Subsection (3) has effect not only for the purposes of this Act but also for the purposes of any rule of law, but does not affect the operation of any provision in the articles of the company.

**(5)** For the purposes of subsection (1), a general notice given to the directors of a company by a director to the effect that the director is an officer or member of a specified body corporate or a member of a specified firm and is to be regarded as interested in any contract that may, after the date of the notice, be made with that body corporate or firm shall be deemed to be a sufficient declaration of interest in relation to any contract so made or proposed to be made if:

(a) the notice states the nature and extent of the director’s interest in the body corporate or firm;

(b) when the question of confirming or entering into the contract is first taken into consideration, the extent of the director’s interest in the body corporate or firm is not greater than is stated in the notice; and

(c) the notice is given at a meeting of the directors or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the directors after it is given.

**(6)** A director of a company who holds any office or possesses any property whereby, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director shall, in accordance with subsection (7), declare at a meeting of the directors of the company the fact and the nature, character and extent of the conflict.

**(7)** A declaration required by subsection (6) in relation to the holding of an office or the possession of any property shall be made by a person:

(a) where the person holds the office or possesses the property as mentioned in subsection (6) when the person becomes a director— at the first meeting of directors held after:

(i) the person becomes a director; or

(ii) the relevant facts as to the holding of the office or the possession of the property come to the person’s knowledge;

whichever is later; or

(b) where the person begins to hold the office or comes into possession of the property as mentioned in subsection (6) after the person becomes a director—at the first meeting of directors held after the relevant facts as to the holding of the office or the possession of the property come to the person’s knowledge.

**(8)** A secretary of a company shall record every declaration under this section in the minutes of the meeting at which it was made.

**(9)** Except as provided in subsection (3), this section is in addition to, and not in derogation of, the operation of any rule of law or any provision in the articles restricting a director from having any interest in contracts with the company or from holding offices or possessing properties involving duties or interests in conflict with his or her duties or interests as a director.

**Duty and liability of officers of certain bodies corporate**

**232. (1)** In this section:

“officer”, in relation to a body corporate, means:

(a) a director, secretary or executive officer of the body corporate;

(b) a receiver, or receiver and manager, of property of the body corporate, or any other authorised person who enters into possession or assumes control of property of the body corporate for the purpose of enforcing any charge;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator of the body corporate; and

(e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons;

“relevant body corporate” means:

(a) a company;

(b) a foreign corporation; or

(c) a prescribed corporation.

**(2)** An officer of a relevant body corporate shall at all times act honestly in the exercise of his or her powers and the discharge of the duties of his or her office.

**(3)** The penalty applicable to a contravention of subsection (2) is:

(a) if the contravention was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both; or

(b) otherwise—$5,000.

**(4)** An officer of a relevant body corporate shall at all times exercise a reasonable degree of care and diligence in the exercise of his or her powers and the discharge of his or her duties.

**(5)** An officer or employee of a relevant body corporate, or a former officer or employee of a relevant body corporate, shall not make improper use of information acquired by virtue of his or her position as such an officer or employee to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the body corporate.

**(6)** An officer or employee of a relevant body corporate shall not make improper use of his or her position as such an officer or employee, to gain, directly or indirectly, an advantage for himself or herself or for any other person or to cause detriment to the body corporate.

**(7)** Where:

(a) a person is convicted of an offence for a contravention of this section; and

(b) the court is satisfied that the body corporate has suffered loss or damage as a result of the act or omission that constituted the offence;

the court by which the person is convicted may, in addition to imposing a penalty, order the convicted person to pay compensation to the body corporate of such amount as that court specifies, and any such order may be enforced as if it were a judgment of that court.

**(8)** Where a person contravenes a provision of this section in relation to a body corporate, the body corporate may, whether or not the person has been convicted of an offence in respect of that contravention, recover from the person as a debt due to the body corporate by action in any court of competent jurisdiction:

(a) if that person or any other person made a profit as a result of the contravention—an amount equal to that profit; and

(b) if the body corporate has suffered loss or damage as a result of the contravention—an amount equal to that loss or damage.

**(9)** Where a person who contravenes this section has been found by a court to be liable to pay an amount to a person because of a contravention of Part 7.11 that arose out of or was constituted by the same act or transaction as the contravention of this section, the amount of the liability of the person under this section shall be reduced by the first-mentioned amount.

**(10)** For the purposes of subsection (9), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction as that from which another liability arose lies on the person liable to pay the amount.

**(11)** This section has effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person by reason of the person’s office or employment in relation to a body corporate and does not prevent the institution of any civil proceedings in respect of a breach of such a duty or in respect of such a liability.

**Liability of directors for debts etc. incurred by body corporate acting as trustee**

**233. (1)** Where:

(a) a relevant body corporate while acting or purporting to act in the capacity of trustee of a trust, incurs a liability:

(i) in the case of a company or prescribed corporation—whether within or outside Australia; or

(ii) in the case of a foreign corporation—within Australia;

(b) the relevant body corporate is for any reason not entitled to be fully indemnified out of the assets of the trust in respect of the liability; and

(c) the relevant body corporate has not discharged, and is unable to discharge, the liability or a part of the liability;

the relevant body corporate and the persons who were directors of the relevant body corporate when the liability was incurred and were not innocent directors in relation to the incurring of the liability are jointly and severally liable to discharge the liability or the undischarged part of the liability, as the case may be.

**(2)** For the purposes of this section, a trustee of a trust shall not, merely because:

(a) the trust has no assets; or

(b) the assets of the trust are insufficient to indemnify the trustee in respect of the liability concerned;

be taken not to be entitled to be fully indemnified out of the assets of the trust in respect of a liability.

**(3)** In this section:

“Australia” includes the external Territories;

“innocent director”, in relation to the incurring of a liability by a relevant body corporate while acting or purporting to act in a capacity of trustee of a trust, means a person who:

(a) was a director of the relevant body corporate at the time when the liability was incurred; and

(b) if the persons who were directors of the relevant body corporate at that time had been at that time the trustees of

the trust and had incurred the liability, would have been entitled to be fully indemnified in respect of the liability by one or more of the other trustees;

“liability” means a debt, liability or other obligation;

“relevant body corporate” means:

(a) a company;

(b) a foreign corporation; or

(c) a prescribed corporation.

**Loans to directors**

**234. (1)** Subject to this section, a company shall not, whether directly or indirectly:

(a) make a loan to:

(i) a director of the company, a spouse of such a director, or a relative of such a director or spouse;

(ii) a director of a body corporate that is related to the company, a spouse of such a director, or a relative of such a director or spouse;

(iii) a trustee of a trust under which a person referred to in subparagraph (i) or (ii) has a beneficial interest where the loan is made to the trustee in the capacity as trustee;

(iv) a trustee of a trust under which a body corporate has a beneficial interest, where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate, being a loan made to the trustee in the capacity as trustee; or

(v) a body corporate, where a person referred to in subparagraph (i) or (ii) has, or 2 or more such persons together have, a relevant interest or relevant interests in shares in the body corporate the nominal value of which is not less than 10% of the nominal value of the issued share capital of the body corporate; or

(b) give a guarantee or provide security in connection with a loan made or to be made by another person to a natural person or body corporate referred to in paragraph (a).

**(2)** For the purposes of subsection (1), where:

(a) a company:

(i) makes a loan to a body corporate or gives a guarantee or provides security in connection with a loan made to a body corporate; or

(ii) makes a loan to a trustee of a trust under which a body corporate has a beneficial interest, or gives a guarantee or

provides security in connection with a loan made to a trustee of a trust under which a body corporate has a beneficial interest;

(b) the company has a relevant interest or relevant interests in shares in the body corporate; and

(c) a person has, or 2 or more persons together have, a relevant interest or relevant interests in shares in the company;

the matters referred to in paragraphs (b) and (c) shall be disregarded for the purpose of determining whether the person has, or the persons together have, as the case may be, a relevant interest or relevant interests in the shares referred to in paragraph (b).

**(3)** Nothing in subsection (1) applies:

(a) to anything done by a company that is an exempt proprietary company;

(b) to a loan made by a company to, or a guarantee given or security provided by a company in relation to, a body corporate that is related to the company if the making of the loan, the giving of the guarantee or the provision of the security has been authorised by a resolution of the directors;

(c) subject to subsection (4), to anything done by a company to provide a person with funds to meet expenditure incurred or to be incurred by the person for the purposes of the company or for the purpose of enabling the person properly to perform duties as an officer of the company;

(d) subject to subsection (4), to anything done by a company to provide a person who is engaged in the full-time employment of the company or of a body corporate that is related to the company with funds to meet expenditure incurred or to be incurred by the person in purchasing or otherwise acquiring premises to be used by the person as the person’s principal place of residence;

(e) to a loan made by a company to a person who is engaged in the full-time employment of the company or of a body corporate that is related to the company, where:

(i) if neither subparagraph (ii) nor (iii) applies—the company has at a general meeting;

(ii) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies have at general meetings; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company have at general meetings;

approved a scheme for the making of such loans and the loan is made in accordance with the scheme; or

(f) to a loan made, guarantee given or security provided by a company in the ordinary course of its ordinary business where:

(i) that business includes the lending of money or the giving of guarantees or the provision of security in connection with loans made by other persons; and

(ii) the loan that is made by the company or in respect of which the company gives the guarantee or provides the security is made on ordinary commercial terms as to the rate of interest, the terms of repayment of principal and payment of interest, the security to be provided and otherwise.

**(4)** Paragraph (3) (c) or (d) does not authorise the making of any loan, the entering into any guarantee or the provision of any security except:

(a) with the prior approval of:

(i) if neither subparagraph (ii) or (iii) applies—the company;

(ii) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company;

given at a general meeting of the company or at general meetings of the company and the listed company or listed companies or of the company and the ultimate holding company, as the case may be, at which the purposes of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed; or

(b) on condition that, if the making of the loan, the giving of the guarantee or the provision of the security is not approved:

(i) if neither subparagraph (ii) nor (iii) applies—by the company at or before the next annual general meeting of the company;

(ii) if the company is a subsidiary of a listed company or listed companies—by the company at or before the next annual general meeting of the company or by the listed company or by each listed company at or before the next annual general meeting of the listed company concerned; or

(iii) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—by the company at or before the next annual general meeting of the company or by the ultimate holding company at or before the next annual general meeting of the ultimate holding company;

the loan be repaid or the liability under the guarantee or security be discharged, as the case may be, within 6 months after the conclusion of that meeting.

**(5)** A company that makes a loan, gives a guarantee or provides security in contravention of this section is not guilty of an offence, but a person involved in the contravention contravenes this subsection.

**(6)** The penalty applicable to a contravention of subsection (5) is:

(a) if it was committed with intent to deceive or defraud the company, members or creditors of the company or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both; or

(b) otherwise—$5,000.

**(7)** Where a company makes a loan, gives a guarantee or provides security in contravention of this section:

(a) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a director of the company or of a body corporate that is related to the company or a spouse of such a director, or a relative of such a director or spouse:

(i) the directors of the company; and

(ii) any officers of the company who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

(b) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust referred to in subparagraph (1) (a) (iii):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose beneficial interest under the trust the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

(ii) any other officers of the company who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be;

(c) in the case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a trustee of a trust under which a body corporate (in this paragraph called the “relevant body corporate”) has a beneficial interest in circumstances referred to in subparagraph (1) (a) (iv):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose relevant interest

or relevant interests in shares in the relevant body corporate the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

(ii) any other officers of that company or of the relevant body corporate who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be; or

(d) in a case of a loan made to, or a guarantee given or security provided in relation to a loan made to, a body corporate referred to in subparagraph (1) (a) (v) (in this paragraph called the “relevant body corporate”):

(i) any director of the company, or of a body corporate that is related to the company, by virtue of whose relevant interest or relevant interests in shares in the relevant body corporate the making of the loan, the giving of the guarantee or the provision of the security contravened this section; and

(ii) any other officers of that company or of the relevant body corporate who are liable to be prosecuted in respect of the contravention, whether or not they, or any of them, have been convicted of an offence or offences in respect of the contravention;

are jointly and severally liable to indemnify the company against any loss arising from the making of the loan, the giving of the guarantee or the providing of the security, as the case may be.

**(8)** It is a defence to a prosecution for a contravention of subsection (1) or (5) or to a proceeding instituted in respect of a liability under subsection (7) if it is proved that the defendant had no knowledge of the making of the loan, the giving of the guarantee or the provision of the security.

**(9)** Nothing in this section prevents the company from recovering the amount of, or of any interest on, any loan made, or any amount for which it becomes liable under any guarantee given or in respect of any security provided, contrary to this section.

**(10)** If a person has made a loan in relation to which a company has given a guarantee or provided security in contravention of this section, the person may enforce the guarantee or security against the company if, and only if:

(a) where the company is a proprietary company—a certificate signed by a director and a secretary of the company certifying that the company was an exempt proprietary company was given to the

person before the guarantee was given or the security was provided; or

(b) in any case—a certificate signed by a director and a secretary of the company certifying that the company was not prohibited by this section from giving the guarantee or providing the security was given to the person before the guarantee was given or the security was provided and the person did not know, and had no reason to believe, that the certificate was incorrect.

**(11)** A director or secretary of a company shall not give to a person a certificate referred to in subsection (10) that is false.

**(12)** This section is in addition to, and not in derogation of, any other law in force in Australia.

**Register of directors’ shareholdings etc.**

**235. (1)** A company shall keep a register showing with respect to each director of the company particulars of:

(a) shares in the company or in a body corporate that is related to the company, being shares in which the director has a relevant interest, and the nature and extent of that interest;

(b) debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company, being debentures or prescribed interests in which the director has a relevant interest, and the nature and extent of that interest;

(c) rights or options of the director or of the director and another person or other persons in respect of the acquisition or disposal of shares in, debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company; and

(d) contracts to which the director is a party or under which the director is entitled to a benefit, being contracts under which a person has a right to call for or to make delivery of shares in, debentures of, or prescribed interests made available by, the company or a body corporate that is related to the company.

**(2)** A company need not show in its register with respect to a director particulars of shares in a body corporate that is related to the company and is a wholly-owned subsidiary of the company or of another body corporate.

**(3)** A company that is a wholly-owned subsidiary of another company shall be deemed to have complied with this section in relation to a director who is a director of that other company if the particulars required by this section to be shown in the register of the first-mentioned company with respect to the director are shown in the register of the second-mentioned company.

**(4)** A company shall, within 7 days after receiving notice from a director under paragraph 236 (1) (a) or a corresponding law, enter in its register in

relation to the director the particulars referred to in subsection (1) including the number and description of shares, debentures, prescribed interests, rights, options and contracts to which the notice relates and, in respect of shares, debentures, prescribed interests, rights or options acquired or contracts entered into after the director became a director:

(a) the price or other consideration for the transaction (if any) by reason of which an entry in required to be made under this section; and

(b) the date of:

(i) the agreement for the transaction or, if it is later, the completion of the transaction; or

(ii) where there was no transaction, the occurrence of the event because of which an entry is required to be made under this section.

**(5)** A company shall, within 3 days after receiving a notice from a director under paragraph 236 (1) (b) or a corresponding law, enter in its register the particulars of the change referred to in the notice.

**(6)** A company is not, because of anything done under this section, to be taken for any purpose to have notice of, or to be upon inquiry as to, the right of a person to or in relation to a share in, debenture of, or prescribed interest made available by, the company.

**(7)** A register kept by a company under this section shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(8)** A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to the person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after the payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.

**(9)** A company shall produce its register at the start of each annual general meeting of the company and keep it open and accessible during the meeting to all persons attending the meeting.

**(10)** It is a defence to a prosecution for failing to comply with subsection (1) or (4) in respect of particulars relating to a director if it is proved that

the failure was due to the failure of the director to comply with section 236 with respect to those particulars.

**(11)** In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of Division 5 of Part 1.2 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

**General duty to make disclosure**

**236. (1)** A director of a company shall give written notice to the company of:

(a) such particulars relating to shares, debentures, prescribed interests, rights, options and contracts as are necessary for the purposes of compliance by the company with the provisions of section 235;

(b) particulars of any change in respect of the particulars referred to in paragraph (a), including the consideration (if any) received as a result of the event given rise to the change;

(c) such matters and events affecting or relating to the director as are necessary for the purposes of compliance by the company with any of the provisions of section 242 that are applicable in relation to the director;

(d) such matters and events affecting or relating to the director as are necessary for the purposes of compliance by the company with any of the provisions of Chapter 6; and

(e) the date and place of the director’s birth.

**(2)** A director required to give a notice under subsection (1) shall give the notice:

(a) in the case of a notice under paragraph (1) (a), within 14 days after:

(i) the date on which the director became a director; or

(ii) the date on which the director became aware that the director had a relevant interest in the shares, debentures or prescribed interests, the date on which the director became aware that the director had acquired the rights or options or the date on which the director entered into the contracts, as the case requires;

whichever last occurs;

(b) in the case of a notice under paragraph (1) (b), within 14 days after the director becomes aware of the occurrence of the event giving rise to the change referred to in that paragraph;

(c) in the case of a notice under paragraph (1) (c), within 14 days after the director becomes aware of the matter or the occurrence of the event;

(d) in the case of a notice under paragraph (1) (d), as soon as practicable after becoming aware that the company requires or will require the

information for the purposes of compliance with any of the provisions of Chapter 6; and

(e) in the case of a notice under paragraph (1) (e), within 14 days after the date on which the director became a director.

**(3)** A company shall, within 7 days after the receipt by it of a notice given under subsection (1), send a copy of the notice to each of the other directors of the company.

**(4)** A person who is the principal executive officer, or a secretary, of a company shall give written notice to the company:

(a) of such matters and events affecting or relating to the person as are necessary for the purposes of compliance by the company with any of the provisions of section 242; and

(b) of the date and place of the person’s birth.

**(5)** A person required to give a notice under subsection (4) shall give the notice:

(a) in the case of a notice under paragraph (4) (a)—within 14 days after the person becomes aware of the matter or the occurrence of the event; and

(b) in the case of a notice under paragraph (4) (b)—within 14 days after the day on which the person becomes the principal executive officer, or a secretary, as the case may be, of the company.

**(6)** In any proceedings under this section, a person shall, in the absence of proof to the contrary, be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the employer’s or principal’s interest or interests in a share in, a debenture of, or a prescribed interest made available by, the company concerned, was aware at that time.

**(7)** In determining for the purposes of this section whether a person has a relevant interest in a debenture or prescribed interest, the provisions of Division 5 of Part 1.2 that apply for the purposes of this section have effect as if a reference in those provisions to a share were a reference to a debenture or prescribed interest.

**(8)** Nothing in this section requires a person to give notice to a company of any matter or event of which the person has previously given notice to the company, whether for the purposes of this section or of a corresponding law.

**Benefits for loss of, or retirement from, office**

**237. (1)** Subject to this section:

(a) a company, an associate of a company (other than a body corporate that is related to the company and is itself a company) or a prescribed superannuation fund in relation to a company shall not

give a prescribed benefit to a person in connection with the retirement of a person from a prescribed office in relation to the company; and

(b) a person shall not give a prescribed benefit to a prescribed person in connection with the transfer of the whole or any part of the undertaking or property of a company.

**(2)** Subsection (1) does not apply if particulars with respect to the prescribed benefit have been disclosed to the members of, and the giving of the proposed prescribed benefit has been approved in general meeting by:

(a) if neither paragraph (b) nor (c) applies—the company;

(b) if the company is a subsidiary of a listed company or listed companies—the company and the listed company or listed companies; or

(c) if the company is not a subsidiary of a listed company but is a subsidiary whose ultimate holding company is incorporated in Australia or an external Territory—the company and the ultimate holding company.

**(3)** The particulars to be disclosed for the purposes of subsection (2) include:

(a) if the proposed prescribed benefit is a payment:

(i) the amount of the payment; or

(ii) if that amount cannot be ascertained at the time of the disclosure—the manner in which that amount is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that amount; and

(b) otherwise:

(i) the money value of the proposed prescribed benefit; or

(ii) if that value cannot be ascertained at the time of the disclosure—the manner in which that value is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that value.

**(4)** Where, because:

(a) the particulars required by subsection (1) to be disclosed to the members of a body corporate or bodies corporate in relation to the giving to a person of a proposed prescribed benefit have been so disclosed; and

(b) the giving to the person of the proposed prescribed benefit has been approved by the body corporate or bodies corporate in general meeting;

subsection (1) does not prohibit the giving to the person of the proposed prescribed benefit, that subsection does not prohibit the giving to the person, instead of the proposed prescribed benefit, of a prescribed benefit the amount or money value of which is less than the amount or money value of the proposed prescribed benefit.

**(5)** Paragraph (1) (a) does not apply in relation to:

(a) the giving of an exempt benefit; or

(b) the giving of a prescribed benefit in prescribed circumstances.

**(6)** Paragraph (1) (a) does not apply in relation to the giving of a prescribed benefit in connection with the retirement of a person from a prescribed office (in this subsection called the “relevant office”) in relation to a company, if:

(a) the prescribed benefit is a genuine payment by way of pension or lump sum payment in respect of past services rendered by the person to the company or to a body corporate that is a related body corporate, or that was, when the past services were rendered, a related body corporate, of the company, including any superannuation, retiring allowance, superannuation gratuity or similar payment; and

(b) the value of the pension or lump sum payment, when added to the value of all other pensions (if any) and lump sum payments (if any) already paid or payable in connection with the retirement of the person from a prescribed office in relation to the company (including any pensions or payments to which subsection (5) applies), does not exceed:

(i) where, at the time when the person retired from the relevant office, the person was, and had been throughout a period (in this subsection called the “relevant period”), or throughout periods totalling a period (in this subsection also called the “relevant period”), of not less than 3 years, an eligible employee in relation to the company—the amount ascertained in accordance with the formula:

TE multiplied by RP over 3;

where:

**TE** is the amount of the total emoluments of the person during the last 3 years of the relevant period; and

**RP** isthe number of years in the relevant period or 7, whichever is the lesser number; or

(ii) otherwise—the total emoluments of the person during the period of 3 years ending when the person retired from the relevant office.

**(7)** In determining for the purposes of paragraph (6) (b) the value of a pension or lump sum payment, any part of the pension or lump sum payment that is attributable to a contribution made by the person or by a person other than:

(a) the company;

(b) a body corporate (in this subsection called a “relevant body corporate”) that is a related body corporate of the company, or that was, when the contribution was made, such a related body corporate; or

(c) an associate of the company, or of a relevant body corporate, in respect of:

(i) the payment of the pension, or the making of the lump sum payment, as the case may be; or

(ii) the making of the contribution; shall be disregarded.

**(8)** For the purposes of subparagraph (6) (b) (i), where at a particular time, or throughout a particular period:

(a) a person was a genuine full-time employee of a company; or

(b) a person was a genuine full-time employee of a body corporate and the body corporate was related to a company;

the person shall be taken to have been at that time, or throughout that period, as the case may be, an eligible employee in relation to the company.

**(9)** Paragraph (1) (a) does not apply in relation to the giving of a prescribed benefit by a person to another person if failure by the first-mentioned person to give the prescribed benefit to the other person would constitute, otherwise than because of breach of contract or breach of trust, a contravention of a law in force in Australia or elsewhere.

**(10)** A prescribed person shall not receive a prescribed benefit if the giving of the prescribed benefit contravenes subsection (1).

**(11)** Where the giving of a prescribed benefit to a person contravenes subsection (1), then:

(a) if the benefit is a payment—the amount of the payment; or

(b) otherwise—the money value of the prescribed benefit;

shall be deemed to be received by the person in trust for the company concerned.

**(12)** Subsection (11) applies in relation to the whole of the amount of a payment or of the money value of a prescribed benefit notwithstanding that, if that amount or value had been less, the giving of the benefit would not have contravened subsection (1).

**(13)** This section is in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to the giving or receipt of a prescribed benefit.

**(14)** In this section:

(a) a reference to the giving of a prescribed benefit by a person includes a reference to the giving of a prescribed benefit that the person is obliged under a contract to give;

(b) a reference to the giving of a prescribed benefit, or to a pension or lump sum payment paid or payable, in connection with the retirement of a person from an office is a reference to the giving of a prescribed benefit, or to a pension or lump sum paid or payable, as the case may be:

(i) by way of compensation for, or otherwise in connection with, the loss by the person of the office; or

(ii) in connection with the retirement of the person from the office;

(c) a reference to a payment includes a reference to a payment by way of damages for breach of contract; and

(d) a reference to retirement of a person from an office includes a reference to:

(i) loss by the person of the office;

(ii) resignation by the person from the office; or

(iii) death of the person at a time when the person holds the office.

**(15)** Without limiting the generality of paragraph (14) (b) where a person gives a prescribed benefit to another person for the purpose, or for purposes including the purpose, of enabling or assisting a person to give to a person a prescribed benefit in connection with the retirement of a person (in this subsection called the “relevant person”) from an office, the first-mentioned person shall be taken, for the purposes of this section, to give the first-mentioned prescribed benefit in connection with the retirement of the relevant person from that office.

**(16)** Where a company, or an associate of a company, gives a prescribed benefit to a superannuation fund in prescribed circumstances, the superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

**(17)** Where a prescribed superannuation fund in relation to a company gives a prescribed benefit to another superannuation fund in prescribed circumstances, the other superannuation fund shall be taken to be, for the purposes of this section, a prescribed superannuation fund in relation to the company.

**(18)** For the purposes of this section, where:

(a) a company, or an associate of a company, gives a prescribed benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to the company; or

(b) a superannuation fund gives a prescribed benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company;

the prescribed benefit first referred to in paragraph (a) or (b) shall be taken to be given in prescribed circumstances.

**(19)** In this section:

“emoluments”, in relation to a person who is a director or other officer of a body corporate, means the amount or value of any money, consideration or benefit given, directly or indirectly, to that person in connection with the management of affairs of the body corporate or of any holding company or subsidiary of the body corporate, whether as a director or officer or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the body corporate;

“exempt benefit” means a prescribed benefit given in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit:

(a) given under an agreement entered into before the commencement of this Part where the giving of the prescribed benefit would have been lawful if this Act had not been enacted;

(b) given under an agreement where particulars of the terms of that agreement have been disclosed to the members of the company and approved by the company in general meeting;

(c) that is a genuine payment by way of damages for breach of contract;

(d) given to the person under an agreement made between the company and the person before the person became the holder of the prescribed office as the consideration or part of the consideration for the person agreeing to hold the prescribed office; or

(e) that is a payment made in respect of leave of absence to which the person is entitled under an industrial instrument;

“give”, in relation to a prescribed benefit, includes:

(a) in the case of a prescribed benefit that is a payment—make; and

(b) in the case of a prescribed benefit that is an interest in property—transfer;

“person” includes a superannuation fund;

“prescribed benefit” means a payment or other valuable consideration or any other benefit and includes, without limiting the generality of the foregoing, an interest in property of any kind;

“prescribed office”, in relation to a company, means:

(a) an office of director of the company or of a related body corporate;

(b) the office of principal executive officer of the company or of a related body corporate; and

(c) any other office in connection with the management of affairs of the company or of a related body corporate that is held by a person who also holds, or who has, at any time within the 12 months immediately before the loss of, or retirement

from, that office, held, an office mentioned in paragraph (a) or (b);

“prescribed person”, in relation to a company, means:

(a) a person who holds, or has at any previous time held, a prescribed office in relation to the company;

(b) the spouse of a person referred to in paragraph (a);

(c) a person who is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or

(d) an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

“relevant benefit”, in relation to a proposal to give a prescribed benefit in connection with the retirement of a person from a prescribed office in relation to a company, being a prescribed benefit in relation to which paragraph (1) (a) would apply, means any other prescribed benefit (including an exempt benefit) given, or proposed to be given, in connection with the retirement of the person from the prescribed office;

“superannuation fund” means a provident, benefit, superannuation or retirement fund.

**(20)** The giving of approval by a body corporate for the giving of a prescribed benefit as mentioned in paragraph (1) (b) does not relieve a director of the body corporate of any duty to the body corporate under section 232 or otherwise, and whether of a fiduciary nature or not, in connection with the giving of the prescribed benefit.

**Assignment of office**

**238.** **(1)** If, in the case of a public company, provision is made by the articles or by an agreement entered into between any person and the company for empowering a director of the company to assign his or her office as such to another person, any such assignment of office does not have any effect, notwithstanding anything in the provision of the articles or agreement, until approved by a special resolution of the company.

**(2)** This section does not prevent the appointment by a director (if authorised by the articles and subject to the articles) of an alternate or substitute director to act for or on behalf of the director during his or her inability for any time to act as director.

**Powers to require disclosure of directors’ emoluments**

**239.** If a company is served with a notice sent by or on behalf of:

(a) at least 10% of the total number of members; or

(b) members who together hold not less than 5% in nominal value of the company’s issued share capital;

requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed, the company shall:

(c) as soon as practicable prepare and cause to be audited a statement showing the total amount of emoluments and other benefits paid to or received by each of the directors of the company and each director of a subsidiary, including any amount paid by way of salary, for the financial year that ended immediately before the service of the notice;

(d) as soon as practicable after the statement has been audited, send a copy of the statement to each person entitled to receive notice of general meetings of the company; and

(e) lay the statement before the next general meeting of the company held after the statement is audited.

**Secretary**

**240.** **(1)** A company shall have at least one secretary.

**(2)** A secretary of a company shall be appointed by the directors.

**(3)** A person is not capable of being a secretary of a company unless the person is a natural person who has attained the age of 18 years.

**(4)** The secretary, or each of the secretaries, shall be a person who ordinarily resides in Australia.

**(5)** A secretary shall be present at the registered office of the company in person or by an agent on the days and during the hours when the registered office is required to be open and accessible to the public.

**(6)** If there is no secretary of a company, or no secretary of the company is capable of acting, any act or thing required or authorised to be done by or in relation to the secretary may be done by or in relation to any assistant or deputy secretary or, if there is no assistant or deputy secretary, or no assistant or deputy secretary is capable of acting, by or in relation to an officer of the company authorised by the directors to act as secretary, either generally or in relation to the doing of that act or thing.

**(7)** A provision of this Act or of the memorandum or articles requiring or authorising any act or thing to be done by or in relation to a director and a secretary is not satisfied by its being done by or in relation to the same person acting both as director and as, or in place of, a secretary.

**(8)** Where a preceding provision of this section is contravened, the company and any officer of the company who is involved in the contravention each contravene this subsection.

**Provisions indemnifying officers or auditors**

**241.** **(1)** Any provisions, whether contained in the articles or in a contract with a company or otherwise, for exempting any officer or auditor of the company from, or indemnifying such an officer or auditor against, any liability that by law would otherwise attach to the officer or auditor in respect of any negligence, default, breach of duty or breach of trust of

which the officer or auditor may be guilty in relation to the company is void.

**(2)** Notwithstanding anything in this section, a company may, pursuant to its articles or otherwise, indemnify an officer or auditor against any liability incurred by the officer or auditor:

(a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or auditor or in which the officer or auditor is acquitted; or

(b) in connection with any application in relation to any such proceedings in which relief is granted under this Act to the officer or auditor by the Court.

**(3)** Subsection (1) does not apply in relation to a contract of insurance, other than a contract of insurance the premiums in respect of which are paid by the company or by a related body corporate.

**(4)** In this section:

“officer”, in relation to a company, means:

(a) a director, secretary, executive officer or employee of the company;

(b) a receiver, or receiver and manager, of property of the company;

(c) an official manager or deputy official manager of the company;

(d) a liquidator of the company; and

(e) a trustee or other person administering a compromise or arrangement made between the company and another person or other persons.

**Register of directors, principal executive officers and secretaries**

**242. (1)** A company shall keep a register of its directors, its principal executive officer and its secretaries.

**(2)** The register shall contain with respect to each director his or her consent in writing to appointment as such and shall specify:

(a) the present Christian or given name and surname, any former Christian or given name or surname, the date and place of birth, the usual residential address, and the business occupation (if any), of the director; and

(b) particulars of directorships held by the director in other bodies corporate that under this Act or the law of any State or Territory are public companies or subsidiaries of public companies;

but it is not necessary for the register to contain particulars of directorships held by a director of a body corporate in a related body corporate.

**(3)** Where a person is a director in one or more subsidiaries of the same holding company, it is sufficient compliance with the provisions of subsection (2) if it is disclosed that the person is the holder of one or more directorships

in that group of companies and the group may be described by the name of the holding company with the addition of the word “Group”.

**(4)** The register shall specify with respect to the principal executive officer and each secretary his or her full name, date and place of birth, address and other occupation (if any) and shall contain his or her consent in writing to appointment as principal executive officer or secretary, as the case may be.

**(5)** The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(6)** A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to the person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.

**(7)** The company shall lodge:

(a) within one month after incorporation, or registration under this Act—a return in the prescribed form containing the particulars required to be specified in the register;

(b) within one month after a person ceases to be, or is appointed, a director of the company—a return in the prescribed form notifying the Commission of the change and containing, with respect to each person who is, at the time of lodgment of the return, a director of the company, the particulars required to be specified in the register;

(c) within one month after a person is appointed the principal executive officer, or a secretary, of the company—a return in the prescribed form notifying the Commission of that fact and specifying the full name, date and place of birth, address and other occupation (if any) of that person; and

(d) within one month after a person ceases to be the principal executive officer, or a secretary, of the company—a return in the prescribed form notifying the Commission of that fact.

**(8)** The Commission may at any time, by written notice to a person who appears to the Commission from returns lodged with the Commission under this section or section 335 to be a director, the principal executive officer or a secretary of a company, require the person to lodge with the Commission, within a period specified in the notice, a notice in the prescribed

form stating whether the person is such a director, principal executive officer or secretary and, if the person has ceased to be such a director, principal executive officer or secretary, specifying the date on which the person so ceased, and, where a person receives such a notice, the person shall comply with the notice.

**(9)** A certificate of the Commission stating that, from any return or notice lodged with the Commission under this section or section 335, or from any return or notice in the possession of the Commission that was lodged with another authority under a corresponding law, it appears that at any time specified in the certificate, or throughout a period specified in the certificate, a person was a director, the principal executive officer or a secretary of a specified company shall, in all courts and by all persons having power to take evidence for the purposes of this Act, be received as *prima facie* evidence of the facts stated in the certificate.

**(10)** For the purposes of subsection (9), a person who appears from any return or notice lodged with or in the possession of the Commission to be a director, the principal executive officer or a secretary of a company shall be deemed to continue as such until, from a return or notice subsequently lodged with or coming into the possession of the Commission, it appears that the person has ceased to be such a director, principal executive officer or secretary.

**(11)** In this section:

“appointed” includes re-appointed.

**Register of disqualified company directors and other officers**

**243. (1)** The Commission shall cause to be kept for the purposes of this Act a Register of Disqualified Company Directors and Other Officers consisting of:

(a) a copy of each order made under subsection 230 (1) or 599 (2); and

(b) a copy of each notice served under subsection 600 (3).

**(2)** Where:

(a) an order has been or is made under a law that corresponds with subsection 230 (1) or 599 (2); or

(b) a notice has been or is served under a law that corresponds with subsection 600 (3);

the Commission may include a copy of the order or notice in the Register of Disqualified Company Directors and Other Officers.

**(3)** A person may inspect and make copies of, or take extracts from, the Register of Disqualified Company Directors and Other Officers.

**PART 3.3—MEETINGS AND PROCEEDINGS**

**Statutory meeting and statutory report**

**244. (1)** Where a public company that is a limited company and has a share capital or a no liability company:

(a) issues a prospectus inviting applications or offers from the public to subscribe for, or offering to the public for subscription, shares in the company; and

(b) the company has not previously issued such a prospectus;

the company shall, within a period of not less than 1 month and not more than 3 months after the day on which the company allots shares pursuant to the prospectus, hold a general meeting of the members of the company, to be called the “statutory meeting”.

**(2)** The directors shall at least 7 days before the day on which the meeting is to be held send a copy of a report, to be called the “statutory report”, to every member of the company.

**(3)** The statutory report shall be certified by not less than 2 directors of the company and shall state, as at the date of the report:

(a) the total number of shares allotted, distinguishing:

(i) shares allotted as fully paid up in cash;

(ii) shares allotted as partly paid up in cash;

(iii) shares allotted as fully paid up otherwise than in cash; and

(iv) shares allotted as partly paid up otherwise than in cash;

and stating:

(v) in the case of shares partly paid up—the extent to which they are so paid up; and

(vi) in the case of shares allotted as fully or partly paid up otherwise than in cash—the consideration for which they have been allotted;

(b) the total amount of cash received by the company in respect of all the shares allotted and so distinguished;

(c) an abstract of the receipts of the company and of the payments made out of those receipts up to a day within 7 days of the date of the report showing under distinctive headings:

(i) the receipts from shares and debentures and other sources;

(ii) the payments made out of those receipts;

(iii) particulars concerning the balance (if any) remaining in hand; and

(iv) an account or estimate of the preliminary expenses;

(d) the name, address and description of:

(i) each director;

(ii) each trustee for holders of debentures (if any);

(iii) each auditor;

(iv) each secretary; and

(v) the principal executive officer; of the company; and

(e) the particulars of any contract the modification of which is to be submitted to the meeting for its approval together with the particulars of the modification or proposed modification.

**(4)** The statutory report shall, so far as it relates to the shares allotted and to the cash received in respect of such shares and to the receipts and payments on capital account, be examined and reported upon by the auditors (if any).

**(5)** The directors shall cause a copy of the statutory report and the auditor’s report (if any) to be lodged at least 7 days before the day of the statutory meeting.

**(6)** The directors shall cause a list showing the names and addresses of the members, and the numbers of shares held by them respectively, to be produced at the beginning of the meeting and to remain open and accessible to any member throughout the meeting.

**(7)** The members present at the meeting may discuss any matter relating to the formation of the company or arising out of the statutory report, whether previous notice has been given or not, but a resolution may only be passed if notice of it has been given in accordance with the articles.

**(8)** The meeting may adjourn from time to time and, at any adjourned meeting, any resolution of which notice has been given in accordance with the articles either before or after the former meeting may be passed and the adjourned meeting has the same powers as an original meeting.

**(9)** The meeting may by resolution appoint a committee or committees of inquiry, and at any adjourned meeting a special resolution may be passed that the company be wound up if, notwithstanding any other provision of this Act, at least 7 days notice of intention to propose the resolution has been given to every member of the company.

**(10)** If default is made in complying with this section:

(a) the company; and

(b) any officer of the company who failed to take reasonable steps to ensure compliance;

each contravene this subsection.

**Annual general meeting**

**245. (1)** Subject to subsection (2), a company shall, in addition to any other meeting held by the company, hold a general meeting, to be called the “annual general meeting”, at least once in every calendar year and, in relation to a financial year of the company that ends after the commencement of this Act, within 5 months, or, in the case of an exempt proprietary company, within 6 months, after the end of that financial year.

**(2)** A company may hold its first annual general meeting within 18 months after its incorporation but, if the first financial year of the company ends after the commencement of this Act, the company shall hold the meeting not more than 5 months (or, in the case of an exempt proprietary company, not more than 6 months) after the end of that financial year.

**(3)** A company shall be deemed to have held an annual general meeting if that company has held a general meeting at which resolutions have been passed dealing with all matters required to be dealt with at an annual general meeting, but nothing in this subsection affects an obligation imposed by this Act to hold an annual general meeting at a particular time or within a particular period.

**(4)** An exempt proprietary company shall be deemed to have held an annual general meeting if that company is deemed by section 255 to have held a general meeting and the resolution that is deemed to have been passed at that general meeting deals with all matters that are required to be dealt with at an annual general meeting.

**(5)** On application made by a company in accordance with a resolution of the directors and signed by a director or secretary, the Commission may, in writing and subject to such conditions as the Commission imposes on the company:

(a) permit the company to hold a meeting in a calendar year other than the one in which subsection (1) requires the meeting to be held; or

(b) extend the period within which subsection (1) or (2) requires the company to hold a meeting.

**(6)** A company shall comply with conditions imposed on it under subsection (5).

**(7)** A permission or extension in force under subsection (5) has effect accordingly.

**(8)** An application by a company for a permission or extension under subsection (5) shall be made before the end of the calendar year in which, or of the period within which, as the case may be, subsection (1) or (2) would otherwise require the company to hold the meeting.

**(9)** So long as proper notice is given to everyone entitled to receive notice of the meeting, a general meeting may be held at any time and the company may resolve that any meeting held or convened to be held shall be the annual general meeting of the company.

**(10)** If default is made in holding a meeting under this section or in complying with a condition imposed under subsection (5) the Court may, on the application of a member, order a general meeting to be convened.

**Convening of general meeting on requisition**

**246. (1)** The directors of a company, notwithstanding anything in its articles, shall, on the requisition in writing of:

(a) in the case of a company having a share capital—at least 100 members holding shares in the company on which there has been paid up an average sum, per member, of at least $200;

(b) in the case of a company not having a share capital—at least 200 members; or

(c) in either case—a member who is entitled, or members who are together entitled, to at least 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings;

as soon as practicable convene a general meeting of the company to be held as soon as practicable but, in any case, not later than 2 months after the date of the deposit of the requisition.

**(2)** The requisition shall state the objects of the meeting and shall be signed by the requisitioning member or members and deposited at the registered office of the company, and, where there are 2 or more requisitioning members, may consist of several documents in like form each signed by 1 or more of the requisitioning members.

**(3)** If the directors do not, within 21 days after the date of the deposit of the requisition, proceed to convene a meeting, the requisitioning member, or, where there are 2 or more requisitioning members, those members or any of them representing more than 50% of the total voting rights of all of them:

(a) may, in the same manner as nearly as possible as that in which meetings are to be convened by directors, convene a meeting; and

(b) for the purposes of convening a meeting as provided by paragraph (a), may request the company to supply a written statement setting out the names and addresses (so far as they are known to the company) of the persons who, at the date of the deposit of the requisition, were entitled, under subsection 247 (4) or a provision of the articles of the company, to receive notice of general meetings of the company.

**(4)** Where a request for a statement is made to a company under paragraph (3) (b), the directors of the company shall send the statement to the person or persons who requested the statement within 7 days after the day on which the request is made.

**(5)** A meeting convened by a requisitioning member or requisitioning members in accordance with subsection (3) shall not be held more than 3 months after the date of the deposit of the requisition.

**(6)** Any reasonable expenses incurred by the requisitioning member or members by reason of the failure of the directors to convene a meeting shall be paid to that member or those members by the company, and any sum so

paid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

**(7)** A meeting at which a special resolution is to be proposed shall be deemed not to be duly convened by the directors if they do not give such notice of the meeting as is required by this Act in the case of special resolutions.

**(8)** For the purposes of the application of this section in relation to a Division 2 company:

(a) a reference in this section to a requisition includes a reference to a requisition deposited:

(i) at a time (whether before or after the commencement of this Act) when the company was a company of a State or Territory; and

(ii) in accordance with a law of the State or Territory that was in force at that time and corresponds to this section; and

(b) where a requisition was so deposited—anything done at such a time, under a law corresponding to this section, pursuant to the requisition shall also be deemed to have been done at that time under this section.

**Convening of meetings**

**247. (1)** So far as the articles do not make other provision, 2 or more members holding at least 5% of the issued share capital, or, if the company does not have a share capital, at least 5% in number of the members of the company, may convene a meeting of the company.

**(2)** A meeting of a company or of a class of members, other than a meeting for the passing of a special resolution, shall be convened by notice in writing of at least 14 days or such longer period as is provided in the articles.

**(3)** A meeting shall, notwithstanding that it is convened by notice shorter than is required by subsection (2), be deemed to be duly convened if it is so agreed:

(a) in the case of a meeting convened as the annual general meeting— by all the members entitled to attend and vote at the meeting; or

(b) in the case of any other meeting—by a majority in number of the members having a right to attend and vote at the meeting, being a majority that together hold at least 95% in nominal value of the shares giving a right to attend and vote or, in the case of a company not having a share capital, are together entitled to at least 95% of the total voting rights of all the members having the right to attend and vote at the meeting.

**(4)** So far as the articles do not make other provision, notice of every meeting shall be served on every member having a right to attend and vote

at the meeting in the manner in which notices are required to be served by Table A.

**Articles as to right to demand a poll**

**248.** **(1)** Any provision contained in a company’s articles is void in so far as it would have the effect:

(a) of excluding the right to demand a poll at a general meeting on any question or matter other than the election of the chairman of the meeting or the adjournment of the meeting;

(b) of making ineffective a demand for a poll on any question or matter, other than the election of the chairman of the meeting or the adjournment of the meeting, that is made:

(i) by at least 5 members having the right to vote at the meeting;

(ii) by a member or members who are together entitled to at least 10% of the total voting rights of all the members having the right to vote at the meeting; or

(iii) by a member or members holding shares in the company conferring a right to vote at the meeting, being shares on which an aggregate sum has been paid up equal to at least 10% of the total sum paid up on all the shares conferring that right; or

(c) of requiring the instrument appointing a proxy, or any other document necessary to show the validity of or otherwise relating to the appointment of a proxy, to be received by the company or any other person more than 48 hours before a meeting or adjourned meeting in order that the appointment may be effective at the meeting.

**(2)** The instrument appointing a proxy to vote at a meeting of a company shall be deemed to confer authority to demand or join in demanding a poll, and, for the purposes of subsection (1), a demand by a person as proxy for a member of the company shall be deemed to be the same as a demand by the member.

**Quorum, chairman, voting etc. at meetings**

**249.** **(1)** So far as the articles do not make other provision:

(a) in the case of a proprietary company, 2 members of the company, and in the case of any other company, 3 members, personally present constitute a quorum;

(b) any member elected by the members present at a meeting may bechairman of the meeting; and

(c) in the case of a company having a share capital, every member has 1 vote in respect of each share or each $20 of stock held by the member, and, in any other case, every member has 1 vote.

**(2)** On a poll taken at a meeting, a person (including a proxy) entitled to 2 or more votes need not, if the person votes, use all the person’s votes or cast in the same way all the votes the person uses.

**(3)** A body corporate may, by resolution of its board, authorise a specified person to act as the body’s representative at specified meetings that the body would, if it were a natural person, be entitled to attend as a member or creditor (including debenture holder) of a company.

**(4)** A person who is authorised under subsection (3) is, in accordance with the authority and until it is revoked, entitled to exercise on the body’s behalf the same powers as the body could, if it were a natural person, exercise as a member or creditor (including debenture holder) of the company.

**(5)** Where:

(a) a person present at a meeting is authorised to act as the representative of a body corporate at the meeting by virtue of an authority given by the body corporate under subsection (3); and

(b) the person is not otherwise entitled to be present at the meeting, the body corporate shall, for the purposes of subsection (1), be deemed to be personally present at the meeting.

**(6)** A certificate under the seal of the body corporate is *prima facie* evidence of the appointment or of the revocation of the appointment, as the case may be, of a representative pursuant to the provisions of subsection (3).

**(7)** Where a holding company holds the whole of the issued shares in a subsidiary and a minute is signed by a representative of the holding company authorised pursuant to subsection (3) stating that any act, matter or thing, or any ordinary or special resolution, required by this Act or by the memorandum or articles of the subsidiary to be made, performed, or passed by or at a general meeting of the subsidiary has been made, performed, or passed, that act, matter, thing or resolution shall, for all purposes, be deemed to have been duly made, performed or passed by or at a general meeting of the subsidiary.

**(8)** Where:

(a) by or under any provision of this Act any notice, copy of a resolution or other document relating to any matter is required to be lodged by the company;

(b) a minute referred to in subsection (7) is signed by the representative pursuant to that subsection; and

(c) the minute relates to such a matter;

the company shall, within 1 month after the signing of the minute, lodge a copy of the minute.

**Proxies**

**250. (1)** Subject to subsections (2), (3) and (4), a member of a company who is entitled to attend and vote at a meeting of the company, or at a meeting of any class of members of the company, is entitled to appoint:

(a) in the case of a company not having a share capital—another member or, where the articles so provide, another person (whether a member or not); or

(b) in any other case—not more than 2 other persons (whether members or not);

as the first-mentioned member’s proxy or proxies to attend and vote instead of the member at the meeting.

**(2)** A proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting but, unless the articles otherwise provide, a proxy is not entitled to vote except on a poll.

**(3)** Where a member appoints 2 proxies, the appointment is of no effect unless each proxy is appointed to represent a specified proportion of the member’s voting rights.

**(4)** A member of a proprietary company is not entitled to appoint another person as the member’s proxy under subsection (1) except:

(a) in accordance with the articles of the company; or

(b) with the leave of the Court.

**(5)** In every notice convening a meeting of a public company or of any class of members of a public company, there shall appear with reasonable prominence:

(a) in the case of a public company having a share capital, a statement:

(i) that a member entitled to attend and vote is entitled to appoint not more than 2 proxies;

(ii) that where more than 1 proxy is appointed, each proxy must be appointed to represent a specified proportion of the member’s voting rights; and

(iii) that a proxy need not be a member; or

(b) in the case of a public company not having a share capital, a statement:

(i) that a member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of the member; and

(ii) that a proxy must, or need not, be a member (as the case requires).

**(6)** If subsection (5) is contravened, an officer of the company who is involved in the contravention contravenes this subsection.

**(7)** A person shall not authorise or permit an invitation to appoint as proxy a person or 1 of a number of persons specified in the invitation to be

issued at the company’s expense to some only of the members entitled to be sent a notice of the meeting and to vote at the meeting by proxy.

**(8)** A person does not contravene subsection (7) merely because of the issue to a member at the member’s request of a form of appointment naming the proxy or a list of persons willing to act as proxies if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.

**Power of Court to order meeting**

**251.** **(1)** If for any reason it is impracticable to convene a meeting in any manner in which meetings may be convened or to conduct the meeting in the manner prescribed by the articles or this Act, the Court may, either of its own motion or on the application of any director or of any member who would be entitled to vote at the meeting, order a meeting to be convened, held and conducted in such manner as the Court thinks fit, and may give such ancillary or consequential directions as it thinks expedient, including a direction that 1 member present in person or by proxy shall be deemed to constitute a meeting.

**(2)** Any meeting convened, held and conducted in accordance with any order made pursuant to this section shall, for all purposes, be deemed to be a meeting duly convened, held and conducted.

**(3)** For the purposes of an application to the Court or of a meeting held by order of the Court under this section, the personal representative of a dead member of a company shall be deemed to be a member of the company and, notwithstanding anything to the contrary in this Act or the memorandum or articles of the company, to have the same voting rights as the dead member had immediately before his or her death by reason of his or her holding shares that on his or her death were transmitted to his or her personal representative by operation of law.

**Circulation of members’ resolutions etc.**

**252.** **(1)** Subject to this section, a company shall, on the requisition in writing of:

(a) in the case of a company having a share capital—at least 100 members holding shares in the company on which there has been paid up an average sum, per member, of at least $200;

(b) in the case of a company not having a share capital—at least 200 members; or

(c) in either case—a member who is entitled, or members who are together entitled, to at least 5% of the total voting rights of all the members having at the date of the deposit of the requisition a right to vote at general meetings;

and, unless the company otherwise resolves, at the expense of the requisitioning member or members:

(d) give to members of the company entitled to have notice of the next annual general meeting sent to them notice of any resolution that may properly be moved and is intended to be moved at that meeting; and

(e) circulate to members of the company entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

**(2)** Notice of a resolution referred to in subsection (1) shall be given to each member of the company:

(a) in the case of a member entitled to have notice of the meeting sent to him, her or it—by serving a copy of the resolution on the member in any manner permitted for service on the member of notice of the meeting; and

(b) in the case of any other member—by giving notice of the general effect of the resolution in any manner permitted for giving the member notice of meetings of the company.

**(3)** A statement referred to in subsection (1) shall be circulated, to each member of the company entitled to have notice of the meeting sent to him, her or it, by serving a copy of the statement on the member in any manner permitted for service on the member of notice of the meeting.

**(4)** A copy or notice that subsection (2) or (3) requires to be served or given shall be served or given in the same manner and, so far as practicable, at the same time as notice of the meeting and, if it is not practicable for it to be served or given at that time, it shall be served or given as soon as practicable after that time.

**(5)** A company is not bound under this section to give notice of any resolution or to circulate any statement unless:

(a) a copy of the requisition signed by the requisitioning member or members (or, where there are 2 or more requisitioning members, 2 or more copies that between them contain the signatures of all the requisitioning members) is deposited at the registered office of the company:

(i) in the case of a requisition requiring notice of a resolution— not less than 6 weeks before the meeting; and

(ii) in the case of any other requisition, not less than one week before the meeting; and

(b) there is deposited or tendered with the requisition a sum reasonably sufficient to meet the company’s expenses in giving effect to the requisition;

but if, after a copy of a requisition requiring notice of a resolution has been deposited at the registered office of the company, an annual general meeting is called for a date 6 weeks or less after the copy has been deposited, the

copy though not deposited within the time required by this subsection shall be deemed to have been properly deposited for the purposes of this section.

**(6)** A company is not bound under this section to circulate any statement if, on the application either of the company or of any other person who claims to be aggrieved, the Court is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter, and the Court may order the costs of the company or of the other person on an application under this section to be paid in whole or in part by the requisitioning member or members, notwithstanding that they are not parties to the application.

**(7)** Despite anything in the company’s articles, the business that may be dealt with at an annual general meeting includes any resolution of which notice is given in accordance with this section, and, for the purposes of this subsection, notice shall be deemed to have been so given notwithstanding the accidental omission to give notice to a member or members.

**(8)** If default is made in complying with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

**Special resolutions**

**253. (1)** A resolution is a special resolution of a company if:

(a) it is passed at a meeting of the company, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such members of the company as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

**(2)** A resolution is a special resolution of the holders of shares in a company included in a class of shares if:

(a) it is passed at a meeting of the holders of shares included in that class of shares, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such holders of shares included in that class of shares as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

**(3)** A resolution is a special resolution of the members of a company included in a class of members if:

(a) it is passed at a meeting of members included in that class of members, being a meeting of which at least 21 days written notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) it is passed at a meeting referred to in paragraph (a) by a majority of at least three-quarters of such members included in that class of members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy, at that meeting.

**(4)** Notwithstanding the provisions of subsection (1), (2) or (3), if it is so agreed by a majority in number of the members having the right to attend and vote at the meeting, being a majority that together hold at least 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together represent at least 95% of the total voting rights of all members having the right to attend and vote at the meeting, a resolution may be proposed and passed as a special resolution at a meeting of which less than 21 days notice has been given.

**(5)** At a meeting at which a special resolution is submitted, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

**(6)** At any meeting at which a special resolution is submitted, a poll shall be deemed to be effectively demanded if demanded:

(a) if the articles make provision permitting a specified number of members for the time being entitled under the articles to vote at the meeting to demand a poll:

(i) where the number specified does not exceed 5—by that number of members so entitled; or

(ii) in any other case—by 5 members so entitled; or

(b) if no such provision is made by the articles—by 3 members entitled to vote at the meeting, or by 1 member or 2 members so entitled if that member holds or those 2 members together hold not less than 10% in nominal value of the shares giving the right to attend and vote at the meeting or, where the company does not have a share capital, if that member is entitled, or those 2 members together are entitled, to not less than 10% of the total voting rights of all members having the right to attend and vote at the meeting.

**(7)** In computing the majority on a poll demanded on the question that a special resolution be passed, reference shall be had to the number of votes cast for and against the resolution and to the number of votes to which each member is entitled by this Act or the articles of the company.

**(8)** For the purposes of this section, notice of a meeting shall be deemed to be duly given and the meeting shall be deemed to be duly held when the notice is given and the meeting held in the manner provided by this Act or by the articles.

**(9)** Where, in the case of a company incorporated before the commencement of this section, any matter is required or permitted to be done by extraordinary resolution, that matter may be done by special resolution.

**Resolution requiring special notice**

**254.** **(1)** Where by this Act special notice is required of a resolution to be put at a meeting of a company, the resolution is not effective unless notice of the intention to move the resolution has been given to the company at least 28 days before the meeting at which it is moved, but if, after notice of the intention to move such a resolution has been given to the company, a meeting is convened for a day 28 days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given.

**(2)** The company shall give persons entitled to be given notice of a meeting of the company notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice of the resolution in any manner allowed by the articles not less than 14 days before the meeting.

**Resolutions of exempt proprietary companies**

**255.** **(1)** If all the members of an exempt proprietary company have signed a document containing a statement that they are in favour of a prescribed resolution in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a general meeting of the company held on the day on which the document was signed and at the time at which the document was last signed by a member or, if the members signed the document on different days, on the day on which, and at the time at which, the document was last signed by a member and, where a document is so signed:

(a) the company shall be deemed to have held a general meeting at that time on that day; and

(b) the document shall be deemed to constitute a minute of that meeting.

**(2)** Subsection (1) does not apply in relation to a document unless the document has been signed by each person who was a member of the company at the time when the document was last signed.

**(3)** For the purposes of this section:

(a) 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more members shall together be deemed to constitute 1 document containing a statement in those terms signed by those members on the respective days on which they signed the separate documents; and

(b) a prescribed resolution is a resolution that is required or permitted by this Act or the memorandum or articles to be passed at a general meeting of a company and includes a resolution appointing an officer or auditor or approving of or agreeing to any act, matter or thing but does not include a resolution of which special notice is required or that is required to be passed by a majority other than a simple majority.

**(4)** Any document that is attached to a document signed as mentioned in subsection (1) and is signed by the member or members who signed the last-mentioned document shall, for the purposes of this Act, be deemed to have been laid before the company at the general meeting referred to in that subsection.

**(5)** Nothing in this section affects or limits any rule of law relating to the effectiveness of the assent of members of a company given to a document, or to any act, matter or thing, otherwise than at a general meeting of the company.

**Lodgment etc. of copies of certain resolutions and agreements**

**256.** **(1)** A printed copy of:

(a) each special resolution;

(b) each resolution or agreement that binds a class of shareholders, whether or not agreed to by all the members of that class; and

(c) each document or resolution that attaches rights to shares (whether or not in substitution for other rights) and is not otherwise required to be lodged under this Act;

shall, except where otherwise expressly provided by this Act, within 1 month after the passing of the resolution or the making of the agreement or document, be lodged by the company.

**(2)** Subsection (1) does not apply in relation to a Table A proprietary company in relation to a resolution, agreement or document unless it affects the company’s articles in relation to the company’s status as a proprietary company.

**(3)** Where articles have not been registered, a member may request the company to furnish him, her or it with a printed copy of any resolution, document or agreement to which subsection (1) applies, or would but for subsection (2) apply, and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

**Resolutions at adjourned meetings**

**257.** Where a resolution is passed at an adjourned meeting of a company or of holders of any class of shares or of directors, the resolution shall for all purposes be treated as having been passed on the day on which it was in fact passed and not on any earlier day.

**Minutes of proceedings**

**258.** **(1)** A company shall:

(a) cause minutes of all proceedings of general meetings and of meetings of its directors to be entered, within 1 month after the relevant meeting is held, in books kept for that purpose; and

(b) except in the case of documents that are deemed to constitute minutes by virtue of section 255, cause those minutes to be signed by the chairman of the meeting at which the proceedings took place or by the chairman of the next succeeding meeting.

**(2)** Any minute that is so entered and, in a case to which paragraph (1) (b) applies, purports to be signed as provided by that paragraph is *prima facie* evidence of the proceedings to which it relates.

**(3)** Where minutes have been so entered and, in a case to which paragraph (1) (b) applies, signed, then, unless the contrary is proved:

(a) the meeting shall be deemed to have been duly held and convened;

(b) all proceedings that are recorded in the minutes as having taken place at the meeting shall be deemed to have duly taken place; and

(c) all appointments of officers or auditors that are recorded in the minutes as having been made at the meeting shall be deemed to have been validly made.

**Inspection of minute books**

**259.** **(1)** A company shall keep the books containing the minutes of proceedings of any general meeting, or of a meeting of the directors, at its registered office, at its principal place of business in Australia, or at such other place in Australia as is approved by the Commission and, in the case of the books containing the minutes of proceedings of general meetings, shall ensure that they are open for inspection by any member without charge.

**(2)** A member of a company may request the company in writing to furnish him, her or it with a copy of any minutes of a general meeting and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in the case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

**PART 3.4—OPPRESSIVE CONDUCT OF AFFAIRS**

**Remedy in cases of oppression or injustice**

**260.** **(1)** An application to the Court for an order under this section in relation to a company may be made:

(a) by a member who believes:

(i) that affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is contrary to the interests of the members as a whole; or

(ii) that an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole; or

(b) by the Commission, in a case where it has investigated, under Division 1 of Part 3 of the Commission Act:

(i) matters being, or connected with, affairs of the company; or

(ii) matters including such matters.

**(2)** If the Court is of the opinion:

(a) that affairs of a company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section called the “oppressed member or members”) or in a manner that is contrary to the interests of the members as a whole; or

(b) that an act or omission, or a proposed act or omission, by or on behalf of a company, or a resolution, or a proposed resolution, of a class of members of a company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members (in this section also called the “oppressed member or members”) or was or would be contrary to the interests of the members as a whole;

the Court may, subject to subsection (4), make such order or orders as it thinks fit, including, but not limited to, one or more of the following:

(c) an order that the company be wound up;

(d) an order for regulating the conduct of affairs of the company in the future;

(e) an order for the purchase of the shares of any member by other members;

(f) an order for the purchase of the shares of any member by the company and for the reduction accordingly of the company’s capital;

(g) an order directing the company to institute, prosecute, defend or discontinue specified proceedings, or authorising a member or members of the company to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;

(h) an order appointing a receiver or a receiver and manager of property of the company;

(j) an order restraining a person from engaging in specified conduct or from doing a specified act or thing;

(k) an order requiring a person to do a specified act or thing.

**(3)** A person shall not contravene an order made under subsection (2) that is applicable to the person.

**(4)** The Court shall not make an order under subsection (2) for the winding up of a company if it is of the opinion that the winding up of the company would unfairly prejudice the oppressed member or members.

**(5)** In this section and in paragraphs 461 (1) (f), (g) and (h):

(a) a reference to a member, in relation to a company, includes, in the case of a company limited by shares, or a company limited both by shares and by guarantee, a reference to a person to whom a share in the company has been transmitted by will or by operation of law;

(b) a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to affairs of a company being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in his capacity as a member or in any other capacity; and

(c) a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member is a reference to an act or omission by or on behalf of a company or a resolution of a class of members of a company being oppressive or unfairly prejudicial to, or unfairly discriminatory against, a person who is a member, whether in the person’s capacity as a member or in any other capacity.

**(6)** Where an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply, with such adaptations as are necessary, as if the order had been made upon an application duly filed in the Court by the company.

**(7)** Where an order under this section makes any alteration in or addition to the constitution of a company, then, despite anything else in this Act but subject to the order:

(a) the company does not have power, without the leave of the Court, to make any further alteration in or addition to the memorandum and articles inconsistent with the provisions of the order; and

(b) subject to this subsection, the alteration has effect as if it has been duly made by resolution of the company.

**(8)** An office copy of any order made under this section pursuant to an application by a member of the company shall be lodged by the applicant with the Commission within 14 days after the making of the order.

**(9)** If default is made in complying with subsection (8), the applicant is guilty of an offence.

**PART 3.5—CHARGES**

***Division 1*—*Preliminary***

**Interpretation and application**

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

“company” includes a registered body;

“document of title” means a document:

(a) used in the ordinary course of business as proof of possession or control, or of the right to possession or control, of property other than land; or

(b) authorising or purporting to authorise, whether by endorsement or delivery, the possessor of the document to transfer or receive property other than land;

and includes:

(c) a bill of lading;

(d) a warehousekeeper’s certificate;

(e) a wharfinger’s certificate;

(f) a warrant or order for the delivery of goods; and

(g) a document that is, or evidences title to, a marketable security;

“present liability”, in relation to a charge, means a liability that has arisen, being a liability the extent or amount of which is fixed or capable of being ascertained, whether or not the liability is immediately due to be met;

“property”, in relation to a company, means property:

(a) except in the case of a foreign company—within or outside Australia; or

(b) in the case of a foreign company—within Australia;

held by the company, whether or not as trustee;

“prospective liability”, in relation to a charge, means any liability that may arise in the future, or any other liability, but does not include a present liability;

“Register” means the Australian Register of Company Charges referred to in section 265;

“registrable charge” means a charge in relation to which, by virtue of section 262, the provisions of this Part mentioned in subsection 262 (1) apply.

**(2)** A charge referred to in subsection 263 (3) or section 264 shall, until the charge is registered, be treated for the purposes of this Part as if it were not a registrable charge but, when the charge is so registered, it has the priority accorded to a registered charge as from the time of registration.

**(3)** The registration of a charge referred to in subsection 263 (3) or section 264 does not prejudice any priority that would have been accorded to the charge under any other law (whether an Australian law or not) if the charge had not been registered.

**(4)** For the purposes of this Part, a notice or other document shall be taken to be lodged when it is received at an office of the Commission by an officer authorised to receive it.

***Division 2*—*Registration***

**Charges required to be registered**

**262. (1)** Subject to this section, the provisions of this Part relating to the giving of notice in relation to, the registration of, and the priorities of, charges apply in relation to the following charges (whether legal or equitable) on property of a company and do not apply in relation to any other charges:

(a) a floating charge on the whole or a part of the property, business or undertaking of the company;

(b) a charge on uncalled share capital or uncalled share premiums;

(c) a charge on a call, whether in respect of share capital or share premiums, made but not paid;

(d) a charge on a personal chattel, including a personal chattel that is unascertained or is to be acquired in the future, but not including a ship registered in an official register kept under an Australian law relating to title to ships;

(e) a charge on goodwill, on a patent or licence under a patent, on a trade mark or service mark or a licence to use a trade mark or service mark, on a copyright or a licence under a copyright or on a registered design or a licence to use a registered design;

(f) a charge on a book debt;

(g) a charge on a marketable security, not being:

(i) a charge created in whole or in part by the deposit of a document of title to the marketable security; or

(ii) a mortgage under which the marketable security is registered in the name of the chargee or a person nominated by the chargee;

(h) a lien or charge on a crop, a lien or charge on wool or a stock mortgage;

(j) a charge on a negotiable instrument other than a marketable security.

**(2)** The provisions of this Part mentioned in subsection (1) do not apply in relation to:

(a) a charge, or a lien over property, arising by operation of law;

(b) a pledge of a personal chattel or of a marketable security;

(c) a charge created in relation to a negotiable instrument or a document of title to goods, being a charge by way of pledge, deposit, letter of hypothecation or trust receipt;

(d) a transfer of goods in the ordinary course of the practice of any profession or the carrying on of any trade or business; or

(e) a dealing, in the ordinary course of the practice of any profession or the carrying on of any trade or business, in respect of goods outside Australia.

**(3)** The reference in paragraph (1) (d) to a charge on a personal chattel is a reference to a charge on any article capable of complete transfer by delivery, whether at the time of the creation of the charge or at some later time, and includes a reference to a charge on a fixture or a growing crop that is charged separately from the land to which it is affixed or on which it is growing, but does not include a reference to a charge on:

(a) a document evidencing title to land;

(b) a chattel interest in land;

(c) a marketable security;

(d) a document evidencing a thing in action; or

(e) stock or produce on a farm or land that by virtue of a covenant or agreement ought not to be removed from the farm or land where the stock or produce is at the time of the creation of the charge.

**(4)** The reference in paragraph (1) (f) to a charge on a book debt is a reference to a charge on a debt due or to become due to the company at some future time on account of or in connection with a profession, trade or business carried on by the company, whether entered in a book or not, and includes a reference to a charge on a future debt of the same nature although not incurred or owing at the time of the creation of the charge, but does not include a reference to a charge on a marketable security, oh a negotiable instrument or on a debt owing in respect of a mortgage, charge or lease of land.

**(5)** The reference in paragraph (1) (h) to a lien or charge on a crop, a lien or charge on wool or a stock mortgage includes a reference to a security (however described) that is registrable under a prescribed law of a State or Territory.

**(6)** For the purposes of this section, a company shall be deemed to have deposited a document of title to property with another person (in this subsection referred to as the “chargee”) in a case where the document of title is not in the possession of the company if:

(a) the person who holds the document of title acknowledges in writing that the person holds the document of title on behalf of the chargee; or

(b) a government, an authority or a body corporate that proposes to issue a document of title in relation to the property agrees, in writing, to deliver the document of title, when issued, to the chargee.

**(7)** For the purposes of this section, a charge shall be taken to be a charge on property of a kind to which a particular paragraph of subsection (1) applies even though the instrument of charge also charges other property

of the company including other property that is of a kind to which none of the paragraphs of that subsection applies.

**(8)** The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge on land.

**(9)** The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge on fixtures given by a charge on the land to which they are affixed.

**(10)** The provisions of this Part mentioned in subsection (1) do not apply in relation to a charge created by a company in its capacity as legal personal representative of a deceased person or as trustee of the estate of a deceased person.

**(11)** A charge on property of a company is not invalid merely because of the failure to lodge with the Commission, or give to the company or another person, a notice or other document that is required by this Division to be so lodged or given.

**Lodgment of notice of charge and copy of instrument**

**263. (1)** Where a company creates a charge, the company shall ensure that there is lodged, within 45 days after the creation of the charge:

(a) a notice in the prescribed form setting out the following particulars:

(i) the name of the company and the date of the creation of the charge;

(ii) whether the charge is a fixed charge, a floating charge or both a fixed and floating charge;

(iii) if the charge is a floating charge—whether there is any provision in the resolution or instrument creating or evidencing the charge that prohibits or restricts the creation of subsequent charges;

(iv) a short description of the liability (whether present or prospective) secured by the charge;

(v) a short description of the property charged;

(vi) whether the charge is created or evidenced by a resolution, by an instrument or by a deposit or other conduct;

(vii) if the charge is constituted by the issue of a debenture or debentures—the name of the trustee (if any) for debenture holders;

(viii) if the charge is not constituted by the issue of a debenture or debentures or there is no trustee for debenture holders— the name of the chargee;

(ix) such other information as is prescribed;

(b) if, pursuant to a resolution or resolutions passed by the company, the company issues a series of debentures constituting a charge to the benefit of which all the holders of debentures in the series are entitled in equal priority, and the charge is evidenced only by the

resolution or resolutions and the debentures—a copy of the resolution or of each of the resolutions verified by a statement in writing to be a true copy, and a copy of the first debenture issued in the series and a statement in writing verifying the execution of that first debenture; and

(c) if, in a case to which paragraph (b) does not apply, the charge was created or evidenced by an instrument or instruments:

(i) the instrument or each of the instruments; or

(ii) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments.

**(2)** In a case to which paragraph (1) (b) applies:

(a) the charge shall, for the purposes of subsection (1), be deemed to be created when the first debenture in the series of debentures is issued; and

(b) if, after the issue of the first debenture in the series, the company passes a further resolution authorising the issue of debentures in the series, the company shall ensure that a copy of that resolution, verified by a statement in writing to be a true copy of that resolution, is lodged within 45 days after the passing of that resolution.

**(3)** A registrable body that applies for registration as a company under Division 3 of Part 2.2, or for registration under Part 4.1, shall lodge with the application for registration the documents specified in subsection (4) in relation to any charge on property of the registrable body that would be registrable under this Division if the registrable body were a company, or a registered body, as the case may be.

**(4)** The documents required to be lodged under subsection (3) in relation to a charge on property of a registrable body are the following documents:

(a) a notice in the prescribed form:

(i) setting out the name of the registrable body;

(ii) if the charge was created by the registrable body—specifying the date of the creation of the charge;

(iii) if the charge was a charge existing on property acquired by the registrable body—setting out the date on which the property was so acquired; and

(iv) otherwise complying with the requirements of paragraph (1) (a);

(b) if the charge was created or evidenced as mentioned in paragraph (1) (b):

(i) in the case of a charge created by the registrable body—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the

series referred to in that paragraph and a statement in writing verifying the execution of that first debenture; or

(ii) in the case of a charge that existed on property acquired by the registrable body—the copies referred to in subparagraph (i) verified by statements in writing to be true copies;

(c) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph (1) (b)):

(i) in the case of a charge created by the registrable body:

(a) the instrument or each of the instruments; or

(b) a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy, and a statement in writing verifying the execution of the instrument or of each of the instruments; or

(ii) in the case of a charge that existed on property acquired by the registrable body—a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy;

(d) if the charge was created or evidenced as mentioned in paragraph (1) (b) and, after the issue of the first debenture in the series, the registrable body passed a further resolution or resolutions authorising the issue of debentures in the series—a copy of that resolution or of each of those resolutions verified by a statement in writing to be a true copy.

**(5)** A notice in relation to a charge, being a charge in relation to which paragraph (1) (b) or (c) or (4) (b) or (c) applies, shall not be taken to have been lodged under subsection (1) or (3) unless the notice is accompanied by the documents specified in that paragraph.

**(6)** Where a notice with respect to an instrument creating a charge has been lodged under subsection (1) or (3), being a charge in respect of an issue of several debentures the holders of which are entitled under the instrument in equal priority to the benefit of the charge, sections 279 to 282 (inclusive) have effect as if any charges constituted by those debentures were registered at the time when the charge to which the notice relates was registered.

**(7)** Where a payment or discount has been made or allowed, either directly or indirectly, by a company or registrable body to a person in consideration of the person’s subscribing or agreeing to subscribe, whether absolutely or conditionally, for debentures, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for debentures, the notice required to be lodged under subsection (1) or (3) shall include particulars as to the amount or rate per centum of the payment or discount.

**(8)** Where a company or registrable body issues debentures as security for a debt of the company or registrable body, the company or registrable

body shall not thereby be regarded, for the purposes of subsection (7), as having allowed a discount in respect of the debentures.

**Acquisition of property subject to charge**

**264.** **(1)** Where a company acquires property that is subject to a charge, being a charge that would have been registrable when it was created if it had been created by a company, the company shall, within 45 days after the acquisition of the property:

(a) ensure that there is lodged:

(i) a notice in the prescribed form in relation to the charge, setting out the name of the company and the date on which the property was so acquired and otherwise complying with the requirements of paragraph 263 (1) (a);

(ii) if the charge was created or evidenced as mentioned in paragraph 263 (1) (a)—a copy of the resolution or of each of the resolutions referred to in that paragraph verified by a statement in writing to be a true copy and a copy of the first debenture issued in the series referred to in that paragraph verified by a statement in writing to be a true copy; and

(iii) if the charge was created or evidenced by an instrument or instruments (otherwise than as mentioned in paragraph 263 (1) (b)):

(a) the instrument or each of the instruments; or

(b)a copy of the instrument or of each of the instruments verified by a statement in writing to be a true copy; and

(b) give to the chargee notice that it has acquired the property and the date on which it was so acquired.

**(2)** A notice in relation to a charge, being a charge in relation to which subparagraph (1) (a) (ii) or (iii) applies, shall not be taken to have been lodged under subsection (1) unless it is accompanied by the documents specified in that subparagraph.

**Registration of documents relating to charges**

**265.** **(1)** The Commission shall keep a register to be known as the Australian Register of Company Charges.

**(2)** Where a notice in respect of a charge on property of a company that is required by section 263 or 264 to be lodged is lodged (whether during or after the period within which the notice was required to be lodged) and the notice contains all the particulars required by the relevant section to be included in the notice, the Commission shall as soon as practicable cause to be entered in the Register the time and date when the notice was lodged and the following particulars in relation to the charge:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee.

**(3)** Subject to subsection (9), where particulars in respect of a charge are entered in the Register in accordance with subsection (2), the charge shall be deemed to be registered, and to have been registered from and including the time and date entered in the Register under that subsection.

**(4)** Where a notice in respect of a charge on property of a company is lodged under section 263 or 264 (whether during or after the period within which the notice was required to be lodged) and a document that accompanies that notice has not been duly stamped as required by any applicable law relating to stamp duty, the Commission shall cause to be entered in the Register the time and date when the notice was lodged and” the particulars referred to in paragraphs (2) (a), (b), (c) and (d), but shall cause the word “provisional” to be entered in the Register next to the entry specifying that time and date.

**(5)** Where:

(a) in accordance with subsection (4), the word “provisional” is entered in the Register next to an entry specifying the time and date on which a notice is respect of a charge was lodged; and

(b) within a period of 30 days after the notice was lodged, or within such further period as the Commission, if it considers it to be appropriate in a particular case, allows, evidence satisfactory to the Commission that the document has been duly stamped has been produced to the Commission;

the Commission shall delete the word “provisional” from the entry in the Register relating to that charge, but if such evidence is not produced within the period, or the further period, referred to in paragraph (b), the Commission shall delete from the Register all the particulars that were entered in relation to the charge.

**(6)** Where a document that purports to be a notice in respect of a charge on property of a company for the purposes of section 263 or 264 is lodged (whether during or after the period within which the notice was required to be lodged) and the document contains the name of the company concerned and the particulars referred to in subparagraph 263 (1) (a) (vii) or (viii), as the case requires, but does not contain some or all of the other particulars that are required to be included in the notice or is otherwise defective:

(a) the Commission shall cause to be entered in the Register the time and date when the document was lodged and such of the particulars referred to in paragraphs (2) (a), (b), (c) and (d) as are ascertainable from the document, but shall cause the word

“provisional” to be entered in the Register next to the entry specifying that time and date; and

(b) the Commission shall, by notice in writing to the person who lodged the document, direct the person to ensure that there is lodged, on or before the day specified in the notice, a notice in relation to the charge that complies with the requirements of section 263 or 264, as the case may be, but the giving by the Commission of a direction to the person under this paragraph does not affect any liability that the company may have incurred or may incur by reason of a contravention of section 263 or 264.

**(7)** Where the Commission gives a direction to a person under paragraph (6) (b) in relation to a charge:

(a) if the direction is complied with on or before the day specified in the notice containing the direction, the Commission shall:

(i) delete from the Register the word “provisional” that was inserted pursuant to paragraph (6) (a); and

(ii) cause to be entered in the Register in relation to the charge any particulars referred to in subsection (2) that have not previously been entered;

(b) if the direction is not complied with on or before that day—the Commission shall delete from the Register all the particulars that were entered in relation to the charge; and

(c) if the direction is complied with after that day—the Commission shall cause to be entered in the Register in relation to the charge the time at which and day on which the direction was complied with and the particulars referred to in paragraphs (2) (a), (b), (c) and (d).

**(8)** The Commission may enter in the Register in relation to a charge, in addition to the particulars expressly required by this section to be entered, such other particulars as the Commission thinks fit.

**(9)** If the word “provisional” is entered in the Register next to an entry specifying a time and day in relation to a charge, the charge shall be deemed not to have been registered but:

(a) where the word “provisional” is deleted from the Register pursuant to subsection (5) or paragraph (7) (a)—the charge shall be deemed to be registered and to have been registered from and including the time and day specified in the Register pursuant to subsection (4) or paragraph (6) (a), as the case may be; or

(b) where the particulars in relation to the charge are deleted from the Register pursuant to paragraph (7) (b) and those particulars and a time and day are subsequently entered in the Register in relation to the charge pursuant to paragraph (7) (c)—the charge shall be deemed to be registered from and including that last-mentioned time and day.

**(10)** Where, pursuant to subsection 263 (3), a registrable body lodges notices relating to 2 or more charges on the same property of the registrable body, the time and day that shall be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

**(11)** Where, in accordance with subsection (10), the time and day that are entered in the Register are the same in relation to 2 or more charges on property of a registrable body, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

**(12)** Where, pursuant to section 264, a company lodges notices relating to 2 or more charges on the same property acquired by the company (being charges that are not already registered under this Division), the time and day that shall be entered in the Register in relation to each of those charges are the time and day when the first notice was lodged.

**(13)** Where, in accordance with subsection (12), the time and day that are entered in the Register are the same in relation to 2 or more charges on property acquired by a company, those charges shall, as between themselves, have the respective priorities that they would have had if they had not been registered under this Division.

**(14)** Where a notice is lodged under section 268 (whether during or after the period within which it was required to be lodged), the Commission shall as soon as practicable cause to be entered in the Register the time and day when the notice was so lodged and the particulars set out in the notice.

**Certain charges void against liquidator or official manager**

**266. (1)** Where:

(a) an order is made, or a resolution is passed, for the winding up of a company; or

(b) an official manager is appointed in respect of a company;

a registrable charge on property of the company is void as a security on that property as against the liquidator or official manager, as the case may be, unless:

(c) a notice in respect of the charge was lodged under section 263 or 264, as the case requires:

(i) within the relevant period; or

(ii) at least 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be;

(d) in relation to a charge other than a charge to which subsection 263 (3) applies—the period within which a notice in respect of the charge (other than a notice under section 268) is required to be lodged, being the period specified in the relevant section or that period as extended by the Court under subsection (4), has not ended at the commencement of the winding up or at the time of

the appointment referred to in paragraph (b) and the notice is lodged before the end of that period;

(e) in relation to a charge to which subsection 263 (3) applies—the period of 45 days after the chargee becomes aware that the registrable body has been registered as a company under Division 3 of Part 2.2, or registered under Part 4.1, has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period; or

(f) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the property charged has been acquired by a company has not ended at the commencement of the winding up or at the time of the appointment referred to in paragraph (b) and the notice is lodged before the end of that period.

**(2)** The reference in paragraph (1) (c) to the relevant period shall be construed as a reference to:

(a) in relation to a charge to which subsection 263 (1) applies—the period of 45 days specified in that subsection, or that period as extended by the Court under subsection (4) of this section;

(b) in relation to a charge to which subsection 263 (3) applies—the period of 45 days after the chargee becomes aware that the registrable body has been registered as a company under Division 3 of Part 2.2 or registered under Part 4.1; or

(c) in relation to a charge to which section 264 applies—the period of 45 days after the chargee becomes aware that the property has been acquired by a company.

**(3)** Where, after there has been a variation in the terms of a registrable charge on property of a company having the effect of increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge:

(a) an order is made, or a resolution is passed, for the winding up of the company; or

(b) an official manager is appointed in respect of the company;

the registrable charge is void as a security on that property to the extent that it secures the amount of the increase in that debt or liability unless:

(c) a notice in respect of the variation was lodged under section 268:

(i) within the period of 45 days specified in subsection 268 (2) or that period as extended by the Court under subsection (4) of this section; or

(ii) not later than 6 months before the commencement of the winding up or the appointment of the official manager, as the case may be; or

(d) the period of 45 days specified in subsection 268 (2), or that period as extended by the Court under subsection (4) of this section, has

not ended at the commencement of the winding up or at the time of the appointment of the official manager and the notice is lodged before the end of that period.

**(4)** The Court, if it is satisfied that the failure to lodge a notice in respect of a charge, or in respect of a variation in the terms of a charge, as required by any provision of this Division:

(a) was accidental or due to inadvertence or some other sufficient cause; or

(b) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, by order, extend the period for such further period as is specified in the order.

**(5)** Where:

(a) a registrable charge (in this subsection referred to as the “later charge”) is created before the end of 45 days after the creation of an unregistered registrable charge (in this subsection referred to as the “earlier charge”);

(b) the later charge relates to all or any of the property to which the earlier charge related; and

(c) the later charge is given as a security for the same liability as is secured by the earlier charge or any part of that liability;

the later charge, to the extent to which it is a security for the same liability or part thereof, and so far as it relates to the property comprised in the earlier charge, is void as a security on that property as against a liquidator or official manager of the company, notwithstanding that a notice in respect of the later charge was lodged under section 263 within a period mentioned in paragraph (1) (c) or (d) of this section, unless it is proved to the satisfaction of the Court that the later charge was given in good faith for the purpose of correcting some material error in the earlier charge or under other proper circumstances and not for the purposes of avoiding or evading the provisions of this Division.

**(6)** Nothing in subsection (1) or (3) operates to affect the title of a person to property purchased for value from a chargee or from a receiver appointed by a chargee in the exercise of powers conferred by the charge or implied by law if that person purchased the property in good faith and without notice of:

(a) the filing of an application for an order for the winding up of the company;

(b) the passing of a resolution for the voluntary winding up of the company; or

(c) the passing of a resolution that the company be placed under official management.

**(7)** The onus of proving that a person purchased property in good faith and without notice of any of the matters referred to in paragraphs (6) (a), (b) and (c) is on the person asserting that the property was so purchased.

**Charges in favour of certain persons void in certain cases**

**267. (1)** Where:

(a) a company creates a charge on property of the company in favour of a person who is, or in favour of persons at least one of whom is, a relevant person in relation to the charge; and

(b) within 6 months after the creation of the charge, the chargee purports to take a step in the enforcement of the charge without the Court having, under subsection (3), given leave for the charge to be enforced;

the charge, and any powers purported to be conferred by an instrument creating or evidencing the charge, are, and shall be deemed always to have been, void.

**(2)** Without limiting the generality of subsection (1), a person who:

(a) appoints a receiver of property of a company under powers conferred by an instrument creating or evidencing a charge created by the company; or

(b) whether directly or by an agent, enters into possession or assumes control of property of a company for the purposes of enforcing a charge created by the company;

shall be taken, for the purposes of subsection (1), to take a step in the enforcement of the charge.

**(3)** On application by the chargee under a charge, the Court may, if it is satisfied that:

(a) immediately after the creation of the charge, the company that created the charge was solvent; and

(b) in all the circumstances of the case, it is just and equitable for the Court to do so;

give leave for the charge to be enforced.

**(4)** Nothing in subsection (1) affects a debt, liability or obligation of a company that would, if that subsection had not been enacted, have been secured by a charge created by the company.

**(5)** Nothing in subsection (1) operates to affect the title of a person to property (other than the charge concerned or an interest in the charge concerned) purchased for value from a chargee under a charge, from an agent of a chargee under a charge, or from a receiver appointed by a chargee under a charge in the exercise of powers conferred by the charge or implied by law, if that person purchased the property in good faith and without notice that the charge was created in favour of a person who is, or in favour of persons at least one of whom is, as the case may be, a relevant person in relation to the charge.

**(6)** The onus of proving that a person purchased property in good faith and without notice that a charge was created as mentioned in subsection (5) is on the person asserting that the property was so purchased.

**(7)** In this section:

“chargee”, in relation to a charge, means:

(a) in any case—the holder, or all or any of the holders, of the charge; or

(b) in the case of a charge that is an agreement to give or execute a charge in favour of a person or persons, whether upon demand or otherwise—that person, or all or any of those persons;

“officer”, in relation to a company, includes, in the case of a registered foreign company, a local agent of the foreign company;

“receiver” includes a receiver and manager;

“relevant person”, in relation to a charge created by a company, means:

(a) a person who is at the time when the charge is created, or who has been at any time during the period of 6 months ending at that time, an officer of the company; or

(b) a person associated, in relation to the creation of the charge, with a person of a kind referred to in paragraph (a).

**Assignment and variation of charges**

**268. (1)** Where, after a registrable charge on property of a company has been created, a person other than the original chargee becomes the holder of the charge, the person who becomes the holder of the charge shall, within 45 days after he, she or it becomes the holder of the charge:

(a) lodge a notice stating that he, she or it has become the holder of the charge; and

(b) give the company a copy of the notice.

**(2)** Where, after a registrable charge on property of a company has been created, there is a variation in the terms of the charge having the effect of:

(a) increasing the amount of the debt or increasing the liabilities (whether present or prospective) secured by the charge; or

(b) prohibiting or restricting the creation of subsequent charges on the property;

the company shall, within 45 days after the variation occurs, ensure that there is lodged a notice setting out particulars of the variation and accompanied by the instrument (if any) effecting the variation or a certified copy of that instrument.

**(3)** Where a charge created by a company secures a debt of an unspecified amount or secures a debt of a specified amount and further advances, a payment or advance made by the chargee to the company in accordance with the terms of the charge shall not be taken, for the purposes of

subsection (2), to be a variation in the terms of the charge having the effect of increasing the amount of the charge or the liabilities (whether present or prospective) secured by the charge.

**(4)** A reference in this section to the chargee in relation to a charge shall, if the charge is constituted by a debenture and debentures and there is a trustee for debenture holders, be construed as a reference to the trustee for debenture holders.

**(5)** Nothing in section 263 requires the lodgment of a notice under that section in relation to a charge merely because of the fact that the terms of the charge are varied only in a manner mentioned in this section.

**Satisfaction of, and release of property from, charges**

**269. (1)** Where, with respect to a charge registered under this Division:

(a) the debt or other liability the payment or discharge of which was secured by the charge has been paid or discharged in whole or in part; or

(b) the property charged or part of that property is released from the charge;

the person who was the holder of the charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, within 14 days after receipt of a request in writing made by the company on whose property the charge exists, give to the company a memorandum in the prescribed form acknowledging that the debt or other liability has been paid or discharged in whole or in part or that the property or that part of it is no longer subject to the charge, as the case may be.

**(2)** The company may lodge the memorandum and, upon the memorandum being lodged, the Commission shall enter in the Register particulars of the matters stated in the memorandum.

**(3)** The reference in subsection (1) to the person who was the holder of a charge at the time when the debt or other liability was so paid or discharged or the property or part of the property was released shall, if the charge was constituted by a debenture or debentures and there was a trustee for debenture holders, be construed as a reference to the person who was, at that time, the trustee for debenture holders.

**Lodgment of notices, offences etc.**

**270. (1)** Where a notice in respect of a charge on property of a company is required to be lodged under section 263 or 264 or subsection 268 (2), the notice may be lodged by the company or by any interested person.

**(2)** Where default is made in complying with section 263 or 264 or subsection 268 (2) in relation to a registrable charge on property of a company, the company and any officer of the company who is in default each contravene this subsection.

**(3)** Where a person who becomes the holder of a registrable charge fails to comply with subsection 268 (1), the person and, if the person is a body corporate, any officer of the body corporate who is in default, each contravene this subsection.

**(4)** Where a document required by this Division other than subsection 268 (1) to be lodged is lodged by a person other than the company concerned, that person:

(a) shall, within 7 days after the lodgment of the document, give to the company a copy of the document; and

(b) is entitled to recover from the company the amount of any fees properly paid by the person on lodgment of the document.

**Company to keep documents relating to charges and register of charges**

**271. (1)** A company shall keep, at the place where the register referred to in subsection (2) is kept, a copy of every document relating to a charge on property of the company that is lodged under this Division or was lodged with a person under a corresponding law, and a copy of every document given to the company under this Division or a corresponding law.

**(2)** A company shall keep a register and shall, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), as soon as practicable enter in the register particulars of the charge, giving in each case:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the chargee; and

(e) the name of the person whom the company believes to be the holder of the charge.

**(3)** A register kept by a company pursuant to subsection (2) shall be open for inspection:

(a) by any creditor or member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(4)** A person may request a company to furnish the person with a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the request is made or within such longer period as the Commission approves.

**(5)** If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of an offence.

**Certificates**

**272.** **(1)** Where particulars of a charge are entered in the Register in accordance with this Division, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission setting out those particulars and stating the time and day when a notice in respect of the charge containing those particulars was lodged with the Commission and, if the word “provisional” appears in the Register next to the reference to that time and day, stating that fact.

**(2)** A certificate issued under subsection (1) is *prima facie* evidence of the matters stated in the certificate.

**(3)** Where particulars of a charge are entered in the Register in accordance with this Division, and the word “provisional” does not appear in the register next to the reference to the time and day when a notice in respect of the charge was lodged, the Commission shall, on request by any person, issue to that person a certificate under the common seal of the Commission stating that particulars of the charge are entered in the Register in accordance with this Division.

**(4)** A certificate issued under subsection (3) is conclusive evidence that the requirements of this Division as to registration (other than the requirements relating to the period after the creation of the charge within which notice in respect of the charge is required to be lodged) have been complied with.

**Registration under other legislation relating to charges**

**273.** **(1)** Where, whether before or after the prescribed time, a notice in relation to a charge is required to be lodged under this Division:

(a) the charge need not be registered under a prescribed law;

(b) no provision of a prescribed law of a State or Territory relating to priorities applies to or in relation to the charge; and

(c) a failure to register the charge under a prescribed law of a State or Territory does not affect the validity, or limit the effect, of the charge.

**(2)** Where:

(a) a transfer, assignment, or giving of security, by a company is registrable under a prescribed law of a State or Territory;

(b) notice in relation to the transfer, assignment or giving of security is required to be lodged under this Division; and

(c) the transfer, assignment or giving of security is registered under this Division;

then:

(d) the transfer, assignment or giving of security is, subject to paragraph (1) (b), as valid and effectual; and

(e) by force of this subsection, the prescribed provisions (if any) of a law of that State or Territory have effect, with the prescribed modifications (if any), in relation to the transfer, assignment or giving of security;

as if it had been duly registered under that prescribed law.

**(3)** Where:

(a) a crop lien, wool lien, or stock mortgage, given by a company is registrable under a prescribed law of a State or Territory;

(b) notice in relation to the crop lien, wool lien, or stock mortgage, is required to be lodged under this Division; and

(c) the crop lien, wool lien, or stock mortgage, is registered under this Division;

then:

(d) the crop lien, wool lien or stock mortgage is, subject to paragraph (1) (b), as valid and effectual; and

(e) by force of this subsection, the prescribed provisions (if any) of a law of that State or Territory have effect, with the prescribed modifications (if any), in relation to the crop lien, wool lien, or stock mortgage;

as if it had been duly registered under that prescribed law.

**(4)** Subject to this Part, the regulations may provide that specified provisions of a law of a State or Territory:

(a) do not apply in relation to specified registrable charges; or

(b) apply, by force of the regulations and with the prescribed modifications (if any), in relation to specified registrable charges.

**(5)** Nothing in this section applies in relation to a charge given by a company jointly with another person who is not, or other persons at least one of whom is not, a company.

**Power of Court to rectify Register**

**274.** Where the Court is satisfied:

(a) that a particular with respect to a registrable charge on property of a company has been omitted from, or mis-stated in, the Register or a memorandum referred on in section 269; and

(b) that the omission or mis-statement:

(i) was accidental or due to inadvertence or to some other sufficient cause; or

(ii) is not of a nature to prejudice the position of creditors or shareholders;

or that on other grounds it is just and equitable to grant relief;

the Court may, on the application of the company or any person interested and on such terms and conditions as seem to the Court just and expedient, order that the omission or mis-statement be rectified.

**Charges of Division 2 company**

**275.** **(1)** This section applies where a company of a State or Territory is registered as a company under Division 2 of Part 2.2.

**(2)** On and after the company’s registration day, this Part (other than this section) applies in relation to the company, with such modifications as the circumstances require, as if:

(a) the company had always been a company as defined in section 9;

(b) this Act had always been in operation;

(c) an act or thing done by or in relation to the company under, or for the purposes of, a law corresponding to a provision of this Part had been done under, or for the purposes of, that provision; and

(d) a reference in this Part to the Register included a reference to a register of company charges kept under a law corresponding to section 265.

**(3)** Nothing in subsection (2) makes a person guilty of a contravention of this Act in respect of an act or thing done, or an omission made, when the company was not a company as defined in section 9.

**(4)** If, immediately before the company’s registration day, a charge or charges on property of the company was or were registered under a law corresponding to this Division:

(a) the Commission shall, as soon as practicable, enter in the Register the time and date, and the particulars, entered in relation to that charge or those charges in the register of company charges kept under that law; and

(b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with subsection 265 (2).

**Charges of Division 3 company**

**276.** Where a foreign company is registered as a company under Division 3 of Part 2.2 and, immediately before the company’s registration day, a charge or charges on property of the company was or were registered under a law corresponding to this Division and was not or were not registered under this Division:

(a) the Commission shall, as soon as practicable, enter in the Register the time and date, and the particulars, entered in relation to that charge or those charges in the register of company charges kept under that law; and

(b) the time and date, and the particulars, so entered shall be deemed to have been entered in the Register in accordance with subsection 265 (2).

**Power to exempt from compliance with certain requirements of Division**

**277.** **(1)** The Commission may, by instrument in writing, exempt a person, as specified in the instrument and subject to such conditions (if any) as are specified in the instrument, from compliance with such of the requirements of section 263, 264 or 268 relating to:

(a) the particulars to be contained in a notice under the relevant section;

(b) the documents (other than the notice) to be lodged under the relevant section; or

(c) the verification of any document required to be lodged under the relevant section;

as are specified in the instrument.

**(2)** A person who is exempted by the Commission, subject to a condition, from compliance with a requirement of section 263, 264 or 268 shall not contravene the condition.

**(3)** Where a person has contravened or failed to comply with a condition to which an exemption under this section is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

***Division 3*—*Order of priority***

**Interpretation**

**278.** **(1)** In this Division:

“priority time”, in relation to a registered charge, means:

(a) except as provided by paragraph (b) or (c)—the time and date appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 265;

(b) where a notice has been lodged under section 264 in relation to a charge on property, being a charge that, at the time when the notice was lodged, was already registered under Division 2—the earlier or earliest time and day appearing in the Register in relation to the charge, being a time and day entered in the Register pursuant to section 264; and

(c) to the extent that the charge has effect as varied by a variation notice of which was required to be lodged under subsection 268 (2)—the time and day entered in the Register in relation to the charge pursuant to subsection 265 (14);

“prior registered charge”, in relation to another registered charge, means a charge the priority time of which is earlier than the priority time of the other charge;

“subsequent registered charge”, in relation to another registered charge, means a charge the priority time of which is later than the priority time of the other registered charge;

“registered charge” means a charge that is registered under Division 2;

“unregistered charge” means a charge that is not registered under Division 2 but does not include a charge that is not a registrable charge.

**(2)** A reference in this Division to a person having notice of a charge includes a reference to a person having constructive notice of the charge.

**(3)** Where, by virtue of the definition of “priority time” in subsection (1), a registered charge has 2 or more priority times each of which relates to a particular liability secured by the charge, each of those liabilities shall, for the purposes of this Division, be deemed to be secured by a separate registered charge the priority time of which is the priority time of the first-mentioned registered charge that relates to the liability concerned.

**Priorities of charges**

**279. (1)** Subject to this section, sections 280 to 282, inclusive, have effect with respect to the priorities, in relation to each other, of registrable charges on the property of a company.

**(2)** The application, in relation to particular registrable charges, of the order of priorities of charges set out in sections 280 to 282, inclusive, is subject to:

(a) any consent (express or implied) that varies the priorities in relation to each other of those charges, being a consent given by the holder of one of those charges, being a charge that would otherwise be entitled to priority over the other charge; and

(b) any agreement between those chargees that affects the priorities in relation to each other of the charges in relation to which those persons are the chargees.

**(3)** The holder of a registered charge, being a floating charge, on property of a company shall be deemed, for the purposes of subsection (2), to have consented to that charge being postponed to a subsequent registered charge, being a fixed charge that is created before the floating charge becomes fixed, on any of that property unless:

(a) the creation of the subsequent registered charge contravened a provision of the instrument or resolution creating or evidencing the floating charge; and

(b) a notice in respect of the floating charge indicating the existence of the provision referred to in paragraph (a) was lodged with the Commission under section 263, 264 or 268 before the creation of the subsequent registered charge.

**(4)** Where a charge relates to property of a kind or kinds to which a particular paragraph or paragraphs of subsection 262 (1) applies or apply and also relates to other property, sections 280 to 282, inclusive, apply so as to affect the priority of the charge only in so far as it relates to the first-mentioned property and do not affect the priority of the charge in so far as it relates to the other property.

**(5)** Sections 280 to 282, inclusive, do not apply so as to affect the operation of:

(a) the *Copyright Act 1968*;

(b) the *Designs Act 1906*;

(c) the *Life Insurance Act 1945*;

(d) the *Patents Act 1952*; or

(e) the *Trade Marks Act 1955.*

**General priority rules in relation to registered charges**

**280. (1)** A registered charge on property of a company has priority over:

(a) a subsequent registered charge on the property, unless the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created;

(b) an unregistered charge on the property created before the creation of the registered charge, unless the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created; and

(c) an unregistered charge on the property created after the creation of the registered charge.

**(2)** A registered charge on property of a company is postponed to:

(a) a subsequent registered charge on the property, where the subsequent registered charge was created before the creation of the prior registered charge and the chargee in relation to the subsequent registered charge proves that the chargee in relation to the prior registered charge had notice of the subsequent registered charge at the time when the prior registered charge was created; and

(b) an unregistered charge on the property created before the creation of the registered charge, where the chargee in relation to the unregistered charge proves that the chargee in relation to the registered charge had notice of the unregistered charge at the time when the registered charge was created.

**General priority rule in relation to unregistered charges**

**281.** An unregistered charge on property of a company has priority over:

(a) a registered charge on the property that was created after the creation of the unregistered charge and does not have priority over the unregistered charge under subsection 280 (1); and

(b) another unregistered charge on the property created after the first-mentioned unregistered charge.

**Special priority rules**

**282.** **(1)** Except as provided by the this section, any priority accorded by this Division to a charge over another charge does not extend to any liability that, at the priority time in relation to the first-mentioned charge, is not a present liability.

**(2)** Where a registered charge on property of a company secures:

(a) a present liability and a prospective liability of an unspecified amount; or

(b) a prospective liability of an unspecified amount;

any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge does not have actual knowledge extends to the prospective liability, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge.

**(3)** Where a registered charge on property of a company secures:

(a) a present liability and a prospective liability up to a specified maximum amount; or

(b) a prospective liability up to a specified maximum amount;

and the notice lodged under section 263 or 264 in relation to the charge sets out the nature of the prospective liability and the amount so specified, then any priority accorded by this Division to the charge over another charge extends to any prospective liability secured by the first-mentioned charge to the extent of the maximum amount so specified, whether the prospective liability became a present liability before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the prospective liability became a present liability.

**(4)** Where:

(a) a registered charge on property of a company secures:

(i) a present liability and a prospective liability up to a specified maximum amount; or

(ii) a prospective liability up to a specified maximum amount;

but the notice lodged under section 263 or 264 in relation to the charge does not set out the nature of the prospective liability or the maximum amount so specified; or

(b) a registered charge on property of a company secures a prospective liability of an unspecified amount;

the following paragraphs have effect:

(c) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that had become a present liability at the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge;

(d) any priority accorded by this Division to the charge over another charge of which the chargee in relation to the first-mentioned charge has actual knowledge extends to any prospective liability secured by the first-mentioned charge that became a present liability, as the result of the making of an advance, after the time when the chargee in relation to the first-mentioned charge first obtained actual knowledge of the other charge if, at that time, the terms of the first-mentioned charge required the chargee in relation to that charge to make the advance after that time, and so extends to that prospective liability whether the advance was made before or after the registration of the first-mentioned charge and notwithstanding that the chargee in relation to the first-mentioned charge had actual knowledge of the other charge at the time when the advance was made.

**PART 3.6—ACCOUNTS**

***Division 1*—*Accounting standards***

**Accounting standards**

**283.** **(1)** The Board may make for the purposes of this Part and Part 3.7 a written accounting standard that is not inconsistent with this Act.

**(2)** An instrument made under subsection (1) is a disallowable instrument for the purposes of section 46a of the *Acts Interpretation Act 1901.*

**(3)** In considering whether or not to make a particular instrument under subsection (1), the Board shall have regard to the fact that section 48 of the *Acts Interpretation Act 1901* would apply in relation to the instrument by virtue of subsection (2) of this section.

**Application of accounting standards: general**

**284.** **(1)** An accounting standard may be expressed so as to apply in relation to all companies or specified companies.

**(2)** Accounting standards may be of general or specially limited application and may differ according to differences in time, locality, place or circumstance.

**(3)** Neither of subsections (1) and (2) limits the other.

**Application of accounting standards: financial years**

**285.** **(1)** Except so far as the contrary intention appears in an accounting standard, an accounting standard applies to:

(a) the first financial year of a body corporate that ends after the commencement of the last-mentioned accounting standard; and

(b) later financial years of the body corporate.

**(2)** Despite anything in an accounting standard, but subject to subsection (4), an accounting standard does not apply to a financial year of a body corporate ending before the commencement of the last-mentioned accounting standard.

**(3)** A company’s directors may elect in writing that an accounting standard that, apart from subsection (4), does not apply to a particular financial year of the company shall apply to that financial year.

**(4)** An election under subsection (3) has effect accordingly.

**Interpretation etc. of accounting standards**

**286.** **(1)** Unless the contrary intention appears in an accounting standard, an expression has the same meaning in an accounting standard as in this Part.

**(2)** A document that purports to be issued or published by or on behalf of the Board or the Commission and to set out the text of a specified accounting standard as in effect at a specified time, or a copy of such a document, is, in proceedings under this Act, *prima facie* evidence that:

(a) the specified accounting standard was in effect at the specified time; and

(b) that text is the text of that accounting standard as so in effect.

**Power of Board to require copy of accounts or group accounts**

**287.** Where an auditor of a company has, under subsection 332 (11), sent to the Board a copy of a report on the accounts or group accounts of the company, the Board may, by written notice given to the company, require it to furnish to the Board, within **7** days after the notice is given, a copy of the accounts or group accounts.

**Application of accounting standards approved under Companies Act 1981**

**288. (1)** As from the commencement of this Part, an accounting standard that was at that commencement an approved accounting standard within the meaning of Part VI of the *Companies Act 1981* has effect, with such modifications as the circumstances require, as if it were an instrument in force under section 283.

**(2)** Despite section 285 but subject to an instrument in force under section 283, an accounting standard, in so far as it has effect by virtue of subsection (1) of this section, applies to a financial year of a body corporate if, and only if, the accounting standard would, if this Act had not been

enacted and the body were a company within the meaning of Part VI of the *Companies Act 1981*,or a law corresponding to that Part, have applied in relation to that financial year by virtue of section 266c of that Act or a law corresponding to the last-mentioned section.

***Division 2*—*Accounting records***

**Accounting records**

**289. (1)** A company shall:

(a) keep such accounting records as correctly record and explain its transactions (including any transactions as trustee) and financial position; and

(b) so keep its accounting records that:

(i) true and fair accounts of the company can be prepared from time to time; and

(ii) its accounts can be conveniently and properly audited in accordance with this Act.

**(2)** A company shall retain the accounting records kept by it under this section, or under a corresponding law, for 7 years after the completion of the transactions to which they relate.

**(3)** A company shall keep its accounting records at such place or places as its directors think fit.

**(4)** The Commission may by writing require a company to produce:

(a) at a specified place within Australia that is reasonable in the circumstances; and

(b) within a specified period of at least 14 days;

specified accounting records of the company that are kept outside Australia.

**(5)** Where accounting records of a company are kept outside Australia, the company shall keep at a place within Australia determined by the directors such statements and records with respect to the matters dealt with in the records kept outside Australia as would enable true and fair accounts, and any documents required by this Act to be attached to the accounts, to be prepared.

**(6)** A company shall lodge written notice of the place in Australia where statements and records kept under subsection (5) are kept, unless the statements and records are kept at the registered office of the company.

**(7)** A company shall keep its accounting records in writing in the English language or so as to enable them to be readily accessible and readily convertible into writing in the English language.

**(8)** The Court may, on application by a director of a company, make an order authorising a registered company auditor acting for the director to inspect the accounting records of the company.

**(9)** A company shall make its accounting records available in writing in the English language at all reasonable times for inspection without charge by any director of the company and by any other person authorised or permitted by or under this Act to inspect them.

**(10)** Where a registered company auditor inspects the accounting records pursuant to an order of the Court under subsection (8), he or she shall not disclose to a person other than the director on whose application the order was made any information acquired by him or her in the course of his or her inspection.

**(11)** A director of a company shall take all reasonable steps to ensure that the company complies with this section.

**(12)** In any proceedings against a person for a contravation of subsection (11), it is a defence if the person proves that he or she had reasonable grounds to believe, and did believe, that a competent and reliable person was:

(a) charged with the duty of seeing that the company complied with this section; and

(b) was in a position to discharge that duty.

***Division 3*—*Financial years of holding company and subsidiaries***

**Synchronisation**

**290. (1)** Subject to this section, the directors of a holding company shall take such action (if any) as is necessary to ensure that the financial year of each subsidiary of the holding company coincides with the financial year of the holding company.

**(2)** The action referred to in subsection (1) shall be taken in relation to a particular subsidiary not later than 12 months after the day on which the subsidiary became a subsidiary of the holding company.

**(3)** Subject to any order by the Commission under this section, where the financial year of a holding company and the financial year of each of its subsidiaries coincide, the directors of the holding company shall at all times take such action as is necessary to ensure that the financial year of the holding company or any of its subsidiaries is not altered in such a way that all of those financial years no longer coincide.

**(4)** Where the directors of a holding company are of the opinion that there is good reason why the financial year of any of its subsidiaries should not coincide with the financial year of the holding company, they may apply in writing to the Commission for an order authorising the subsidiary to continue to have or to adopt (as the case requires) a financial year that does not coincide with that of the holding company.

**(5)** The application shall be supported by a statement in writing made in accordance with a resolution of the directors of the holding company,

signed by not less than 2 directors and stating the reasons for seeking the order.

**(6)** The Commission may require the directors making the application to supply such information relating to the operations of the holding company, and of any related corporation, as the Commission thinks necessary for the purpose of determining the application.

**(7)** The Commission may engage a registered company auditor to investigate and report to it on the application.

**(8)** The costs of an investigation and report under subsection (7) are payable by the holding company of which the applicants are directors.

**(9)** The Commission may make an order granting or refusing the application or granting the application subject to such limitations, terms or conditions as it thinks fit, and shall serve a copy of the order on the holding company.

**(10)** Where the directors of a holding company make an application under subsection (4) in relation to a subsidiary:

(a) subsection (1) does not apply in relation to the subsidiary until the determination day for the application; and

(b) subject to subsection (12), the period within which the directors of the holding company are required to comply with subsection (1) in relation to the subsidiary is the period of 12 months beginning on that day.

**(11)** Subsection (10) has effect despite sections 41 and 44a of the *Administrative Appeals Tribunal Act 1975.*

**(12)** Where an order is made under this section authorising a subsidiary of a holding company to have, or to adopt, a financial year that does not coincide with that of the holding company, compliance with the order (including any limitations, terms or conditions set out in it) shall be taken to be compliance with subsection (1) in relation to the subsidiary.

**(13)** Where the directors of a holding company make an application under subsection (4) in relation to a subsidiary, the directors of the holding company are not entitled to make another application under subsection (4) in relation to the subsidiary within 3 years after the determination day for the first-mentioned application unless:

(a) the first-mentioned application resulted in the making of an order granting the application or granting it subject to limitations, terms or conditions; or

(b) the Commission is satisfied that there has been a substantial change in the relevant facts or circumstances since that day.

**(14)** In this section:

“determination day”, in relation to an application under subsection (4), means:

(a) if the Tribunal makes a decision on an application for review of the Commission’s decision on the application under subsection (4)—the day when:

(i) if there is an appeal from the Tribunal’s decision— any appeal arising out of the Tribunal’s decision is finally determined or otherwise disposed of; or

(ii) otherwise—the Tribunal’s decision comes into operation;

(b) if paragraph (a) does not apply but an application is, or applications are, made to the Tribunal for review of the Commission’s decision on the application under subsection (4)—the day of withdrawal or dismissal of the application, or of the last of the applications to be withdrawn or dismissed; or

(c) otherwise—the day when the Commission’s order on the application under subsection (4) is served on the holding company.

**Orders under corresponding laws**

**291.** **(1)** Where, immediately before a Division 2 company’s registration day, an order was in force in relation to the company under a law corresponding to section 290, this section applies on and after that day.

**(2)** The order has effect, with such modifications as the circumstances require, as if it had been made under section 290.

**(3)** Subject to section 290, if the order, as in force immediately before the company’s registration day, was limited to a specified period, it ceases to have effect at the end of that period.

***Division 4*—*Financial statements***

**Profit and loss account**

**292.** A company’s directors shall, before the deadline after a financial year, cause to be made out a profit and loss account for that financial year that gives a true and fair view of the company’s profit or loss for that financial year.

**Balance-sheet**

**293.** A company’s directors shall, before the deadline after a financial year, cause to be made out a balance-sheet as at the end of that financial year that gives a true and fair view of the company’s state of affairs as at the end of that financial year.

**Steps to be taken before accounts made out**

**294.** **(1)** This section shall be complied with before a company’s accounts are made out under sections 292 and 293 in relation to a financial year.

**(2)** The directors shall take reasonable steps:

(a) to find out what has been done about writing off bad debts and making provision for doubtful debts; and

(b) to cause all known bad debts to be written off and adequate provision to be made for doubtful debts.

**(3)** The directors shall take reasonable steps to find out whether any current assets, other than bad or doubtful debts, are unlikely to realise (whether directly or indirectly) in the ordinary course of business their value as shown in the company’s accounting records and, if so, to cause:

(a) the value of those assets to be written down to an amount that they might be expected so to realise; or

(b) adequate provision to be made for the difference between their value as so shown and the amount that they might be expected so to realise.

**(4)** The directors shall take reasonable steps:

(a) to find out whether the value of any non-current asset is shown in the company’s accounting records at an amount that, having regard to the asset’s value to the company as a going concern, exceeds the amount that it would have been reasonable for the company to spend to acquire the asset as at the end of the financial year; and

(b) unless adequate provision for writing down the value of that asset is made—to cause to be included in the accounts such information and explanations as will prevent the accounts from being misleading because of the overstatement of the value of that asset.

**Group accounts**

**295.** The directors of a company that is a group holding company at the end of a financial year shall, before the deadline after the financial year, cause to be made out group accounts that:

(a) deal with:

(i) the group’s profit or loss for; and

(ii) the group’s state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group; and

(b) give a true and fair view of the profit or loss and state of affairs so far as they concern members of the company.

**Audit of financial statements**

**296.** **(1)** The directors of a company, other than a company that pursuant to section 325 or 326 did not appoint an auditor to audit the financial statements concerned, shall take reasonable steps to ensure that the company’s financial statements for a financial year are audited as required by this Part before the deadline after that financial year.

**(2)** A company’s directors shall cause to be attached to, or endorsed on, the company’s financial statements for a financial year the auditor’s report

on those financial statements that is furnished to the directors under subsection 332 (2).

**Financial statements to comply with regulations**

**297.** **(1)** A company’s directors shall ensure that the company’s financial statements for a financial year comply with such of the prescribed requirements as are relevant to the financial statements.

**(2)** Where a company’s financial statements for a financial year, as prepared in accordance with subsection (1), would not otherwise give a true and fair view of the matters with which this Division requires them to deal, the directors shall add such information and explanations as will give a true and fair view of those matters.

**Financial statements to comply with applicable accounting standards**

**298.** **(1)** Subject to section 297, a company’s directors shall ensure that the company’s financial statements for a financial year are made out in accordance with applicable accounting standards.

**(2)** Despite subsection (1), where a company’s financial statements for a financial year would not, if made out in accordance with a particular applicable accounting standard, give a true and fair view of the matters with which this Division requires the financial statements to deal, the directors need not ensure that the financial statements are made out in accordance with that accounting standard.

**Effect of sections 297 and 298**

**299.** Neither of sections 297 and 298 affects the generality of any provision of this Division other than those sections.

**Inclusion of comparative amounts for items required by accounting standards**

**300.** **(1)** Where:

(a) section 298 requires a company’s financial statements for a financial year to specify a particular amount (in this subsection called the “current year amount”); and

(b) that section or a corresponding law required the company’s financial statements for the previous financial year to specify a corresponding amount;

the directors shall ensure that the first-mentioned financial statements:

(c) set out the corresponding amount in such a way as to allow easy comparison between the current year amount and the corresponding amount; and

(d) if the current year amount has been determined on a different basis from the corresponding amount:

(i) include a note to that effect; and

(ii) set out the corresponding amount in such a way as to draw attention to the note.

**(2)** For the purposes of this section, section 298 or a corresponding law requires a body corporate’s financial statements for a financial year to specify an amount if, and only if, the directors:

(a) are required to ensure that the financial statements included an amount relating to the matter to which the first-mentioned amount relates; and

(b) would not have been so required if that section or corresponding law had not applied in relation to the financial year.

***Division 5*—*Directors’ statements***

**Statement to be attached to accounts**

**301. (1)** A company’s directors shall cause to be attached to the company’s accounts that are, or are included in, the company’s financial statements for a financial year a statement complying with this section and subsection 303 (2).

**(2)** The statement shall state whether or not, in the directors’ opinion:

(a) the profit and loss account gives a true and fair view of the company’s profit or loss for the financial year; and

(b) the balance-sheet gives a true and fair view of the company’s state of affairs as at the end of the financial year.

**(3)** In forming their opinion for the purposes of subsection (2), the directors shall have regard to circumstances that have arisen, and information that has become available, since the end of the financial year and that would, if the accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.

**(4)** If adjustments have not been made in the accounts to reflect circumstances or information of a kind referred to in subsection (3) that are or is relevant to understanding the accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the accounts, or that amount or particular, from being misleading because adjustments have not been so made.

**(5)** The statement shall state whether or not, in the directors’ opinion, there are, when the statement is made, reasonable grounds to believe that the company will be able to pay its debts as and when they fall due.

**(6)** The statement shall state whether or not the accounts have been made out in accordance with all applicable accounting standards.

**(7)** If the applicable accounting standards include accounting standards that apply in relation to the financial year because of an election under section 285, the statement shall specify those accounting standards and state that they so apply.

**(8)** If the accounts have not been made out in accordance with a particular applicable accounting standard, the statement shall:

(a) state why the accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters with which Division 4 requires them to deal; and

(b) give particulars of the quantified financial effect on the accounts of failing to make them out in accordance with that accounting standard.

**(9)** If, pursuant to section 326, the company did not appoint an auditor to audit the accounts, the statement shall state whether or not the company has, in respect of the financial year:

(a) kept such accounting records as correctly record and explain its transactions and financial position;

(b) so kept its accounting records that true and fair accounts of the company can be prepared from time to time; and

(c) so kept its accounting records that the accounts of the company can be conveniently and properly audited in accordance with this Act.

**(10)** The statement shall state whether or not the accounts have been properly prepared by a competent person.

**(11)** If the company has been dormant throughout the period beginning at the start of the financial year and ending on the day the statement is made, the statement shall state that the company has so been dormant.

**Statement to be attached to group accounts**

**302. (1)** The directors of a company that is a group holding company at the end of a particular financial year shall cause to be attached to group accounts that are included in the company’s financial statements for the financial year a statement that complies with this section and subsection 303 (2).

**(2)** The statement shall state whether or not, in the directors’ opinion, the group accounts give a true and fair view of:

(a) the group’s profit or loss for; and

(b) the group’s state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group, so far as the profit or loss and state of affairs concern members of the company.

**(3)** In forming their opinion for the purposes of subsection (2), the directors shall have regard to circumstances that have arisen, and information that has become available, since:

(a) in the case of circumstances or information concerning the company—the end of the financial year; or

(b) in the case of circumstances or information concerning another body corporate in the group—the end of the corresponding financial year of that body;

and that would, if the group accounts had been made out when the statement is made, have affected the determination of an amount or particular in them.

**(4)** If adjustments have not been made in the group accounts to reflect circumstances or information of a kind referred to in subsection (3) that are or is relevant to understanding the group accounts or an amount or particular in them, the statement shall include such information and explanations as will prevent the group accounts, or that amount or particular, from being misleading because adjustments have not been so made.

**(5)** The statement shall state whether or not the group accounts have been made out in accordance with all applicable accounting standards.

**(6)** If the applicable accounting standards include accounting standards that apply in relation to the financial year because of an election made under section 285, the statement shall specify those accounting standards and state that they so apply.

**(7)** If the group accounts have not been made out in accordance with a particular applicable accounting standard, the statement shall:

(a) state why the group accounts, if made out in accordance with that accounting standard, would not have given a true and fair view of the matters with which Division 4 requires them to deal; and

(b) give particulars of the quantified financial effect on the group accounts of failing to make them out in accordance with that accounting standard.

**(8)** If, pursuant to section 326, the company did not appoint an auditor to audit the group accounts, the statement shall state whether they have been properly prepared by a competent person.

**(9)** If:

(a) the company has been dormant throughout the period beginning at the start of the financial year and ending on the day the statement is made; and

(b) each body corporate that was a subsidiary of the company at any time during the financial year has been dormant throughout each period since the start of the financial year during which it was a subsidiary of the company;

the statement shall state that the company and each such body corporate have so been dormant.

**Statements under this Division**

**303. (1)** A company’s directors shall comply with section 301, or sections 301 and 302, as the case requires, in relation to a financial year:

(a) unless, pursuant to section 325 or 326, the company did not appoint an auditor to audit its financial statements for the financial year—

before the auditor reports under this Part on the financial statements; or

(b) otherwise—before the deadline after the financial year.

**(2)** A statement required by section 301 or 302 in relation to a financial year of a company shall:

(a) be made in accordance with a resolution of the directors;

(b) be made not more than 42 days before the day of the deadline after the financial year;

(c) specify the day on which it was made; and

(d) be signed by at least 2 directors.

***Division 6*—*Directors’ reports***

**Report on company other than group holding company**

**304. (1)** The directors of a company that is not a group holding company at the end of a particular financial year shall cause to be made out a report complying with this Division, other than:

(a) in any case—section 305; and

(b) if at the end of the financial year the company was an exempt proprietary company or a wholly-owned subsidiary of another company—subsections (7), (8), (9) and (10) of this section.

**(2)** Subsection (1) does not apply in relation to a company in relation to a financial year if the company is dormant throughout the period beginning at the start of, and ending at the deadline after, the financial year.

**(3)** The report shall state the names of the directors in office on the day the report is made out.

**(4)** The report shall state the company’s principal activities in the course of the financial year and any significant change in the nature of those activities that occurred during the financial year.

**(5)** The report shall state the net amount of the company’s profit or loss for the financial year after provision for income tax.

**(6)** The report shall state the amount (if any) that the directors recommend should be paid by way of dividend.

**(7)** The report shall state the amounts (if any) that have been paid or declared by way of dividend since the start of the financial year, indicating which (if any) of those amounts have been shown in a previous report under this Division or a corresponding law.

**(8)** The report shall contain a review of the company’s operations during the financial year and of the results of those operations.

**(9)** The report shall give particulars of any significant change in the company’s state of affairs that occurred during the financial year.

**(10)** The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect:

(a) the company’s operations;

(b) the results of those operations; or

(c) the company’s state of affairs;

in financial years after the financial year.

**(11)** The report shall refer to:

(a) likely developments in the company’s operations; and

(b) the expected results of those operations;

in financial years after the financial year.

**Report on group holding company**

**305. (1)** The directors of a company that is a group holding company at the end of a particular financial year shall cause to be made out a report complying with this Division, other than:

(a) in any case—section 304; and

(b) if at the end of the financial year the company was an exempt proprietary company—subsections (7), (8), (9) and (10) of this section.

**(2)** Subsection (1) does not apply in relation to a company in relation to a financial year if:

(a) the company is dormant throughout the period beginning at the start of, and ending at the deadline after, the financial year; and

(b) each body corporate that is a subsidiary of the company at any time during the financial year is dormant throughout so much of each period during which it is a subsidiary of the company as falls within the period referred to in paragraph (a).

**(3)** The report shall state the names of the directors in office on the day the report is made out.

**(4)** The report shall state the principal activities of the group during the financial year and any significant change in the nature of those activities that occurred during the financial year.

**(5)** The report shall state the net amount of the consolidated profit or loss of the group for the financial year after:

(a) provision for income tax; and

(b) deducting any amounts that should properly be attributed to a person other than a body corporate in the group.

**(6)** The report shall state the amount (if any) that the directors recommend should be paid by way of dividend.

**(7)** The report shall state the amounts (if any) that have been paid or declared by way of dividend since the start of the financial year, indicating

which (if any) of those amounts have been shown in a previous report under this Division or a corresponding law.

**(8)** The report shall contain a review of the group’s operations during the financial year and of the results of those operations.

**(9)** The report shall give particulars of any significant change in the group’s state of affairs that occurred during the financial year.

**(10)** The report shall give particulars of any matter or circumstance that has arisen since the end of the financial year and has significantly affected, or may significantly affect:

(a) the group’s operations;

(b) the results of those operations; or

(c) the group’s state of affairs;

in financial years after the financial year.

**(11)** The report shall refer to:

(a) likely developments in the group’s operations; and

(b) the expected results of those operations; in financial years after that financial year.

**Report may omit prejudicial information**

**306.** If, in the directors’ opinion, it would prejudice the company’s interests to include in the report particular information, being some or all of the information that subsection 304 (11) or 305 (11) requires to be so included:

(a) the first-mentioned information need not be so included; and

(b) if it is not so included—the report shall state that some or all, as the case requires, of the information required by that subsection has not been so included.

**Public companies**

**307.** If at the end of the financial year the company is a public company and is not a wholly-owned subsidiary of another company, the report shall contain, or have attached to it, a statement that, in relation to each of the directors, sets out, as at the day the report is made out:

(a) particulars of the directors’ qualifications, experience and special responsibilities (if any);

(b) particulars of shares in the company or in a related body corporate that paragraph 235 (1) (a) requires to be shown with respect to that director in a register kept in accordance with subsection 235 (1); and

(c) particulars of any interest of the director in a contract or proposed contract with the company, being an interest whose nature the director has declared:

(i) in accordance with subsection 231 (1) or a corresponding law; and

(ii) since the date of the last report made out in relation to the company under this subsection or a corresponding law.

**Options**

**308. (1)** If subsection 304 (1) applies, this section applies in relation to the company.

**(2)** If subsection 305 (1) applies, this section applies in relation to each body corporate in the group that has at any time granted to a person an option to have shares in the body issued to the person.

**(3)** The report shall state, in relation to each option that the company or body corporate has, during or since the financial year, granted to a person to have shares in the company or body issued to the person:

(a) unless subsection 304 (1) applies—the name of the company or body;

(b) the name of the person to whom the option was granted or, if it was granted generally to all the holders of shares or debentures, or of a class of shares or debentures, of the company or body or of any other body corporate, that the option was so granted;

(c) the number and classes of shares in respect of which the option was granted;

(d) the day of expiration of the option;

(e) the basis on which the option is or was to be exercised; and

(f) whether or not a person entitled to exercise the option has or had, by virtue of the option, a right to participate in a share issue of any other body corporate.

**(4)** The report shall state:

(a) unless subsection 304 (1) applies—the name of the company or body corporate;

(b) particulars of shares in the company or body issued, during or since the financial year, by virtue of the exercise of an option;

(c) the number and classes of unissued shares in the company or body under option as at the day the report is made out;

(d) the prices, or the method of fixing the prices, of issue of those unissued shares;

(e) the days of expiration of the options in respect of those unissued shares; and

(f) particulars of the rights (if any) of the holders of the options in respect of those unissued shares to participate by virtue of the options in any share issue of any other body corporate.

**(5)** If particulars that this section requires have been stated in a previous report made out in relation to the company under this Division or a corresponding law, they may be stated by referring to that report.

**Benefits under contracts with directors**

**309.** **(1)** The report shall set out whether or not, during or since the financial year, a director has received, or become entitled to receive, because of a contract made by the company or a related body corporate with the director, a firm of which the director is a member, or a company in which the director has a substantial financial interest, a benefit other than:

(a) a benefit included in the aggregate amount of emoluments received or due and receivable by directors shown, in accordance with the regulations made for the purposes of subsection 297 (1), in the company’s financial statements for the financial year; or

(b) the fixed salary of a full-time employee of the company or a related body corporate.

**(2)** If so, the report shall set out the general nature of each such benefit that a director has so received or to which a director has so become entitled.

**Reports generally**

**310.** **(1)** A company’s directors shall comply with this Division in relation to a financial year before the deadline after the financial year.

**(2)** A report that this Division requires in relation to a financial year of a company shall:

(a) be made out in accordance with a resolution of the directors;

(b) be made out not more than 42 days before the day of the deadline after the financial year;

(c) specify the day on which it was made out; and

(d) be signed by at least 2 directors.

***Division 7*—*Financial statements and directors’ reports***

**Rounding off amounts**

**311.** The regulations may permit specified companies, subject to such conditions, exceptions or qualifications (if any) as are specified in the regulations, to insert in any accounts or report under this Act, in substitution for an amount that the company would, but for this section, be required or permitted to set out in the accounts or report, an amount that is ascertained in accordance with the regulations and is not more than $500 greater or less than the first-mentioned amount.

**Directors of holding company to obtain all necessary information**

**312.** **(1)** Subject to subsection (3), the directors of a company that is a group holding company at the end of a particular financial year shall not cause to be made out the group accounts referred to in section 295, the statement referred to in section 302 or the report referred to in section 305 unless they have available to them sufficient information, in relation to each subsidiary, to enable them to ensure:

(a) that the group accounts will give a true and fair view of:

(i) the group’s profit or loss for; and

(ii) the group’s state of affairs as at the end of;

that financial year of the company and the corresponding financial years of the other bodies corporate in the group, so far as they concern members of the company; and

(b) that neither the statement nor the report will be false or misleading in a material particular.

**(2)** The directors of a subsidiary shall, at the request of the directors of the company, supply to the company all the information that is required by the directors of the company for the preparation of the group accounts, the statement and the report referred to in subsection (1).

**(3)** Where the directors of a company, having taken all such steps as are reasonably available to them, are unable to obtain from the directors of a subsidiary the information required by the directors of the holding company for the preparation of the group accounts, the statement and the report referred to in subsection (1) within the period within which those accounts, that statement and that report are respectively required, by the provisions referred to in that subsection, to be prepared:

(a) the directors of the holding company shall cause to be made out those group accounts, that statement and that report without incorporating in, or including with, those group accounts, or incorporating in that statement or report, as the case requires, the information relating to the subsidiary, but:

(i) they shall include in those group accounts, that statement or that report, as the case requires, a description of the nature of the information that has not been obtained, and shall include in those group accounts, that statement and that report such qualifications and explanations as are necessary to prevent those group accounts, that statement and that report from being misleading; and

(ii) they may qualify accordingly that part of that statement that is made under subsection 302 (2); and

(b) where the directors of the holding company have caused to be made out those group accounts, that statement and that report in accordance with paragraph (a), they shall, within 1 month after receiving any of that information from the directors of the subsidiary:

(i) lodge a statement setting out or summarising the information and containing such qualifications and explanations, by the directors of the company, of those group accounts, that statement or that report as are necessary having regard to the information received from the directors of the subsidiary; and

(ii) send, to each shareholder, a copy of the statement required by subparagraph (i) to be lodged.

**Relief from requirements as to accounts and reports**

**313. (1)** A company’s directors may apply to the Commission for an order relieving them, relieving the company, or relieving the auditor (if any) of the company, from compliance with specified requirements of this Act relating to, or to the audit of, accounts or group accounts or to the report required by Division 6.

**(2)** On an application under subsection (1), the Commission may make an order relieving the directors, the company, or the auditor of the company, as the case may be, from compliance with all or any of the specified requirements either unconditionally or on condition that the directors comply, the company complies, or the auditor of the company complies, as the case may be, with such other requirements relating to, or to the audit of, the accounts or group accounts or to the report as the Commission imposes.

**(3)** An application under subsection (1) shall be in writing supported by a statement in writing made in accordance with a resolution of the directors of the company, signed by not less than 2 directors and stating the reasons for seeking an order.

**(4)** The Commission may require the directors making application under subsection (1) to supply such information relating to the operations of the company, and of any related body corporate, as the Commission thinks necessary for the purpose of determining the application.

**(5)** Notice of an order under subsection (2) shall be served on the company to which it relates.

**(6)** The Commission may, where it considers it appropriate, make an order in respect of a specified class of companies relieving the directors of a company included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class, from compliance with specified requirements of this Act relating to, or to the audit of, accounts or group accounts or to the report required by Division 6.

**(7)** An order under subsection (6) may be made either unconditionally or on condition that the directors of the company comply, the company complies, or the auditor of the company complies, as the case may be, with such other requirements relating to, or to the audit of, accounts or group accounts or to the report as the Commission imposes.

**(8)** Notice of an order under subsection (6) shall be published in the *Gazette.*

**(9)** A reference in subsection (1) or (6) to requirements of this Act relating to, or to the audit of, accounts or group accounts does not include a reference to the requirements of section 289.

**(10)** Without limiting the generality of subsections (1) and (6), a reference in either of those subsections to requirements of this Act relating to, or to the audit of, accounts or group accounts includes:

(a) a reference to a requirement that an annual return of a company be accompanied by a copy of accounts or group accounts of the company; and

(b) a reference to a requirement that particulars relating to:

(i) the profit or loss of a company for a financial year;

(ii) the state of affairs of a company as at the end of a financial year;

(iii) the profit or loss of a company and any other body corporate or bodies corporate for respective financial years; or

(iv) the state of affairs of a company and any other body corporate or bodies corporate as at the end of respective financial years;

be contained in an annual return of the company.

**(11)** The Commission shall not make an order in relation to a company, or in relation to a class of companies, unless:

(a) in relation to each requirement of this Act that is specified in the order, the Commission is of the opinion that compliance with the requirement:

(i) would render accounts or group accounts, or a report required by Division 6, misleading;

(ii) would be inappropriate to the circumstances of the company, or of the companies included in that class, as the case may be; or

(iii) would impose unreasonable burdens on:

(a) the company, an officer of the company or the auditor (if any) of the company; or

(b) the companies, or officers or auditors of the companies, included in that class;

as the case may be; or

(b) the company is a company (in this paragraph called a “relevant company”):

(i) not carried on for the purposes of profit or gain to its individual members;

(ii) prohibited, by the terms of its constitution, from making any distribution, whether in money, property or otherwise, to its members; and

(iii) required by or under an Australian law to prepare annually a statement of its income and expenditure or a statement as to its financial position, or both;

or that class is a class of relevant companies, as the case may be.

**(12)** The reference in subsection (11) to an order in relation to a company, or in relation to a class of companies, is a reference to:

(a) an order under subsection (1) relieving the directors of the company, relieving the company, or relieving the auditor (if any) of the company; or

(b) an order under subsection (6) relieving the directors of a company included in that class, relieving a company included in that class, or relieving the auditor (if any) of a company included in that class;

from compliance with specified requirements of this Act.

**(13)** The Commission may make an order under subsection (1) or (6) that is limited to a specified period and:

(a) in the case of an order under subsection (1)—may from time to time either on application by the directors, or without any such application, revoke or suspend the operation of the order; or

(b) in the case of an order under subsection (6)—may from time to time revoke or suspend the operation of the order.

**(14)** The revocation or suspension under subsection (13) of an order does not take effect until:

(a) in the case of an order under subsection (1)—notice of the revocation or suspension is served on the company to which the order relates; and

(b) in the case of an order under subsection (6)—notice of the revocation or suspension is published in the *Gazette.*

**Orders under corresponding laws**

**314.** **(1)** Where, immediately before a Division 2 company’s registration day, an order was in force in relation to the company under a law corresponding to section 313, this section applies on and after that day.

**(2)** The order has effect, with such modifications as the circumstances require, as if:

(a) it had been made under section 313; and

(b) there were specified in it, instead of the specified requirements of the company law of a State or Territory, the corresponding requirements of this Act.

**(3)** Subject to section 313, if the order, as in force immediately before the company’s registration day, was limited to a specified period, it ceases to have effect at the end of that period.

**Members entitled to financial statements and reports**

**315.** **(1)** In this section:

“eligible person”, in relation to a company, means a person who is entitled to receive notice of general meetings of the company.

**(2)** A company shall, at or before the time when it sends notice of an annual general meeting to eligible persons or, if the company sends notice of an annual general meeting to eligible persons more than 14 days before the meeting, at least 14 days before the meeting, send to each eligible person a copy of each document a copy of which section 316 requires to be laid before the meeting.

**(3)** A company shall furnish to a member of the company, whether or not the member is entitled to have sent to him, her or it copies of the accounts or group accounts, to whom copies have not been sent, or a holder of debentures, on request in writing being made by him, her or it to the company, as soon as practicable and without charge, a copy of the last accounts and group accounts (if any) laid or to be laid before the company at its annual general meeting, together with copies of the other documents required under subsection (1) to accompany those accounts and group accounts (if any).

**(4)** It is a defence to a prosecution for a contravention of subsection (1) or (3) in relation to a person if it is proved that the person had, before the contravention occurred, been furnished with documents as required by that subsection.

**(5)** This section does not apply in relation to a mutual life assurance company limited by guarantee registered under the *Life Insurance Act 1945.*

**(6)** Subsections (1) and (3) do not apply in relation to a company in relation to an annual general meeting that is deemed by virtue of section 255 to have been held.

**Financial statements and reports to be laid before annual general meeting**

**316.** A company’s directors shall cause to be laid before the annual general meeting of the company that section 245 requires to be held in relation to a financial year:

(a) a copy of the company’s financial statements for that financial year;

(b) a copy of each statement that Division 5 requires in relation to that financial year;

(c) a copy of the report that Division 6 requires in relation to that financial year; and

(d) a copy of the auditor’s report (if any) about the financial statements that section 332 requires.

**Commission may require company to lodge accounts etc.**

**317.** **(1)** In this section:

“annual meeting documents”, in relation to a financial year of a company, means the documents copies of which section 316 or a corresponding law requires or required to be laid before the annual general meeting of the company that section 245 or a corresponding law requires or required to be held in relation to that financial year;

“financial year”, in relation to a company, does not include a financial year of the company, the company’s accounts relating to which were required to be audited under this Part or a corresponding law.

**(2)** The Commission may, by writing served on a company (not being an exempt proprietary company that is an unlimited company), require the company to lodge, within a specified period of at least 14 days, a copy of

the company’s annual meeting documents for a specified financial year or specified financial years.

**(3)** A company need not lodge a copy of a particular document under subsection (1) if the company has previously lodged the document or a copy of the document.

**(4)** A company need not lodge a copy of a particular document pursuant to a notice under subsection (1) if, as at the time when the notice is served, the document has not been made out, but, if the document is made out after that time, the company shall lodge a copy of the document within 14 days after the document is made out.

**Contravention of Part**

**318. (1)** Subject to this section, if a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, or has knowingly been the cause of any default under, any of the provisions of this Part (including any of those provisions as applying by virtue of section 1058) other than Divisions 1 and 2 and section 317, the director contravenes this subsection.

**(2)** The penalty applicable to a contravention of subsection (1) is:

(a) in a case to which paragraph (b) does not apply—$5,000; or

(b) if the offence was committed with intent to deceive or defraud members of creditors of the company or creditors of any other person or for any other fraudulent purpose—$20,000 or imprisonment for 5 years, or both.

**(3)** In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, the provisions of this Part relating to the form and content of the accounts or group accounts of a company by reason of an omission from the accounts or group accounts (including any of those provisions as applying by virtue of section 1058), it is a defence if it is proved that the information omitted was immaterial and did not affect the giving of a true and fair view of the matters required by Division 4 to be dealt with in the accounts or group accounts, as the case may be.

**(4)** In any proceedings against a person for failure to take all reasonable steps to comply with, or to secure compliance with, or for having knowingly been the cause of any default under, any of the preceding provisions of this Part (including any of those provisions as applying by virtue of section 1058) relating to the accounts or group accounts of a company by reason that the accounts or group accounts, as the case may be, have not been made out in accordance with an applicable accounting standard, the onus of proving that the accounts or group accounts, as the case may be, would not, if made out in accordance with that accounting standard, have given a true and fair view of the matters required by Division 4 to be dealt with in the accounts or group accounts lies on that person.

**(5)** If, after the end of the period within which any accounts of a company or any report of the directors of a company is or are required by Division 4, 5 or 6 to be made out, the Commission, by notice in writing to each of the directors, requires the directors to produce the accounts or report to a person specified in the notice on a day and at a place so specified, and the directors fail to produce the accounts or report as required by the notice, then, in any proceeding for a failure to comply with Division 4, 5 or 6 proof of the failure to produce the accounts or report as required by the notice is *prima facie* evidence that the accounts or report were not made out within that period.

***Division 8*—*Inspection of records***

**Inspection of records**

**319.** **(1)** Where:

(a) a member of a company applies to the Court for an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member to inspect books of the company; and

(b) the Court is satisfied that the member is acting in good faith and that the inspection is to be made for a proper purpose;

the Court may:

(c) make an order authorising a registered company auditor, or a duly qualified legal practitioner, acting on behalf of the member, at such time as is specified in the order, to inspect, and to make copies of, or take extracts from, specified books of the company; and

(d) make such other order or orders (if any) as it thinks fit including, without limiting the generality of the foregoing, an order relating to the use that may be made of the information disclosed to the member by the registered company auditor or the duly qualified legal practitioner as a result of the inspection.

**(2)** The right of a member of a company to apply for an order under subsection (1) is in addition to and not in derogation of any right in relation to the inspection of books of a company that a member of a company has under any other law.

**Disclosure of information**

**320.** A registered company auditor, or a duly qualified legal practitioner, who inspects books of a company pursuant to an order of the Court under section 319 shall not disclose information acquired in the course of the inspection to a person other than:

(a) the member of the company on whose application the order was made; or

(b) a staff member, or a member or acting member, of the Commission.

***Division 9*—*Transitional***

**Application of this Part and Part 3.7 to Division 2 company**

**321.** A person need not comply with a provision of this Part or Part 3.7 in relation to a Division 2 company in relation to a financial year of the company that ended before its registration day.

**Continued application to Division 2 company of requirements of corresponding law**

**322.** **(1)** Where:

(a) a company of a State or Territory is registered as a company under Division 2 of Part 2.2; and

(b) as at the start of the company’s registration day, a person (being the company or anyone else) had not fully complied, in relation to the company in relation to a financial year of the company that ended before that day, with the requirements of a law, or of a previous law, of that State or Territory corresponding to a provision of this Part (other than sections 289 and 290) or Part 3.7;

subsections (2) and (3) of this section apply, subject to this Act, on and after that day.

**(2)** The person shall comply with those requirements as if:

(a) they were requirements imposed by a law of the Commonwealth; and

(b) in the law or previous law referred to in paragraph (1) (b):

(i) a reference to a particular law corresponding to a provision of this Act included a reference to that provision; and

(ii) a reference to the NCSC were, or included, as the case requires, a reference to the Commission.

**(3)** If, at a time, or throughout a period beginning, on or after that day, the person contravenes those requirements, this Act applies as if the person had, at that time or throughout that period, as the case may be, contravened the provision referred to in paragraph (1) (b).

**(4)** The regulations may modify or vary, and may exempt from compliance with, requirements with which this section requires a person to comply.

**Division 3 or 4 companies**

**323.** The regulations may provide for the application of this Part and Part 3.7, with the prescribed modifications (if any), in relation to a Division 3 or 4 company in relation to a financial year of the company ending before its registration day.

**PART 3.7—AUDIT**

**Qualifications of auditors**

**324. (1)** Subject to this section, a person shall not:

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company; or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company;

if:

(d) the person is not a registered company auditor;

(e) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, owes more than $5,000 to the company or to a related body corporate; or

(f) except where the company is an exempt proprietary company, the person:

(i) is an officer of the company;

(ii) is a partner, employer or employee of an officer of the company; or

(iii) is a partner or employee of an employee of an officer of the company.

**(2)** Subject to this section, a firm shall not:

(a) consent to be appointed as auditor of a company;

(b) act as auditor of a company; or

(c) prepare a report required by this Act to be prepared by a registered company auditor or by an auditor of a company;

unless:

(d) at least 1 member of the firm is a registered company auditor who is ordinarily resident in Australia;

(e) the business name under which the firm is carrying on business is registered under a law of a State or Territory relating to the registration of business names or a return in the prescribed form has been lodged showing, in relation to each member of the firm, the member’s full name and address as at the time when the firm so consents, acts or prepares a report;

(f) no member of the firm, and no body corporate in which a member of the firm is a substantial shareholder for the purposes of Part 6.7, owes more than $5,000 to the company or to a related body corporate;

(g) except where the company is an exempt proprietary company, no member of the firm is:

(i) an officer of the company;

(ii) a partner, employer or employee of an officer of the company; or

(iii) a partner or employee of an employee of an officer of the company; and

(h) except where the company is an exempt proprietary company, no officer of the company receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

**(3)** A reference in subsection (1) or (2) to indebtedness to a body corporate does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of Part 4.5 where:

(a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and

(b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as his or her principal place of residence.

**(4)** For the purposes of subsections (1) and (2), a person shall be deemed to be an officer of a company if:

(a) the person is an officer of a related body corporate; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person in relation to the company—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the company or of a related body corporate.

**(5)** For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of being or having been the liquidator of that company or of a related body corporate.

**(6)** For the purposes of this section, a person shall not be taken to be an officer of a company by reason only of having been appointed as auditor of that company or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the company or a related body corporate service of process or any notices required to be served on the company or related body corporate.

**(7)** The appointment of a firm as auditor of a company shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.

**(8)** Where a firm that has been appointed as auditor of a company is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:

(a) a person who was deemed under subsection (7) to be an auditor of the company and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor

of the company as from the day of his or her retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 329 does not apply to that resignation;

(b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the company as from the day of his or her admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the company;

but nothing in this subsection affects the operation of subsection (2).

**(9)** Except as provided by subsection (8), the appointment of the members of a firm as auditors of a company that is deemed by subsection (7) to have been made by reason of the appointment of the firm as auditor of the company is not affected by the dissolution of the firm.

**(10)** A report or notice that purports to be made or given by a firm appointed as auditor of a company shall not be taken to be duly made or given unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

**(11)** Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, auditor of a company or prepares a report required by this Act to be prepared by an auditor of a company, each member of the firm is guilty of an offence.

**(12)** Where it is, in the opinion of the Commission, impracticable for an exempt proprietary company to obtain the services of a registered company auditor as auditor of the company by reason of the place where the company carries on business, a person who is, in the opinion of the Commission, suitably qualified or experienced and is approved by the Commission for the purposes of this Act in relation to the audit of the company’s accounts may be appointed as auditor of the company, subject to such terms and conditions as are specified in the approval.

**(13)** A person appointed in accordance with subsection (12) shall, in relation to the auditing of the company’s accounts and, if it is a holding company for which group accounts are required, group accounts but subject to the terms and conditions of the approval under that subsection, be deemed to be a registered company auditor and the provisions of this Act shall, with the necessary modifications, apply in relation to the person accordingly.

**(14)** Where a person approved by the Commission under subsection (12) is acting as auditor of a company, the Commission may at any time, by notice in writing given to the company:

(a) amend, revoke or vary the terms and conditions of its approval; or

(b) terminate the appointment of that person as auditor of the company.

**(15)** A notice under subsection (14) terminating the appointment of a person as auditor of a company takes effect as if, on the date on which the notice is received by the company, the company had received from the person notice of the person’s resignation as auditor taking effect from that date.

**(16)** A person shall not:

(a) if the person has been appointed auditor of a company—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the company; or

(b) if the person is a member of a firm that has been appointed auditor of a company—knowingly disqualify the firm while the appointment continues from acting as auditor of the company.

**When unlimited exempt proprietary company need not appoint auditor**

**325. (1)** Despite this Part, an exempt proprietary company that is an unlimited company need not appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or converts to, such a company or is a subsequent annual general meeting, if:

(a) at the date of the annual general meeting no member of the company is a person other than a natural person, an exempt proprietary company, that is an unlimited company, or an exempt proprietary company of a State or Territory that is an unlimited company of that State or Territory; and

(b) not more than 1 month before the annual general meeting, all the members of the company have agreed that the company need not appoint an auditor.

**(2)** The directors of an exempt proprietary company that is an unlimited company need not comply with subsection 327 (1) if:

(a) all the members of the company have agreed, on a day not later than 14 days after the incorporation of the company, that the company need not appoint an auditor; and

(b) between the day of the incorporation of the company and the day referred to in paragraph (a), no member of the company is a person other than a natural person, an exempt proprietary company that is an unlimited company, or an exempt proprietary company of a State or Territory that is an unlimited company of that State or Territory.

**(3)** Where a company, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of the proceedings of general meetings of the company.

**(4)** An exempt proprietary company that is an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

**(5)** Within 1 month after:

(a) a company that by reason of the circumstances referred to in subsection (1) or (2) does not have an auditor ceases to be an exempt proprietary company or ceases to be an unlimited company; or

(b) a body corporate other than:

(i) an exempt proprietary company that is an unlimited company; or

(ii) an exempt proprietary company of a State or Territory that is an unlimited company of that State or Territory;

becomes a member of an exempt proprietary company that, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor;

the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

**(6)** A person or firm appointed as auditor of a company under subsection (5) holds office, subject to this Division, until the next annual general meeting of the company.

**When exempt proprietary company need not appoint auditor**

**326. (1)** Despite this Part, an exempt proprietary company that is not an unlimited company need not appoint an auditor at an annual general meeting, whether that meeting is the first annual general meeting held after the company is incorporated as, or becomes, such a company or is a subsequent annual general meeting, if not more than 1 month before the annual general meeting all the members of the company have agreed that the company need not appoint an auditor.

**(2)** The directors of an exempt proprietary company that is not an unlimited company need not comply with subsection 327 (1) if all the members of the company have agreed, on a day not later than 14 days after the incorporation of the company, that the company need not appoint an auditor.

**(3)** Where a company, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor, a secretary of the company shall record a minute to that effect in the book containing the minutes of proceedings of general meetings of the company.

**(4)** An exempt proprietary company that is not an unlimited company and that at an annual general meeting did not appoint an auditor shall at the next annual general meeting of the company appoint an auditor unless the conditions referred to in subsection (1) are satisfied.

**(5)** Where:

(a) a directors’ statement relating to accounts of a company contains a statement to the effect that, in respect of a financial year, the company:

(i) did not keep such accounting records as correctly record and explain its transactions and financial position;

(ii) did not so keep its accounting records that true and fair accounts of the company can be prepared from time to time; or

(iii) did not so keep its accounting records that the accounts of the company can be conveniently and properly audited in accordance with this Act;

(b) a directors’ statement relating to accounts of a company contains a statement to the effect that the accounts have not been properly prepared by a competent person;

(c) a directors’ statement relating to group accounts of a company contains a statement to the effect that the group accounts have not been properly prepared by a competent person; or

(d) a director of a company is convicted of an offence under subsection 1308 (2) or 1309 (1) in relation to a matter that, under subsection 301 (9) or 302 (7), has been stated in a directors’ statement relating to accounts or group accounts of the company;

there shall be deemed to be a vacancy in the office of the auditor of the company and subsection 327 (5) applies in relation to that vacancy.

**(6)** In subsection (5):

(a) a reference to a directors’ statement relating to accounts of a company is a reference to a statement that the directors of the company have, under section 301, caused to be attached to the accounts; and

(b) a reference to a directors’ statement relating to group accounts of a company is a reference to a statement that the directors of the holding company have, under section 302, caused to be attached to the group accounts.

**(7)** Where a company, by reason of circumstances referred to in subsection (1) or (2), does not have an auditor and all the members of the company have agreed that the company should appoint an auditor, an auditor may be appointed as if a vacancy had occurred in the office of auditor.

**(8)** Within 1 month after a company that, by reason of the circumstances referred to in subsection (1) or (2), does not have an auditor ceases to be an exempt proprietary company, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

**(9)** If, within 14 days after a company that has an auditor becomes an exempt proprietary company, all the members of the company agree, this Act does not prevent the company from terminating the appointment of the auditor and, where the appointment is so terminated, a vacancy in the office of auditor of the company shall be deemed not to have occurred.

**(10)** A person or firm appointed as auditor of a company under subsection (5) or (8) holds office, subject to this Division, until the next annual general meeting of the company and subsection (1) does not apply in relation to that company.

**Appointment of auditors**

**327. (1)** Within 1 month after the day on which a company is incorporated, the directors of the company shall appoint, unless the company at a general meeting has appointed, a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company.

**(2)** A person or firm appointed as auditor of a company under subsection (1) holds office, subject to this Part, until the first annual general meeting of the company.

**(3)** A company shall:

(a) at its first annual general meeting appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors of the company; and

(b) at each subsequent annual general meeting, if there is a vacancy in the office of auditor of the company, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

**(4)** A person or firm appointed as auditor under subsection (3) holds office until death or removal or resignation from office in accordance with section 329 or until ceasing to be capable of acting as auditor by reason of subsection 324 (1) or (2).

**(5)** Within 1 month after a vacancy, other than a vacancy caused by the removal of an auditor from office, occurs in the office of auditor of the company, if there is no surviving or continuing auditor of the company, the directors shall, unless:

(a) the company at a general meeting has appointed a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy; or

(b) where the company is an exempt proprietary company, all the members of the company have within 1 month after the vacancy occurs agreed that it is not necessary for the vacancy to be filled;

appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

**(6)** While a vacancy in the office of auditor continues, the surviving or continuing auditor or auditors (if any) may act.

**(7)** A company or the directors of a company shall not appoint a person or firm as auditor of the company unless that person or firm has, before the appointment, consented by notice in writing given to the company or to the directors to act as auditor and has not withdrawn his, her or its consent by notice in writing given to the company or to the directors.

**(8)** A notice under subsection (7) given by a firm shall be signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

**(9)** If a company appoints a person or firm as auditor of a company in contravention of subsection (7), the purported appointment does not have any effect and the company and any officer of the company who is in default are each guilty of an offence.

**(10)** Where an auditor of a company is removed from office at a general meeting in accordance with section 329:

(a) the company may at that meeting (without adjournment), by a resolution passed by a majority of not less than three-quarters of such members of the company as, being entitled so to do, vote in person or, where proxies are allowed, by proxy, forthwith appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, to whom or which has been sent a copy of the notice of nomination in accordance with subsection 328 (3); or

(b) if such a resolution is not passed or, by reason only that such a copy of the notice of nomination has not been sent to a person, could not be passed, the meeting may be adjourned to a day not earlier than 20 days and not later than 30 days after the day of the meeting and the company may, at the adjourned meeting, by ordinary resolution appoint as auditor or auditors a person or persons, a firm or firms, or a person or persons and a firm or firms, notice of whose nomination for appointment as auditor has been received by the company from a member of the company at least 14 clear days before the day to which the meeting is adjourned.

**(11)** Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under subsection (1), the company shall, within the period of 7 days commencing on the day of the failure, give to the Commission notice of the failure, and, subject to subsection (12), the Commission:

(a) in a case where the company, before the end of that period, gives to the Commission notice of the failure—shall, upon receiving the notice; or

(b) in any other case:

(i) may, at any time after the end of that period and before the Commission receives from the company notice of the failure; and

(ii) if the company, after the end of that period, gives to the Commission notice of the failure—shall, upon receiving the notice;

appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

**(12)** Where, after the removal from office of an auditor of a company, the company fails to appoint an auditor under subsection (10), the Commission shall not appoint an auditor of the company under subsection (11):

(a) in any case—if there is another auditor of the company whom the Commission believes to be able to carry out the responsibilities of auditor alone and who agrees to continue as auditor;

(b) in the case of an exempt proprietary company—if:

(i) all the members have, since the removal from office of the first-mentioned auditor, agreed that it is not necessary for an auditor to be appointed; and

(ii) the company has given to the Commission notice of the failure and has, at the time of giving to the Commission notice of the failure, given to the Commission notice that all the members have so agreed; or

(c) in a case where, at the end of the period of 7 days commencing on the day of the failure, the company has not given to the Commission notice of the failure—if the Commission has, at any time after the end of that period, already appointed an auditor of the company under subsection (11).

**(13)** Subject to subsection (11), if a company does not appoint an auditor when required by this Act to do so, the Commission may, on the application in writing of a member of the company, appoint as auditor or auditors of the company a person or persons, a firm or firms, or a person or persons and a firm or firms, who or which consents or consent to be so appointed.

**(14)** A person or firm appointed as auditor of a company under subsection (5), (10), (11) or (13) holds office, subject to this Division, until the next annual general meeting of the company.

**(15)** Notwithstanding subsection (4), a person or firm who holds the office of auditor of a company that becomes a subsidiary of a corporation shall, unless the person or firm sooner vacates that office, retire at the annual general meeting of that subsidiary next held after it becomes such a subsidiary but, subject to this Division, is eligible for re-appointment.

**(16)** If a director of a company fails to take all reasonable steps to comply with, or to secure compliance with, subsection (1) or (5), he or she is guilty of an offence.

**Nomination of auditors**

**328.** **(1)** Subject to this section, a company is not entitled to appoint a person or a firm as auditor of the company at its annual general meeting, not being a meeting at which an auditor is removed from office, unless notice in writing of his, her or its nomination as auditor was given to the company by a member of the company:

(a) before the meeting was convened; or

(b) not less than 21 days before the meeting.

**(2)** If a company purports to appoint a person or firm as auditor of the company in contravention of subsection (1), the purported appointment is of no effect and the company and any officer of the company who is in default are each guilty of an offence.

**(3)** Where notice of nomination of a person or firm for appointment as auditor of a company is received by the company, whether for appointment at a meeting or an adjourned meeting referred to in subsection 327 (1) or at an annual general meeting, the company shall:

(a) not less than 7 days before the meeting; or

(b) at the time notice of the meeting is given;

send a copy of the notice of nomination to each person or firm nominated, to each auditor of the company and to each person entitled to receive notice of general meetings of the company.

**Removal and resignation of auditors**

**329.** **(1)** An auditor of a company may be removed from office by resolution of the company at a general meeting of which special notice has been given, but not otherwise.

**(2)** Where special notice of a resolution to remove an auditor is received by a company, it shall as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice.

**(3)** Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to every member of the company to whom notice of the meeting is sent.

**(4)** Unless the Commission on the application of the company otherwise orders, the company shall send a copy of the representations in accordance with the auditor’s request, and the auditor may, without prejudice to his or her right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

**(5)** An auditor of a company may, by notice in writing given to the company, resign as auditor of the company if:

(a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to the Commission, notified the company in writing of the application to the Commission; and

(b) the consent of the Commission has been given.

**(6)** The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (5), notify the auditor and the company whether it consents to the resignation of the auditor.

**(7)** A statement made by an auditor in an application to the Commission under subsection (5) or in answer to an inquiry by the Commission relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and

(b) may not be made the ground of a prosecution, action or suit against the auditor;

and a certificate by the Commission that the statement was made in the application or in the answer to the inquiry by the Commission is conclusive evidence that the statement was so made.

**(8)** Subject to subsection (9), the resignation of an auditor takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation;

(b) on the day on which the Commission gives its consent to the resignation; or

(c) on the day (if any) fixed by the Commission for the purpose;

whichever last occurs.

**(9)** The resignation of an auditor of an exempt proprietary company does not require the consent of the Commission under subsection (5), and takes effect:

(a) on the day (if any) specified for the purpose in the notice of resignation; or

(b) on the day on which the notice is received by the company;

whichever is the later.

**(10)** Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph 324 (2) (d) of acting as auditor of a company, the member so retiring or withdrawing shall (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he or she obtains the consent of the Commission to his or her retirement or withdrawal.

**(11)** Within 14 days after:

(a) the removal from office of an auditor of a company; or

(b) the receipt of a notice of resignation from an auditor of a company,

the company shall:

(c) lodge with the Commission a notice of the removal or resignation in the prescribed form; and

(d) where there is a trustee for the holders of debentures of the company—give to the trustee a copy of the notice lodged with the Commission.

**Effect of winding up on office of auditor**

**330.** An auditor of a company ceases to hold office if:

(a) a special resolution is passed for the voluntary winding up of the company; or

(b) in a case to which paragraph (a) does not apply an order is made by the Court for the winding up of the company.

**Fees and expenses of auditors**

**331.** The reasonable fees and expenses of an auditor of a company are payable by the company.

**Powers and duties of auditors as to reports on accounts**

**332.** **(1)** An auditor of a company shall report to the members on the accounts required to be laid before the company at the annual general meeting and on the company’s accounting records and other records relating to those accounts and, if it is a company for which group accounts are required, shall also report to the members on the group accounts.

**(2)** A report by an auditor of a company under subsection (1) shall be furnished by the auditor to the directors of the company in sufficient time to enable the company to comply with the requirements of subsection 315 (2) in relation to that report.

**(3)** An auditor shall, in a report under this section, state:

(a) whether the accounts and, if the company is a company for which group accounts are required, the group accounts are in the auditor’s opinion properly drawn up:

(i) so as to give a true and fair view of the matters required by Division 4 of Part 3.6 (or, in the case of a prescribed corporation within the meaning of section 409, by Part 3.6), to be dealt with in the accounts and, if there are group accounts, in the group accounts;

(ii) in accordance with the provisions of this Act; and

(iii) in accordance with applicable accounting standards;

(b) if, in the auditor’s opinion, the accounts, or, if the company is a company for which group accounts are required, the accounts or group accounts, have not been drawn up in accordance with a particular applicable accounting standard:

(i) whether, in the auditor’s opinion, the accounts or group accounts, as the case may be, would, if drawn up in accordance with that accounting standard, have given a true and fair view of the matters required by Division 4 of Part 3.6 (or, in the case of a prescribed corporation within the meaning of section 409, by Part 3.6) to be dealt with in the accounts or group accounts;

(ii) if, in the auditor’s opinion, the accounts or group accounts, as the case may be, would not, if so drawn up, have given a true and fair view of those matters—the auditor’s reasons for being of that opinion;

(iii) if the directors have caused to be attached to the accounts or group accounts a statement under section 301 or 302, as the case may be, giving particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts—the auditor’s opinion concerning the particulars; and

(iv) if neither subparagraph (ii) nor (iii) applies—particulars of the quantified financial effect on the accounts or group accounts of the failure to so draw up the accounts or group accounts, as the case may be;

(c) in the case of group accounts:

(i) the names of the subsidiaries (if any) of which the auditor has not acted as auditor;

(ii) if there are included in the group accounts (whether separately or consolidated with other accounts) the accounts of a subsidiary of which the auditor has not acted as auditor, and the auditor has not examined those accounts and the auditor’s report (if any) on those accounts—the name of the subsidiary; and

(iii) where the auditor’s report on the accounts of any subsidiary was made subject to any qualification, or included any comment made under subsection (4)—the name of the subsidiary and particulars of the qualification or comment;

(d) any defect or irregularity in the accounts or group accounts and any matter not set out in the accounts or group accounts without regard to which a true and fair view of the matters dealt with by the accounts or group accounts would not be obtained; and

(e) if the auditor is not satisfied as to any matter referred to in paragraph (a) or (b), the auditor’s reasons for not being so satisfied.

**(4)** It is the duty of an auditor of a company to form an opinion as to each of the following matters:

(a) whether the auditor has obtained all the information and explanations that the auditor required;

(b) whether proper accounting records and other records, including registers, have been kept by the company as required by this Act;

(c) whether the returns received from branch offices of the company are adequate;

(d) where the company is a holding company:

(i) whether the accounts of the subsidiaries that are to be consolidated with other accounts are in form and content appropriate and proper for the purposes of the preparation of the consolidated accounts, and whether the auditor has received satisfactory information and explanations as required by the auditor for that purpose; and

(ii) whether the procedures and methods used by the company and by each of its subsidiaries in arriving at the amounts taken into any consolidated accounts were appropriate to the circumstances of the consolidation; and

(e) where group accounts are prepared otherwise than as one set of consolidated accounts for the group—whether the auditor agrees with the reasons for preparing them in the form in which they are prepared as given by the directors in the accounts;

and the auditor shall state in the auditor’s report particulars of any deficiency, failure or shortcoming in respect of any matter referred to in this subsection.

**(5)** An auditor of a company has a right of access at all reasonable times to the accounting records and other records, including registers, of the company, and is entitled to require from any officer of the company such information and explanations as the auditor desires for the purposes of audit.

**(6)** An auditor of a company for which group accounts are required has a right of access at all reasonable times to the accounting records and other records, including registers, of any subsidiary and is entitled to require from any officer or auditor of any subsidiary, at the expense of the holding company, such information and explanations in relation to the affairs of the subsidiary as the auditor requires for the purpose of reporting on the group accounts.

**(7)** The auditor’s report shall be attached to or endorsed on the accounts or group accounts and shall, if a member so requires, be read before the company at the annual general meeting, and is open to inspection by a member at any reasonable time.

**(8)** An auditor of a company or an agent of the auditor authorised by the auditor in writing for the purpose is entitled to attend any general meeting of the company and to receive all notices of, and other communications relating to, any general meeting that a member is entitled to receive, and to be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor in the capacity of auditor, and is entitled so to be heard notwithstanding that the

auditor retires at that meeting or a resolution to remove the auditor from office is passed at that meeting.

**(9)** If an auditor of a company becomes aware that the company or the directors has or have made default in complying with section 245 or the provisions of section 316 relating to the laying of accounts or group accounts before the annual general meeting of the company, the auditor shall immediately inform the Commission by notice in writing and, if accounts or group accounts have been prepared and audited, send to the Commission a copy of the accounts or group accounts and of the auditor’s report on the accounts or group accounts.

**(10)** Except in a case to which subsection (9) applies, if an auditor, in the course of the performance of duties as auditor of a company, is satisfied that:

(a) there has been a contravention of this Act; and

(b) the circumstances are such that in the auditor’s opinion the matter has not been or will not be adequately dealt with by comment in the auditor’s report on the accounts or group accounts or by bringing the matter to the notice of the directors of the company or, if the company is a subsidiary, of the directors of any body corporate of which the company is a subsidiary;

the auditor shall forthwith report the matter to the Commission by notice in writing.

**(11)** An auditor of a company who:

(a) is not satisfied that accounts or group accounts of a company have been drawn up in accordance with a particular applicable accounting standard; or

(b) is of the opinion that accounts or group accounts of the company have not been drawn up in accordance with a particular applicable accounting standard;

shall send by post to the Board, within 7 days after the auditor furnishes to the directors of the company the auditor’s report under this section on the accounts or group accounts, a copy of the report.

**Obstruction of auditor**

**333. (1)** An officer of a body corporate shall not, without lawful excuse, refuse or fail to allow an auditor of the body or of its holding company access, in accordance with the provisions of this Act, to any accounting records and other records, including registers, of the body in the officer’s possession, or to give any information or explanation as and when required under those provisions or otherwise hinder, obstruct or delay an auditor in the performance of the auditor’s duties or the exercise of the auditor’s powers.

**(2)** An auditor of a body corporate who refuses or fails without lawful excuse to allow an auditor of a holding company of the body corporate access, in accordance with the provisions of this Act, to any accounting

records and other records, including registers, of the body corporate in the auditor’s custody or control, or to give any information or explanation as and when required under those provisions, or otherwise hinders, obstructs or delays an auditor in the performance of the auditor’s duties or the exercise of the auditor’s powers, contravenes this subsection.

**Special provisions relating to borrowing corporations and guarantor bodies**

**334. (1)** The auditor of a borrowing corporation shall, within 7 days after furnishing the corporation or its members with any report, certificate or other document that the auditor is required by this Act or by the debentures or trust deed to give to the corporation or its members, send to every trustee for the holders of debentures of the borrowing corporation a copy of the report, certificate or document, together with a copy of each document accompanying the report, certificate or document so furnished.

**(2)** Where, in the performance of duties as auditor of a borrowing corporation, or a guarantor body, the auditor becomes aware of any matter that, in the auditor’s opinion, is or is likely to be prejudicial to the interests of the holders of debentures of the borrowing corporation and is relevant to the exercise and performance of the powers and duties imposed by this Act or by any trust deed upon any trustee for the holders of the debentures, the auditor shall, within 7 days after becoming aware of the matter, send a report in writing on the matter to the corporation of which the auditor is auditor and a copy of the report to the trustee.

**PART 3.8—ANNUAL RETURN**

**Annual return**

**335. (1)** Acompany shall, after the end of a financial year of the company and before the end of the period of 1 month commencing immediately after:

(a) unless paragraph (b) applies—the day of the annual general meeting of the company that is held in relation to that financial year; or

(b) if no annual general meeting of the company is held in relation to that financial year within the period within which section 245 requires it to be so held—the end of the last-mentioned period;

lodge an annual return of the company in the prescribed form, containing a list of members and such other particulars as are prescribed and accompanied by the prescribed documents.

**(2)** The Commission may serve on a company a partly completed annual return of the company that is in the prescribed form and in which the Commission has set out particulars on the basis of information previously received by the Commission.

**(3)** Where the Commission, under subsection (2), serves on a company a partly completed annual return of the company in which the Commission

has set out particulars (in this subsection referred to as the “relevant particulars”), the company may:

(a) delete such (if any) of the relevant particulars as are incorrect and insert in the return as required the correct particulars of the matters to which the deleted particulars related; and

(b) complete and lodge the return in accordance with this Part;

and, if the company lodges the return, the company shall be deemed, except for the purposes of subsection (2) and this subsection, to have set out in the return such (if any) of the relevant particulars as the company has not deleted.

**Annual activities statement**

**336. (1)** In this section:

“following period”, in relation to a statement that is included under this section in a company’s annual return, means the period beginning on the day specified under paragraph (3) (b) in the statement and ending on the day specified under that paragraph in the certificate included under this section in the next annual return of the company to be lodged.

**(2)** An annual return of a company shall include a statement that complies with this section.

**(3)** The statement shall:

(a) be signed by at least 2 directors of the company; and

(b) specify the day on which it was so signed, or the first day on which it was signed by a director of the company, as the case requires, being a day that is not more than 28 days before the annual return is lodged.

**(4)** Unless the company is dormant at the start of the specified day, the statement shall state whether or not, as at that day, trading activities within the meaning of this Act were the whole or a substantial part of the company’s activities.

**(5)** Unless the company is dormant at the start of the specified day, the statement shall state to the effect that the company:

(a) intends trading activities within the meaning of this Act to be the whole or a substantial part of the activities in which the company will engage during the whole or a specified part of the following period; or

(b) does not intend such trading activities to be the whole or a substantial part of the activities in which the company will engage during the whole or any part of the following period;

as the case requires.

**(6)** If, as at the specified day, the company 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), the certificate shall state to that effect.

**(7)** If the certificate states as mentioned in subsection (6), it shall also state to the effect that the company:

(a) intends to carry on that business as its sole or principal business during the whole or a specified part of the following period; or

(b) does not intend to carry on that business as its sole or principal business during the whole or any part of the following period;

as the case requires.

**(8)** If the company is dormant at the start of the specified day, the statement shall:

(a) state to the effect that the company was so dormant and specify the day (in this section called the “dormancy day”) on which the company last became dormant;

(b) if the dormancy day is more than 3 months after the company was incorporated—state whether or not trading activities within the meaning of this Act were the whole or a substantial part of the activities in which the company engaged during the 3 months ending on the dormancy day; and

(c) if the dormancy day is less than 3 months before the day specified under paragraph (3) (b)—state whether or not the company intends that, within 3 months after the dormancy day:

(i) the company will cease to be dormant; and

(ii) trading activities within the meaning of this Act will be the whole or a substantial part of the company’s activities.

**Exemption of certain companies**

**337. (1)** A public company that:

(a) has more than 500 members;

(b) keeps its principal register at a place within 25 kilometres of an office of the Commission; and

(c) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of members and its particulars of shares transferred;

need not comply with such of the provisions of this Division and of the regulations made for the purposes of this Division as relate to the inclusion inthe annual return of a list of members.

**(2)** A company limited by guarantee, being a company the memorandum or articles of which prohibits or prohibit the payment of any dividend by the company to its members, need not comply with such of the provisions of this Part and of the regulations made for the purposes of this Part as relate to the inclusion in the annual return of a list of members.

**(3)** The Commission may, by order published in the *Gazette* require a company to which subsection (1) or (2) applies to comply with all or any

of the provisions of this Part or of the regulations made for the purposes of this Part referred to in that subsection.

**Information in annual return deemed to satisfy certain other lodgment requirements**

**338.** Where:

(a) a company is or was required by or under a provision of this Act to lodge a document; and

(b) without having lodged the document, the company lodges in accordance with this Part an annual return of the company that sets out all the particulars that are or were required by or under that provision to be set out in the document;

then, for the purposes of this Act:

(c) the company shall be deemed to lodge the document when the company so lodges the annual return; and

(d) the document shall be deemed to consist of so much of the annual return as sets out the particulars referred to in paragraph (b).

**Division 2 company**

**339.** **(1)** A Division 2 company need not comply with this Part in relation to a financial year of the company that ended before its registration day.

**(2)** Where:

(a) a company of a State or Territory is registered as a company under Division 2 of Part 2.2; and

(b) as at the start of the company’s registration day, the company had not yet lodged with the NCSC, as required by a law of the State or Territory corresponding to this Part, a return relating to a financial year of the company ending before that day;

the company shall, within:

(c) if the period within which that law required the company so to lodge the return had not ended as at the start of that day—that period; or

(d) otherwise—14 days after that day;

lodge a return that relates to that financial year and is made out in accordance with the requirements of that law.

**CHAPTER 4—VARIOUS CORPORATIONS**

**PART 4.1—REGISTRATION OF CERTAIN BODIES**

***Division 1*—*Registrable Australian corporations***

**Registrable Australian corporation not to carry on business interstate unless registered**

**340.** A registrable Australian corporation shall not, on or after the transfer day for the corporation, carry on business interstate unless:

(a) it is registered under this Division; or

(b) it has applied to be registered under this Division and the application has not been dealt with.

**Application for registration**

**341.** Subject to this Part, where a registrable Australian corporation lodges for registration under this Division:

(a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;

(b) a certified copy of its constitution;

(c) a list of its directors containing particulars with respect to those directors that are equivalent to the particulars that this Act requires the register of the directors, principal executive officers and secretaries of a company to contain;

(d) in relation to each existing charge on property of the corporation that would be a registrable charge within the meaning of Part 3.5 if the corporation were a registered Australian corporation, the documents that subsection 263 (3) requires to be lodged;

(e) notice of the address of:

(i) if it has in its place of origin a registered office for the purposes of a law (other than this Act) there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin; and

(f) notice of the address of its registered office under section 359;

the Commission shall:

(g) register it under this Division by entering its name in a register kept for the purposes of this Division; and

(h) allot to it a registration number distinct from the registration number of each body corporate (other than the corporation) already registered under Part 2.2 or this Part.

**Cessation of business etc.**

**342. (1)** Within 7 days after ceasing to carry on business interstate, a registered Australian corporation shall lodge written notice that it has so ceased.

**(2)** Where the Commission has reasonable cause to believe that a registered Australian corporation does not carry on business interstate, the Commission may send to the corporation in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the corporation’s name off the register.

**(3)** Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the corporation is still carrying on business interstate, it may publish in the *Gazette*,and send to the corporation in the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the corporation’s name will, unless cause to the contrary is shown, be struck off the register.

**(4)** At the end of the period specified in a notice sent under subsection (3), the Commission may, unless cause to the contrary has been shown, strike the corporation’s name off the register and shall publish in the *Gazette* notice of the striking off.

**(5)** Nothing in subsection (4) affects the power of the Court to wind up a corporation whose name has been struck off the register.

**(6)** Where a corporation’s name is struck off the register under subsection (4), the corporation ceases to be registered under this Division.

**(7)** If the Commission is satisfied that a corporation’s name was struck off the register as a result of an error on the Commission’s part, the Commission may restore the corporation’s name to the register, and thereupon the corporation’s name shall be deemed never to have been struck off and the corporation shall be deemed never to have ceased to be registered under this Division.

**(8)** A person who is aggrieved by a corporation’s name having been struck off the register may, within 15 years after the striking off, apply to the Court for the corporation’s name to be restored to the register.

**(9)** If, on an application under subsection (8), the Court is satisfied that:

(a) at the time of the striking off, the corporation was carrying on business interstate; or

(b) it is otherwise just for the corporation’s name to be restored to the register;

the Court may, by order:

(c) direct the corporation’s name to be restored to the register; and

(d) give such directions, and make such provisions, as it thinks just for placing the corporation and all other persons in the same position, as nearly as practicable, as if the corporation’s name had never been struck off.

**(10)** On the lodging of an office copy of an order under subsection (9), the corporation’s name shall be deemed never to have been struck off.

**(11)** Where a corporation’s name is restored to the register under subsection (7) or (9), the Commission shall cause notice of that fact to be published in the *Gazette.*

**(12)** Where a corporation ceases to be registered under this Division, an obligation to lodge a document that this Act imposes on the corporation by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the corporation so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the corporation even if the period prescribed for lodging the document has not ended at or before that time.

**(13)** Where a registered Australian corporation commences to be wound up, or is dissolved, in its place of origin, the Court shall, on application by the person who is the liquidator for the corporation’s place of origin, or by the Commission, appoint a liquidator of the corporation.

**(14)** A liquidator of a registered Australian corporation who is appointed by the Court:

(a) shall, before any distribution of the corporation’s property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the corporation carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the corporation within a reasonable time before the distribution;

(b) shall not, without obtaining an order of the Court, pay out a creditor of the corporation to the exclusion of another creditor of the corporation; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the corporation in Australia outside the corporation’s place of origin and shall pay the net amount so recovered and realised to the liquidator of the corporation for its place of origin.

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

***Division 2*—*Foreign companies***

**Foreign company not to carry on business in Australia unless registered**

**343.** A foreign company shall not, on or after the transfer day for the foreign company, carry on business in Australia unless:

(a) it is registered under this Division; or

(b) it has applied to be registered under this Division and the application has not been dealt with.

**Application for registration**

**344.** Subject to this Part, where a foreign company lodges for registration under this Division:

(a) a certified copy of a current certificate of its incorporation or registration in its place of origin, or a document of similar effect;

(b) a certified copy of its constitution;

(c) a list of its directors containing particulars with respect to those directors that are equivalent to the particulars that this Act requires the register of the directors, principal executive officers and secretaries of a company to contain;

(d) if that list includes directors who are:

(i) resident in Australia; and

(ii) members of a local board of directors;

a memorandum that is duly executed by or on behalf of the foreign company and states the powers of those directors;

(e) in relation to each existing charge on property of the foreign company that would be a registrable charge within the meaning of Part 3.5 if the foreign company were a registered foreign company, the documents that subsection 263 (3) requires to be lodged;

(f) notice of the address of:

(i) if it has in its place of origin a registered office for the purposes of a law there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin; and

(g) notice of the address of its registered office under section 359;

the Commission shall:

(h) register the foreign company under this Division by entering its name in a register kept for the purposes of this Division; and

(j) allot to the foreign company a registration number distinct from the registration number of each body corporate (other than the foreign company) already registered under Part 2.2 or this Part.

**Appointment of local agent**

**345.** **(1)** A foreign company may at any time appoint a person as a local agent.

**(2)** The Commission shall not register a foreign company under this Division unless the foreign company has at least one local agent in relation to whom the foreign company has complied with section 346.

**(3)** Where:

(a) because a person ceased on a particular day to be a local agent of the foreign company, a registered foreign company has no local agent; and

(b) the foreign company carries on business, or has a place of business, in Australia;

the foreign company shall, within 21 days after that day, appoint a person as a local agent.

**Local agent: how appointed**

**346.** **(1)** A foreign company that lodges a memorandum of appointment, or a power of attorney, that is duly executed by or on behalf of the foreign company and states the name and address of a person who is:

(a) a natural person or a company;

(b) resident in Australia; and

(c) authorised to accept on the foreign company’s behalf service of process and notices;

shall be taken to appoint that person as a local agent.

**(2)** Where a memorandum of appointment, or a power of attorney, lodged under subsection (1) is executed on the foreign company’s behalf, the foreign company shall, unless it has already done so, lodge a copy, verified in writing in the prescribed form to be a true copy, of the document authorising the execution.

**(3)** A copy lodged under subsection (2) shall be deemed for all purposes to be the original of the document.

**(4)** A foreign company that appoints a local agent shall lodge a written statement that is in the prescribed form and is made by the local agent.

**(5)** A person whom a foreign company appoints as a local agent is a local agent of the foreign company until the person:

(a) ceases by virtue of section 347 to be such a local agent; or

(b) dies or ceases to exist.

**Local agent: how removed**

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

**(2)** Where a notice is lodged under subsection (1), the person ceases to be a local agent of the foreign company at the end of:

(a) the period of 21 days beginning on the day of lodgment; or

(b) the day specified in the notice;

whichever is the later.

**Liability of local agent**

**348.** A local agent of a registered foreign company:

(a) is answerable for the doing of all acts, matters and things that the foreign company is required by or under this Act to do; and

(b) is personally liable to a penalty imposed on the foreign company for a contravention of this Act unless the local agent satisfies the court or tribunal hearing the matter that the local agent should not be so liable.

**Balance-sheets and other documents**

**349.** **(1)** Subject to this section, a registered foreign company shall, at least once in every calendar year and at intervals of not more than 15 months, lodge a copy of its balance-sheet made up to the end of its last financial year, and a copy of its profit and loss account for its last financial year, in such form and containing such particulars and including copies of such documents as the company is required to prepare by the law for the time being applicable to that company in its place of origin, together with a statement in writing in the prescribed form verifying that the copies are true copies of the documents so required.

**(2)** The Commission may extend the period within which subsection (1) requires a balance-sheet, profit and loss account or other document to be lodged.

**(3)** The Commission may, if it is of the opinion that the balance-sheet, the profit and loss account and the other documents referred to in subsection (1) do not sufficiently disclose the company’s financial position:

(a) require the company to lodge a balance-sheet;

(b) require the company to lodge an audited balance-sheet;

(c) require the company to lodge a profit and loss account; or

(d) require the company to lodge an audited profit and loss account;

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

**(4)** The registered foreign company shall comply with the requirements set out in the notice.

**(5)** Where a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a balance-sheet, the company shall prepare and lodge a balance-sheet, or, if the Commission so requires, an audited balance-sheet, within such period, in such form and containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Act.

**(6)** Where a registered foreign company is not required by the law of its place of origin to prepare a profit and loss account, the company shall prepare and lodge a profit and loss account or, if the Commission so requires, an audited profit and loss account, within such period, in such form, containing such particulars and including such documents as the company would have been required to prepare if the company were a public company incorporated under this Act.

**(7)** The Commission may, by *Gazette* notice, declare that this section does not apply to specified foreign companies.

**(8)** Subsections (1) to (6), inclusive, do not apply in relation to a foreign company in relation to which a notice is in force under subsection (7).

**Cessation of business etc.**

**350. (1)** Within 7 days after ceasing to carry on business in Australia, a registered foreign company shall lodge written notice that it has so ceased.

**(2)** Where the Commission receives notice from a local agent of a registered foreign company that the foreign company has been dissolved, the Commission shall remove the foreign company’s name from the register.

**(3)** Where the Commission has reasonable cause to believe that a registered foreign company does not carry on business in Australia, the Commission may send to the foreign company in the prescribed manner a letter to that effect and stating that, if no answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with a view to striking the foreign company’s name of the register.

**(4)** Unless the Commission receives, within one month after the date of the letter, an answer to the effect that the foreign company is still carrying on business in Australia, it may publish in the *Gazette,* and send to the foreign company in the prescribed manner, a notice that, at the end of 3 months after the date of the notice, the foreign company’s name will, unless cause to the contrary is shown, be struck off the register.

**(5)** At the end of the period specified in a notice sent under subsection (4), the Commission may, unless cause to the contrary has been shown, strike the foreign company’s name off the register and shall publish in the *Gazette* notice of the striking off.

**(6)** Nothing in subsection (5) affects the power of the Court to wind up a foreign company whose name has been struck off the register.

**(7)** Where a foreign company’s name is struck off the register under subsection (5), the foreign company ceases to be registered under this Division.

**(8)** If the Commission is satisfied that a foreign company’s name was struck off the register as a result of an error on the Commission’s part, the

Commission may restore the foreign company’s name to the register, and thereupon the foreign company’s name shall be deemed never to have been struck off and the foreign company shall be deemed never to have ceased to be registered under this Division.

**(9)** A person who is aggrieved by a foreign company’s name having been struck off the register may, within 15 years after the striking off, apply to the Court for the foreign company’s name to be restored to the register.

**(10)** If, on an application under subsection (9), the Court is satisfied that:

(a) at the time of the striking off, the foreign company was carrying on business in Australia; or

(b) it is otherwise just for the foreign company’s name to be restored to the register;

the Court may, by order:

(c) direct the foreign company’s name to be restored to the register; and

(d) give such directions, and make such provision, as it thinks just for placing the foreign company and all other persons in the same position, as nearly as practicable, as if the foreign company’s name had never been struck off.

**(11)** On the lodging of an office copy of an order under subsection (9), the foreign company’s name shall be deemed never to have been struck off.

**(12)** Where a foreign company’s name is restored to the register under subsection (8) or (10), the Commission shall cause notice of that fact to be published in the *Gazette.*

**(13)** Where a foreign company ceases to be registered under this Division, an obligation to lodge a document that this Act imposes on the foreign company by virtue of the doing of an act or thing, or the occurrence of an event, at or before the time when the foreign company so ceased, being an obligation not discharged at or before that time, continues to apply in relation to the foreign company even if the period prescribed for lodging the document has not ended at or before that time.

**(14)** Where a registered foreign company commences to be wound up, or is dissolved, in its place of origin:

(a) each person who, on the day when the winding up proceedings began, was a local agent of the foreign company shall, within the period of 1 month after that day or within that period as extended by the Commission in special circumstances, lodge or cause to be lodged notice of that fact and, when a liquidator is appointed, notice of the appointment; and

(b) the Court shall, on application by the person who is the liquidator for the foreign company’s place of origin, or by the Commission, appoint a liquidator of the foreign company

**(15)** A liquidator of a registered foreign company who is appointed by the Court:

(a) shall, before any distribution of the foreign company’s property is made, by advertisement in a daily newspaper circulating generally in each State or Territory where the foreign company carried on business at any time during the 6 years before the liquidation, invite all creditors to make their claims against the foreign company within a reasonable time before the distribution;

(b) shall not, without obtaining an order of the Court, pay out a creditor of the foreign company to the exclusion of another creditor of the foreign company; and

(c) shall, unless the Court otherwise orders, recover and realise the property of the foreign company in Australia and shall pay the net amount so recovered and realised to the liquidator of the foreign company for its place of origin.

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

**Principal Australian register of foreign company**

**351. (1)** A registered foreign company that has a share capital may cause a branch register of members to be kept in Australia.

**(2)** Where a member of a registered foreign company is resident in Australia and requests the foreign company in writing to register in a branch register in Australia shares held by the member, then:

(a) if the foreign company already keeps a principal Australian register— the foreign company shall register in that register the shares held by the member; or

(b) otherwise—the foreign company shall, within 1 month after receiving the request:

(i) keep at its registered office or at some other place in Australia a branch register of members; and

(ii) register in that register the shares held by the member.

**(3)** Subsection (2) does not apply in relation to a foreign company whose constitution prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, shares in the foreign company.

**(4)** Subject to this section, a registered foreign company that does not keep a register under section 352 may discontinue its principal Australian register and shall, if it does so, transfer all entries in that register to a register of members kept outside Australia.

**(5)** Where shares held by a member of a registered foreign company who is resident in Australia are registered in the foreign company’s principal

Australian register, the foreign company shall not discontinue that register without that member’s written consent.

**Branch registers in Australia**

**352.** **(1)** A registered foreign company that has a share capital and keeps a principal Australian register in a State or Territory may cause a branch register of members to be kept at a place outside that State or Territory.

**(2)** Where a member of a registered foreign company that keeps a principal Australian register in a State or Territory is resident in another State or Territory and requests the foreign company in writing to register in a branch register in that other State or Territory shares held by the member, then, if the foreign company keeps a branch register in that other State or Territory, the foreign company shall register in that branch register the shares held by that member.

**(3)** A foreign company shall keep, at the place where its principal Australian register is kept, a duplicate of each of its branch registers, properly entered up from time to time.

**(4)** A duplicate kept under subsection (3) shall be deemed to be part of the principal Australian register.

**(5)** Within 28 days after an entry is made in the branch register of a foreign company, the foreign company shall send a copy of the entry to the place where its principal Australian register is kept.

**(6)** Subject to subsections (3), (4) and (5), a foreign company shall distinguish shares in the foreign company that are registered in a branch register from the shares registered in its principal Australian register.

**(7)** Subject to subsections (3), (4) and (5), while shares in a foreign company are registered in a branch register, the foreign company shall not register in its principal Australian register or in any other branch register a transaction in relation to the shares.

**(8)** A foreign company may discontinue a branch register kept in a State or Territory and shall, if it does so, transfer all entries in that register:

(a) if the foreign company keeps another branch register in that State or Territory—to that other branch register; or

(b) otherwise—to the principal Australian register.

**Register kept under section 351 or 352**

**353.** **(1)** This section has effect where a registered foreign company keeps a register under section 351 or 352.

**(2)** The foreign company shall keep the register in the same manner as this Act requires a company to keep its principal register.

**(3)** Subject to subsection (2), the foreign company shall register a transaction in the register in the same way, and at the same charge, as it

would have registered the transaction in the register of members that the foreign company keeps in its place of origin.

**(4)** A transfer of shares in the foreign company that is lodged at the foreign company’s registered office, or at the place where the register is kept, is binding on the foreign company.

**(5)** The Court has the same powers in relation to rectification of the register as it has in relation to rectification of a company’s register of members.

**(6)** The register shall be deemed to be part of the foreign company’s register of members.

**(7)** At the written request of a member who holds shares registered in the register, the foreign company shall remove the shares from the register and register them in such other register as is specified in the request.

**(8)** The register is *prima facie* evidence of matters that this Act requires or authorises to be entered in the register.

**Notifying Commission about register kept under section 351 or 352**

**354.** Within 14 days after:

(a) beginning to keep a register under section 351 or 352;

(b) changing the place where a register is so kept; or

(c) discontinuing a register under section 351 or 352;

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

**Effect of right to acquire shares compulsorily**

**355.** Where:

(a) a law of the place of origin of a foreign company that corresponds to section 414 or 701 entitles a person to give notice to another person that the first-mentioned person wishes to acquire shares in the foreign company that the other person holds; and

(b) some or all of those shares are registered in a register kept under section 351 or 352;

sections 351, 352, 353 and 354 cease to apply in relation to the foreign company until the first-mentioned person acquires, or ceases to be entitled to acquire, the shares so registered.

**Index of members and inspection and closing of registers**

**356.** The provisions of section 209 relating to the keeping of an index of the names of members of a company apply, with such adaptations as are necessary, in relation to persons holding shares in a register kept under section 351 or 352 and section 210 applies, with such adaptations as are necessary, to the inspection and closing of such a register and of an index kept in relation to such a register.

**Certificate as to shareholding**

**357.** A certificate under the seal of a foreign company specifying shares held by a member of that company and registered in a register kept under section 351 or 352 is *prima facie* evidence of the title of the member to the shares and of the fact that the shares are registered in the register.

***Division 3*—*Bodies registered under this Part***

**Names**

**358.** **(1)** The Commission shall not register a body corporate under Division 1 or 2 unless the body’s name is reserved under section 376 in respect of the body.

**(2)** A registered body shall not use a name in a State or Territory unless:

(a) the body is registered under that name under Division 1 or 2; or

(b) the name is registered in respect of the body under the law in force in that State or Territory relating to business names.

**(3)** Subject to this section, where a registered body lodges in accordance with section 361 notice of particulars of a change in the body’s name, the Commission shall alter the register it keeps for the purposes of Division 1 or 2, as the case requires, by substituting the body’s new name for the name by which the body was previously registered.

**(4)** The Commission shall not register under subsection (3) a change in a registered body’s name unless the name to which the body proposes to change its name is reserved under section 377 in respect of the body.

**Registered office**

**359.** **(1)** A registered body shall have a registered office in Australia to which all communications and notices may be addressed and that shall be open:

(a) if the body has:

(i) lodged a notice under subsection (2); or

(ii) lodged a notice under subsection (2) and a notice or notices under subsection (4);

for such hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day as are specified in that notice, or in the later or last of those notices, as the case may be; or

(b) otherwise—for not fewer than 5 hours between 10 a.m. and 4 p.m. on each business day;

and at which a representative of the body is present at all times when the office is open.

**(2)** A registered body may lodge written notice of the hours (being not fewer than 3) between 9 a.m. and 5 p.m. on each business day during which the body’s registered office is open.

**(3)** Within 7 days after a change in the situation of its registered office, a registered body shall lodge a written notice of the change and of the new address of that office.

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

**Certificate of registration**

**360.** **(1)** On registering a body corporate under Division 1 or 2 or registering under subsection 358 (3) a change in a registered body’s name, the Commission shall issue to the body a certificate, under the Commission’s common seal and in the prescribed form, of the body’s registration under that Division.

**(2)** A certificate under subsection (1) is *prima facie* evidence of the matters stated in it.

**Notice of certain changes**

**361.** **(1)** A registered body shall, within 1 month after a change in:

(a) its name;

(b) its constitution or any other document lodged in relation to the body;

(c) its directors;

(d) if the body is a foreign company;

(i) the powers of any directors who are resident in Australia and members of a local board of directors of the foreign company;

(ii) a local agent or local agents; or

(iii) the name or address of a local agent; or

(e) the situation of:

(i) if it has in its place of origin a registered office for the purposes of a law (other than this Act) there in force—that office; or

(ii) otherwise—its principal place of business in its place of origin;

lodge a written notice of particulars of the change, together with such documents (if any) as the regulations require.

**(2)** The Commission may in special circumstances extend the period within which subsection (1) requires a notice or document to be lodged.

**Publication of name etc.**

**362.** **(1)** This section applies to:

(a) a registered body; or

(b) a body corporate that is a registrable Australian corporation and carries on business interstate.

**(2)** The body shall set out in legible characters on every public document of the body that is issued, signed or published:

(a) in any case—the body’s name;

(b) unless the body is an Australian bank—the name of the body’s place of origin; and

(c) if:

(i) the liability of the body’s members is limited;

(ii) the last word of the body’s name is neither the word “Limited” nor the abbreviated “Ltd.”; and

(iii) the body is not an Australian bank;

notice of the fact that the liability of the body’s members is limited.

**(3)** The body shall set out its name, in legible characters, on every eligible negotiable instrument of the body that is signed or issued.

**(4)** On:

(a) every public document of the body that is issued, signed or published; and

(b) every eligible negotiable instrument of the body that is signed or issued;

the body shall set out in legible characters, after the body’s name when it first appears, the expression “Australian Registered Body Number” and the body’s registration number.

**(5)** The body may comply with subsection (4) by setting out:

(a) the abbreviation “Aust.” instead of the word “Australian”;

(b) the abbreviation “Regd.” instead of the word “Registered”;

(c) the abbreviation “No.” instead of the word “Number”; or

(d) the abbreviation “A.R.B.N.” instead of the expression “Australian Registered Body Number”.

**(6)** An officer of the body, or any other person, shall not, on the body’s behalf, issue, sign or publish a public document of the body that contravenes subsection (2) or (4).

**(7)** An officer of the body, or any other person, shall not sign or issue, or authorise to be signed or issued, on the body’s behalf, an eligible negotiable instrument of the body that contravenes subsection (3).

**(8)** A person who contravenes subsection (7) is liable to the holder of the eligible negotiable instrument for the amount due on it unless that amount is paid by the body.

**(9)** Unless the body is an Australian bank, it shall paint or affix and keep painted or affixed, in a conspicuous position and in letters easily legible, on the outside of its registered office and of every office and place at which its business is carried on and that is open and accessible to the public:

(a) its name and the name of its place of origin;

(b) if the liability of its members is limited and the last word of its name is neither the word “Limited” nor the abbreviated “Ltd.” —notice of the fact that the liability of its members is limited; and

(c) in the case of its registered office—the expression “Registered Office”.

**(10)** If the body is an Australian bank, it shall paint or affix its name, and shall keep its name painted or affixed, in a conspicuous position and in letters easily legible, on the outside of every office or place at which its business is carried on and that is open and accessible to the public.

**Service of documents on registered body**

**363. (1)** A document may be served on a registered body:

(a) by leaving it at, or by sending it by post to, the registered office of the body; or

(b) in the case of a registered foreign company—by leaving it at, or by sending it by post to, the address of a local agent of the foreign company, being:

(i) in a case to which subparagraph (ii) does not apply—an address notice of which has been lodged under subsection 346 (1); or

(ii) if a notice or notices of a change or alteration in that address has or have been lodged under subsection 361 (1)—the address shown in that last-mentioned notice or the later or latest of those last-mentioned notices.

**(2)** For the purposes of subsection (1), the situation of the registered office of a registered body:

(a) in a case to which neither paragraph (b) nor paragraph (c) applies— shall be deemed to be the place notice of the address of which has been lodged under paragraph 341 (e) or 344 (g);

(b) if only one notice of a change in the situation of the registered office has been lodged with the Commission under subsection 359 (3)—shall, on and from:

(i) the day that is 7 days after the day on which the notice was lodged; or

(ii) the day that is specified in the notice as the day from which the change is to take effect;

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

(c) if 2 or more notices of a change in the situation of the registered office have been lodged under subsection 359 (3)—shall, on and from:

(i) the day that is 7 days after the day on which the later or latest of those notices was lodged; or

(ii) the day that is specified in the later or latest of those notices as the day from which the change is to take effect;

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

and shall be so deemed to be that place irrespective of whether the address of a different place is shown as the address of the registered office of the registered body in a return or other document (not being a notice under subsection 359 (3)) lodged after the notice referred to in paragraph (a) or (b), or the later or latest of the notices referred to in paragraph (c), was lodged.

**(3)** Without limiting the operation of subsection (1), if 2 or more directors of a registered body reside in Australia or an external Territory, a document may be served on the body by delivering a copy of the document personally to each of 2 of those directors.

**(4)** Where a liquidator of a registered body has been appointed, a document may be served on the company by leaving it at, or by sending it by post to, the last address of the office of the liquidator notice of which has been lodged.

**(5)** Nothing in this section affects the power of the Court to authorise a document to be served on a registered body in a manner not provided for by this section.

**Power to hold land**

**364.** **(1)** A registered Australian corporation that is a trading corporation, banking corporation or insurance corporation has power to hold land in any State or Territory.

**(2)** A registered Australian corporation that is incorporated in a Territory has power to hold land in any Territory.

**(3)** A registered foreign company has power to hold land in any State or Territory.

**(4)** Nothing in this section affects by implication:

(a) any other powers of a registered body; or

(b) the powers of any other body, whether incorporated or not.

**Application of certain State and Territory laws**

**365.** **(1)** Despite the foreign companies law of a State or Territory:

(a) a registered Australian corporation may carry on business interstate; and

(b) a registered foreign company may carry on business in Australia or in any State or Territory.

**(2)** Except as provided in subsection (3) or as prescribed, a law of the Commonwealth (other than this Act), or a law of a State or Territory, does not apply in relation to a registered body merely because it has at any time been registered under the foreign companies law of a State or Territory.

**(3)** Nothing in subsection (2) affects, except as provided by this Act (other than that subsection), any rights, privileges, powers, authorities, duties, functions, liabilities (including liabilities in respect of offences) or obligations of a registered body, or of any other person, existing immediately before the body became registered under this Part.

**(4)** Except as expressly provided in this Act, nothing in this Act is intended to exclude or limit the application, in relation to a registrable Australian corporation or a foreign company, of a law of a State or Territory, in so far as that law is capable of so applying concurrently with this Act.

**PART 4.2—NAMES**

**Interpretation**

**366.** In this Part:

“body corporate” includes an intended body corporate;

“company” includes an intended company;

“registrable body” includes an intended registrable body.

**Available names**

**367.** **(1)** Subject to this section, a name is available to a body corporate unless the name:

(a) is reserved or registered in respect of another body corporate; or

(b) is a name, or a name of a kind, that is declared by the regulations to be unacceptable for registration under this Part.

**(2)** In comparing for the purposes of paragraph (1) (a) a name in respect of which an application for reservation is made with a name that is reserved or registered, no regard shall be had to:

(a) any use of the definite article as the first word in one or both of those names;

(b) any word, abbreviation or symbol included in one or both of those names as required or permitted by section 368 or 371; or

(c) the type, size and case of letters, the size of any numbers or other characters, and any accents, spaces between letters, numbers or characters, and punctuation marks, used in one or both of those names.

**(3)** A name that is reserved in respect of a body corporate is available to that body.

**(4)** A name is available to a body corporate if the Minister has consented in writing to the name being available to that body.

**Names of particular classes of companies**

**368.** **(1)** A limited company shall have the word “Limited” or the abbreviation “Ltd.” as part of and at the end of its name.

**(2)** A no liability company shall have the words “No Liability” or the abbreviation “N.L.” as part of and at the end of its name.

**(3)** A proprietary company shall have the word “Proprietary” or the abbreviation “Pty.” as part of its name, inserted immediately before the word “Limited” or before the abbreviation “Ltd.” or, in the case of an unlimited company, at the end of its name.

**Use of words “Limited” and “No Liability”**

**369.** A corporation shall not carry on business under a name or title of which “Limited” or “No Liability”, or any abbreviation of that word, is the final word or abbreviation, unless the corporation is duly incorporated with limited liability or no liability, as the case may be, under an Australian company law or the law of a country or place outside Australia.

**Use of word “Proprietary”**

**370.** **(1)** A company shall not use the word “Proprietary”, or any abbreviation of that word, as part of its name unless the company fulfils the requirements that this Act requires proprietary companies to fulfil.

**(2)** Subsection (1) does not apply in relation to a Division 2 company that was originally incorporated before 24 December 1896 under the company law of Victoria.

**Abbreviations of words included in a company’s name**

**371.** A description of a company is not inadequate or incorrect merely because of one or more of the following:

(a) the use of the abbreviation “Co.” or “Coy.” instead of the word “Company” in the company’s name;

(b) the use of the abbreviation “Pty.” instead of the word “Proprietary” in the company’s name;

(c) the use of the abbreviation “Ltd.” instead of the word “Limited” in the company’s name;

(d) the use of the abbreviation “Aust.” instead of the word “Australian” in the company’s name;

(e) the use of the abbreviation “No.” instead of the word “Number” in the company’s name;

(f) the use of the symbol “&” instead of the word “and” in the company’s name;

(g) the use of the abbreviation “N.L.” instead of the words “No Liability” in the company’s name;

(h) the use of the abbreviation “A.C.N.” instead of the words “Australian Company Number” in the company’s name;

(j) the use of any of those words instead of the corresponding abbreviation or symbol in the company’s name.

**Company with registration number as name**

**372.** **(1)** This section applies where the memorandum, or the application for the registration, as the case requires, of a company that it is proposed to incorporate under Division 1 of Part 2.2:

(a) has been lodged; and

(b) states that the company’s name on registration is to be its registration number.

**(2)** Subsection 120 (2) does not apply in relation to the company.

**(3)** If the Commission registers the company under section 120, it shall so register it by a name consisting of the following:

(a) first, the expression “Australian Company Number”;

(b) next, the company’s registration number;

(c) next, the expression or expressions (if any) that section 368 requires to be included in the company’s name;

and shall register the name under this Part in respect of the company.

**Name of intended Division 1 company**

**373.** **(1)** A person may lodge an application to reserve a specified name in respect of an intended Division 1 company.

**(2)** If the name is available to the company, the Commission shall reserve it in respect of the company for 2 months after the date of lodgment of the application.

**(3)** Where:

(a) a name is reserved under this section in respect of a company; and

(b) the Commission registers the company by that name under Division 1 of Part 2.2;

the Commission shall register the name in respect of the company and, where the Commission does so, the name is no longer reserved in respect of the company.

**(4)** Where:

(a) a name is reserved under this section in respect of a company; and

(b) the person who applied for the reservation informs the Commission in writing that the person no longer wishes the name to be reserved in respect of the company;

the Commission shall cancel the reservation.

**(5)** The reservation of a name under this section in respect of a company does not of itself entitle the company to be registered by that name under Division 1 of Part 2.2.

**Name by which body corporate proposes to be registered as a company**

**374.** **(1)** A body corporate may lodge an application to reserve a specified name as the name by which it is proposed that the body be registered as a company under Division 2, 3 or 4 of Part 2.2.

**(2)** If the name is available to the body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

**(3)** Subject to this Part, where, at the commencement of Division 2 of Part 2.2, a company of a State or Territory was registered by a particular name under the company law of that State or Territory, then, so long as the company continues to be registered by that name under that company law, the name shall be deemed, except for the purposes of subsection 367 (1), to be reserved under this section in respect of the company.

**(4)** Subject to this Part, where, at the commencement of Division 3 of Part 2.2, a foreign company was registered or incorporated by a particular name under the law of its place of origin, then, so long as the foreign company continues to be registered or incorporated by that name under that law, the name shall be deemed, except for the purposes of subsection 367 (1), to be reserved under this section in respect of the foreign company.

**(5)** Where:

(a) a name is reserved under this section in respect of a body corporate; and

(b) the Commission registers the body as a company by that name under Division 2, 3 or 4 of Part 2.2;

the Commission shall register the name in respect of the company and, where the Commission does so, the name is no longer reserved in respect of the body.

**(6)** Where:

(a) a name is reserved under this section in respect of a body corporate; and

(b) the body informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

**(7)** The reservation of a name under this section in respect of a body corporate does not of itself entitle the body to be registered as a company by that name.

**Proposed new name of company**

**375.** **(1)** A company may lodge an application to reserve a specified name as the name to which the company proposes to change its name.

**(2)** If the name is available to the company, the Commission shall reserve it in respect of the company for 2 months after the date of lodgment of the application.

**(3)** Where:

(a) a name is reserved under this section in respect of a company; and

(b) the company changes its name to that name under section 382;

the Commission shall register the new name in respect of the company and, where the Commission does so:

(c) the new name is no longer reserved in respect of the company; and

(d) the Commission shall cancel the registration, in respect of the company, of the name by which the company was registered before it changed its name.

**(4)** Where:

(a) a name is reserved under this section in respect of a company; and

(b) the company informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

**(5)** The reservation of a name under this section in respect of a company does not of itself entitle the company to change its name to that name.

**Name by which registrable body proposes to be registered**

**376. (1)** A person may lodge an application to reserve a specified name in respect of an intended registrable body that it is proposed will be registered under Part 4.1.

**(2)** A registrable body may lodge an application to reserve a specified name as the name by which the body proposes to be registered under Part 4.1.

**(3)** If the name is available to the registrable body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

**(4)** Subject to this Part, where, at the commencement of Division 1 of Part 4.1, a registrable Australian corporation was registered or incorporated by a particular name under the law of its place of origin, then, so long as the corporation continues to be registered or incorporated by that name under that law, the name shall be deemed, except for the purposes of subsection 367 (1), to be reserved under this section in respect of the corporation.

**(5)** Subject to this Part, where, at the commencement of Division 2 of Part 4.1, a foreign company was registered or incorporated by a particular name under the law of its place of origin, then, so long as the foreign company continues to be registered or incorporated by that name under that law, the name shall be deemed, except for the purposes of subsection 367 (1), to be reserved under this section in respect of the foreign company.

**(6)** Where:

(a) a name is reserved under this section in respect of a registrable body; and

(b) the Commission registers the body by that name under Part 4.1;

the Commission shall register the name in respect of the body and, where the Commission does so, the name is no longer reserved in respect of the body.

**(7)** Where:

(a) a name is reserved under this section in respect of a registrable body; and

(b) the person who applied for the reservation of the name informs the Commission in writing that the person no longer wishes the name to be reserved in respect of the body;

the Commission shall cancel the reservation.

**(8)** The reservation of a name under this section in respect of a registrable body does not of itself entitle the body to be registered by that name under Part 4.1.

**New name or proposed new name of registered body**

**377.** **(1)** A registered body may lodge an application to reserve a specified name as the name to which the body has changed, or proposes to change, its name.

**(2)** If the name is available to the body, the Commission shall reserve it in respect of the body for 2 months after the date of lodgment of the application.

**(3)** Where:

(a) a name is reserved under this section in respect of a registered body; and

(b) whether before or after the name is reserved, the body changed or changes its name to that reserved name;

the Commission shall register the new name in respect of the body and, where the Commission does so:

(c) the new name is no longer reserved in respect of the body; and

(d) the Commission shall cancel the registration, in respect of the body, of the name by which the body was registered before it changed its name.

**(4)** Where:

(a) a name is reserved under this section in respect of a registered body; and

(b) the body informs the Commission in writing that it no longer wishes the name to be reserved in respect of it;

the Commission shall cancel the reservation.

**Applications under sections 373 to 377**

**378.** An application under any of sections 373 to 377, inclusive, shall be in the prescribed form and accompanied by the prescribed documents.

**Extension of reservation**

**379.** Where at any time during a period for which a name is reserved (whether or not pursuant to the exercise on any previous occasion or occasions of a power under this section) an application is made to the Commission for an extension of that period, the Commission may extend that period for a further period of 2 months.

**Cancellation of registration where body corporate dissolved or de-registered**

**380.** **(1)** Where a name is registered in respect of a body corporate and the body is dissolved, the Commission shall cancel the registration.

**(2)** Where a name is registered in respect of a body corporate and the body ceases to be registered under Part 2.2 or 4.1, the Commission shall cancel the registration of the name in respect of that body.

**Registration remains in force until cancelled**

**381.** The registration of a name under a provision of this Part remains in force under that provision until the Commission cancels it.

**Change of name**

**382.** **(1)** A company may, by special resolution and with the approval of the Commission, change its name.

**(2)** The Commission shall not approve a change of name of a company under subsection (1) unless the proposed new name is reserved in respect of the company under section 375.

**(3)** If the name of a company is (whether through inadvertence or otherwise and whether originally or by change of name) a name that is not available to the company:

(a) the company may, by special resolution, change its name to a name that is reserved in respect of that company under section 375; and

(b) if the Commission so directs, the company shall so change its name within 6 weeks after the date of the direction or within such longer period as the Commission allows, unless the Minister, by writing, annuls the direction.

**(4)** A change of name by a company under this section does not:

(a) create a new legal entity;

(b) prejudice or affect the identity of the body corporate constituted by the company or its continuity as a body corporate;

(c) affect the property, or the rights or obligations, of the company; or

(d) render defective any legal proceedings by or against the company;

and any legal proceedings that could have been continued or begun by or against the company by its former name may be continued or begun by or against it by its new name.

**Omission of “Limited” in names of charitable and other companies**

**383. (1)** Where the Commission is satisfied that a proposed limited company:

(a) is being formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, patriotism, pension or superannuation schemes or any other object useful to the community;

(b) will apply its profits (if any) or other income in promoting its objects; and

(c) will prohibit the payment of any dividend to its members;

the Commission may (after requiring, if it thinks fit, the proposal to be advertised in such manner as it directs either generally or in a particular case), by licence, authorise the proposed company to be incorporated as a company with limited liability without the addition of the word “Limited” to its name.

**(2)** Where the Commission is satisfied:

(a) that the objects of a limited company are restricted to those specified in paragraph (1) (a) and to objects incidental or conducive to those so specified; and

(b) that by its memorandum or articles the company is required to apply its profits (if any) or other income in promoting its objects and is prohibited from paying any dividend to its members;

the Commission may, by licence, authorise the company to change its name to a name approved by the Commission that does not contain the word “Limited”.

**(3)** A licence may be issued on such conditions as the Commission thinks fit.

**(4)** Any conditions on which a licence is so issued are binding on the company and shall, if the Commission so directs, be inserted in the memorandum or articles, which may, by special resolution, be altered to give effect to any such direction.

**(5)** A company in respect of which a licence is in force is exempt from complying with the provisions of this Act relating to the use of the word “Limited” as part of its name.

**(6)** Subject to subsection (7), a licence may be revoked by the Commission and, where a licence is so revoked:

(a) the name of the company shall be deemed to be altered by the addition of the word “Limited” at the end of the name; and

(b) the company no longer enjoys the exemptions and privileges granted, because of the licence, by or under this Act.

**(7)** Before a licence is revoked, the Commission shall give to the company notice in writing of the Commission’s intention to revoke the licence and shall give the company an opportunity to appear at a hearing before the

Commission and make submissions and give evidence in relation to the matter.

**(8)** Where a licence is revoked, a provision of the memorandum that was inserted in compliance with a condition on which the licence was issued may be altered in the same manner as a provision of that memorandum with respect to the objects of the company may be altered, and section 172 applies to a proposal for such an alteration accordingly.

**(9)** Where a licence is in force in respect of a company, an alteration of the memorandum or articles, other than an alteration consisting solely of a change of the name of the company, does not have any effect unless:

(a) a statement setting out the text of the alteration or proposed alteration has been lodged and the alteration or proposed alteration has been approved by the Commission; and

(b) the alteration is made in accordance with the articles and the provisions of this Act.

**(10)** Where an alteration or proposed alteration of the memorandum or articles of a company, other than an alteration consisting solely of a change of the name of the company, is approved as mentioned in paragraph (9) (a) and the alteration is made as mentioned in paragraph (9) (b), the alteration has effect notwithstanding a failure to obtain any consent or approval required to be obtained by virtue of a provision contained in the licence or a provision inserted in the memorandum or articles for the purposes of subsection (3) or a corresponding law.

**(11)** Where:

(a) a company of a State or Territory is registered as a company under Division 2 of Part 2.2; and

(b) a licence under a law corresponding to this section was in force in respect of that company immediately before its registration day;

that licence continues in force, subject to this section, as if it had been granted by the Commission under this section.

**PART 4.3—NO LIABILITY COMPANIES**

**Application of Act to no liability companies**

**384.** Subject to this Part and except as otherwise expressly provided in this Act, the provisions of this Act relating to public companies, other than Division 2 of Part 5.6 and section 477 (so far as it relates to calls), paragraphs 478 (1) (a) and (b), subsections 478 (2), (3) and (4) and subsection 483 (3), apply in relation to no liability companies.

**Shareholder not liable to calls or contributions**

**385.** The acceptance of a share in a no liability company, whether by original allotment or by transfer, does not constitute a contract on the part of the person accepting it to pay any calls in respect of the share or any contribution to the debts and liabilities of the company and such a person

is not liable to be sued for any calls or contributions but is not entitled to a dividend upon any such share upon which a call is due and unpaid.

**Dividends payable on shares irrespective of amount paid up**

**386.** Subject to any provisions of the articles relating to preferred, deferred or other special classes of shares, dividends that are payable to the shareholders in a no liability company are payable to the persons entitled to those dividends in proportion to the shares held by them respectively, irrespective of the amount paid up or credited as paid up on the shares.

**Calls: when due**

**387.** **(1)** The calls upon shares in a no liability company shall be so made that they are payable at least 14 days after the day on which the call is made, and no subsequent call shall be made until after the end of 7 days after the day on which the call made immediately before it is payable.

**(2)** When a call is made, notice of the amount of the call, of the day when it is payable and of the place for payment shall, at least 7 days before that day, be sent by post to the holder of shares on which the call is made.

**Forfeiture of shares**

**388.** **(1)** Any share in a no liability company upon which a call is unpaid at the end of 14 days after the day for its payment is thereupon forfeited without any resolution of directors or other proceedings and shall, subject to this Part, be offered for sale by public auction not more than 6 weeks after the day on which the call is payable.

**(2)** The sale shall be advertised not less than 14 and not more than 21 days before the day appointed for the sale in a daily newspaper circulating generally throughout Australia.

**(3)** Where a sale is not held because of error or inadvertence, the sale, if it is held in due course as soon as practicable after the discovery of the error or inadvertence, is not invalid.

**(4)** If there is any failure to comply with the provisions of this section, the company and any officer of the company who is in default are each guilty of an offence.

**(5)** At any such sale, a share forfeited for non-payment of any call may, if the company in accordance with its articles or by ordinary resolution so determines, be offered for sale and sold credited as paid up to the sum of the amount paid up on the share at the time of forfeiture and the amount of the call and the amount of any other calls becoming payable on or before the day of the sale.

**(6)** The proceeds of the sale shall be applied in payment of:

(a) first, the expenses of the sale;

(b) second, any expenses necessarily incurred in respect of the forfeiture; and

(c) third, the calls then due and unpaid;

and the balance (if any) shall be paid to the member whose share has been so sold on the member’s delivering to the company the share certificate that relates to the forfeited share.

**Provisions as to sale of forfeited shares**

**389.** **(1)** The directors may, in the case of a share advertised for sale as forfeited for non-payment of a call, fix a reserve price not exceeding the sum of the amount of the call due and unpaid on the share at the time of forfeiture and the amount of any other calls becoming payable on or before the date of the sale.

**(2)** If a bid at least equal to the reserve price so fixed is not made for the share, the share may be withdrawn from sale

**(3)** A share so withdrawn from sale or a share for which no bid is received at the sale shall be held by the directors in trust for the company and shall be disposed of in such manner as the company, in accordance with its articles or by resolution, determines, but, at any meeting of the company, no person is entitled to any vote in respect of the shares so held by the directors in trust.

**(4)** Unless otherwise specifically provided by resolution, the shares to be so disposed of shall first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

**Shares held by, or in trust for, company**

**390.** A call does not have any effect upon any forfeited share that is held by or in trust for the company pursuant to this Part, but such a share, when it is re-issued or sold by the company, may be credited as paid up to such amount as the company, in accordance with its articles or by resolution, determines.

**Sale of shares on non-payment of calls valid although specific numbers not advertised**

**391.** **(1)** When forfeited shares are sold for non-payment of any call, the sale is valid although the specific numbers of the shares are not advertised.

**(2)** In every advertisement, it is sufficient to give notice of the intended sale of forfeited shares by advertising to the effect that all shares on which a call remains unpaid will be sold.

**Postponement of sale**

**392.** **(1)** An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale or from any date to which the sale has duly been postponed, but so that no such intended sale shall be postponed to a date more than 90 days from the first date fixed for the intended sale.

**(2)** The date to which the sale is postponed shall, in respect of every postponement, be advertised in a daily newspaper circulating generally in Australia.

**Redemption of forefeited shares**

**393.** **(1)** Notwithstanding anything in this Part, if a share belonging to a person has been forfeited, the person may, at any time up to or on the day immediately before the day upon which it is intended to sell the share, redeem the share by payment to the company of:

(a) all calls due on the share; and

(b) if the company so requires:

(i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the company in respect of the forfeiture; and

(ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

**(2)** Upon such a payment, the person is entitled to the share as if the forfeiture had not occurred.

**Office to be open on day before sale**

**394.** On the day immediately before the day appointed for the sale of a forfeited share, the registered office of the company shall be open during the hours for which it is by this Act required to be open and accessible to the public.

**Distribution of surplus on cessation of business on winding up**

**395.** **(1)** If, on the winding up of a no liability company, there remains any surplus, the surplus shall be distributed amongst the parties entitled to it in proportion to the shares held by them respectively irrespective of the amounts paid up on the shares.

**(2)** A member who is in arrears in payment of any call, but whose shares have not been actually forfeited, is not entitled to share in such a distribution until the amount owing in respect of the call has been fully paid and satisfied.

**Distribution of surplus on cessation of business within 12 months after incorporation**

**396.** **(1)** If a no liability company ceases to carry on business within 12 months after its incorporation, shares issued for cash rank on a winding up, to the extent of the capital contributed by subscribing shareholders, in priority to those issued to vendors or promotors, or both, for consideration other than cash.

**(2)** In subsection (1), “no liability company” includes a company that, having been incorporated as a no liability company, changes its status under section 167.

**Rights attaching to preference shares issued to promoters**

**397.** **(1)** Notwithstanding the constitution of a no liability company, the holders of any shares issued to vendors or promotors are not entitled to any preference on the winding up of the company.

**(2)** In subsection (1), “no liability company” includes a company that, having been incorporated as a no liability company, changes its status under section 167.

**Restrictions on tribute arrangements**

**398.** **(1)** Without the sanction of a special resolution of the company, the directors of a no liability company shall not:

(a) let the whole or proportion of a mine or claim on tribute; or

(b) make any contract for working any land on tribute.

**(2)** Subsection (1) does not preclude the directors of a no liability company from letting the whole or portion of a mine or claim on tribute, or making any contract for working any land on tribute, for any period not exceeding 3 months, without the sanction of such a resolution, if no such letting or contract has been made within the period of 2 years immediately preceding the proposed letting or contract.

**PART 4.4—INVESTMENT COMPANIES**

**Interpretation**

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

“body corporate” does not include an exempt public authority;

“investment company” means a body corporate in relation to which an order under subsection (3) is in force;

“net tangible assets”, in relation to a body corporate, means tangible property at book values, less total liabilities at book values and less any aggregate amount by which the book values of the marketable securities held by the corporation exceed their market values;

“relevant provision of this Part” means any of the provisions of sections 400 to 407 (inclusive).

**(2)** A reference in a relevant provision of this Part to an investment company is a reference to an investment company to which that provision applies.

**(3)** The Commission may, by order published in the *Gazette*,declare to be an investment company a body corporate (being a company or a foreign corporation that is, or is required to be, registered as a foreign company under Division 2 of Part 4.1) that is engaged primarily in the business of investment in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control.

**(4)** Where the Commission makes an order declaring a body corporate to be an investment company, the Commission may specify in the order the relevant provisions of this Part that are to apply to that investment company.

**(5)** If, in an order declaring a body corporate to be an investment company, the Commission specifies relevant provisions of this Part that are to apply to that body corporate, any relevant provisions of this Part that are not so specified do not apply to the body corporate.

**(6)** If the Commission does not, in an order declaring a body corporate to be an investment company, specify relevant provisions of this Part that are to apply to the body, every provision of this Part applies to the body.

**Restrictions on borrowing by investment companies**

**400.** **(1)** An investment company shall not borrow an amount if that amount, or the sum of that amount and amounts previously borrowed by it and not repaid, exceeds an amount equivalent to 50% of its net tangible assets.

**(2)** An investment company shall not borrow an amount otherwise than by the issue of debentures if that amount, or the sum of that amount and amounts previously borrowed by it otherwise than by the issue of debentures and not repaid, exceeds an amount equivalent to 25% of its net tangible assets.

**(3)** In subsection (2), “debentures” does not include a debenture:

(a) that is redeemable, except at the option of the borrower exercised not earlier than 36 months after the day of issue of the debenture, within less than 5 years after that day; or

(b) that is issued to a bank as security for an overdraft.

**Restrictions on investments of investment companies**

**401.** **(1)** An investment company shall not invest an amount in a body corporate if that amount, or the sum of that amount and amounts previously invested by it in that body corporate and still so invested, exceeds an amount equivalent to 10% of the net tangible assets of the investment company.

**(2)** An investment company shall not hold more than 5% of the subscribed ordinary share capital of a body corporate.

**Restrictions on underwriting by investment companies**

**402.** **(1)** An investment company shall not underwrite any issue of authorised securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other authorised securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 40% of its net tangible assets.

**(2)** An investment company shall not underwrite any issue of non-authorised securities to an amount that, when added to the amount or amounts (if any) to which it has previously underwritten a current issue or issues of other non-authorised securities (not being an amount or amounts in respect of which the underwriting obligation has been discharged), exceeds an amount equivalent to 20% of its net tangible assets.

**(3)** Where:

(a) an investment company has underwritten any issue of securities and, in relation to the underwriting, has not contravened subsection (1) or (2); and

(b) the investment company, as a result of the underwriting, invests in a body corporate contrary to section 401;

the investment company shall be deemed not to have contravened a provision of that section by reason of so investing in the body corporate if, at the end of 12 months after so investing:

(c) the amount invested by it in the body corporate does not exceed an amount equivalent to 10% of the net tangible assets of the investment company; and

(d) it does not hold more than 5% of the subscribed ordinary share capital of the body corporate.

**(4)** This section applies in relation to sub-underwriting as if the sub-underwriting were underwriting.

**(5)** In this section:

“authorised securities” means securities in which trustees are authorised by an Australian law, or by a law of New Zealand, to invest trust funds in their hands;

“non-authorised securities” means securities other than authorised securities.

**Special requirements as to articles and prospectus**

**403. (1)** An investment company shall not issue a prospectus or permit a prospectus to be issued on its behalf unless the prospectus:

(a) where the memorandum of the company contains a provision stating the objects of the company:

(i) specifies the type of security in which, in accordance with the objects of the company, the company may invest; and

(ii) states whether it is among the objects of the company to invest in Australia or outside Australia or both; or

(b) where the memorandum of the company does not contain a provision stating the objects of the company—states that the memorandum does not contain such a provision.

**(2)** After the end of 3 months after an investment company has been declared to be an investment company, the investment company shall not borrow or invest any moneys, or underwrite or sub-underwrite any issue of

securities, unless the articles of the company specify the matters referred to in paragraph (1) (a) or (b), as the case requires.

**Investment company not to hold shares in other investment companies**

**404.** **(1)** An investment company shall not purchase, or (after the end of 3 years after it is declared to be an investment company) hold, shares in, or debentures of:

(a) another investment company; or

(b) a body corporate that is incorporated in Australia, in an excluded Territory, or in New Zealand, and in relation to which an order under subsection (2) is in force.

**(2)** The Commission may, by order published in the *Gazette*,declare a body corporate that is engaged primarily in the business of investment in marketable securities for the purpose of revenue or profit and not for the purpose of exercising control to be a body corporate to which paragraph (1) (b) applies.

**Investment company not to speculate in commodities**

**405.** **(1)** An investment company shall not, for the purpose of profit, buy or sell, or deal in, any raw materials or manufactured goods, whether in existence or not, otherwise than by investing in companies trading in such materials or goods.

**(2)** Subsection (1) does not apply in relation to:

(a) any buying, selling or dealing by an investment company pursuant to a contract entered into by the investment company before it was declared to be an investment company; or

(b) the selling of or the dealing in raw materials or manufactured goods acquired by the investment company:

(i) before it was so declared; or

(ii) pursuant to a contract entered into before it was so declared.

**Balance-sheets and accounts**

**406.** **(1)** An investment company shall state under separate headings in every balance-sheet of the company, in addition to any other matters required to be stated in that balance-sheet:

(a) the investments of the company in any securities other than relevant securities; and

(b) the manner in which the investments of the company have been valued.

**(2)** In subsection (1):

“relevant securities” means:

(a) government, municipal and other public debentures, stocks and bonds;

(b) shares in a body corporate;

(c) options in respect of shares in a body corporate; and

(d) debentures of a body corporate.

**(3)** An investment company shall attach to every such balance-sheet:

(a) a complete list of all purchases and sales of securities by the company during the period to which the accounts relate together with a statement of the total amount of brokerage paid or charged by the company during that period and the proportion of that brokerage paid to any stock or share broker, or any employee or nominee of any stock or share broker, who is an officer of the company; and

(b) a complete list of all the investments of the company as at the date of the balance-sheet showing the descriptions and quantities of those investments.

**(4)** An investment company shall show separately in the profit and loss account, in addition to any other matters required to be shown in that profit and loss account, income from underwriting (including sub-underwriting).

**Investment fluctuation reserve**

**407.** **(1)** The net profits and losses of an investment company from the purchase and sale of securities shall be respectively credited and debited by the company to a reserve account to be kept by it and to be called the “investment fluctuation reserve”.

**(2)** The investment fluctuation reserve is not available for the payment of dividends.

**(3)** The investment fluctuation reserve is available for the payment of income tax payable in respect of profits made on the sale of securities.

**Contraventions**

**408.** **(1)** If default is made by an investment company in complying with any of the provisions of this Part, the investment company and any officer of the investment company who is in default each contravene this subsection.

**(2)** A transaction entered into by the company is not invalid by reason only of such a contravention.

**PART 4.5—FINANCIAL STATEMENTS OF AUSTRALIAN BANKS AND LIFE INSURANCE CORPORATIONS**

**Australian banks and life insurance corporations**

**409.** **(1)** In this section, “prescribed corporation” means:

(a) an Australian bank; or

(b) a body corporate that is registered under the *Life Insurance Act 1945.*

**(2)** Subject to this section, Parts 3.6 and 3.7 apply in relation to a prescribed corporation that is a company or a subsidiary of a company.

**(3)** Where, under a law of the Commonwealth relating to banking, a prescribed corporation is required to prepare accounts annually, accounts of the corporation that comply with that law shall be deemed to comply with the provisions of Chapter 3 relating to accounts.

**(4)** Subsection 304 (1) does not apply to or in relation to a prescribed corporation or its directors.

**(5)** Where, under a law of the Commonwealth relating to life insurance, a prescribed corporation is required to prepare accounts annually, the prescribed corporation and the directors and auditors of the corporation shall not be taken to have contravened such of the provisions of Parts 3.6 and 3.7 as are applicable to it or them by reason only:

(a) that no accounts are laid before the annual general meeting of the corporation other than accounts that:

(i) comply with that law; or

(ii) comply with such conditions as are specified by the Commission; or

(b) that, where accounts that comply with such conditions as are specified by the Commission are laid before the annual general meeting of the corporation, an auditor’s report to the members on those accounts is not laid before that meeting.

**(6)** Subsection 332 (3) does not apply in relation to the accounts of a prescribed corporation that is registered under the *Life Insurance Act 1945* where those accounts comply with that law.

**(7)** Where, at the end of a financial year, a company is a group holding company and is, under section 295, required to cause group accounts to be made out, the company and the directors and auditors of the company:

(a) shall not be taken to have contravened the provisions of Chapter 3 relating to group accounts by reason only that the group accounts do not contain, whether separately or consolidated with other accounts, accounts of a prescribed corporation in the group other than accounts that:

(i) in any case—comply with a law of the Commonwealth relating to the preparation of annual accounts of the prescribed corporation; or

(ii) in the case of a prescribed corporation registered under the *Life Insurance Act 1945*—comply with such conditions as are specified by the Commission;

(b) shall not be taken to have contravened section 305 by reason only that a directors’ report made under that section relates only to bodies corporate in the group other than prescribed corporations; and

(c) shall not be taken to have contravened section 296 or 332 by reason only that that section is not complied with in relation to prescribed corporations in the group that are registered under the *Life Insurance Act 1945.*

**(8)** A prescribed corporation shall not be taken to have contravened section 315 in relation to an annual general meeting by reason only that it does not send to a person entitled to receive notice of general meetings of the company accounts or documents referred to in that section other than accounts and documents so referred to that, in compliance with the provisions of Part 3.6, whether by the operation of this section or otherwise, are to be laid before that annual general meeting.

**(9)** Where a prescribed corporation registered under the *Life Insurance Act 1945* does not lay before its annual general meeting accounts and an auditor’s report that comply with that Act, it shall lodge a copy of those accounts and a copy of that report on or before a day at most 9 months after the end of the period to which they relate.

**CHAPTER 5—EXTERNAL ADMINISTRATION**

**PART 5.1—ARRANGEMENTS AND RECONSTRUCTIONS**

**Interpretation**

**410.** A reference in this Part, in relation to a Part 5.1 body, to the directors is a reference to the directors of the body or any one or more of them.

**Power to compromise with creditors and members**

**411. (1)** Where a compromise or arrangement is proposed between a Part 5.1 body and its creditors or any class of them or between a Part 5.1 body and its members or any class of them, the Court may, on the application in a summary way of the body or of any creditor or member of the body, or, in the case of a body being wound up, of the liquidator, order a meeting or meetings of the creditors or class of creditors or of the members of the body or class of members to be convened in such manner, and to be held in such place or places, as the Court directs and, where the Court makes such an order, the Court may approve the explanatory statement required by paragraph 412 (1) (a) to accompany notices of the meeting or meetings.

**(2)** The Court shall not make an order pursuant to an application under subsection (1) unless:

(a) 14 days notice of the hearing of the application, or such lesser period of notice as the Court or the Commission permits, has been given to the Commission; and

(b) the Court is satisfied that the Commission has had a reasonable opportunity:

(i) to examine the terms of the proposed compromise or arrangement to which the application relates and a draft explanatory statement relating to the proposed compromise or arrangement; and

(ii) to make submissions to the Court in relation to the proposed compromise or arrangement and the draft explanatory statement.

**(3)** In subsection (2), “draft explanatory statement”, in relation to a proposed compromise or arrangement between a body and its creditors or any class of them or between a body and its members or any class of them, means a statement:

(a) explaining the effect of the proposed compromise or arrangement and, in particular, stating any material interests of the directors of the body, whether as directors, as members or creditors of the body or otherwise, and the effect on those interests of the proposed compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(b) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member of the body whether or not to agree to the proposed compromise or arrangement, being information that is within the knowledge of the directors of the body and has not previously been disclosed to the creditors or members of the body.

**(4)** A compromise or arrangement is binding on the creditors, or on a class of creditors, or on the members, or on a class of members, as the case may be, of the body and on the body or, if the body is in the course of being wound up, on the liquidator and contributories of the body, if, and only if:

(a) at a meeting convened in accordance with an order of the Court under subsection (1):

(i) in the case of a compromise or arrangement between a body and its creditors or a class of creditors—the compromise or arrangement is agreed to by a majority in number of the creditors, or of the creditors included in that class of creditors, present and voting, either in person or by proxy, being a majority whose debts or claims against the company amount in the aggregate to at least 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy, or of the creditors included in that class present and voting in person or by proxy, as the case may be; and

(ii) in the case of a compromise or arrangement between a body and its members or a class of members—the compromise or arrangement is agreed to by a majority in number of the members, or of the members included in that class of members, present and voting, either in person or by proxy, being, in the case of a body having a share capital, a majority

whose shares have nominal values that amount, in the aggregate, to at least 75% of the total of the nominal values of all the shares of the members present and voting in person or by proxy, or of the members included in that class present and voting in person or by proxy, as the case may be; and

(b) it is approved by order of the Court.

**(5)** Where the Court orders 2 or more meetings of creditors or of a class of creditors, or 2 or more meetings of members or of a class of members, to be held in relation to the proposed compromise or arrangement:

(a) in the case of meetings of creditors—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly; or

(b) in the case of meetings of members—the meetings shall, for the purposes of subsection (4), be deemed together to constitute a single meeting and the votes in favour of the proposed compromise or arrangement cast at each of the meetings shall be aggregated, and the votes against the proposed compromise or arrangement cast at each of the meetings shall be aggregated, accordingly.

**(6)** The Court may grant its approval to a compromise or arrangement subject to such alterations or conditions as it thinks just.

**(7)** Except with the leave of the Court, a person shall not be appointed to administer, and shall not administer, a compromise or arrangement approved under this Act between a body and its creditors or any class of them or between a body and its members or any class of them, whether by the terms of that compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement, if the person:

(a) is a mortgagee of any property of the body;

(b) is an auditor or an officer of the body;

(c) is an officer of a body corporate that is a mortgagee of property of the body;

(d) is not a registered liquidator;

(e) is an officer of a body corporate related to the body; or

(f) unless the Commission directs in writing that this paragraph does not apply in relation to the person in relation to the body—has at any time within the last 12 months been an officer or promoter of the body or of a related body corporate.

**(8)** Paragraph (7) (d) does not apply in relation to a body corporate authorised by or under:

(a) in any case—an Act; or

(b) if the Part 5.1 body concerned is incorporated in a State or Territory—a law in force in that State or Territory;

to administer the compromise or arrangement concerned.

**(9)** Where a person is or persons are appointed by, or under a power given by, the terms of a compromise or arrangement, to administer the compromise or arrangement:

(a) section 425, subsections 427 (2) and (4) and sections 428, 432 and 434 apply in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receivers and managers, of property of the body; and

(ii) a reference in any of those sections or subsections to a receiver, or to a receiver of property, of a corporation were a reference to that person or to those persons; and

(b) section 536 applies in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the body; and

(ii) a reference in that section to a liquidator were a reference to that person or to those persons.

**(10)** An order of the Court made for the purposes of paragraph (4) (b) does not have any effect until an office copy of the order is lodged with the Commission, and upon being so lodged, notwithstanding subsection 171 (5), the order takes effect, or shall be deemed to have taken effect, on and from the date of lodgment or such earlier date as the Court determines and specifies in the order.

**(11)** Subject to subsection (12), a copy of every order of the Court made for the purposes of paragraph (4) (b) shall be annexed to every copy of the memorandum of the body issued after the order has been made or, in the case of a body not having a memorandum, to every copy so issued of the constitution of the body.

**(12)** The Court may, by order, exempt a body from compliance with subsection (11) or determine the period during which the body shall comply with that subsection.

**(13)** Where a compromise or arrangement referred to in subsection (1) (whether or not for the purposes of or in connection with a scheme for the reconstruction of a body or bodies or the amalgamation of any 2 or more bodies) has been proposed, the directors of the body shall:

(a) if a meeting of the members of the body by resolution so directs— instruct such accountants or solicitors or both as are named in the resolution to report on the proposals and send their report or reports to the directors as soon as practicable; and

(b) if a report or reports is or are obtained pursuant to paragraph (a)—make the report or reports available at the registered office of the body for inspection by the shareholders and creditors of the

body at least 7 days before the day of the meeting ordered by the Court to be convened as provided in subsection (1).

**(14)** If default is made in complying with subsection (11), the body contravenes this subsection.

**(15)** If default is made in complying with subsection (13), each director of the body contravenes this subsection.

**(16)** Where no order has been made or resolution passed for the winding up of a Part 5.1 body and a compromise or arrangement has been proposed between the body and its creditors or any class of them, the Court may, in addition to exercising any of its other powers, on the application in a summary way of the body or of any member or creditor of the body, restrain further proceedings in any action or other civil proceeding against the body except by leave of the Court and subject to such terms as the Court imposes.

**(17)** The Court shall not approve a compromise or arrangement under this section unless:

(a) it is satisfied that the compromise or arrangement has not been proposed for the purpose of enabling any person to avoid the operation of any of the provisions of Chapter 6; or

(b) there is produced to the Court a statement in writing by the Commission stating that the Commission has no objection to the compromise or arrangement;

but the Court need not approve a compromise or arrangement merely because a statement by the Commission stating that the Commission has no objection to the compromise or arrangement has been produced to the Court as mentioned in paragraph (b).

**Information as to compromise with creditors or members**

**412. (1)** Where a meeting is convened under section 411, the body shall:

(a) with every notice convening the meeting that is sent to a creditor or member, send a statement (in this section called the “explanatory statement”):

(i) explaining the effect of the compromise or arrangement and, in particular, stating any material interests of the directors, whether as directors, as members or creditors of the body or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons; and

(ii) setting out such information as is prescribed and any other information that is material to the making of a decision by a creditor or member whether or not to agree to the compromise or arrangement, being information that is within the knowledge of the directors and has not previously been disclosed to the creditors or members; and

(b) in every notice convening the meeting that is given by advertisement, include either a copy of the explanatory statement or a notification

of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of the explanatory statement.

**(2)** In the case of a creditor whose debt does not exceed $200, paragraph (1) (a) does not apply unless the Court otherwise orders but the notice convening the meeting that is sent to such a creditor shall specify a place at which a copy of the explanatory statement can be obtained on request and, where the creditor makes such a request, the body shall as soon as practicable comply with the request.

**(3)** Where the compromise or arrangement affects the rights of debenture holders, the explanatory statement shall specify any material interests of the trustees for the debenture holders, whether as such trustees, as members or creditors of the body or otherwise, and the effect on those interests of the compromise or arrangement in so far as that effect is different from the effect on the like interests of other persons.

**(4)** Where a notice given by advertisement includes a notification that copies of the explanatory statement can be obtained in a particular manner, every creditor or member entitled to attend the meeting shall, on making application in that matter, be furnished by the body free of charge with a copy of the explanatory statement.

**(5)** Each person who is a director or trustee for debenture holders shall give notice to the body of such matters relating to the person as are required to be included in the explanatory statement.

**(6)** In the case of a compromise or arrangement that is not, or does not include, a compromise or arrangement between a Part 5.1 body and its creditors or any class of them, the body shall not send out an explanatory statement pursuant to subsection (1) unless a copy of that statement has been registered by the Commission.

**(7)** Where an explanatory statement sent out under subsection (1) is not required by subsection (6) to be registered by the Commission, the Court shall not make an order approving the compromise or arrangement unless it is satisfied that the Commission has had a reasonable opportunity to examine the explanatory statement and to make submissions to the Court in relation to that statement.

**(8)** Where a copy of an explanatory statement is lodged with the Commission for registration under subsection (6), the Commission shall not register the copy of the statement unless the statement appears to comply with this Act and the Commission is of the opinion that the statement does not contain any matter that is false in a material particular or materially misleading in the form or context in which it appears.

**(9)** Where a body contravenes this section, a person involved in the contravention contravenes this subsection.

**(10)** It is a defence to a prosecution for a contravention of this section if it is proved that the contravention was due to the failure of a person (other than the defendant), being a director of the body or a trustee for debenture holders of the body, to supply for the purposes of the explanatory statement particulars of the person’s interests.

**Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies**

**413. (1)** Where an application is made to the Court under this Part for the approval of a compromise or arrangement and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of a Part 5.1 body or Part 5.1 bodies or the amalgamation of 2 or more Part 5.1 bodies and that, under the scheme, the whole or any part of the undertaking or of the property of a body concerned in the scheme (in this section called the “transferor body”) is to be transferred to a company (in this section called the “transferee company”), the Court may, either by the order approving the compromise or arrangement or by a later order, provide for all or any of the following matters:

(a) the transfer to the transferee company of the whole or a part of the undertaking and of the property or liabilities of the transferor body;

(b) the allotting or appropriation by the transferee company of shares, debentures, policies or other interests in that company that, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor body;

(d) if the transferor body is a company—the dissolution, without winding up, of the transferor body;

(e) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement;

(f) the transfer or allotment of any interest in property to any person concerned in the compromise or arrangement;

(g) such incidental, consequential and supplemental matters as are necessary to ensure that the reconstruction or amalgamation is fully and effectively carried out.

**(2)** Where an order made under this section provides for the transfer of property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company, free, in the case of any particular property if the order so directs, from any charge that is, by virtue of the compromise or arrangement, to cease to have effect.

**(3)** Where an order is made under this section, each body to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

**(4)** In this section:

“liabilities” includes duties of any description, including duties that are of a personal character or are incapable under the general law of being assigned or performed vicariously;

“property” includes rights and powers of any description, including rights and powers that are of a personal character and are incapable under the general law of being assigned or performed vicariously.

**Acquisition of shares of shareholders dissenting from scheme or contract approved by majority**

**414. (1)** In this section:

“dissenting shareholder”, in relation to a scheme or contract, means a shareholder who has not assented to the scheme or contract or who has failed to transfer his, her or its shares in accordance with the scheme or contract;

“excluded shares”, in relation to a scheme or contract involving a transfer to a person of shares in a class of shares in a company, means shares in that class that, when the offer relating to the scheme or contract is made, are held by:

(a) in any case—the person or a nominee of the person; or

(b) if the person is a body corporate—a subsidiary of the body.

**(2)** Where a scheme or contract (not being a scheme or contract arising out of the making of takeover offers, or a takeover announcement, under Chapter 6) involving a transfer of shares in a class of shares in a company (in this section called the “transferor company”) to a person (in this section called the “transferee”) has, within 4 months after the making of the offer relating to the scheme or contract by the transferee, been approved by the holders of at least nine-tenths in nominal value of the shares included in that class of shares (other than excluded shares), the transferee may, within 2 months after the offer has been so approved, give notice as prescribed to a dissenting shareholder that the transferee wishes to acquire the shares held by that shareholder.

**(3)** Where such a notice is given, then, unless the Court orders otherwise on an application by a dissenting shareholder made within one month after the day on which the notice was given or within 14 days after a statement is supplied under subsection (7) to a dissenting shareholder, whichever is the later, the transferee is entitled and bound, subject to this section, to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee.

**(4)** Where alternative terms were offered to the approving shareholders, the dissenting shareholder is entitled to elect not later than the end of one

month after the date on which the notice is given under subsection (2) or 14 days after a statement is supplied under subsection (7), whichever is the later, which of those terms he, she or it prefers and, if he, she or it fails to make the election within the time allowed by this subsection, the transferee may, unless the Court otherwise orders, determine which of those terms is to apply to the acquisition of the shares of the dissenting shareholder.

**(5)** Notwithstanding subsections (3) and (4), where the nominal value of the excluded shares exceeds one-tenth of the aggregate nominal value of the excluded shares and the shares (other than excluded shares) to be transferred under the scheme or contract, those subsections do not apply unless:

(a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and

(b) the holders who approve the scheme or contract together hold at least nine-tenths in nominal value of the shares (other than excluded shares) to be transferred under the scheme or contract and are also at least three-quarters in number of the holders of those shares.

**(6)** For the purposes of paragraph (5) (b), 2 or more persons registered as holding shares jointly shall be counted as one person.

**(7)** When a notice is given under subsection (2), the dissenting shareholder may, by written notice given to the transferee within one month after the day on which the notice was given under subsection (2), ask for a statement in writing of the names and addresses of all other dissenting shareholders as shown in the register of members.

**(8)** Where a notice is given under subsection (7), the transferee shall comply with it.

**(9)** Where, under a scheme or contract referred to in subsection (2), the transferee becomes beneficially entitled to shares in the transferor company which, together with any other shares in the transferor company to which the transferee or, where the transferee is a body corporate, a body corporate related to the transferee is beneficially entitled, comprise or include nine-tenths in nominal value of the shares included in the class of shares concerned, then:

(a) the transferee shall, within one month after the date on which he, she or it becomes beneficially entitled to those shares (unless in relation to the scheme or contract he, she or it has already complied with this requirement), give notice of the fact as prescribed to the holders of the remaining shares included in that class who, when the notice was given, had not assented to the scheme or contract or been given notice by the transferee under subsection (2); and

(b) such a holder may, within 3 months after the giving of the notice to him, her or it by notice to the transferee, require the transferee to acquire his, her or its share and, where alternative terms were

offered to the approving shareholders, elect which of those terms he, she or it will accept.

**(10)** Where a shareholder gives notice under paragraph (9) (b) with respect to his, her or its shares, the transferee is entitled and bound to acquire those shares:

(a) on the terms on which under the scheme or contract the shares of the approving shareholders were transferred to him, her or it and, where alternative terms were offered to those shareholders, on the terms for which the shareholder has elected, or where he, she or it has not so elected, for whichever of the terms the transferee determines; or

(b) on such other terms as are agreed or as the Court, on the application of the transferee or of the shareholder, thinks fit to order.

**(11)** Subsections (12) and (13) apply where a notice has been given under subsection (1) unless the Court, on an application made by the dissenting shareholder, orders to the contrary.

**(12)** The transferee shall, within 14 days after:

(a) the end of one month after the day on which the notice was given;

(b) the end of 14 days after a statement under subsection (7) is supplied; or

(c) if an application has been made to the Court by a dissenting shareholder—the application is disposed of;

whichever last happens:

(d) send a copy of the notice to the transferor company together with an instrument of transfer that relates to the shares that the transferee is entitled to acquire under this section and is executed, on the shareholder’s behalf, by a person appointed by the transferee and, on the transferee’s own behalf, by the transferee; and

(e) pay, allot or transfer to the transferor company the consideration for the shares.

**(13)** When the transferee has complied with subsection (12), the transferor company shall register the transferee as the holder of the shares.

**(14)** All sums received by the transferor company under this section shall be paid into a separate bank account and those sums, and any other consideration so received, shall be held by that company in trust for the several persons entitled to the shares in respect of which they were respectively received.

**(15)** Where a sum or other property received by a company under this section or a corresponding law has been held in trust by the company for a person for at least 2 years (whether or not that period began before the commencement of this Part), the company shall, before the end of 10 years after the day on which the sum was paid, or the consideration was allotted or transferred, to the company, pay the sum or transfer the consideration,

and any accretions to it and any property that may become substituted for it or for part of it, to the Minister to be dealt with under Part 9.7.

**Notification of appointment of scheme manager and power of Court to require report**

**415.** **(1)** Within 14 days after being appointed to administer a compromise or arrangement approved under this Part, a person shall lodge a notice in writing of the appointment.

**(2)** Where an application is made to the Court under this Part in relation to a proposed compromise or arrangement, the Court may:

(a) before making any order on the application, require the Commission or another person specified by the Court to give to the Court a report as to the terms of the compromise or arrangement or of the scheme for the purposes of or in connection with which the compromise or arrangement has been proposed, the conduct of the officers of the body or bodies concerned and any other matters that, in the opinion of the Commission or that person, ought to be brought to the attention of the Court;

(b) in deciding the application, have regard to anything contained in the report; and

(c) make such order or orders as to the payment of the costs of preparing and giving the report as the Court thinks fit.

**PART 5.2—RECEIVERS AND MANAGERS**

**Interpretation**

**416.** In this Part, unless the contrary intention appears:

“corporation” does not include:

(a) a registrable Australian corporation, other than a registered Australian corporation;

(b) a company of a State or Territory;

(c) an exempt public authority; or

(d) a corporation sole;

“officer”, in relation to a registered foreign company, includes a local agent of the foreign company;

“property”, in relation to a corporation, means property:

(a) in the case of a company or a registered Australian corporation—within or outside Australia;

(b) in the case of a foreign corporation—within Australia; or

(c) in the case of a corporation incorporated in an excluded Territory—within a State or Territory;

“receiver”, in relation to property of a corporation, includes a receiver and manager.

**Application of Part**

**417.** Except so far as the contrary intention appears, this Part applies in relation to a receiver of property of a corporation who is appointed after the commencement of this section, even if the appointment arose out of a transaction entered into, or an act or thing done, before that commencement.

**Persons not to act as receivers**

**418.** **(1)** A person is not qualified to be appointed, and shall not act, as receiver of property of a corporation if the person:

(a) is a mortgagee of property of the corporation;

(b) is an auditor or an officer of the corporation;

(c) is an officer of a body corporate that is a mortgagee of property of the corporation;

(d) is not a registered liquidator;

(e) is an officer of a body corporate related to the corporation; or

(f) unless the Commission directs in writing that this paragraph does not apply in relation to the person in relation to the corporation— has at any time within the last 12 months been an officer or promoter of the corporation or of a related body corporate.

**(2)** In subsection (1):

“officer”, in relation to a body corporate, does not include a receiver, appointed under an instrument whether before or after the commencement of this section, of property of the body.

**(3)** Paragraph (1) (d) does not apply in relation to a body corporate authorised by or under an Act or a law of a State or Territory to act as receiver of property of the corporation concerned.

**(4)** Nothing in this section prevents a person from acting as receiver of property of a Division 2 company under an appointment validly made before the company’s registration day.

**Liability of receiver**

**419.** **(1)** A receiver, or any other authorised person, who, whether as agent for the corporation concerned or not, enters into possession or assumes control of any property of a corporation for the purpose of enforcing any charge is, notwithstanding any agreement to the contrary, but without prejudice to the person’s rights against the corporation or any other person, liable for debts incurred by the person in the course of the receivership, possession or control for services rendered, goods purchased or property hired, leased, used or occupied.

**(2)** Subsection (1) does not constitute the person entitled to the charge a mortgagee in possession.

**(3)** Where:

(a) a person (in this subsection called the “controller”) enters into possession or assumes control of property of a corporation;

(b) the controller purports to have been properly appointed as a receiver in respect of that property under a power contained in an instrument, but has not been properly so appointed; and

(c) civil proceedings in an Australian court arise out of an act alleged to have been done by the controller;

the court may, if it is satisfied that the controller believed on reasonable grounds that the controller had been properly so appointed, order that:

(d) the controller be relieved in whole or in part of a liability that the controller has incurred but would not have incurred if the controller had been properly so appointed; and

(e) a person who purported to appoint the controller as receiver be liable in respect of an act, matter or thing in so far as the controller has been relieved under paragraph (d) of liability in respect of that act, matter or thing.

**Powers of receiver**

**420. (1)** Subject to this section, a receiver of property of a corporation has power to do, in Australia and elsewhere, all things necessary or convenient to be done for or in connection with, or as incidental to, the attainment of the objectives for which the receiver was appointed.

**(2)** Without limiting the generality of subsection (1), but subject to any provision of the court order by which, or the instrument under which, the receiver was appointed, being a provision that limits the receiver’s powers in any way, a receiver of property of a corporation has, in addition to any powers conferred by that order or instrument, as the case may be, or by any other law, power, for the purpose of attaining the objectives for which the receiver was appointed:

(a) to enter into possession and take control of property of the corporation in accordance with the terms of that order or instrument;

(b) to lease, let on hire or dispose of property of the corporation;

(c) to grant options over property of the corporation on such conditions as the receiver thinks fit;

(d) to borrow money on the security of property of the corporation;

(e) to insure property of the corporation;

(f) to repair, renew or enlarge property of the corporation;

(g) to convert property of the corporation into money;

(h) to carry on any business of the corporation;

(j) to take on lease or on hire, or to acquire, any property necessary or convenient in connection with the carrying on of a business of the corporation;

(k) to execute any document, bring or defend any proceedings or do any other act or thing in the name of and on behalf of the corporation;

(m) to draw, accept, make and indorse a bill of exchange or promissory note;

(n) to use a seal of the corporation;

(o) to engage or discharge employees on behalf of the corporation;

(p) to appoint a solicitor, accountant or other professionally qualified person to assist the receiver;

(q) to appoint an agent to do any business that the receiver is unable to do, or that it is unreasonable to expect the receiver to do, in person;

(r) where a debt or liability is owed to the corporation—to prove the debt or liability in a bankruptcy, insolvency or winding up and, in connection therewith, to receive dividends and to assent to a proposal for a composition or a scheme of arrangement;

(s) where the receiver was appointed under an instrument that created a charge on uncalled capital or uncalled premiums of the corporation:

(i) in the name of the corporation, to make a call in respect of money unpaid on shares in the corporation (whether on account of the nominal value of the shares or by way of premium); or

(ii) upon the giving of a proper indemnity to a liquidator of the corporation—in the name of the liquidator, to make a call in respect of money unpaid on account of the nominal value of shares in the corporation;

(t) to enforce payment of any call that is due and unpaid, whether the calls were made by the receiver or otherwise;

(u) to make or defend an application for the winding up of the corporation; and

(w) to refer to arbitration any question affecting the corporation.

**(3)** The conferring by this section on a receiver of powers in relation to property of a corporation does not affect any rights in relation to that property of any other person other than the corporation.

**(4)** In this section, a reference, in relation to a receiver, to property of a corporation is, unless the contrary intention appears, a reference to the property of the corporation in relation to which the receiver was appointed.

**Duties of receiver with respect to bank accounts and accounting records**

**421. (1)** A receiver of property of a corporation shall:

(a) open and maintain a bank account bearing the receiver’s own name, the title “receiver” and the name of the corporation;

(b) within 3 business days after money of the corporation comes under the receiver’s control, pay that money into the account referred to in paragraph (a);

(c) ensure that the account referred to in paragraph (a) does not contain any moneys other than the moneys of the corporation that come under the receiver’s control; and

(d) keep such accounting records as correctly record and explain all transactions entered into by the receiver as receiver.

**(2)** Any director, creditor or member of a corporation may, unless the Court otherwise orders, personally or by an agent, inspect records kept by a receiver of property of the corporation for the purposes of paragraph (1) (d).

**Reports by receiver**

**422.** **(1)** If it appears to the receiver of property of a corporation that:

(a) a past or present officer, or a member, of the corporation may have been guilty of an offence in relation to the corporation; or

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the corporation:

(i) may have misapplied or retained, or may have become liable or accountable for, any money or property (whether the property is within or outside Australia) of the corporation; or

(ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the corporation;

the receiver shall:

(c) lodge as soon as practicable a report about the matter; and

(d) give to the Commission such information, and such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.

**(2)** The receiver may also lodge further reports specifying any other matter that, in the receiver’s opinion, it is desirable to bring to the notice of the Commission.

**(3)** If it appears to the Court:

(a) that a past or present officer, or a member, of a corporation in respect of property of which a receiver has been appointed has been guilty of an offence under a law referred to in paragraph (1) (a) in relation to the corporation; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding up of a corporation in respect of property of which a receiver has been appointed has engaged in conduct referred to in paragraph (1) (b) in relation to the corporation;

and that the receiver has not lodged a report about the matter, the Court may, on the application of a person interested in the appointment of the receiver or of its own motion, direct the receiver to lodge such a report.

**Supervision of receiver**

**423.** **(1)** If:

(a) it appears to the Court or to the Commission that a receiver of property of a corporation has not faithfully performed or is not faithfully performing the receiver’s duties or has not observed or is not observing:

(i) a requirement of the order by which, or the instrument under which, the receiver was appointed;

(ii) a requirement of the Court; or

(iii) a requirement of this Act, of the regulations or of the rules; or

(b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a receiver of property of a corporation in connection with the performance of the receiver’s duties;

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

**(2)** The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the receiver and the Court may order the receiver to make good any loss that the estate of the corporation has sustained thereby and may make such other order or orders as it thinks fit.

**(3)** The Court may at any time require a receiver of property of a corporation to answer any inquiry in relation to the performance of the receiver’s duties as receiver and may examine the receiver or any other person on oath concerning the performance of the receiver’s duties and may direct an investigation to be made of the receiver’s books.

**Receiver may apply to Court**

**424.** A receiver of property of a corporation appointed under a power contained in an instrument may apply to the Court for directions in relation to any matter arising in connection with the performance of the receiver’s functions.

**Power of Court to fix remuneration of receiver**

**425.** **(1)** The Court may, on application by the liquidator or the official manager of a corporation, or by the Commission, by order fix the amount to be paid by way of remuneration to any person who, under a power contained in an instrument, has been appointed as receiver of property of the corporation.

**(2)** The power of the Court to make an order under this section:

(a) extends to fixing the remuneration for any period before the making of the order or the application for the order;

(b) is exercisable even if the receiver has died, or ceased to act, before the making of the order or the application for the order; and

(c) if the receiver has been paid or has retained for the receiver’s remuneration for any period before the making of the order any amount in excess of that fixed for that period—extends to requiring the receiver or the receiver’s personal representatives to account for the excess or such part of the excess as is specified in the order.

**(3)** The power conferred by paragraph (2) (c) shall not be exercised in respect of any period before the making of the application for the order unless, in the opinion of the Court, there are special circumstances making it proper for the power to be so exercised.

**(4)** The Court may from time to time, on an application made by the liquidator, the official manager, the receiver or the Commission, vary or amend an order made under this section.

**Receiver to enjoy qualified privilege in certain circumstances**

**426.** A receiver of property of a corporation has qualified privilege in respect of:

(a) a matter contained in a report that the receiver lodges under section 422; or

(b) a comment that the receiver makes under paragraph 429 (2) (c).

**Notification of appointment of receiver**

**427.** **(1)** A person who obtains an order for the appointment of a receiver of property of a corporation, or who appoints such a receiver under a power contained in an instrument, shall:

(a) within 7 days after obtaining the order or making the appointment, lodge notice that the order has been obtained, or that the appointment has been made, as the case may be; and

(b) within 21 days after obtaining the order or making the appointment, cause notice that the order has been obtained, or that the appointment has been made, as the case may be, to be published in the *Gazette.*

**(2)** Within 14 days after being appointed as a receiver of property of a corporation, a person shall lodge a notice in the prescribed form of the address of the person’s office.

**(3)** A receiver of property of a corporation shall, within 14 days after a change in the situation of the receiver’s office, lodge notice in the prescribed form of the change.

**(4)** Where a person appointed as receiver of property of a corporation ceases to act as such, the person shall:

(a) within 7 days after so ceasing to act, lodge notice that the person has so ceased to act; and

(b) within 21 days after so ceasing to act, cause notice that the person has so ceased to act to be published in the *Gazette.*

**Statement that receiver appointed**

**428.** Where a receiver of property (whether within or outside Australia) of a corporation has been appointed, the corporation shall set out, in every public document, and in every eligible negotiable instrument, of the corporation, after the name of the corporation where it first appears, a

statement that a receiver, or a receiver and manager, as the case requires, has been appointed.

**Provisions as to information where receiver appointed**

**429. (1)** In this section:

“reporting officer”, in relation to a corporation in respect of property of which a receiver has been appointed, means a person who is:

(a) in the case of a company or registered Australian corporation—a director or secretary of the company or registered Australian corporation; or

(b) in the case of a foreign company—a local agent of the foreign company;

on the day of the appointment.

**(2)** Where a receiver of property of a corporation is appointed:

(a) the receiver shall serve on the corporation as soon as practicable notice of the appointment;

(b) within 14 days after the corporation receives the notice, the reporting officers shall make out and submit to the receiver a report in the prescribed form about the affairs of the corporation as at the day of the appointment; and

(c) the receiver shall, within one month after receipt of the report:

(i) lodge a copy of the report and a notice setting out any comments the receiver sees fit to make relating to the report or, if the receiver does not see fit to make any comment, a notice stating that the receiver does not see fit to make any comment;

(ii) send to the corporation a copy of the notice lodged in accordance with subparagraph (i); and

(iii) if the appointment was by or on behalf of the holders of debentures of the corporation, send to the trustees (if any) for those holders a copy of the report and a copy of the notice lodged in accordance with subparagraph (i).

**(3)** Where notice has been served on a corporation under paragraph (2) (a), the reporting officers may apply to the receiver or to the Court to extend the period within which the report is to be submitted and:

(a) if application is made to the receiver—if the receiver believes that there are special reasons for so doing, the receiver may, by notice in writing given to the reporting officers, extend that period until a specified day; and

(b) if application is made to the Court—if the Court believes that there are special reasons for so doing, the Court may, by order, extend that period until a specified day.

**(4)** As soon as practicable after granting an extension under paragraph (3) (a), the receiver shall lodge a copy of the notice.

**(5)** As soon as practicable after the Court grants an extension under paragraph (3) (b), the reporting officers shall lodge a copy of the order.

**(6)** Subsections (2), (3) and (4) do not apply in relation to the appointment of a receiver to act with an existing receiver or in place of a receiver who has died or ceased to act, except that, where subsection (2) applies to a receiver who dies or ceases to act before that subsection has been fully complied with, the references in paragraphs (2) (b) and (c) and subsections (3) and (4) to the receiver, subject to subsection (7), include references to the receiver’s successor and to any continuing receiver.

**(7)** Where a corporation is being wound up, this section and section 430 apply even if the receiver and the liquidator are the same person, but with any necessary modifications arising from that fact.

**Receiver may require reports**

**430. (1)** A receiver of property of a corporation may, by notice given to the person or persons, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to the receiver, a report, containing such information as is specified in the notice as to the affairs of the corporation or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the corporation;

(b) where the corporation was incorporated within one year before the date of the receiver’s appointment—persons who have taken part in the formation of the corporation ;

(c) persons who are employed by the corporation or have been so employed within one year before the date of the receiver’s appointment and are, in the opinion of the receiver, capable of giving the information required;

(d) persons who are, or have been within one year before the date of the receiver’s appointment, officers of, or employed by, a corporation that is, or within that year was, an officer of the corporation.

**(2)** The receiver may, in a notice under subsection (1), specify the information that the receiver requires as to affairs of a corporation by reference to information required by this Act to be included in any other report, statement or notice under this Act.

**(3)** A person making a report and verifying it as required by subsection (1) shall, subject to the regulations, be allowed, and shall be paid by the receiver (or the receiver’s successor) out of the receiver’s receipts, such costs and expenses incurred in and about the preparation and making of the report and the verification of the report as the receiver (or the receiver’s successor) considers reasonable.

**(4)** A person shall comply with a requirement made under subsection

**(5)** A reference in this section to the receiver’s successor includes a reference to a continuing receiver.

**Receiver may inspect books**

**431.** A receiver of property of a corporation is entitled to inspect at any reasonable time any books of the corporation that relate to that property and a person shall not fail to allow the receiver to inspect such books at such a time.

**Lodging of accounts of receiver**

**432.** **(1)** A receiver of property of a corporation shall, within one month after the end of the period of 6 months (or such lesser period as the receiver determines) from the date of the receiver’s appointment and of every subsequent period of 6 months during which the receiver acts as receiver, and within one month after the receiver ceases to act as receiver, lodge an account in the prescribed form showing:

(a) the receiver’s receipts and payments during each such period or, where the receiver ceases to act as receiver, during the period from the end of the period to which the last account related or from the date of the receiver’s appointment, as the case requires, up to the date of the receiver so ceasing to act;

(b) except in the case of the first account lodged under this subsection— the aggregate amount of receipts and payments during all preceding periods since the receiver’s appointment; and

(c) where the receiver has been appointed under a power contained in an instrument—the amount (if any) owing under that instrument:

(i) in the case of the first account—at the time of the receiver’s appointment and at the end of the period to which the account relates; and

(ii) in the case of any other account—at the end of the period to which the account relates;

and the receiver’s estimate of the total value, at the end of the period to which the account relates, of the property of the corporation that is subject to the instrument.

**(2)** The Commission may, of its own motion or on the application of the corporation or a creditor of the corporation, cause the accounts lodged in accordance with subsection (1) to be audited by a registered company auditor appointed by the Commission and, for the purpose of the audit, the receiver shall furnish the auditor with such books and information as the auditor requires.

**(3)** Where the Commission causes the accounts to be audited on the request of the corporation or a creditor, the Commission may require the corporation or creditor, as the case may be, to give security for the payment of the cost of the audit.

**(4)** The costs of an audit under subsection (2) shall be fixed by the Commission and the Commision may if it thinks fit make an order declaring that, for the purposes of subsection 419 (1), those costs shall be deemed to be a debt incurred by the receiver in the course of the receivership for services rendered and, where such an order is made, the receiver is liable for those costs in accordance with section 419 as if they were such a debt.

**(5)** A person shall comply with a requirement made under this section.

**Payment of certain debts, out of property subject to floating charge, in priority to claims under charge**

**433. (1)** In this section:

“company” includes a registered Australian corporation.

**(2)** This section applies where:

(a) a receiver is appointed on behalf of the holders of any debentures of a corporation that are secured by a floating charge, or possession is taken or control is assumed, by or on behalf of the holders of any debentures of a corporation, of any property comprised in or subject to a floating charge; and

(b) at the date of the appointment or of the taking of possession or assumption of control (in this section called the “relevant date”):

(i) the corporation has not commenced to be wound up voluntarily; and

(ii) the corporation has not been ordered to be wound up by the Court.

**(3)** In the case of a company, the receiver or other person taking possession or assuming control of property of the company shall pay, out of the property coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:

(a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 562;

(b) next, if an auditor of the company had applied to the Commission under subsection 329 (6) for consent to his, her or its resignation as auditor and the Commission had refused that consent before the relevant date—the reasonable fees and expenses of the auditor incurred during the period beginning on the day of the refusal and ending on the relevant date;

(c) subject to subsections (6) and (7), next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 556 (1) (e), (g) or (h) or section 560.

**(4)** In the case of a foreign company, the receiver or other person taking possession or assuming control of property of the foreign company shall pay, out of the property of the foreign company coming into his, her or its hands, the following debts or amounts in priority to any claim for principal or interest in respect of the debentures:

(a) first, any amount that in a winding up is payable in priority to unsecured debts pursuant to section 562;

(b) next, any debt or amount that in a winding up is payable in priority to other unsecured debts pursuant to paragraph 556 (1) (e), (g) or (h) or section 560.

**(5)** The receiver or other person taking possession or assuming control of property of the corporation shall pay debts and amounts payable pursuant to paragraph (3) (c) or (4) (b) in the same order of priority as is prescribed by Division 6 of Part 5.6 in respect of those debts and amounts.

**(6)** In the case of a company, if an auditor of the company had applied to the Commission under subsection 329 (6) for consent to his, her or its resignation as auditor and the Commission had, before the relevant date, refused that consent, a receiver shall, when property comes to the receiver’s hands, before paying any debt or amount referred to in paragraph (3) (c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the relevant date but before the date on which the property comes into the receiver’s hands, being fees and expenses in respect of which provision has not already been made under this subsection.

**(7)** If an auditor of the company applies to the Commission under subsection 329 (6) for consent to his, her or its resignation as auditor and, after the relevant date, the Commission refuses that consent, the receiver shall, in relation to property that comes into the receiver’s hands after the refusal, before paying any debt or amount referred to in paragraph (3) (c), make provision out of that property for the reasonable fees and expenses of the auditor incurred after the refusal and before the date on which the property comes into the receiver’s hands, being fees and expenses in respect of which provision has not already been made under this subsection.

**(8)** A receiver shall make provision in respect of reasonable fees and expenses of an auditor in respect of a particular period as required by subsection (6) or (7) whether or not the auditor has made a claim for fees and expenses for that period, but where the auditor has not made a claim, the receiver may estimate the reasonable fees and expenses of the auditor for that period and make provision in accordance with the estimate.

**(9)** For the purposes of this section the references in Division 6 of Part 5.6 to the relevant date shall be read as references to the date of the appointment of the receiver, or of possession being taken or control being assumed, as the case may be.

**Enforcement of duty of receiver to make returns**

**434. (1)** If a receiver of property of a corporation:

(a) who has made default in making or lodging any return, account or other document or in giving any notice required by law fails to make good the default within 14 days after the service on the receiver, by any member or creditor of the corporation or trustee for debenture holders, of a notice requiring the receiver to do so; or

(b) who has been appointed under a power contained in an instrument has, after being required at any time by the liquidator of the corporation so to do, failed to render proper accounts of, and to vouch, the receiver’s receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator;

the Court may make an order directing the receiver to make good the default within such time as is specified in the order.

**(2)** An application under subsection (1) may be made:

(a) if paragraph (1) (a) applies—by a member or creditor of the corporation or by a trustee for debenture holders; and

(b) if paragraph (1) (b) applies—by the liquidator of the corporation.

**PART 5.3—OFFICIAL MANAGEMENT**

**Interpretation**

**435.** **(1)** In this Part:

“special notice”, in relation to a meeting of creditors of a company, means notice of the meeting sent by post to each of the creditors and posted not less than 14 days and not more than 21 days before the date of the meeting.

**(2)** For the purposes of this Part, a special resolution shall be deemed to have been passed at a meeting of creditors of a company if the resolution is agreed to by a majority in number of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to at least 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, at the meeting.

**(3)** A creditor of a company, being a related body corporate, is not entitled to vote as a creditor on a special resolution moved at a meeting of creditors of the company convened under this Part.

**(4)** Subject to subsection (3), nothing in this Part affects the rights of a secured creditor of the company.

**Power of company to call meeting of creditors to appoint official manager**

**436.** **(1)** Where it is resolved by the majority of the directors of a company present at a meeting of the directors specially convened for the purpose that the company is unable to pay its debts as and when they become due and payable, the company may, or, where the company is requested in writing to do so by a creditor of the company who has a judgment against the company unsatisfied to the extent of at least $1,000, the company shall, convene a meeting of its creditors in accordance with this section for the purpose of placing the company under official management and appointing an official manager of the company.

**(2)** A meeting of creditors of a company for the purposes of this section shall be convened by giving notice of the meeting in accordance with this section to the creditors of the company.

**(3)** The notice referred to in subsection (2) shall be given by the company within:

(a) 35 days after the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1); or

(b) such further period as the Commission allows where, in the opinion of the Commission, the company would not be able to give the notice within the time specified in paragraph (a).

**(4)** The company shall, at least 7 days before the end of the period within which the notice referred to in subsection (2) is required to be given, prepare a report in the prescribed form as to the affairs of the company made up to a date not earlier than the date of the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1).

**(5)** Each director of the company shall furnish to the company a certificate under his or her hand certifying whether the report prepared in accordance with subsection (4) does or does not, to the best of his or her knowledge, information and belief, give a true and fair view of the state of affairs of the company as at the date to which it is made up and, subject to subsection (8), a company shall be deemed to have failed to comply with subsection (4) unless each director has furnished to the company such a certificate.

**(6)** Where a director certifies that to the best of his or her knowledge, information and belief the report does not give a true and fair view of the state of affairs of the company, the director shall also state in the certificate the grounds on which he or she formed that opinion.

**(7)** A director of a company shall not furnish a certificate under subsection (5) concerning a report prepared in accordance with subsection (4) unless he or she has made such enquiries as are reasonably necessary to determine whether the report does or does not give a true and fair view of the state of affairs of the company as at the date to which is made up.

**(8)** Where the Commission is satisfied that it is impracticable for a company to obtain the certificate referred to in subsection (5) from a director of the company, the Commission may exempt the company from the obligation to obtain the certificate from that director.

**(9)** For the purposes of subsection (2), notice of a meeting of creditors of a company shall be given by:

(a) sending by post to each of the creditors a notice, in the prescribed form; and

(b) publishing a copy of that notice in each State, Territory or excluded Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding

the passing of the resolution, or the receipt by the company of the request, referred to in subsection (1), in a daily newspaper circulating generally in that State, Territory or excluded Territory, as the case may be;

not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting.

**(10)** Subject to subsection (11), the company shall attach to every notice posted in accordance with subsection (9):

(a) a summary of the affairs of the company, in the prescribed form;

(b) a notice that the report that the company is required by subsection (4) to prepare is available for inspection at the registered office of the company and that a copy of the report will be sent by post to any creditor who makes a request in writing for a copy of the report or will be delivered to any creditor who attends at the registered office of the company and requests a copy; and

(c) a copy of each certificate furnished by a director of the company in accordance with subsection (5).

**(11)** The company may attach to a notice posted in accordance with subsection (9) a copy of the report prepared in accordance with subsection (4) and, where it so attaches a copy of that report, the company is not required to attach the summary and notice referred to in paragraphs (10) (a) and (b).

**(12)** A meeting of creditors convened under this section shall be convened for a day, time and place convenient to the majority in value of the creditors.

**(13)** The creditors of the company present at the meeting who are entitled to vote on a special resolution moved at the meeting shall appoint a chairman of the meeting.

**(14)** The chairman so appointed shall at the meeting determine whether the day, time and place of the meeting are convenient to the majority in value of the creditors, and his or her decision is final.

**(15)** Within 7 days after the first notice convening the meeting is posted to any creditor, the company shall lodge with the Commission a copy of that notice and shall attach to the copy a certified copy of the report required to be prepared by the company under subsection (4) and a certified copy of each of the certificates furnished by the directors under subsection (5).

**(16)** If a company fails to comply with subsection (1), (4), (10) or (15), or a request referred to in paragraph (10) (b), the company is, notwithstanding section 1311, not guilty of an offence against this Act but any officer of the company who is in default is guilty of an offence.

**(17)** Any director of a company who fails to take all reasonable steps to secure compliance by the company with subsection (4) is guilty of an offence.

**(18)** A director who contravenes, or fails to comply with, subsection (5), (6) or (7) is guilty of an offence.

**Report as to affairs of company to be submitted to meeting of creditors**

**437.** **(1)** The directors of a company that has convened a meeting of creditors under section 436 shall appoint one of their number to attend the meeting.

**(2)** Thedirector so appointed shall attend the meeting and shall:

(a) submit to the meeting the report prepared in accordance with subsection 436 (4); and

(b) disclose to the meeting the company’s affairs and the circumstances leading up to the convening of the meeting.

**(3)** If subsection (1) or (2) is contravened, a person (other than the company) who is involved in the contravention contravenes this subsection.

**Power to adjourn meeting**

**438.** **(1)** A meeting convened under section 436 may by resolution be adjourned from time to time to a time and day specified in the resolution but shall not be adjourned to a day later than 21 days after the day for which the meeting was originally convened.

**(2)** Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

**(3)** Where a meeting is adjourned to a day more than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the day, time and place of the resumption of the meeting to be published, at least 7 days before that day, in a daily newspaper circulating generally in the State or Territory in which the resumed meeting is to be held.

**Power of creditors to place company under official management**

**439.** **(1)** At a meeting of creditors of a company convened under section 436, the creditors may, by special resolution:

(a) resolve that the company be placed under official management for a period, beginning on the date of the passing of the resolution and ending not more than 3 years from that date, specified in the resolution;

(b) appoint a person named in the resolution who:

(i) has consented in writing to act as official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a body corporate that is a mortgagee of property of the company; and

(iv) has furnished to the company a certificate under his or her hand stating that he or she is not an insolvent under administration;

to be the official manager of the company during the period of the official management; and

(c) fix the amount of the salary or other remuneration of the official manager or delegate the fixing of the amount to a committee of management appointed under this Part.

**(2)** The company shall:

(a) within 7 days after the passing of the special resolution referred to in subsection (1):

(i) cause a notice in the prescribed form of the passing of the resolution to be lodged with the Commission; and

(ii) send by post to each of the creditors and members of the company a notice in the prescribed form of the passing of the special resolution and the provisions of section 454; and

(b) within 21 days after the passing of the special resolution, cause notice that the company has been placed under official management and of the full name of the official manager to be published in the *Gazette.*

**(3)** If the company fails to comply with subsection (2), the company is, notwithstanding section 1311, not guilty of an offence but any officer of the company who is in default is guilty of an offence.

**(4)** A creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, more than 5%of the total unsecured debts of the company may, within 14 days after the appointment of a person as official manager of the company under subsection (1) of this section or subsection 456 (3), apply to the Court for an order terminating the appointment.

**(5)** Where, on an application under subsection (4), the Court is of the view that the person is not suitable to be the official manager of the company, the Court may make an order:

(a) terminating the person’s appointment; and

(b) appointing as official manager a registered company auditor (other than the auditor of the company) who has consented in writing to act as official manager.

**(6)** Where under subsection (5) the Court has made an order appointing a person to be the official manager of a company, this Part applies to that person as if the person had been appointed official manager of the company at a meeting of creditors under subsection (1) on the date of the order.

**(7)** Where the Court makes an order under subsection (5), the person obtaining the order shall:

(a) within 7 days after the making of the order, lodge with the Commission notice in the prescribed form of the making of the order and its date; and

(b) within 7 days after the passing and entering of the order, lodge with the Commission an office copy of the order.

**Appointment of committee of management**

**440.** **(1)** At a meeting of the creditors of a company held under this Part, the creditors may resolve that a committee of management be appointed for the purposes of this Part.

**(2)** A committee of management of a company shall consist of 5 natural persons, of whom 3 shall be appointed by the creditors of the company by special resolution and 2 shall be appointed by the members of the company at a general meeting of the company.

**(3)** A person is not eligible to be appointed a member of a committee of management of a company unless the person is:

(a) in the case of an appointment by the creditors of the company:

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or

(iii) a person authorised in writing by a creditor of the company to be a member of the committee of management; or

(b) in the case of an appointment by the members of the company:

(i) a member of the company;

(ii) the attorney of a member of the company by virtue of a general power of attorney given by the member; or

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

**Notice of appointment and address of official manager**

**441.** **(1)** A person who has been appointed official manager of a company shall:

(a) within 7 days after the date of his or her appointment, lodge notice in the prescribed form of his or her appointment as official manager and of the address of his or her office; and

(b) within 14 days after any change in the situation of his or her office, lodge notice in the prescribed form of the change.

**(2)** A person shall:

(a) within 7 days after his or her resignation or removal from office as official manager of a company, lodge notice in the prescribed form of his or her resignation or removal; and

(b) within 21 days after his or her resignation or removal from office as official manager of a company, cause notice of his or her resignation or removal to be published in the *Gazette.*

**Effect of resolution**

**442.** **(1)** Subject to section 454, where a special resolution placing a company under official management has been duly passed by the creditors of the company under subsection 439 (1):

(a) the company is under official management for the period specified in the special resolution unless the official management is extended or earlier terminated under this Part;

(b) the directors of the company cease to hold office;

(c) the person appointed official manager of the company shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company; and

(d) the affairs of the company shall be conducted subject to this Part.

**(2)** The official manager shall be chairman of any meeting of the company, of its creditors or of the creditors and members of the company that is held or resumed while he or she holds office as official manager.

**Six-monthly meetings of creditors and members**

**443.** **(1)** Subject to subsection (2), within 2 months after the end of the period of 6 months beginning on the date of his or her appointment as official manager and of each subsequent period of 6 months, or, if the Commission, at any time before the end of any such period, requires or permits him or her to do so in respect of a lesser period specified by the Commission, within 2 months after the end of the period so specified, the official manager of a company shall:

(a) prepare a statement showing the assets and liabilities of the company as at the last day of the period and a report containing such other information as he or she thinks necessary to enable the creditors and members of the company to assess the financial position of the company as at the last day of the period;

(b) convene a meeting of the creditors and members of the company to consider the statement and report; and

(c) cause the statement and report to be laid before the creditors and members at that meeting.

**(2)** Where under subsection (1) the Commission has required or permitted the preparation of a statement and report in respect of a period of less than 6 months, the next period of 6 months shall commence at the end of that lesser period.

**(3)** The official manager of a company shall attach to each statement referred to in subsection (1):

(a) a statement signed by him or her; and

(b) in the case of a company that is required by this Act to appoint a person to be its auditor—a statement signed by the auditor;

stating in each case whether or not, in the opinion of the person by whom the statement is signed, the statement referred to in subsection (1) is drawn up so as to give a true and fair view of the affairs of the company.

**(4)** An auditor of a company shall supply to the official manager of the company at his or her request a statement he or she requires for the purposes of complying with subsection (3).

**(5)** The official manager of the company shall cause copies of the statement and report referred to in this section to be kept and to be available for inspection by any creditor or member of the company at the registered office of the company.

**(6)** The official manager shall:

(a) give written notice to every creditor and member of the company that the statement referred to in subsection (1) has been made up when next sending to the creditors or members any report, notice of meeting, notice of call or dividend relating to the company; and

(b) in the notice inform creditors and members of the company at what address, and between what hours, the statement may be inspected.

**(7)** Within 7 days after a meeting is held under subsection (1), the official manager shall lodge a notice in the prescribed form of the holding of the meeting and of the day on which it was held, together with a copy of each statement and report laid before the creditors and members at that meeting.

**(8)** Where a quorum is not present at a meeting convened in accordance with subsection (1), the official manager shall, within 7 days after the day for which the meeting was convened or, if the meeting was adjourned and no quorum is present at the adjourned meeting, within 7 days after the day to which the meeting was adjourned, lodge with the Commission:

(a) a notice stating:

(i) that the meeting was duly convened and that no quorum was present; or

(ii) that the meeting was duly convened and adjourned and that no quorum was present at the adjourned meeting;

as the case requires; and

(b) a copy of the statement and a copy of the report prepared in accordance with paragraph (1) (a).

**(9)** Where the statement referred to in subsection (1) is not accompanied by a statement signed by a registered company auditor, the Commission may cause the statement referred to in subsection (1) to be audited by a registered company auditor appointed by the Commission, and, for the purposes of the audit, the official manager shall furnish to the auditor such books and information as the auditor requires.

**(10)** The costs of an audit under subsection (9) shall be fixed by the Commission and are part of the costs of the official management.

**Stay of proceedings**

**444.** **(1)** Where a company is under official management, no action or other civil proceeding against the company in an Australian court shall, except with the leave of the Court and in accordance with such terms and conditions (if any) as the Court imposes, be begun or carried on until the company ceases to be under official management.

**(2)** At any time after a company has, in accordance with section 436, convened a meeting of its creditors for the purpose of placing the company under official management and before the passing of a special resolution by the creditors under subsection 439 (1) resolving that the company be placed under official management, the company or any creditor of the company may, if any action or other civil proceeding against the company in an Australian court is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms and conditions as it thinks fit.

**Power to extend period of official management**

**445.** **(1)** The official manager of a company shall convene a meeting of creditors of the company for a day not earlier than 7 months, and not later than 1 month, before the day on which the period of official management is due to end for the purpose of considering whether or not the period of official management should be extended and, if the creditors think fit, passing a special resolution extending the period of official management for such further period not exceeding 12 months as is specified in the resolution.

**(2)** If, at a meeting held under section 443 not earlier than 7 months and not later than one month before the day on which the period of official management is due to end, the creditors of the company consider whether or not the period of official management should be extended, the official manager shall be taken to have complied with subsection (1).

**(3)** The meeting referred to in subsection (1) shall be convened by the official manager by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting.

**(4)** The official manager shall, within 7 days after the passing of a special resolution under subsection (1), lodge a copy of that resolution.

**Extension of period of official management**

**446.** Where a special resolution extending the period of official management of a company is passed at a meeting convened in accordance with section 445, the company continues under official management during the period specified in the resolution unless the official management is further extended or is earlier terminated under this Part.

**Appointment of official manager not to affect appointment and duties of auditor**

**447.** While a company is under official management, the provisions of this Act relating to the appointment and re-appointment of auditors and the rights and duties of auditors continue to apply in relation to the company and, in the application of those provisions in relation to the company, a reference to the directors of a company shall be read as a reference to the official manager of the company.

**Duties of official manager**

**448.** **(1)** Subject to this Act, the official manager of a company shall:

(a) as soon after his or her appointment as is reasonably practicable, take into his or her custody or under his or her control all the property to which the company is or appears to be entitled;

(b) subject to any direction given pursuant to paragraph (c), conduct the business and management of the company in such manner as he or she thinks most economical and most beneficial to the interests of the members and creditors of the company;

(c) comply with any directions of the creditors of the company that are agreed to by special resolution at any meeting of creditors of which special notice has been given;

(d) comply with all requirements of this Act applicable to the company or the directors of the company relating to the keeping of accounts and the lodging of annual returns and perform all such other duties as are so applicable and are imposed on the company or on the directors of the company by or under this Act;

(e) if so directed by the committee of management of the company acting under subsection 458 (6) or by a creditor or creditors of the company to whom the company owes at least 10% in value of the total unsecured debts of the company, by notice sent by post to each of the creditors, convene a meeting of creditors of the company; and

(f) if a meeting of creditors held under subsection 445 (1) does not resolve to extend the period of the official management—within 7 days after the conclusion of the meeting, by notice sent by post to each of the members of the company, convene a meeting of the members to be held on a day not later than 21 days after the conclusion of the meeting of creditors under subsection 445 (1) for the purpose of:

(i) reporting to the members accordingly; and

(ii) enabling the members, if they think fit, to elect directors of the company to take office upon the termination of the period of official management.

**(2)** A meeting convened under paragraph (1) (f) shall be deemed to have been properly convened and to be empowered under the memorandum and articles of the company to appoint or elect directors, and directors so

appointed or elected shall take office on the termination of the period of official management of the company.

**(3)** If at any time the official manager is of the opinion that the continuance of the official management of the company will not enable the company to pay its debts, he or she shall convene a meeting of the members of the company for the purpose of considering and, if the members think fit, passing a special resolution that the company be wound up voluntarily.

**(4)** Where the official manager convenes a meeting of members of the company under subsection (3), the official manager shall:

(a) convene a meeting of the creditors of the company for the day, or the day next following the day, on which the meeting of members is proposed to be held;

(b) cause the notices of the meeting of creditors to be sent by post to the creditors on the same day as the sending of the notices of the meeting of the members; and

(c) convene the meeting of creditors for a day, time and place convenient to the majority in value of the creditors and give the creditors at least 14 days’ notice by post of the meeting.

**(5)** The official manager shall lay before the meeting of creditors convened in accordance with subsection (4) a report in the prescribed form as to the affairs of the company made up to a day that is not more than 30 days before the day for which the meeting is convened.

**(6)** Where, at a meeting of members of a company convened under subsection (3), the members pass a special resolution to the effect that the company be wound up voluntarily:

(a) the members shall, at that meeting, nominate a person to be liquidator for the purpose of winding up the affairs, and distributing the property, of the company; and

(b) the creditors may, at the meeting of creditors of the company convened under subsection (4), nominate a person to be liquidator for that purpose.

**(7)** A person nominated by the members of a company pursuant to subsection (6) shall, subject to subsections (8) and (9), be the liquidator of the company.

**(8)** Where the members and creditors of a company nominate different persons to be the liquidator of the company, the person nominated by the creditors shall, subject to subsection (9), be the liquidator of the company.

**(9)** Where the members and creditors of a company nominate different persons to be the liquidator of the company, the Court may, on the application of a member or creditor of the company made within 7 days after the day on which the nomination was made by the creditors, by order, direct that the person nominated by the members be the liquidator of the

company or that the persons nominated by the members and creditors, respectively, be jointly the liquidators of the company.

**(10)** On the appointment of a liquidator the company ceases to be under official management.

**(11)** The person who, immediately before the appointment of the liquidator, was the official manager of the company shall, within 7 days after the holding of the later of the meetings referred to in subsections (3) and (4), lodge a notice in the prescribed form of the holding of the meetings and the dates of the meetings, being a notice that has attached to it a copy of the report referred to in subsection (5).

**Undue preferences in the case of official management**

**449.** **(1)** A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company which, if it had been made or incurred by a natural person, would, in the event of his or her becoming a bankrupt, be void as against the trustee in the bankruptcy, is, if the company is placed under official management, void as against the official manager.

**(2)** Where:

(a) a creditor of a company has issued execution against the property of the company or has instituted proceedings to attach a debt due to the company or to enforce a charge, or a charging order, against property of the company; and

(b) the creditor would, if the execution or proceedings had been issued or instituted in relation to a debt due by a natural person who subsequently became a bankrupt, be required to pay the amount (if any) received by the creditor as a result of the execution or proceedings to the trustee in the bankruptcy;

the creditor shall, in the event of the company being placed under official management, pay the amount (if any) received as a result of the execution or proceedings, less the taxed costs of the execution or proceedings, to the official manager.

**(3)** Where a creditor has paid to the official manager of a company an amount in accordance with subsection (2), that creditor shall be taken to be an unsecured creditor of the company for the amount owed to him, her or it by the company as if the execution or proceedings had not been issued or instituted.

**(4)** For the purposes of this section, the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person and the date on which a person becomes a bankrupt is the date on which the company commences to be under official management.

**Application and disposal of property during official management**

**450.** **(1)** The official manager of a company may sell or otherwise dispose of any property of the company in the ordinary course of the business of the company.

**(2)** The official manager of a company may sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed $5,000.

**(3)** The official manager of a company may, with the consent of the committee of management, sell or otherwise dispose of any property of the company otherwise than in the ordinary course of the business of the company if the aggregate of the value of that property and the price or prices received for any other property previously sold or disposed of otherwise than in the ordinary course of the business of the company during the period of official management does not exceed $20,000.

**(4)** The official manager of a company may:

(a) with the leave of the Court; or

(b) with the consent of the creditors given by a special resolution passed at a meeting of the creditors of which special notice has been given, being a notice that set out the intention to propose, as a special resolution, a resolution for the sale or disposal, or the mortgage or charge, of that property;

sell or otherwise dispose of, or mortgage or charge, any property of the company.

**(5)** The money of the company that becomes available to the official manager of the company during the period of the official management shall be applied by him or her in the following order:

(a) first, in the payment of the costs of the official management, including the remuneration of the official manager, the deputy official manager (if any) and the auditor of the company (if any) appointed in accordance with the provisions of Part 3.7;

(b) next, in discharge of the liabilities of the company incurred in the course of the official management;

(c) next, in discharge of any other liabilities of the company.

**(6)** Subject to subsection (5), the liabilities of the company referred to in paragraph (5) (c) shall be discharged as if those liabilities were liabilities of a company being wound up, and the provisions of Parts 5.4, 5.5 and 5.6 apply, as far as possible, in relation to the discharge of those liabilities.

**Official manager may apply to Court for directions**

**451. (1)** The official manager may apply to the Court for directions in relation to any matter arising out of the exercise of his or her powers or functions as official manager.

**(2)** An act done in accordance with a direction given by the Court on application made under subsection (1) shall be deemed to have been properly done for the purposes of this Act.

**Certain provisions applicable to official management**

**452.** **(1)** This section applies where a company is under official management.

**(2)** A sum due to a member in that capacity, whether by way of dividends, profits or otherwise, shall not be treated as a debt of the company payable to that member in the case of competition between the member and a creditor who is not a member, but may be taken into account for the purpose of the final adjustment of the rights of the members among themselves.

**(3)** The Court may make such order for inspection of the books of the company by creditors and members as the Court thinks just, and any books in the possession, or in the custody or under the control, of the company may be inspected by creditors or members accordingly, but not further or otherwise.

**(4)** Sections 533, 534, 535 and 536 apply in relation to the company as

if:

(a) the company were being wound up;

(b) a reference in any of those provisions to the liquidator of the company were a reference to the official manager of the company;

(c) a reference in any of those provisions to contributories were a reference to members of the company; and

(d) the reference in subsection 534 (1) to a report lodged under section 533 were a reference to a report lodged under that section as applied by virtue of this subsection.

**Power of Court to terminate official management and give directions**

**453.** **(1)** If at any time, on the application of the official manager or of any creditor or member of a company or of the Commission, it appears to the Court that the purpose for which the company was placed under official management has been fulfilled or that, for any reason, it is undesirable that the company should continue to be under official management, the Court may by order terminate the official management on the date specified in the order and, upon that date, the official manager ceases to be the official manager of the company.

**(2)** The Court shall not make an order under subsection (1) on an application by a person other than the Commission unless at least 7 days notice in writing of the application has been given to the Commission.

**(3)** The Court may, on an application under subsection (1), if the applicant or, where the Commission is not the applicant, the Commission so requests, grant leave to the person making the request to file an application for the winding up of the company.

**(4)** On making an order under subsection (1), the Court may also give such directions as it considers fit for the resumption of the management and control of the company by its officers, including directions for the convening

of a general meeting of members of the company to elect directors to take office upon the termination of the official management.

**(5)** The costs and expenses of any proceeding before the Court under this section and the costs and expenses incurred in convening a meeting of members of the company pursuant to an order of the Court under this section shall, if the Court so directs, form part of the costs of the official management of the company.

**Resolution to place company under official management effective, subject to appeal**

**454. (1)** Where a resolution has been passed under subsection 439 (1) determining that a company be placed under official management:

(a) a creditor to whom the company owes, or a representative of a group of creditors to whom the company owes in the aggregate, an amount that exceeds 5% of the total unsecured debts of the company;

(b) a member holding, or any representative of a group of members holding collectively, at least 10% of the paid-up capital of the company; or

(c) in the case of a company not having a share capital, any member holding, or any representative of a group of members holding collectively, at least 10% of the total voting rights of members having a right to vote at all general meetings;

may apply to the Court for the variation or cancellation of the resolution at any time within a period of 14 days after the passing of the resolution and the Court may, if it is of the opinion that there is no reasonable prospect of the company being rehabilitated or that the resolution is not in the interests of the creditors and the members of the company, vary or cancel the resolution.

**(2)** Where the Court makes an order cancelling a resolution, the Court may give such directions as it considers necessary for the resumption of the management and control of the company by the persons who were officers of the company immediately before it was placed under official management.

**(3)** Upon the cancellation of a resolution by the Court under this section, the company ceases to be under official management and the person appointed official manager of the company ceases to hold office.

**(4)** Where the Court makes an order under this section varying a resolution, the resolution has effect, on and from the date of the order, as varied by the order.

**(5)** Where an order is made under this section, the acts of the official manager before the making of the order are as valid and binding on the company, and on the members and creditors of the company, as they would have been if the order had not been made.

**Lodgment of office copy of Court order.**

**455.** **(1)** Where the Court makes an order under section 453 (otherwise than on the application of the Commission) or an order under section 454, the person on whose application the order is made shall lodge:

(a) within 7 days after the order is made—notice in the prescribed form of the making of the order and the date of the order; and

(b) within 7 days of the passing and entering of the order—an office copy of the order.

**(2)** Where the Commission is an applicant for an order under section 453, the Commission shall enter in its records particulars of the application and, after the passing and entering of the order, an office copy of the order, and subsection 1274 (2) applies in relation to the document containing those particulars and to the office copy as if they were documents lodged with the Commission.

**Termination of appointment and release of official manager**

**456.** **(1)** The appointment of a person as official manager of a company terminates where:

(a) that person tenders his or her resignation in writing to either:

(i) the committee of management appointed pursuant to this Part; or

(ii) a meeting of creditors of the company;

(b) a special resolution that the appointment of the person be terminated is passed at a meeting of creditors of the company of which special notice stating that the meeting is convened for the purpose of considering such a resolution has been given; or

(c) the Court makes an order that the appointment of the person be terminated.

**(2)** The appointment of a person as official manager of a company shall be terminated by the committee of management or, if there is no committee of management, by the Court on the application of any creditor or member of the company if:

(a) the official manager becomes an insolvent under administration;

(b) the official manager becomes incapable, by reason of mental infirmity, of managing his or her affairs;

(c) having been appointed by an order of the Court under subsection 439 (5), the official manager ceases to be a registered company auditor; or

(d) the official manager becomes the auditor of the company.

**(3)** Where a vacancy occurs in the office of official manager of a company, the committee of management may appoint, or if there is no committee of management, a meeting of creditors of the company convened for that purpose by any 2 of their number may by special resolution appoint, as official manager, a person who is qualified for appointment.

**(4)** A person is qualified for appointment under subsection (3) if the person:

(a) has consented in writing to act as official manager of the company;

(b) is not the auditor of the company;

(c) is not an officer of a body corporate that is a mortgagee of property of the company; and

(d) has furnished to the committee of management or the chairman of the meeting of creditors, as the case may be, a certificate signed by the person stating that he or she is not an insolvent under administration.

**(5)** A person appointed official manager under subsection (3) shall assume, and is responsible for, the management of the company and shall perform the duties, and may perform any of the functions and exercise any of the powers, of the directors of the company.

**(6)** Where the appointment of an official manager terminates or is terminated, until a person is appointed official manager under subsection (3), the powers and functions of the official manager vest in, and the duties of the official manager shall be performed by:

(a) the deputy official manager;

(b) if there is no deputy official manager—the committee of management; or

(c) if there is no deputy official manager and no committee of management—a person appointed by the Court, on the application of a creditor of the company, to act as official manager until a person is appointed official manager under subsection (3).

**(7)** A person who convenes a meeting of creditors of a company for the purpose of considering a resolution that the appointment of a person as official manager of the company be terminated shall give to the person who is the official manager not less than 14 days written notice of the meeting and of the purpose for which it is being convened.

**(8)** Where a person who is an official manager of a company receives a notice given under subsection (7), he or she shall:

(a) before the date on which the meeting is to be held, prepare a report showing how the official management of the company has been conducted by him or her;

(b) present the report to the meeting and give such explanations of that report as are reasonably requested by any creditor; and

(c) within 7 days after the holding of the meeting, lodge with the Commission a notice of the holding of the meeting:

(i) setting out the date on which the meeting was held; and

(ii) stating whether the resolution for the termination of the appointment of the person as official manager was passed;

together with a copy of the report prepared in accordance with paragraph (a).

**(9)** Where a person (other than a person who has been given notice of a meeting under subsection (7) ) ceases to be an official manager of a company (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under subsection 439 (5) ):

(a) the person shall, notwithstanding that he or she has ceased to be the official manager, within 14 days after the day on which he or she ceased to be the official manager, prepare a report showing how the official management was conducted by him or her and, for this purpose, he or she has a right of access to the books of the company; and

(b) the person shall, within 28 days after the day on which he or she ceased to be the official manager, convene a meeting of all persons who were creditors of the company at the commencement of the official management and all persons who, on the day on which the person ceased to be the official manager, were creditors of the company.

**(10)** Notice of the meeting referred to in paragraph (9) (b) shall be given to the creditors of the company by sending by post to each of the creditors, not less than 7 days, nor more than 14 days, before the date fixed for the holding of the meeting, a notice specifying the day, time, place and purpose of the meeting and a copy of the report prepared in accordance with paragraph (9) (a).

**(11)** At the meeting of creditors convened under paragraph (9) (b), the person who was the official manager of the company shall present his or her report to the meeting and shall give such explanations of that report as are reasonably requested by any creditor.

**(12)** Within 7 days after the holding of the meeting referred to in paragraph (9) (b), the person who was the official manager shall lodge notice of the holding of the meeting and of the date on which it was held, together with a copy of the report prepared in accordance with paragraph (9) (a).

**(13)** At a meeting of creditors convened under paragraph (9) (b), 2 creditors constitute a quorum and, if a quorum is not present at the meeting, the person who was the official manager shall, within 7 days after the day for which the meeting was convened, lodge:

(a) a notice stating that the meeting was duly convened and that no quorum was present; and

(b) a copy of the report prepared in accordance with paragraph (9) (a).

**(14)** If the meeting is not held on the day for which it is convened under paragraph (9) (b), the person who was official manager shall, within 7 days after that day, lodge:

(a) a notice stating that the meeting was not held on that day; and

(b) a copy of the report prepared in accordance with paragraph (9) (a).

**(15)** The expenses incurred by a person who was an official manager of a company in connection with the preparation of a report in accordance with paragraph (8) (a) form part of the costs of the official management.

**(16)** The expenses incurred by a person who was official manager of a company in connection with the preparation of a report in accordance with paragraph (9) (a) and in relation to the convening and holding of the meeting in accordance with paragraph (9) (b) form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

**(17)** Subject to subsection (18), where a person ceases to be the official manager of a company (including a person who ceases to be an official manager by reason that his or her appointment is terminated by the Court under subsection 439 (5)), the adoption by a meeting of creditors of the company of the report prepared by him or her under paragraph (8) (a) or (9) (a), as the case requires, and of his or her explanations, discharges him or her from all liability in respect of any act or omission by him or her in the management of the company or otherwise in relation to his or her conduct as official manager.

**(18)** The adoption by a meeting of creditors of a company of a report prepared in accordance with paragraph (8) (a) or (9) (a) by a person who has ceased to be the official manager of the company and of any explanations of the person in relation to the report does not:

(a) discharge the person from the liabilities referred to in subsection (17) if the adoption was obtained by fraud or by suppression or concealment of a material fact; or

(b) discharge the person from a liability to which, by virtue of a law other than this Act, he or she would be subject in respect of any negligence, default, breach of trust or breach of duty committed by him or her in relation to the company.

**(19)** If the report prepared by a person in accordance with paragraph (8) (a) or (9) (a) and the explanations of the report are not adopted by a meeting of creditors within 2 months after:

(a) in the case of a report prepared in accordance with paragraph (8) (a)—the date of the meeting to which the report was presented; or

(b) in the case of a report prepared in accordance with paragraph (9) (a)—the date on which notice of the meeting convened in accordance with paragraph (9) (b) was given to the creditors of the company;

the person may apply to the Court for an order of release.

**(20)** If a person who was official manager of the company complies with subsection (13), he or she may apply to the Court for an order of release.

**(21)** On an application under subsection (19) or (20), the Court may, if it thinks fit, make an order releasing the applicant from liability for acts or omissions by him or her in the management of the company and such an order has the same effect as the adoption of a report and explanations has under subsection (17).

**(22)** Where the Court makes an order under subsection (21), it may by order direct that any costs or expenses incurred by the applicant in connection with the application shall form part of the costs of the official management and shall be deemed to have been incurred during the period of the official management.

**(23)** Where the Court makes an order under subsection (21), the person who was the official manager shall lodge with the Commission an office copy of the order within 7 days after the passing and entering of the order.

**Notification that company is under official management**

**457.** A company that is under official management shall set out, in every public document, and in every eligible negotiable instrument, of the company, after the name of the company where it first appears, the expression “under official management”.

**Functions of committee of management; appointment of deputy official manager**

**458.** **(1)** The functions of the committee of management of a company appointed under this Part are to assist and advise the official manager of the company in relation to any matters concerning the management of the company on which he or she requests the advice and assistance of the committee.

**(2)** Either the committee of management of a company or a meeting of creditors of a company convened by the official manager:

(a) may appoint a person who:

(i) has consented in writing to act as deputy official manager of the company;

(ii) is not the auditor of the company;

(iii) is not an officer of a body corporate that is a mortgagee of property of the company; and

(iv) has furnished to the official manager a certificate under his or her hand stating that he or she is not an insolvent under administration;

to be a deputy official manager of the company;

(b) may remove the deputy official manager from office and may, if the committee of management or the meeting of creditors, as the case may be, considers it is necessary, appoint another person to be deputy official manager in his or her place; and

(c) may determine the amount of the salary or other remuneration of the deputy official manager.

**(3)** In the absence of the official manager of a company, a deputy official manager shall, subject to any written directions given to him or her by the official manager, act as the official manager and, while so acting, has the powers, duties and functions of the official manager.

**(4)** A person who is appointed deputy official manager of a company shall, within 14 days after his or her appointment, lodge with the Commission a notice in the prescribed form of his or her appointment as deputy official manager and of the address of his or her office and, in the event of any change in the situation of his or her office, he or she shall, within 14 days after the change, lodge with the Commission notice in the prescribed form of the change.

**(5)** A person who ceases to be deputy official manager shall, within 14 days after ceasing to be deputy official manager, lodge with the Commission notice in the prescribed form of his or her ceasing to be deputy official manager.

**(6)** The committee of management of a company may, at any time and from time to time, direct the official manager of the company to convene a meeting of the creditors of the company or a meeting of the members of the company or a meeting of both creditors and members of the company, and the official manager shall give effect to the direction.

**(7)** Subject to this section and the regulations, the provisions of sections 549 and 550 apply with respect to a committee of management of a company, the proceedings of and vacancies in a committee of management of a company, and the removal of members of the committee of management of a company, and so apply as if:

(a) a reference in any of those provisions to the committee of inspection or to the committee were a reference to the committee of management;

(b) a reference in any of those provisions to a member of the committee were a reference to a member of the committee of management;

(c) a reference in any of those provisions to the liquidator were a reference to the official manager of the company; and

(d) a reference in any of those provisions to a contributory were a reference to a member of the company.

**PART 5.4—WINDING UP BY THE COURT**

***Division 1*—*Order for winding up***

**Winding up of company that has ceased to be a trading or banking corporation**

**459. (1)** The Court may order the winding up of a company (other than a new company) that is neither a trading corporation nor a banking corporation.

**(2)** Subsections (3), (4), (5) and (6) have effect for the purposes of an application made in relation to a company on the ground provided for by subsection (1).

**(3)** Unless the contrary is proved, the Court may presume that the company is neither a trading corporation nor a banking corporation at a particular time if, as at that time:

(a) the company:

(i) has contravened section 155; and

(ii) has lodged no annual return; or

(b) the company has lodged a notice under subsection 158 (3).

**(4)** Unless the contrary is proved, the Court may presume that the company is neither a trading corporation nor a banking corporation at a particular time if, as at that time:

(a) the company has contravened section 335 in relation to a particular financial year;

(b) the Commission has given to the company a written notice requiring the company to lodge its annual return for that financial year within a specified period of at least 28 days after the notice is so given; and

(c) that period has ended and the company has not lodged an annual return for that financial year that includes a statement complying with section 336.

**(5)** Unless the contrary is proved, the Court may presume that a company is not a trading corporation at a particular time if:

(a) as at that time, the company:

(i) has lodged for the purposes of section 155 a statement stating to the effect that the company does not intend as mentioned in subsection 155 (4); and

(ii) has lodged no annual return; or

(b) a statement included under section 336 in the last annual return lodged by the company before that time states to the effect that:

(i) as at a particular day, trading activities were not a substantial part of the company’s activities;

(ii) the company does not intend as mentioned in paragraph 336 (5) (b);

(iii) the company became dormant on a particular day that is not less than 3 months before that time;

(iv) trading activities were not a substantial part of the activities in which the company engaged during a particular period; or

(v) the company does not intend as mentioned in paragraph 336 (8) (c).

**(6)** Unless the contrary is proved, the Court may presume that the company is not a banking corporation at a particular time if, as at that time:

(a) the company:

(i) has lodged for the purposes of section 155 a statement that does not state to the effect that the company intends as mentioned in subsection 155 (5); and

(ii) has lodged no annual return; or

(b) the statement included under section 336 in the last annual return lodged by the company before that time:

(i) does not state as mentioned in subsection 336 (6); or

(ii) states to the effect that the company does not intend as mentioned in paragraph 336 (7) (b).

**Winding up of company on the ground of insolvency**

**460.** **(1)** The Court may order the winding up of a company that is unable to pay its debts.

**(2)** For the purposes of an application that is made in relation to a company on the ground provided for by subsection (1), the company shall be deemed to be unable to pay its debts if:

(a) a creditor by assignment or otherwise to whom the company is indebted in a sum exceeding $1,000 then due has served on the company a demand, signed by or on behalf of the creditor, requiring the company to pay the sum so due and the company has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(c) the Court, after taking into account any contingent and prospective liabilities of the company, is satisfied that the company is unable to pay its debts.

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

**461.** The Court may order the winding up of a company if:

(a) the company has by special resolution resolved that it be wound up by the Court;

(b) default is made by the company in lodging the statutory report or in holding the statutory meeting;

(c) the company does not commence business within one year from its incorporation or suspends its business for a whole year;

(d) unless the company is a wholly-owned subsidiary of another company—the number of members falls, in the case of a proprietary company, below 2 or, in the case of any other company, below 5;

(e) directors have acted in affairs of the company in their own interests rather than in the interests of the members as a whole, or in any other manner whatsoever that appears to be unfair or unjust to other members;

(f) affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or in a manner that is contrary to the interests of the members as a whole;

(g) an act or omission, or a proposed act or omission, by or on behalf of the company, or a resolution, or a proposed resolution, of a class of members of the company, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members or was or would be contrary to the interests of the members as a whole;

(h) the Commission has stated in a report prepared under Division 1 of Part 3 of the Commission Act that, in its opinion:

(i) the company cannot pay its debts and should be wound up; or

(ii) it is in the interests of the public, of the members, or of the creditors, that the company should be wound up;

(j) if the application was made by the Insurance and Superannuation Commissioner—the Court is of opinion that it is in the interests of the public, of the members or of the creditors that the company should be wound up; or

(k) the Court is of opinion that it is just and equitable that the company be wound up.

**Standing to apply for winding up**

**462. (1)** Any one or more of the following may apply for an order to wind up a company on the ground provided for by subsection 459 (1):

(a) the Commission;

(b) the Minister;

(c) a Minister of a State who is administering provisions of the company law of that State;

(d) the company.

**(2)** Subject to this section, any one or more of the following may apply for an order to wind up a company on a ground provided for by subsection 460 (1) or section 461:

(a) the company;

(b) a creditor (including a contingent or prospective creditor) of the company;

(c) a contributory;

(d) the liquidator of the company;

(e) the Commission pursuant to section 464 or 453;

(f) an official manager of the company appointed under Part 5.3;

(g) a person (other than the Commission) who has been granted leave under section 453; or

(h) the Insurance and Superannuation Commissioner appointed under the *Insurance and Superannuation Commissioner Act 1987.*

**(3)** A person being, or persons including, the Insurance and Superannuation Commissioner may only apply for an order to wind up a company if:

(a) an inspector has been appointed to make an investigation in respect of the company under section 52 of the *Insurance Act 1973*;and

(b) the company’s liabilities within the meaning of Part III of that Act exceed the company’s assets within the meaning of that Part.

**(4)** The Court shall not hear an application by a person being, or persons including, a contingent or prospective creditor of a company for an order to wind up the company unless and until:

(a) such security for costs has been given as the Court thinks reasonable; and

(b) a *prima facie* case for winding up the company has been established to the Court’s satisfaction.

**(5)** Except as permitted by this section, a person is not entitled to apply for an order to wind up a company.

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

**463.** The Court may make an order under section 459, 460 or 461 even if the company is being wound up voluntarily.

**Application for winding up in connection with investigation under Commission Act**

**464.** **(1)** Where the Commission is investigating, or has investigated, under Division 1 of Part 3 of the Commission Act:

(a) matters being, or connected with, affairs of a company; or

(b) matters including such matters;

the Commission may apply to the Court for the winding up of the company.

**(2)** For the purposes of an application under subsection (1), this Act applies, with such modifications as the circumstances require, as if a winding up application had been made by the company.

**(3)** The Commission shall give a copy of an application made under subsection (1) to the company.

**Commencement of winding up by the Court**

**465.** **(1)** Where, before the filing of the application, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing

of the resolution and, unless the Court on proof of fraud or mistake thinks fit otherwise to direct, all proceeding taken in the voluntary winding up shall be deemed to have been validly taken.

**(2)** In any other case the winding up shall be deemed to have commenced at the time of the filing of the application for the winding up.

**Payment of preliminary costs etc.**

**466.** **(1)** The persons, other than the company itself or the liquidator of the company, on whose application any winding up order is made shall, at their own cost, prosecute all proceedings in the winding up until a liquidator has been appointed under this Part.

**(2)** The liquidator shall, unless the Court orders otherwise, reimburse the applicant out of the property of the company the taxed costs incurred by the applicant in any such proceedings.

**(3)** Where the company has no property or does not have sufficient property and, in the opinion of the Commission, a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation, the taxed costs or so much of them as is not reimbursed under subsection (2) may be reimbursed by the Commission to an amount not exceeding $1,000.

**(4)** Where any winding up order is made upon the application of the company or a liquidator of the company, the costs incurred shall, subject to any order of the Court, be paid out of the property of the company in like manner as if they were the costs of any other applicant.

**Powers of Court on hearing application**

**467.** **(1)** Subject to subsection (2), on hearing a winding up application the Court may:

(a) dismiss the application with or without costs;

(b) adjourn the hearing conditionally or unconditionally; or

(c) make any interim or other order that it thinks fit.

**(2)** The Court shall not refuse to make a winding up order merely because:

(a) the property of the company has been mortgaged to an amount equal to or greater than the value or amount of that property; or

(b) the company has no property.

**(3)** The Court may, on the application coming on for hearing or at any time at the request of the applicant, the company or any person who has given notice of intention to appear on the hearing of the application:

(a) direct that any notices be given or any steps be taken before or after the hearing of the application;

(b) dispense with any notices being given or steps being taken that are required by this Act, or by the rules, or by any prior order of the Court;

(c) direct that oral evidence be taken on the application or any matter relating to the application;

(d) direct a speedy hearing or trial of the application or of any issue or matter;

(e) allow the application to be amended or withdrawn; and

(f) give such directions as to the proceedings as the Court thinks fit.

**(4)** Where the application is made by members as contributories on the ground that it is just and equitable that the company should be wound up or that the directors have acted in a manner that appears to be unfair or unjust to other members, the Court, if it is of the opinion that:

(a) the applicants are entitled to relief either by winding up the company or by some other means; and

(b) in the absence of any other remedy it would be just and equitable that the company should be wound up;

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

**(5)** Notwithstanding any rule of law to the contrary, the Court shall not refuse to make an order for winding up on the application of a person referred to in paragraph 462 (2) (c) on the ground that, if the order were made, no property of the company would be available for distribution among the contributories.

**(6)** Where the application is made on the ground of default in lodging the statutory report or in holding the statutory meeting, the Court may, instead of making a winding up order, direct that the statutory report be lodged or that a meeting be called, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

**(7)** At any time after the filing of a winding up application and before a winding up order has been made, the company or any creditor or contributory may, where any action or other civil proceeding against the company is pending, apply to the Court to stay or restrain further proceedings in the action or proceeding, and the Court may stay or restrain the proceedings accordingly on such terms as it thinks fit.

**Avoidance of dispositions of property, attachments etc.**

**468. (1)** Any disposition of property of the company, other than an exempt disposition, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up by the Court is, unless the Court otherwise orders, void.

**(2)** In subsection (1), “exempt disposition”, in relation to a company that has commenced to be wound up by the Court, means:

(a) a disposition made by the liquidator of the company pursuant to a power conferred on the liquidator by this Act or by an order of the Court; or

(b) a payment of money by an Australian bank out of an account maintained by the company with the Australian bank, being a payment made by the Australian bank:

(i) on or before the day on which the Court makes the order for the winding up of the company; and

(ii) in good faith and in the ordinary course of the banking business of the Australian bank.

**(3)** Notwithstanding subsection (1), the Court may, where an application for winding up has been filed but a winding up order has not been made, by order:

(a) validate the making, after the filing of the application, of a disposition of property of the company; or

(b) permit the business of the company or a portion of the business of the company to be carried on, and such acts as are incidental to the carrying on of the business or portion of the business to be done, during the period before a winding up order (if any) is made;

on such terms as it thinks fit.

**(4)** Any attachment, sequestration, distress or execution put in force against the property of the company after the commencement of the winding up by the Court is void.

**Application to be *lis* pendens**

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

**Certain notices to be lodged**

**470. (1)** An applicant (other than the Commission) for the winding up of a company shall:

(a) lodge, not later than 10.30 a.m. on the next business day after the filing of the application, notice of the filing of the application and of the date on which the application was filed;

(b) after an order for winding up is made—lodge, within 2 business days after the making of the order, notice of the making of the order, of the date on which the order was made and of the name and address of the liquidator; and

(c) if the application is withdrawn or dismissed—lodge, within 2 business days after the withdrawal or dismissal of the application, notice of the withdrawal or dismissal of the application and of the date on which the application was withdrawn or dismissed.

**(2)** The applicant shall, within 7 days after the passing and entering of a winding up order:

(a) except where the applicant is the Commission—lodge an office copy of the order;

(b) serve an office copy of the order on the company or such other person as the Court directs; and

(c) deliver to the liquidator an office copy of the order together with a statement that the order has been served as mentioned in paragraph (b).

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

**Effect of winding up order**

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

**(2)** Where an order has been made for the winding up of a company, or a provisional liquidator has been appointed in respect of a company, no action or other civil proceeding may be commenced or proceeded with against the company except:

(a) by leave of the Court; and

(b) in accordance with such terms as the Court imposes.

***Division 2*—*Court-appointed liquidators***

**Power of Court to appoint official liquidator**

**472.** **(1)** On an order being made for the winding up of a company, the Court may appoint an official liquidator to be liquidator of the company.

**(2)** The Court may appoint an official liquidator provisionally at any time after the filing of a winding up application and before the making of a winding up order or, if there is an appeal against a winding up order, before a decision in the appeal is made.

**(3)** A liquidator appointed provisionally has and may exercise such functions and powers as are conferred on him or her by this Act or prescribed by the rules or as the Court specifies in the order appointing him or her.

**General provisions about liquidators**

**473.** **(1)** A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

**(2)** A provisional liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined by the Court.

**(3)** A liquidator is entitled to receive such remuneration by way of percentage or otherwise as is determined:

(a) if there is a committee of inspection—by agreement between the liquidator and the committee of inspection; or

(b) if there is no committee of inspection or the liquidator and the committee of inspection fail to agree:

(i) by a resolution passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company that have been admitted to proof amount in the aggregate to at least 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy, that have been admitted to proof; or

(ii) if no such resolution is passed—by the Court.

**(4)** A meeting of creditors for the purposes of subsection (3) shall be convened by the liquidator by sending to each creditor a notice to which is attached a statement of all receipts and expenditure by the liquidator and of the amount of remuneration sought by him or her.

**(5)** Where the remuneration of a liquidator is determined in the manner specified in paragraph (3) (a), the Court may, on the application of:

(a) a member or members whose shareholding or shareholdings represents or represent in the aggregate at least 10% of the issued capital of the company;

(b) a creditor or creditors whose debts against the company that have been admitted to proof amount in the aggregate to at least 10% of the total amount of the debts of the creditors of the company that have been admitted to proof; or

(c) the Commission;

review the liquidator’s remuneration and may confirm, increase or reduce that remuneration.

**(6)** Where the remuneration of a liquidator is determined in the manner specified in subparagraph (3) (b) (i) the Court may, on the application of the liquidator or of a member or members referred to in subsection (5), review the liquidator’s remuneration and may confirm, increase or reduce that remuneration.

**(7)** A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

**(8)** If more than one liquidator is appointed by the Court, the Court shall declare whether anything that is required or authorised by this Act to be done by the liquidator is to be done by all or any one or more of the persons appointed.

**(9)** Subject to this Act, the acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.

**Custody and vesting of company’s property**

**474.** **(1)** Where a winding up order has been made or a provisional liquidator has been appointed, the liquidator or provisional liquidator shall take into his or her custody or under his or her control all the property to which the company is or appears to be entitled, and, if there is no liquidator, all the property of the company shall be in the custody of the Court.

**(2)** The Court may, on the application of the liquidator, by order direct that all or any part of the property of the company shall vest in the liquidator and thereupon the property to which the order relates shall vest accordingly and the liquidator may, after giving such indemnity (if any) as the Court directs, bring, or may defend, any action or other legal proceeding that relates to that property or that it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

**(3)** Where an order is made under this section, the liquidator of the company to which the order relates shall, within 14 days after the making of the order, lodge with the Commission an office copy of the order.

**Report as to company’s affairs to be submitted to liquidator**

**475.** **(1)** There shall be made out and verified by a statement in writing in the prescribed form, and submitted to the liquidator, by the persons who were, at the date of the winding up order or, if the liquidator specifies an earlier date, that earlier date, the directors and secretary of the company a report in the prescribed form as to the affairs of the company as at the date concerned.

**(2)** The liquidator may, by notice in writing served personally or by post addressed to the last known address of the person, require one or more persons included in one or more of the following classes of persons to make out as required by the notice, verify by a statement in writing in the prescribed form, and submit to him or her, a report, containing such information as is specified in the notice as to the affairs of the company or as to such of those affairs as are specified in the notice, as at a date specified in the notice:

(a) persons who are or have been officers of the company;

(b) where the company was formed within one year before the date of the winding up order—persons who have taken part in the formation of the company;

(c) persons who are employed by the company or have been employed by the company within one year before the date of the winding up order and are, in the opinion of the liquidator, capable of giving the information required;

(d) persons who are, or have been within one year before the date of the winding up order, officers of, or employed by, a body corporate that is, or within that year was, an officer of the company to the affairs of which the report relates;

(e) a person who was a provisional liquidator of the company.

**(3)** The liquidator may, in a notice under subsection (2), specify the information that he or she requires as to affairs of the company by reference to information required by this Act or the regulations to be included in any other report, statement or notice under this Act.

**(4)** A report referred to in subsection (1) shall, subject to subsection (6), be submitted to the liquidator not later than 14 days after the making of the winding up order.

**(5)** A person required to submit a report referred to in subsection (2) shall, subject to subsection (6), submit it not later than 14 days after the liquidator serves notice of the requirement.

**(6)** Where the liquidator believes there are special reasons for so doing, he or she may, on an application in writing made to him or her before the end of the time limited by subsection (4) or (5) for the submission by the applicant of a report under subsection (1) or (2), grant, by notice in writing, an extension of that time.

**(7)** A liquidator:

(a) shall, within 7 days after receiving a report under subsection (1) or (2), cause a copy of the report to be filed with the Court and a copy to be lodged; and

(b) shall, where he or she gives a notice under subsection (6), as soon as practicable lodge a copy of the notice.

**(8)** A person making or concurring in making a report required by this section and verifying it as required by this section shall, subject to the rules, be allowed, and shall be paid by the liquidator out of the property of the company, such costs and expenses incurred in and about the preparation and making of the report and the verification of that report as the liquidator considers reasonable.

**(9)** A person shall not, without reasonable excuse, contravene a provision of this section other than subsection (7).

**(10)** A person shall not, without reasonable excuse, contravene subsection (7).

**Preliminary report by liquidator**

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

(a) in the case of a company having a share capital—as to the amount of capital issued, subscribed and paid up;

(b) as to the estimated amounts of assets and liabilities of the company;

(c) if the company has failed—as to the causes of the failure; and

(d) as to whether, in his or her opinion, further inquiry is desirable with respect to a matter relating to the promotion, formation or

insolvency of the company or the conduct of the business of the company.

**Powers of liquidator**

**477. (1)** The liquidator may, with the approval of the Court, of the committee of inspection or of a resolution of the creditors:

(a) carry on the business of the company so far as is necessary for the beneficial disposal or winding up of that business;

(b) subject to the provisions of section 556, pay any class of creditors in full;

(c) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging that they have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company or whereby the company may be rendered liable; and

(d) compromise any calls, liabilities to calls, debts, liabilities capable of resulting in debts and any claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the property or the winding up of the company, on such terms as are agreed, and take any security for the discharge of, and give a complete discharge in respect of, any such call, debt, liability or claim.

**(2)** The liquidator may:

(a) bring or defend any legal proceeding in the name and on behalf of the company;

(b) appoint a solicitor to assist him or her in his or her duties;

(c) sell or otherwise dispose of, in any manner, all or any part of the property of the company;

(d) do all acts and execute in the name and on behalf of the company all deeds, receipts and other documents and for that purpose use when necessary the company’s common or official seal;

(e) subject to the *Bankruptcy Act 1966*,prove in the bankruptcy of any contributory or debtor of the company or under any deed executed under that Act;

(f) draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company;

(g) obtain credit, whether on the security of the property of the company or otherwise;

(h) take out letters of administration of the estate of a deceased contributory or debtor, and do any other act necessary for obtaining payment of any money due from a contributory or debtor, or his or her estate, that cannot be conveniently done in the name of the company;

(j) compromise any debt due to the company other than calls and liabilities for calls and other than a debt where the amount claimed by the company to be due to it exceeds $20,000;

(k) appoint an agent to do any business that the liquidator is unable to do, or that it is unreasonable to expect the liquidator to do, in person; and

(m) do all such other things as are necessary for winding up the affairs of the company and distributing its property.

**(3)** A liquidator of a company is entitled to inspect at any reasonable time any books of the company and a person who refuses or fails to allow the liquidator to inspect such books at such a time is guilty of an offence.

**(4)** The authority of the Court or committee of inspection or a resolution of the creditors is not required for the carrying on of the business of the company by the liquidator in accordance with paragraph (1) (a) during the 4 weeks next after the date of the winding up order.

**(5)** For the purpose of enabling the liquidator to take out letters of administration or recover money as mentioned in paragraph (2) (h), the money due shall be deemed to be due to the liquidator.

**(6)** The exercise by the liquidator of the powers conferred by this section is subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

**Settlement of list of contributories and application of property**

**478. (1)** As soon as practicable after a winding up order is made, the liquidator:

(a) shall settle a list of contributories;

(b) may rectify the register of members where rectification is required under this Part; and

(c) shall cause the property of the company to be collected and applied in discharge of its liabilities.

**(2)** Notwithstanding the provisions of subsection (1), where it appears to the liquidator that it will not be necessary to make calls on or adjust the rights of contributories, the liquidator may dispense with the settlement of a list of contributories.

**(3)** In settling the list of contributories the liquidator shall distinguish between persons who are contributories in their own right and persons who are contributories by virtue of representing, or being liable for the debts of, other persons.

**(4)** The list of contributories, when settled in accordance with the regulations, is *prima facie* evidence of the liabilities of the persons named in the list as contributories.

**Exercise and control of liquidator’s powers**

**479.** **(1)** Subject to this Part, the liquidator shall, in the administration of the property of the company and in the distribution of the property among its creditors, have regard to any directions given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and, in case of conflict, any directions so given by the creditors or contributories override any directions given by the committee of inspection.

**(2)** The liquidator may convene general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and he or she shall convene meetings at such times as the creditors or contributories by resolution direct or whenever requested in writing to do so by at least one-tenth in value of the creditors or contributories.

**(3)** The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding up.

**(4)** Subject to this Part, the liquidator shall use his or her own discretion in the management of affairs and property of the company and the distribution of its property.

**Release of liquidator and dissolution of company**

**480.** When the liquidator:

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

(b) has resigned or has been removed from office;

he or she may apply to the Court:

(c) for an order that he or she be released; or

(d) for an order that he or she be released and that the company be dissolved.

**Orders for release or dissolution**

**481.** **(1)** The Court:

(a) may cause a report on the accounts of the liquidator to be prepared by the auditor appointed by the Commission under section 557 or by some other registered company auditor appointed by the Court;

(b) on the liquidator complying with all the requirements of the Court— shall take into consideration the report and any objection against the release of the liquidator that is made by the auditor or by any creditor, contributory or other person interested; and

(c) shall either grant or withhold the release accordingly.

**(2)** Where the release of a liquidator is withheld and the Court is satisfied that the liquidator has been guilty of default, negligence, breach of

trust or breach of duty, the Court may order the liquidator to make good any loss that the company has sustained by reason of the default, negligence, breach of trust or breach of duty and may make such other order as it thinks fit.

**(3)** An order of the Court releasing the liquidator discharges him or her from all liability in respect of any act done or default made by him or her in the administration of the affairs of the company or otherwise in relation to his or her conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

**(4)** Where the liquidator has not previously resigned or been removed, his or her release operates as a removal from office.

**(5)** Where the Court has made:

(a) an order that the liquidator be released; or

(b) an order that the liquidator be released and that the company be dissolved;

the liquidator shall, within 14 days after the making of the order, lodge an office copy of the order.

**(6)** Where an order is made that the company be dissolved, the company is, from the date of the order, dissolved accordingly.

***Division 3***—***General powers of Court***

**Power to stay or terminate winding up**

**482. (1)** At any time during the winding up of a company, the Court may, on the application of the liquidator or of a creditor or contributory, make an order staying the winding up either indefinitely or for a limited time or terminating the winding up on a day specified in the order.

**(2)** On such an application, the Court may, before making an order, direct the liquidator to furnish a report with respect to a relevant fact or matter.

**(3)** Where the Court has made an order terminating the winding up, the Court may give such directions as it thinks fit for the resumption of the management and control of the company by its officers, including directions for the convening of a general meeting of members of the company to elect directors of the company to take office upon the termination of the winding up.

**(4)** The costs of proceedings before the Court under this section and the costs incurred in convening a meeting of members of the company in accordance with an order of the Court under this section shall, if the Court so directs, form part of the costs, charges and expenses of the winding up.

**(5)** Where an order is made under this section, the company shall lodge an office copy of the order within 14 days after the making of the order.

**Delivery of property to liquidator**

**483. (1)** The Court may require a person who is a contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer to the liquidator or provisional liquidator, as soon as practicable or within a specified period, any money, property or books in the person’s hands to which the company is *prima facie* entitled.

**(2)** The Court may make an order directing any contributory for the time being on the list of contributories to pay to the company in the manner directed by the order any money due from the contributory or from the estate of the person whom the contributory represents, exclusive of any money payable by the contributory or the estate by virtue of any call pursuant to this Act, and may:

(a) in the case of an unlimited company—allow to the contributory by way of set-off any money due to the contributory or to the estate that the contributory represents from the company on any independent dealing or contract but not any money due to the contributory as a member of the company in respect of any dividend or profit; and

(b) in the case of a limited company—make to any director whose liability is unlimited or to such a director’s estate the like allowance;

and, in the case of any company whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him, her or it by way of set-off against any subsequent call.

**(3)** The Court may, either before or after it has ascertained the sufficiency of the property of the company:

(a) make calls on all or any of the contributories for the time being on the list of contributories, to the extent of their liability, for payment of any money that the Court considers necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves; and

(b) make an order for payment of any calls so made;

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

**(4)** The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the amount due into a bank named in the order to the account of the liquidator instead of to the liquidator, and any such order may be enforced in the same manner as if it had directed payment to the liquidator.

**(5)** All money and securities paid or delivered into any bank under this Division are subject in all respects to orders of the Court.

**(6)** An order made by the Court under this section is, subject to any right of appeal, conclusive evidence that the money (if any) thereby appearing

to be due or ordered to be paid is due, and all other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings.

**Appointment of special manager**

**484.** **(1)** The liquidator may, if satisfied that the nature of the property or business of the company, or the interests of the creditors or contributories generally, requires or require the appointment of a special manager of the property or business of the company other than himself or herself, apply to the Court, and the Court may appoint a special manager of the property or business to act during such time as the Court directs with such powers, including any of the powers of a receiver or manager, as are entrusted to him or her by the Court.

**(2)** The special manager:

(a) shall give such security and account in such manner as the Court directs;

(b) shall receive such remuneration as is fixed by the Court; and

(c) may at any time resign by notice in writing addressed to the liquidator or may, on cause shown, be removed by the Court.

**Claims of creditors and distribution of property**

**485.** **(1)** The Court may fix a day on or before which creditors are to prove their debts or claims or after which they will be excluded from the benefit of any distribution made before those debts are proved.

**(2)** The Court shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled to it.

**(3)** The Court may, in the event of the property being insufficient to satisfy the liabilities, make an order as to the payment out of the property of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

**Inspection of books by creditors and contributories**

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

**Power to arrest absconding contributory**

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

**Delegation to liquidator of certain powers of Court**

**488.** **(1)** Provision may be made by rules or regulations for enabling or requiring all or any of the powers and duties conferred and imposed on the Court by this Part in respect of:

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;

(b) the paying, delivery, conveyance, surrender or transfer of money, property or books to the liquidator;

(c) the making of calls and the adjusting of the rights of contributories among themselves and the distribution of any surplus among the persons entitled to it; and

(d) the fixing of a time within which debts and claims must be proved;

to be exercised or performed by the liquidator as an officer of the Court and subject to the control of the Court.

**(2)** Notwithstanding anything contained in rules or regulations made for the purposes of subsection (1), a liquidator shall not:

(a) make any call without either the special leave of the Court or the sanction of the committee of inspection; or

(b) distribute any surplus among the persons entitled to it without the special leave of the Court.

**Powers of Court cumulative**

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

**PART 5.5—VOLUNTARY WINDING UP**

***Division 1*—*Resolution for winding up***

**Limitation on right to wind up voluntarily**

**490.** Where an application has been filed with the Court for the winding up of a company on the ground that it is unable to pay its debts, the company is not, without the leave of the Court, entitled to resolve that it be wound up voluntarily.

**Circumstances in which company may be wound up voluntarily**

**491.** **(1)** Subject to section 490, a company may be wound up voluntarily if the company so resolves by special resolution.

**(2)** A company shall:

(a) within 7 days after the passing of a resolution for voluntary winding up, lodge a printed copy of the resolution; and

(b) within 21 days after the passing of the resolution, cause notice of the resolution to be published in the *Gazette.*

**Commencement of winding up**

**492.** A voluntary winding up commences at the time of the passing of the resolution for voluntary winding up.

**Effect of voluntary winding up**

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

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

**Declaration of solvency**

**494.** **(1)** Where it is proposed to wind up a company voluntarily, a majority of the directors that consists of at least 2 of them may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

**(2)** There shall be attached to the declaration a statement of affairs of the company showing, in the prescribed form:

(a) the property of the company, and the total amount expected to be realised from that property;

(b) the liabilities of the company; and

(c) the estimated expenses of winding up;

made up to the latest practicable date before the making of the declaration.

**(3)** A declaration so made has no effect for the purposes of this Act unless:

(a) the declaration is made at the meeting of directors referred to in subsection (1);

(b) the declaration is lodged before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out or such later date as the Commission, whether before, on or after the first-mentioned date, allows; and

(c) the resolution for voluntary winding up is passed within the period of 5 weeks after the making of the declaration or within such further period after the making of that declaration as the Commission, whether before or after the end of that period of 5 weeks, allows.

**(4)** A director who makes a declaration under this section (including a declaration that has no effect for the purposes of this Act by reason of subsection (3)) without having reasonable grounds for his or her opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

**(5)** If the company is wound up pursuant to a resolution for voluntary winding up passed within the period of 5 weeks after the making of the declaration or, if pursuant to paragraph (3) (c) the Commission has allowed a further period after the end of that period of 5 weeks, within that further period, but its debts are not paid or provided for in full within the period stated in the declaration, it shall be presumed, unless the contrary is shown, that a director who made the declaration did not have reasonable grounds for his or her opinion.

***Division 2*—*Members’ voluntary winding up***

**Liquidators**

**495. (1)** The company in general meeting shall appoint a liquidator or liquidators for the purpose of winding up the affairs and distributing the property of the company and may fix the remuneration to be paid to him, her or them.

**(2)** On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves the continuance of any of those powers.

**(3)** If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him or her, and for that purpose a general meeting may be convened by any contributory or, if there were 2 or more liquidators, by the continuing liquidators.

**(4)** The meeting shall be held in the manner provided by this Act or by the articles or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

**Duty of liquidator to call creditors’ meeting in case of insolvency**

**496. (1)** Where a declaration has been made under section 494 and the liquidator is at any time of the opinion that the company will not be able to pay or provide for the payment of its debts in full within the period stated in the declaration, he or she shall as soon as practicable convene a meeting of the creditors.

**(2)** The liquidator shall send to each creditor with the notice convening the meeting a list setting out the names of all creditors, the addresses of

those creditors and the estimated amounts of their claims, as shown in the records of the company.

**(3)** Unless the Court otherwise orders, nothing in subsection (2) requires the liquidator to send, to a creditor whose debt does not exceed $200, a list of creditors referred to in that subsection, but the notice convening the meeting that is sent to a creditor to whom the liquidator is not required to send such a list shall specify a place at which copies of the list referred to in that subsection can be obtained on request made orally or in writing and, where such a creditor so requests, the liquidator shall as soon as practicable comply with the request.

**(4)** The liquidator shall lay before the meeting a statement of the assets and liabilities of the company and the notice convening the meeting shall draw the attention of the creditors to the right conferred upon them by subsection (5).

**(5)** The creditors may, at the meeting convened under subsection (1), appoint some other person to be liquidator for the purpose of winding up the affairs and distributing the property of the company instead of the liquidator appointed by the company.

**(6)** If the creditors appoint some other person under subsection (5), the winding up shall thereafter proceed as if the winding up were a creditors’ voluntary winding up.

**(7)** The liquidator or, if another person is appointed by the creditors to be liquidator, the person so appointed shall, within **7** days after a meeting has been held pursuant to subsection (1), lodge a notice in the prescribed form.

**(8)** Where the liquidator has convened a meeting under subsection (1) and the creditors do not appoint a liquidator instead of the liquidator appointed by the company, the winding up shall thereafter proceed as if the winding up were a creditors’ voluntary winding up, but the liquidator is not required to convene an annual meeting of creditors at the end of the first year from the commencement of the winding up if the meeting held under subsection (1) was held less than 3 months before the end of that year.

***Division 3*—*Creditors’ voluntary winding up***

**Meeting of creditors**

**497. (1)** The company shall cause a meeting of the creditors of the company to be convened for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

**(2)** The company shall convene a meeting at a date, time and place convenient to the majority in value of the creditors and shall:

(a) give to the creditors at least 7 days notice by post of the meeting;

(b) send to each creditor with the notice:

(i) a summary of the affairs of the company in the prescribed form; and

(ii) a list setting out the names of all creditors, the addresses of those creditors and the estimated amounts of their claims, as shown in the records of the company;

(c) lodge, not less than 7 days before the day fixed for the holding of the meeting, a copy of the notice given under paragraph (a) and of the documents that accompanied that notice in accordance with paragraph (b); and

(d) publish, not less than 7 days, nor more than 14 days, before the day fixed for the holding of the meeting, a copy of the notice given or to be given under paragraph (a) in each State, Territory or excluded Territory in which the company carries on business or has carried on business at any time during the 2 years immediately preceding that day in a daily newspaper circulating generally in that State, Territory or excluded Territory.

**(3)** Unless the Court otherwise orders, nothing in subsection (2) requires the company to send, to a creditor whose debt does not exceed $200, a list of creditors referred to in subparagraph (2) (b) (ii), but the notice convening the meeting that is sent to a creditor to whom the company is not required to send such a list shall specify a place at which copies of the list referred to in that subparagraph can be obtained on request made orally or in writing and, where such a creditor so requests, the company shall as soon as practicable comply with the request.

**(4)** If the company contravenes subsection (1) or (2):

(a) the company is not guilty of an offence by virtue of this section or section 1311; and

(b) a person involved in the contravention contravenes this subsection.

**(5)** The directors of the company shall:

(a) cause to be laid before the meeting of creditors a report in the prescribed form, and verified by all the directors, as to the affairs of the company, made up to the latest practicable date before the notices of the meeting were sent; and

(b) appoint one of their number to attend the meeting.

**(6)** The director so appointed and a secretary shall attend the meeting and disclose to the meeting the affairs of the company and the circumstances leading up to the proposed winding up.

**(7)** The directors of the company shall, not later than 7 days after the report referred to in paragraph (5) (a) is laid before the meeting of creditors as mentioned in that paragraph, lodge a copy of the report with the Commission.

**(8)** The creditors may appoint one of their number or the director appointed under subsection (5) to preside at the meeting.

**(9)** The chairman shall, at the meeting, determine whether the meeting has been held at a date, time and place convenient to the majority in value of the creditors and his or her decision is final.

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

**Power to adjourn meeting**

**498. (1)** A meeting convened under section 497 may by resolution be adjourned from time to time to a time and day specified in the resolution but shall not be adjourned to a day later than 21 days after the day for which the meeting was originally convened.

**(2)** Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

**(3)** Where a meeting is adjourned to a day more than 8 days after the passing of the resolution by which it is adjourned, the company shall cause notice of the day, time and place of the resumption of the meeting to be published, in a daily newspaper circulating generally in the State or Territory in which the resumed meeting is to be held, at least 7 days before that day.

**(4)** If the meeting of the company is adjourned and the resolution for winding up is passed at an adjourned meeting, any resolution passed at the meeting of the creditors has effect as if it had been passed immediately after the passing of the resolution for winding up.

**Liquidators**

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

**(2)** Notwithstanding the provisions of subsection (1), where different persons are nominated, any director or member may, within 7 days after the date on which the nomination was made by the creditors, apply to the Court for an order directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors.

**(3)** The committee of inspection, or, if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator.

**(4)** On the appointment of a liquidator, the powers of the directors cease except so far as the committee of inspection, or, if there is no such committee, the creditors, approve the continuance of any of those powers.

**(5)** If a liquidator, other than a liquidator appointed by or by the direction of the Court, dies, resigns or otherwise vacates his or her office, the creditors may fill the vacancy and, for the purpose of so doing, a meeting of the creditors may be convened by any 2 of their number.

**Execution and civil proceedings**

**500.** **(1)** Any attachment, sequestration, distress or execution put in force against the property of the company after the commencement of a creditors’ voluntary winding up is void.

**(2)** After the commencement of the winding up, no action or other civil proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court imposes.

**(3)** The Court may require any contributory, trustee, receiver, banker, agent or officer of the company to pay, deliver, convey, surrender or transfer forthwith or within such time as the Court directs to the liquidator any money, property or books in his, her or its hands to which the company is *prima facie* entitled.

***Division 4*—*Voluntary winding up generally***

**Distribution of property of company**

**501.** Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

**Appointment of liquidator**

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

**Removal of liquidator**

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

**Review of liquidator’s remuneration**

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

**Acts of liquidator valid etc.**

**505.** **(1)** The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.

**(2)** A conveyance, assignment, transfer, mortgage, charge or other disposition of a company’s property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of any person taking such property in good faith and for value and without actual knowledge of the defect or irregularity.

**(3)** A person making or permitting a disposition of property to a liquidator shall be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator that is not then known to that person.

**(4)** For the purposes of this section, a disposition of property shall be taken as including a payment of money.

**Powers and duties of liquidator**

**506.** **(1)** The liquidator may:

(a) in the case of a members’ voluntary winding up, with the approval of a special resolution of the company or, in the case of a creditors’ voluntary winding up, with the approval of the Court or the committee of inspection or, if there is no such committee, a meeting of creditors, exercise any of the powers given by paragraphs 477 (1) (b), (c) and (d) to a liquidator in a winding up by the Court;

(b) exercise any of the other powers given by this Act to the liquidator in a winding up by the Court;

(c) exercise the power under section 478 of a liquidator appointed by the Court to settle a list of contributors;

(d) exercise the power of the Court of making calls;

(e) exercise the power of the Court of fixing a time within which debts and claims must be proved; or

(f) convene a general meeting of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he or she thinks fit.

**(2)** A list of contributories settled in accordance with paragraph (1) (c) is *prima facie* evidence of the liability of the persons named in the list to be contributories.

**(3)** The liquidator shall pay the debts of the company and adjust the rights of the contributories among themselves.

**(4)** When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as is determined at the time of their appointment, or in default of such determination, by any number not less than 2.

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

**507. (1)** This section applies where it is proposed to transfer or sell to a body corporate the whole or a part of the business or property of a company.

**(2)** The liquidator of the company may, with the sanction of a special resolution of the company conferring on the liquidator either a general authority or an authority in respect of a particular arrangement, enter into an arrangement under which, in compensation or part compensation for the transfer or sale:

(a) the liquidator is to receive shares, debentures, policies or other like interests in the body corporate for distribution among the members of the company; or

(b) the members of the company may, instead of, or as well as, receiving cash, shares, debentures, policies or other like interests in the body corporate, participate in the profits of, or receive any other benefit from, the body corporate.

**(3)** A transfer, sale or arrangement under this section is binding on the members of the company.

**(4)** If a member of the company who did not vote in favour of a special resolution expresses dissent from the resolution in writing addressed to the liquidator and left at the office of the liquidator within 7 days after the passing of the resolution, the member may require the liquidator either to abstain from carrying the resolution into effect or to purchase the member’s interest at a price to be determined by agreement or by arbitration under this section.

**(5)** If the liquidator elects to purchase the member’s interest, the purchase money shall be paid before the company is dissolved and be raised by the liquidator in such manner as is determined by special resolution.

**(6)** A special resolution is not invalid for the purposes of this section because it is passed before, or concurrently with, a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within 1 year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

**(7)** For the purposes of an arbitration under this section, the law of the Capital Territory relating to commercial arbitration applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party.

**(8)** The appointment of an arbitrator may be made in writing signed by:

(a) if there is only one liquidator—the liquidator; or

(b) if there is more than one liquidator—any 2 or more of the liquidators.

**(9)** The Court may give any directions necessary for the initiation and conduct of the arbitration and any such direction is binding on the parties.

**(10)** In the case of a creditors’ voluntary winding up, the powers of the liquidator under this section shall not be exercised except with the approval of the Court or the committee of inspection.

**Annual meeting of creditors**

**508.** **(1)** If the winding up continues for more than 1 year, the liquidator shall:

(a) in the case of a members’ voluntary winding up—convene a general meeting of the company; or

(b) in the case of a creditors’ voluntary winding up—convene a general meeting of the company and a meeting of the creditors;

within 3 months after the end of the first year from the commencement of the winding up and the end of each succeeding year, and shall lay before the meeting or each meeting an account of his or her acts and dealings and of the conduct of the winding up during that first year or that succeeding year, as the case may be.

**(2)** The liquidator shall cause the notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

**Final meeting and dissolution**

**509.** **(1)** As soon as the affairs of the company are fully wound up, the liquidator shall make up an account showing how the winding up has been conducted and the property of the company has been disposed of and, when the account is so made up, he or she shall convene a general meeting of the company, or, in the case of a creditors’ voluntary winding up, a meeting of the creditors and members of the company, for the purpose of laying before it the account and giving any explanation of the account.

**(2)** The meeting shall be convened by an advertisement published in the *Gazette* at least 1 month before the meeting specifying the date, time, place and purpose of the meeting.

**(3)** The liquidator shall, within 7 days after the meeting, lodge a return of the holding of the meeting and of its date with a copy of the account attached to the return.

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

**(5)** Subject to subsection (6), at the end of the period of 3 months after the lodging of the return the company is dissolved.

**(6)** On the application of the liquidator or of any other party who appears to the Court to be interested, the Court may, before the end of the period of 3 months referred to in subsection (5), by order, declare that subsection (5) is not to apply in relation to the company and specify the date on which the company is to be dissolved and, where the Court makes such an order, the company is dissolved on the date specified in the order.

**(7)** The person on whose application an order of the Court under this section is made shall, within 14 days after the making of the order, lodge an office copy of the order.

**Arrangement: when binding on creditors**

**510.** **(1)** An arrangement entered into between a company about to be, or in the course of being, wound up and its creditors is, subject to subsection (4):

(a) binding on the company if sanctioned by a special resolution; and

(b) binding on the creditors if a resolution in favour of the arrangement is passed at a meeting of creditors by a majority of the creditors present and voting, either in person or by proxy, being a majority whose debts against the company amount in the aggregate to at least 75% of the total amount of the debts of the creditors of the company present and voting, either in person or by proxy.

**(2)** A creditor shall be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by the creditor and the amount of any debt or set-off owing by the creditor to the company, appears to be the balance due to the creditor.

**(3)** A dispute about the value of any such security or lien or the amount of any such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

**(4)** A creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court in respect of the arrangement, and the Court may confirm, set aside or modify the arrangement and make such further order as it thinks just.

**Application to Court to have questions determined or powers exercised**

**511.** **(1)** The liquidator, or any contributory or creditor, may apply to the Court:

(a) to determine any question arising in the winding up of a company; or

(b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

**(2)** The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

**Costs**

**512.** All proper costs, charges and expenses of and incidental to the winding up (including the remuneration of the liquidator) are payable out of the property of the company in priority to all other claims.

**PART 5.6—WINDING UP GENERALLY**

***Division 1*—*Preliminary***

**Application**

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

***Division 2*—*Contributories***

**Where Division applies**

**514.** This Division applies where a company is wound up.

**General liability of contributory**

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

(a) to pay the company’s debts and liabilities and the costs, charges and expenses of the winding up; and

(b) to adjust the rights of the contributories among themselves.

**Company limited by shares**

**516.** Subject to sections 518 and 519, if the company is a company limited by shares, a member need not contribute more than the amount (if any) unpaid on the shares in respect of which the member is liable as a present or past member.

**Company limited by guarantee**

**517.** Subject to sections 518 and 519, if the company is a company limited by guarantee, a member need not contribute more than the amount the member has undertaken to contribute to the company’s property if the company is wound up.

**Company limited both by shares and by guarantee**

**518.** Subject to section 519, if the company is a company limited both by shares and by guarantee, neither of sections 516 and 517 applies but a member need not contribute more than the aggregate of the following:

(a) any sums unpaid on any shares held by the member;

(b) the amount the member has undertaken to contribute to the company’s property if the company is wound up.

**Exceptions for former unlimited company**

**519.** Despite sections 516, 517 and 518, if the company is a limited company and became a limited company by virtue of a change of status under paragraph 167 (1) (a), the amount that a member at the time of the change of status, or a person who at that time was a past member, is liable to contribute in respect of the company’s debts and liabilities contracted before that time is unlimited.

**Past member: later debts**

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

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

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

**Present members to contribute first**

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

**Past member of former unlimited company**

**523.** If the company is a limited company and became a limited company within 3 years before the day of the commencement of the winding up by virtue of a change of status under paragraph 167 (1) (a), a past member who was a member at the time of the change of status is liable:

(a) despite section 521; and

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

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

**Past member of former limited company**

**524.** If the company has changed its status under paragraph 167 (1) (e), a person who, at the time when the company applied for the change of status, was a past member and did not again become a member after that time need not contribute more than the person would have been liable to contribute if the company had not so changed its status.

**Debts to a member**

**525.** A sum due to a member in that capacity, whether by way of dividends, profits or otherwise, shall not be treated as a debt of the company payable to that member in a case of competition between the member and a creditor who is not a member, but may be taken into account for the purposes of the final adjustment of the rights of the contributories among themselves.

**Liability on certain contracts**

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

**Nature of contributory’s liability**

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

**Death of contributory**

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

(a) his or her personal representatives are liable in due course of administration to contribute to the company’s property in discharge of his or her liability to contribute and are contributories accordingly; and

(b) if his or her personal representatives default in paying any money that they are ordered to pay—proceedings may be taken for administering his or her estate and for compelling payment, out of the assets of that estate, of the money due.

**Bankruptcy of contributory**

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

(a) his or her trustee shall represent him or her for the purposes of the winding up and shall be a contributory accordingly; and

(b) calls already made, and the estimated value of his or her liability to future calls, may be proved against his or her estate.

**Division 2 company**

**530.** If the company is a Division 2 company:

(a) a reference in this Division to paragraph 167 (1) (a) or (e) includes a reference to a law corresponding to that paragraph; and

(b) a reference to becoming a limited company includes a reference to becoming a limited company within the meaning of a law corresponding to paragraph 167 (1) (a).

***Division 3*—*Liquidators***

**Books to be kept by liquidator**

**531.** A liquidator shall keep proper books in which he or she shall cause to be made entries or minutes of proceedings at meetings and of such other

matters as are prescribed, and any creditor or contributory may, unless the Court otherwise orders, personally or by an agent inspect them.

**Disqualification of liquidator**

**532. (1)** Subject to this section, a person shall not consent to be appointed, and shall not act, as liquidator of a company unless he or she is:

(a) a registered liquidator; or

(b) registered as a liquidator of that company under subsection 1282 (3).

**(2)** Subject to this section, a person shall not, except with the leave of the Court, seek to be appointed, or act, as liquidator of a company:

(a) if the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding $5,000 to the company or a body corporate related to the company;

(b) if the person is, otherwise than in his or her capacity as liquidator, a creditor of the company or of a related body corporate in an amount exceeding $5,000; or

(c) if:

(i) the person is an officer of the company (otherwise than by reason of being a liquidator of the company or of a related body corporate);

(ii) the person is an officer of any body corporate that is a mortgagee of property of the company;

(iii) the person is an auditor of the company;

(iv) the person is a partner or employee of an auditor of the company;

(v) the person is a partner, employer or employee of an officer of the company; or

(vi) the person is a partner or employee of an employee of an officer of the company.

**(3)** The reference in paragraph (2) (a) to indebtedness to a body corporate does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of Part 4.5 where:

(a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and

(b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as the person’s principal place of residence.

**(4)** Subsection (1) and paragraph (2) (c) do not apply to a members’ voluntary winding up of a proprietary company that is an exempt proprietary company or is a subsidiary of a public company.

**(5)** Paragraph (2) (c) does not apply to a creditors’ voluntary winding up if, by a resolution carried by a majority of the creditors in number and value present and voting, either in person or by proxy, at a meeting of which 7 days notice has been given to every creditor stating the purpose of the meeting, it is determined that that paragraph shall not so apply.

**(6)** For the purposes of subsection (2), a person shall be deemed to be an officer or auditor of a company if:

(a) the person is an officer or auditor of a related body corporate; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person—the person has, at any time within the immediately preceding period of 2 years, been an officer, auditor or promoter of the company or of a related body corporate.

**(7)** A person shall not consent to be appointed, and shall not act, as liquidator of a company if he or she is an insolvent under administration.

**(8)** A person shall not consent to be appointed, and shall not act, as liquidator of a company that is being wound up by order of the Court unless he or she is an official liquidator.

**(9)** A person shall not be appointed as liquidator of a company unless the person has, before his or her appointment, consented in writing to act as liquidator of the company.

**Reports by liquidator**

**533. (1)** If it appears to the liquidator of a company, in the course of a winding up of the company, that:

(a) a past or present officer, or a member or contributory, of the company may have been guilty of an offence under a law of the Commonwealth or a State or Territory in relation to the company;

(b) a person who has taken part in the formation, promotion, administration, management or winding up of the company:

(i) may have misapplied or retained, or may have become liable or accountable for, any money or property of the company; or

(ii) may have been guilty of any negligence, default, breach of duty or breach of trust in relation to the company; or

(c) the company may be unable to pay its unsecured creditors more than SO cents in the dollar;

the liquidator shall:

(d) as soon as practicable lodge a report with respect to the matter and state in the report whether he or she proposes to make an application for an examination or order under section 597; and

(e) furnish the Commission with such information, and give to it such access to and facilities for inspecting and taking copies of any documents, as the Commission requires.

**(2)** The liquidator may also, if he or she thinks fit, lodge further reports specifying any other matter that, in his or her opinion, it is desirable to bring to the notice of the Commission.

**(3)** If it appears to the Court, in the course of winding up a company:

(a) that a past or present officer, or a contributory or member, of the company has been guilty of an offence under a law referred to in paragraph (1) (a) in relation to the company; or

(b) that a person who has taken part in the formation, promotion, administration, management or winding up of the company has engaged in conduct referred to in paragraph (1) (b) in relation to the company;

and that the liquidator has not lodged with the Commission a report with respect to the matter, the Court may, on the application of a person interested in the winding up or of its own motion, direct the liquidator so to lodge such a report.

**Prosecution by liquidator of delinquent officers and members**

**534.** **(1)** Where:

(a) a report has been lodged under section 533; and

(b) it appears to the Commission that the matter is not one in respect of which a prosecution ought to be begun;

it shall inform the liquidator accordingly, and the liquidator may begin a prosecution for any offence referred to in the report.

**(2)** The Commission may direct that the whole or a specified part of the costs and expenses properly incurred by a liquidator in proceedings under this section shall be paid out of money of the Commission.

**(3)** Subject to a direction under subsection (2), to any charges on the property of the company and to any debts to which this Act gives priority, all such costs and expenses are payable out of that property as part of the costs of the winding up.

**Liquidator has qualified privilege in certain circumstances**

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

**Supervision of liquidators**

**536.** **(1)** Where:

(a) it appears to the Court or to the Commission that a liquidator has not faithfully performed or is not faithfully performing his or her duties or has not observed or is not observing:

(i) a requirement of the Court; or

(ii) a requirement of this Act, of the regulations or of the rules; or

(b) a complaint is made to the Court or to the Commission by any person with respect to the conduct of a liquidator in connection with the performance of his or her duties;

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

**(2)** The Commission may report to the Court any matter that in its opinion is a misfeasance, neglect or omission on the part of the liquidator and the Court may order the liquidator to make good any loss that the estate of the company has sustained thereby and may make such other order or orders as it thinks fit.

**(3)** The Court may at any time require a liquidator to answer any inquiry in relation to the winding up and may examine the liquidator or any other person on oath concerning the winding up and may direct an investigation to be made of the books of the liquidator.

**Notice of appointment and address of liquidator**

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

**(2)** A liquidator shall, within 14 days after his or her resignation or removal from office, lodge notice of the resignation or removal in the prescribed form.

**Regulations relating to money etc. received by liquidator**

**538.** **(1)** The regulations may:

(a) require a liquidator to pay, into such bank and account, in such manner and at such times as are prescribed, money received by him or her;

(b) prescribe the circumstances and manner in which money paid into such an account is to be paid out;

(c) require a liquidator of a company to deposit, in such bank, in such manner and at such times as are prescribed, bills, notes or other securities payable to the company or its liquidator;

(d) prescribe the circumstances and manner in which bills, notes or other securities so deposited are to be delivered out;

(e) make provision in relation to the giving by the Court of directions with respect to the payment, deposit or custody of money payable to or into the possession of a liquidator, or of bills, notes or other securities so payable; and

(f) provide for:

(i) the payment by a liquidator of interest at such rate, on such amount and in respect of such period as is prescribed;

(ii) disallowance of all or of such part as is prescribed of the remuneration of a liquidator;

(iii) the removal from office of a liquidator by the Court; and

(iv) the payment by a liquidator of any expenses occasioned by reason of his or her default;

where a liquidator contravenes or fails to comply with regulations made under this section.

**(2)** Regulations made under this section may apply generally or in relation to a specified class of windings up.

**Liquidator’s accounts**

**539. (1)** A liquidator shall, within 1 month after the end of the period of 6 months from the date of his or her appointment and of every subsequent period of 6 months during which he or she acts as liquidator and within 1 month after he or she ceases to act as liquidator, lodge:

(a) an account in the prescribed form and verified by a statement in writing showing:

(i) his or her receipts and his or her payments during each such period or, where he or she ceases to act as liquidator, during the period from the end of the period to which the last preceding account related or from the date of his or her appointment, as the case requires, up to the date of his or her so ceasing to act; and

(ii) in the case of the second account lodged under this subsection and all subsequent accounts—the aggregate amount of receipts and payments during all preceding periods since his or her appointment; and

(b) in the case of a liquidator other than a provisional liquidator—a statement in the prescribed form relating to the position in the winding up, verified by a statement in writing.

**(2)** The Commission may cause the account and, where a statement of the position in the winding up has been lodged, that statement to be audited by a registered company auditor, who shall prepare a report on the account and the statement (if any).

**(3)** For the purposes of the audit under subsection (2) the liquidator shall furnish the auditor with such books and information as the auditor requires.

**(4)** Where the Commission causes an account, or an account and a statement, to be audited under subsection (2):

(a) the Commission shall furnish to the liquidator a copy of the report prepared by the auditor; and

(b) subsection 1289 (2) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.

**(5)** The liquidator shall give notice that the account has been made up to every creditor and contributory when next forwarding any report, notice of meeting, notice of call or dividend.

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

**Liquidator to remedy defaults**

**540.** **(1)** If any liquidator who has made any default in lodging or making any application, return, account or other document, or in giving any notice that he or she is by law required to lodge, make or give, fails to make good the default within 14 days after the service on him or her of a notice requiring him or her to do so, the Court may, on the application of any contributory or creditor of the company or the Commission, make an order directing the liquidator to make good the default within such time as is specified in the order.

**(2)** Any order made under subsection (1) may provide that all costs of and incidental to the application shall be borne by the liquidator.

**(3)** Nothing in subsection (1) prejudices the operation of any law imposing penalties on a liquidator in respect of any such default.

***Division 4*—*General***

**Notification that company is in liquidation**

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

**Books of company**

**542.** **(1)** Where a company is being wound up, all books of the company and of the liquidator that are relevant to affairs of the company at or subsequent to the commencement of the winding up of the company are, as between the contributories of the company, *prima facie* evidence of the truth of all matters purporting to be recorded in those books.

**(2)** If a company has been wound up, the liquidator shall retain the books referred to in subsection (1) for a period of 5 years from the date of dissolution of the company and, subject to section 262aof the *Income Tax Assessment Act 1936*,may, at the end of that period, destroy them.

**(3)** Despite subsection (2) but subject to subsection (4), when a company has been wound up, the books referred to in subsection (1) may be destroyed within a period of 5 years after the dissolution of the company:

(a) in the case of a winding up by the Court—in accordance with the directions of the Court given pursuant to an application of which at least 14 days notice has been given to the Commission;

(b) in the case of a members’ voluntary winding up—as the company by resolution directs; and

(c) in the case of a creditors’ voluntary winding up—as the committee of inspection directs, or, if there is no such committee, as the creditors of the company direct.

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

**Investment of surplus funds on general account**

**543.** **(1)** Whenever the cash balance standing to the credit of a company that is in the course of being wound up is in excess of the amount that, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, is required for the time being to answer demands in respect of the property of the company, the liquidator, if so directed in writing by the committee of inspection, or, if there is not committee of inspection, the liquidator himself or herself, may, unless the Court on application by any creditor thinks fit to order otherwise and so orders, invest the sum or any part of the sum:

(a) in any manner in which trustees are for the time being authorised by law to invest trust funds;

(b) on deposit with an eligible money market dealer; or

(c) on deposit at interest with any bank;

and any interest received in respect of that money so invested forms part of the property of the company.

**(2)** Whenever any part of the money so invested is, in the opinion of the committee of inspection, or, if there is no committee of inspection, of the liquidator, required to answer any demands in respect of the property of the company, the committee of inspection may direct, or, if there is no committee of inspection, the liquidator may arrange for, the sale or realisation of such part of the securities as is necessary.

**Unclaimed property to be paid to Minister**

**544.** **(1)** Where a liquidator of a company has in his or her hands or under his or her control:

(a) any amount being a dividend or other money that has remained unclaimed for more than 6 months after the day when the dividend or other money became payable; or

(b) after making a final distribution, any unclaimed or undistributed amount of money arising from the property of the company;

he or she shall forthwith pay that money to the Minister to be dealt with under Part 9.7.

**(2)** The Court may at any time, on the application of the Commission:

(a) order a liquidator of a company to submit to it an account, verified by affidavit, of any unclaimed or undistributed funds, dividends or other money in his or her hands or under his or her control;

(b) direct an audit of accounts submitted to it in accordance with paragraph (a); and

(c) direct a liquidator of a company to pay any money referred to in paragraph (a) to the Minister to be dealt with under Part 9.7.

**(3)** Where a liquidator of a company pays money to the Minister pursuant to subsection (1) or an order of the Court made under paragraph (2) (c), the liquidator is entitled to a receipt for the money so paid and the giving of that receipt discharges the liquidator from any liability in respect of the money.

**(4)** For the purposes of this section the Court may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a company and the provisions of this Act with respect to the exercise of those powers apply, with such adaptations as are prescribed, to proceedings under this section.

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

**Expenses of winding up where property insufficient**

**545.** **(1)** Subject to this section, a liquidator is not liable to incur any expense in relation to the winding up of a company unless there is sufficient available property.

**(2)** The Court or the Commission may, on the application of a creditor or a contributory, direct a liquidator to incur a particular expense on condition that the creditor or contributory indemnifies the liquidator in respect of the recovery of the amount expended and, if the Court or the Commission so directs, gives such security to secure the amount of the indemnity as the Court or the Commission thinks reasonable.

**(3)** Nothing in this section shall be taken to relieve a liquidator of any obligation to lodge a document (including a report) with the Commission under any provision of this Act by reason only that he or she would be required to incur expense in order to perform that obligation.

**Resolutions passed at adjourned meetings of creditors and contributories**

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

**Meetings to ascertain wishes of creditors or contributories**

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

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

**(2)** In the case of creditors, regard shall be had to the value of each creditor’s debt.

**(3)** In the case of contributories, regard shall be had to the number of votes conferred on each contributory by this Act or the articles.

***Division 5*—*Committees of inspection***

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

**548.** **(1)** The liquidator of a company shall, if so requested by a creditor or contributory, convene separate meetings of the creditors and contributories for the purpose of determining:

(a) whether a committee of inspection should be appointed; and

(b) where a committee of inspection is to be appointed:

(i) the numbers of members to represent the creditors and the contributories, respectively; and

(ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

**(2)** If there is a difference between the determination of the meeting of creditors and the determination of the meeting of contributories, the Court may resolve the difference and make such order as it thinks proper.

**(3)** A person is not eligible to be appointed a member of a committee of inspection unless the person is:

(a) in the case of an appointment by creditors of the company:

(i) a creditor of the company;

(ii) the attorney of a creditor of the company by virtue of a general power of attorney given by the creditor; or

(iii) a person authorised in writing by a creditor of the company to be a member of the committee of inspection; or

(b) in the case of an appointment by the contributories of the company:

(i) a contributory of the company;

(ii) the attorney of a contributory of the company by virtue of a general power of attorney given by the contributory; or

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

**Proceedings of committee of inspection**

**549.** **(1)** A committee of inspection shall meet at such times and places as its members from time to time appoint.

**(2)** The liquidator or a member of the committee may convene a meeting of the committee.

**(3)** A committee may act by a majority of its members present at a meeting, but shall not act unless a majority of its members are present.

**Vacancies on committee of inspection**

**550.** **(1)** A member of a committee may resign by notice in writing signed by the member and delivered to the liquidator.

**(2)** If a member of a committee:

(a) becomes an insolvent under administration; or

(b) is absent from 5 consecutive meetings of the committee without the leave of those members who together with himself or herself represent the creditors or contributories, as the case may be;

his or her office becomes vacant.

**(3)** A member of the committee who represents creditors may be removed by a resolution at a meeting of creditors of which 7 days’ notice has been given stating the object of the meeting, and a member of the committee who represents contributories may be removed by a resolution at a meeting of contributories of which such notice has been given.

**(4)** A meeting referred to in subsection (3) may appoint a person to fill a vacancy caused by the removal of a member of the committee.

**(5)** A vacancy in the committee may be filled by the appointment of a person by a resolution at a meeting of the creditors or of the contributories, as the case may be, of which 7 days’ notice has been given.

**(6)** A vacancy in the committee that is not filled as provided by subsection (4) or (5) may be filled by the appointment of a person by the committee and a person so appointed represents the creditors, or the contributories, as the case may be.

**(7)** Notwithstanding a vacancy in the committee, the continuing members of the committee may act provided they are not less than 2 in number.

**Member of committee not to accept extra benefit**

**551.** **(1)** A member of a committee of inspection shall not, while acting as such a member, except as provided by this Act or with the leave of the Court:

(a) make an arrangement for receiving, or accept, from the company or any other person, in connection with the winding up, a gift, remuneration or pecuniary or other consideration or benefit;

(b) directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the company or any gift, profit or advantage from a creditor; or

(c) directly or indirectly become the purchaser of any property of the company.

**(2)** A transaction entered into in contravention of subsection (1) may be set aside by the Court on the application of a creditor or member of the company.

**Powers of Court where no committee of inspection**

**552.** Where there is no committee of inspection, the Court may, on the application of the liquidator, do any thing and give any direction or permission that is by this Part authorised or required to be done or given by the committee.

***Division 6*—*Proof and ranking of claims***

**Proofs of debts**

**553.** **(1)** In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the *Bankruptcy Act 1966,* all debts payable on a contingency and all claims against the company (present or future, certain or contingent, ascertained or sounding only in damages) are admissible to proof against the company, a just estimate being made so far as possible of the value of such debts or claims as are subject to any contingency or sound only in damages or for some other reason do not bear a certain value.

**(2)** Subject to sections 279 and 556, in the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the *Bankruptcy Act 1966*,in relation to the estates of bankrupt persons, and all persons who in any such case would be entitled to prove for and receive dividends out of the property of the company may come in under the winding up and make such claims against the company as they respectively are entitled to by virtue of this section.

**Computation of debts**

**554.** **(1)** The amount of a debt of a company (including a debt that is for or includes interest) is to be computed for the purposes of the winding up as at the relevant date.

**(2)** Subsection (1) does not apply to an amount required to be paid under subsection 557 (1).

**Debts proved to rank equally except as otherwise provided**

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

**Priority payments**

**556.** **(1)** Subject to the following provisions of this Division, in the winding up of a company the following debts shall be paid in priority to all other unsecured debts:

(a) first, the costs, charges and expenses of the winding up, including the taxed costs of an applicant payable under section 466, the remuneration of the liquidator and the costs of any audit carried out under section 539;

(b) if the winding up was preceded by the appointment of a provisional liquidator—next, the costs, charges and expenses properly and reasonably incurred by the provisional liquidator during the period of his or her appointment and the remuneration of the provisional liquidator;

(c) where the winding up commences within 2 months after the end of a period of official management of the company—next, the costs, charges and expenses of and incidental to the official management properly and reasonably incurred by the official manager during the period of official management, including the remuneration of the official manager, of any deputy official manager and of any auditor appointed in accordance with Part 3.7;

(d) where the winding up commences within 2 months after the end of a period of official management of the company—next, debts of the company properly and reasonably incurred by the official manager in the conduct by him or her of the business of the company during the period of official management;

(e) next, wages in respect of services rendered to the company by employees before the relevant date, but not exceeding $2,000 in respect of an excluded employee of the company;

(f) next, all amounts due in respect of injury compensation, being compensation the liability for which arose before the relevant date;

(g) next, all amounts due:

(i) on or before the relevant date;

(ii) by virtue of an industrial instrument;

(iii) to, or in respect of, employees of the company; and

(iv) in respect of leave of absence;

but not exceeding $1,500 in respect of an excluded employee of the company;

(h) next, retrenchment payments payable to employees of the company (other than excluded employees of the company);

(j) next, any amount that, pursuant to an order under section 91 of the Commission Act, the company was at the relevant date under an obligation to pay.

**(2)** In this section:

“company” means a company that is being wound up;

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

(a) who has been or is an employee of the company, whether remunerated by salary, wages, commission or otherwise; and

(b) whose employment by the company commenced before the relevant date;

“excluded employee”, in relation to a company, means:

(a) an employee of the company who has been:

(i) at any time during the period of 12 months ending on the relevant date; or

(ii) at any time since the relevant date;

or who is, a director of the company;

(b) an employee of the company who has been:

(i) at any time during the period of 12 months ending on the relevant date; or

(ii) at any time since the relevant date;

or who is, the spouse of an employee of the kind referred to in paragraph (a); or

(c) an employee of the company who is a relative (other than a spouse) of an employee of the kind referred to in paragraph (a);

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

**Orders under section 91 of the Commission Act**

**557. (1)** Where, after the relevant date, an order is made under section 91 of the Commission Act against a company that is being wound up, the amount that, pursuant to the order, the company is liable to pay is admissible to proof against the company and:

(a) where all the debts that, under section 556, have priority over all unsecured debts have not been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts except those having priority under section 556; and

(b) where all the debts that, under section 556, have priority over all other unsecured debts have been paid at the time when the amount is admitted to proof—shall be paid in priority to all other unsecured debts that, at that time, have not been paid.

**(2)** Where a copy of an order referred to in subsection (1) against a company is served on the liquidator of the company and the liquidator has not admitted to proof the amount that, pursuant to the order, the company is liable to pay, the liquidator:

(a) shall serve notice on the Commission that he or she has not admitted that amount to proof; and

(b) shall not make a payment or further payment out of the property of the company (other than payments of debts that, under section

556, have priority over all other unsecured debts) until the end of 7 days after service of that notice.

**Debts due to employees**

**558.** **(1)** Where a contract of employment with a company being wound up was subsisting immediately before the relevant date, the employee under the contract is, whether or not he or she is a person referred to in subsection (2), entitled to payment under section 556 as if his or her services with the company had been terminated by the company on the relevant date.

**(2)** Where, for the purposes of the winding up of a company, a liquidator employs a person whose services with the company had been terminated by reason of the winding up, that person shall, for the purpose of calculating any entitlement to payment for leave of absence, or any entitlement to a retrenchment amount in respect of employment, be deemed, while the liquidator employs him or her for those purposes, to be employed by the company.

**(3)** Subject to subsection (4), where, after the relevant date, an amount in respect of long service leave or extended leave, or a retrenchment amount, becomes payable to a person referred to in subsection (2) in respect of the employment so referred to, the amount is a cost of the winding up.

**(4)** Where, at the relevant date, the length of qualifying service of a person employed by a company that is being wound up is insufficient to entitle him or her to any amount in respect of long service leave or extended leave, or to any retrenchment amount in respect of employment by the company, but, by the operation of subsection (2) he or she becomes entitled to such an amount after that date, that amount:

(a) is a cost of the winding up to the extent of an amount that bears to that amount the same proportion as the length of his or her qualifying service after that relevant date bears to the total length of his or her qualifying service; and

(b) shall, to the extent of the balance of that amount, be deemed, for the purposes of section 556, to be an amount referred to in paragraph 556 (1) (g), or a retrenchment payment payable to the person, as the case may be.

**(5)** In this section, “retrenchment amount”, in relation to employment of a person, means an amount payable to the person, by virtue of an industrial instrument, in respect of termination of the employment.

**Debts of a class to rank equally**

**559.** After provision is made for the costs, charges and expenses referred to in paragraph 556 (1) (a), the debts of a class referred to in each of the remaining paragraphs of subsection 556 (1) rank equally between themselves and shall be paid in full, unless the property of the company is insufficient to meet them, in which case they shall be paid proportionately.

**Advances in respect of wages, retrenchment payments and leave of absence**

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

**Priority of employees’ claims over floating charges**

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

(a) any debt referred to in paragraph 556 (1) (e), (g) or (h);

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

(c) any amount in respect of which a right of priority is given by section 560;

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

**Insurance against liabilities to third parties**

**562.** **(1)** Where a company is, under a contract of insurance entered into before the relevant date, insured against liability to third parties, then, if such a liability is incurred by the company (whether before or after the relevant date) and an amount in respect of that liability has been or is received by the company or the liquidator from the insurer, the amount shall, after deducting any expenses of or incidential to getting in that amount, be paid by the liquidator to the third party in respect of whom the liability was incurred to the extent necessary to discharge that liability, or any part of that liability remaining undischarged, in priority to all payments in respect of the debts mentioned in section 556.

**(2)** If the liability of the insurer to the company is less than the liability of the company to the third party, subsection (1) does not limit the rights of the third party in respect of the balance.

**(3)** This section has effect notwithstanding any agreement to the contrary.

**Provisions relating to injury compensation**

**563.** **(1)** Notwithstanding anything in section 556, paragraph 556 (1) (f) does not apply in relation to the winding up of a company in any case where:

(a) the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company and the right to the injury compensation has, on the reconstruction or amalgamation, been preserved to the person entitled to it; or

(b) the company has entered into a contract with an insurer in respect of any liability for injury compensation.

**(2)** Where injury compensation is payable by way of periodical payments, the amount of that compensation shall, for the purposes of paragraph 556 (1) (f), be taken to be the lump sum for which those periodical payments could, if redeemable, be redeemed under the law under which the periodical payments are made.

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

**564.** Where in any winding up:

(a) property has been recovered under an indemnity for costs of litigation given by certain creditors, or has been protected or preserved by the payment of moneys or the giving of indemnity by creditors; or

(b) expenses in relation to which a creditor has indemnified a liquidator have been recovered;

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

***Division 7*—*Effect on other transactions***

**Undue preference**

**565.** **(1)** A settlement, a conveyance or transfer of property, a charge on property, a payment made, or an obligation incurred, by a company that, if it had been made or incurred by a natural person, would, in the event of his or her becoming a bankrupt, be void as against the trustee in the bankruptcy, is, in the event of the company being wound up, void as against the liquidator.

**(2)** For the purposes of subsection (1), the date that corresponds with the date of presentation of the petition in bankruptcy in the case of a natural person is:

(a) in the case of a winding up by the Court:

(i) where, before the filing of the application for the winding up, a resolution has been passed by the company for winding up the company voluntarily—the date upon which the resolution to wind up the company voluntarily is passed;

(ii) where the company is under official management at the time of the filing of the application for the winding up or had been under official management at any time within the period of 6 months before the filing of the application—the date of the commencement of the official management; or

(iii) in any other case—the date of the filing of the application for the winding up; and

(b) in the case of a voluntary winding up:

(i) where the company is under official management at the time when the resolution to wind up the company voluntarily is passed or had been under official management at any time within the period of 6 months before the passing of that resolution—the date of the commencement of the official management; or

(ii) in any other case—the date upon which the resolution to wind up the company voluntarily is passed.

**(3)** For the purposes of this section, the date that corresponds with the date on which a person becomes a bankrupt is the date on which the winding up of the company commences or is deemed to have commenced.

**(4)** Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors is void.

**Effect of floating charge**

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

**Liquidator’s right to recover in respect of certain transactions**

**567. (1)** Where any property, business or undertaking has been acquired by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company:

(a) from a promoter of the company or a spouse of such a promoter, or from a relative of such a promoter or spouse;

(b) from a person who was, at the time of the acquisition, a director of the company, from a spouse of such a director, or from a relative of such a person or spouse;

(c) from a body corporate that was, at the time of the acquisition, related to the company; or

(d) from a person who was, at the time of the acquisition, a director of a body corporate that was related to the company, from a spouse of such a person, or from a relative of such a person or spouse;

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

**(2)** Where any property, business or undertaking has been sold by a company for a cash consideration within a period of 4 years before the commencement of the winding up of the company:

(a) to a promoter of the company or a spouse of such a promoter, or to a relative of such a promoter or spouse;

(b) to a person who was, at the time of the sale, a director of the company, to a spouse of such a director, or to a relative of such a person or spouse;

(c) to a body corporate that was, at the time of the sale, related to the company; or

(d) to a person who was, at the time of the sale, a director of a body corporate that was related to the company, to a spouse of such a director, or to a relative of such a person or spouse;

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

**(3)** For the purposes of this section, the value of the property, business or undertaking includes the value of any goodwill, profits or gain that might have been made from the property, business or undertaking.

**(4)** In this section, “cash consideration” means any consideration payable otherwise than by the issue of shares in the company.

**(5)** Where:

(a) a disposition of property is made by a company within the period of 6 months before the commencement of the winding up of the company;

(b) the disposition of property confers a preference upon a creditor of the company; and

(c) the disposition of property has the effect of discharging an officer of the company from a liability (whether under a guarantee or otherwise and whether contingent or otherwise);

the liquidator:

(d) in a case to which paragraph (e) does not apply—may recover from that officer an amount equal to the value of the relevant property, as the case may be; or

(e) where the liquidator has recovered from the creditor in respect of the disposition of the relevant property:

(i) an amount equal to part of the value of the relevant property; or

(ii) part of the relevant property;

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

**(6)** Where:

(a) a liquidator recovers an amount of money from an officer of a company in respect of a disposition of property to a creditor as mentioned in subsection (5); and

(b) the liquidator subsequently recovers from that creditor an amount equal to the whole or part of the value of the property disposed of;

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

**Disclaimer of onerous property**

**568. (1)** Subject to this section, where part of the property of a company consists of:

(a) land burdened with onerous covenants;

(b) shares;

(c) property that is unsaleable or is not readily saleable; or

(d) unprofitable contracts;

the liquidator of the company may, on behalf of the company, subject to subsection (2), notwithstanding that he or she has endeavoured to sell or has taken possession of the property or exercised an act of ownership in relation to it, by writing signed by him or her, disclaim the property.

**(2)** The power of the liquidator under subsection (1) may only be exercised within 12 months after the commencement of the winding up or such further period as is allowed by the Court but, where the property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power may be exercised at any time within 12 months after the property has come to his or her knowledge or such further period as is allowed by the Court.

**(3)** The disclaimer operates to terminate, as from the date of the disclaimer, the rights, interests and liabilities of the company and the property of the company in or in respect of the property disclaimed but does not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

**(4)** The Court may, before or on granting leave to disclaim, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, as the Court thinks just and may make such other order in the matter as the Court thinks just.

**(5)** Where a disclaimer in respect of property is made, the liquidator shall, as soon as practicable, give notice of the disclaimer:

(a) to every person who, to the knowledge of the liquidator, has an interest in the property; and

(b) in the case of property the transfer or transmission of which is required by a law to be registered—to the registrar or other person who has the function under that law of registering the transfer or transmission of that property.

**(6)** A liquidator is not entitled to disclaim a lease without the leave of the Court unless:

(a) he or she has, in accordance with the regulations, given to the lessor and, if the company has sub-let the whole or part of the leased property or has charged the lease, to each sub-lessee or chargee 28 days notice in writing of his or her intention to disclaim the lease; and

(b) no person to whom the liquidator has given such a notice has, within 28 days after it was given to the person, required the liquidator, in accordance with the regulations, to apply to the Court for leave to disclaim the lease.

**(7)** The Court may, in relation to an application for leave to disclaim a lease under this section, make such orders with respect to fixtures, improvements and other matters arising out of the lease, as the Court thinks proper.

**(8)** Where:

(a) an application in writing has been made to the liquidator by a person interested in property requiring the liquidator to decide whether he or she will disclaim the property; and

(b) the liquidator has, for the period of 28 days after the receipt of the application, or for such extended period as is allowed by the Court, declined or neglected to disclaim the property;

the liquidator is not entitled to disclaim the property under this section and, in the case of a contract, he or she shall be deemed to have adopted it.

**(9)** The Court may, on the application of a person who is, as against the company, entitled to the benefit or subject to the burden of a contract made with the company, make an order:

(a) discharging the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court thinks proper; or

(b) rescinding the contract on such terms as to restitution by or to either party, or otherwise, as the Court thinks proper.

**(10)** Amounts payable pursuant to an order under subsection (9) may be proved as a debt in the winding up.

**(11)** The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Act in respect of, disclaimed property, and after hearing such persons as it thinks proper, make an order for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or to whom, it seems to the Court to be proper that it should be vested or delivered, or a trustee for that person.

**(12)** A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the extent of any loss the person has suffered by reason of the disclaimer and may prove the loss as a debt in the winding up.

**(13)** For the purpose of determining whether property of a company is of a kind to which subsection (1) applies, the liquidator may, by notice served on a person claiming to have an interest in the property, require the person to furnish to the liquidator within such period, not being less than 14 days, as is specified in the notice, a statement of the interest claimed by the person and the person shall comply with the requirement.

**Executions, attachments etc. before winding up**

**569. (1)** Where:

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

(b) the company commences to be wound up;

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

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

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

(a) notice in writing of an application to the Court for the winding up of the company; or

(b) notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily;

it is not competent for the creditor to take any action, or any further action, as the case may be, to attach a debt due to the company or to enforce a charge or a charging order against property of the company.

**(4)** Subsection (3) does not affect the right of a creditor to take action or further action if:

(a) in a case to which paragraph (3) (a) applies—the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (3) (b) applies—the meeting of the company has refused to pass the resolution.

**(5)** Subsection (3) does not prevent a creditor from performing a binding contract for the sale of property entered into before the creditor received a notice referred to in that subsection.

**(6)** Notwithstanding anything contained in this Division, a person who purchases property in good faith:

(a) under a sale by the sheriff in consequence of the issue of execution against property of a company that, after the sale, commences to be wound up; or

(b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a company that, after the sale, commences to be wound up;

acquires a good title to it as against the liquidator and the company.

**(7)** In this section:

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

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

**Duties of sheriff after receiving notice of application**

**570. (1)** Subject to this section, where a sheriff:

(a) receives notice in writing of an application to the Court for the winding up of a company; or

(b) receives notice in writing of the convening of a meeting of a company to consider a resolution that the company be wound up voluntarily;

it is not competent for the sheriff to:

(c) take any action to sell property of the company pursuant to any process of execution issued by or on behalf of a creditor; or

(d) pay to the creditor by whom or on whose behalf the process of execution was issued or to any person on the creditor’s behalf the proceeds of the sale of property of the company that has been sold pursuant to such a process or any moneys seized, or paid to avoid seizure or sale of property of the company, under such a process.

**(2)** Subsection (1) does not affect the power of the sheriff to take any action or make any payment if:

(a) in a case to which paragraph (1) (a) applies—the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (1) (b) applies—the meeting of the company has refused to pass the resolution.

**(3)** Subject to this section, where the registrar or other appropriate officer of a court to which proceeds of the sale of property of a company or other moneys have been paid by a sheriff pursuant to a process of execution issued by or on behalf of a creditor of the company:

(a) receives notice in writing of an application to the Court for the winding up of the company; or

(b) receives notice in writing of the convening of a meeting of the company to consider a resolution that the company be wound up voluntarily;

any of those proceeds or moneys not paid out of court shall not be paid to the creditor or to any person on behalf of the creditor.

**(4)** Subsection (3) does not prevent the making of a payment if:

(a) in a case to which paragraph (3) (a) applies—the application has been withdrawn or dismissed; or

(b) in a case to which paragraph (3) (b) applies—the meeting of the company has refused to pass the resolution.

**(5)** Where a company is being wound up, the liquidator may serve notice in writing of that fact on a sheriff or the registrar or other appropriate officer of a court.

**(6)** Upon such a notice being so served:

(a) the sheriff shall deliver or pay to the liquidator:

(i) any property of the company in the sheriff’s possession under a process of execution issued by or on behalf of a creditor; and

(ii) any proceeds of the sale of property of the company or other money in the sheriff’s possession, being proceeds of the sale of property sold, whether before or after the commencement of the winding up, pursuant to such a process or money seized, or paid to avoid seizure or sale of property of the company, whether before or after the commencement of the winding up, under such a process; or

(b) the registrar or other officer of the court shall pay to the liquidator any proceeds of the sale of property of the company or other money in court, being proceeds of sale or other moneys paid into court, whether before or after the commencement of the winding up, by a sheriff pursuant to a process of execution issued by or on behalf of a creditor;

as the case requires.

**(7)** Where:

(a) property is, or proceeds of the sale of property or other money are, required by subsection (6) to be delivered or paid to a liquidator; or

(b) a sheriff has, pursuant to subsection (1), refrained from taking action to sell property of a company, being land, and that company is being wound up under an order made on the application referred to in that subsection;

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

**(8)** For the purpose of giving effect to the charge referred to in subsection (7), the sheriff, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other money referred to in that subsection as he or she thinks necessary for the purpose.

**(9)** The Court may, if in a particular case it considers it is proper to do

so:

(a) permit a sheriff to take action to sell property or make a payment that the sheriff could not, by reason of subsection (1), otherwise validly take; or

(b) permit the making of a payment the making of which would, by reason of subsection (3), otherwise be prohibited.

***Division 8***—***Dissolution***

**Power of Court to declare dissolution of company void**

**571.** **(1)** Where a company has been dissolved pursuant to subsection 481 (6) or 509 (5), the Court may at any time, on application of the liquidator of the company or of any other person who appears to the Court to be interested, make an order declaring the dissolution to have been void, and the Court may by the order give such directions and make such provisions (including directions and provisions relating to the re-transmission of property vested in the Commission under section 576) as seem just for placing the company and all other persons in the same position as nearly as may be as if the company had not been dissolved.

**(2)** The person on whose application the order was made shall, within 14 days after the making of the order or such further time as the Court allows, lodge with the Commission an office copy of the order.

**Notice by Commission of intention to deregister defunct company**

**572.** **(1)** Where the Commission has reasonable cause to believe that a company is not carrying on business or is not in operation, it may send to the company by post a letter to that effect and stating that, unless an answer showing cause to the contrary is received within one month from the date of the letter, a notice will be published in the *Gazette* with the view to cancelling the registration of the company.

**(2)** Unless the Commission receives an answer within one month from the date of the letter to the effect that the company is carrying on business or is in operation, it may publish in the *Gazette* and send to the company in the prescribed manner a notice stating that, at the end of 3 months from the date of that notice, the registration of the company mentioned in the notice will, unless cause is shown to the contrary, be cancelled and the company will be dissolved.

**(3)** Where a company is being wound up and the Commission has reasonable cause to believe that:

(a) no liquidator is acting;

(b) the affairs of the company are fully wound up and for a period of 6 months the liquidator has been in default in lodging any return required to be made by him or her; or

(c) the affairs of the company have been fully wound up under Part 5.4 and there is no property or the property available is not sufficient to pay the costs of obtaining an order of the Court dissolving the company;

it may publish in the *Gazette* and send to the company or the liquidator (if any) a notice stating as mentioned in subsection (2).

**(4)** A letter or notice to be sent under this section or section 573 to a company may be addressed:

(a) to the company at its registered office;

(b) if no office has been registered—to the care of some officer of the company; or

(c) if no office has been registered and there is no officer of the company whose name and address are known to the Commission— to each of the persons who subscribed to the memorandum of the company addressed to him or her at the address mentioned in the memorandum.

**Application to Commission for deregistration of defunct company**

**573. (1)** In this section:

“eligible applicant”, in relation to a company, means:

(a) the company;

(b) a member of the company; or

(c) any other interested person.

**(2)** An eligible applicant in relation to a company may apply in the prescribed form to the Commission for approval to publish a notice under subsection (5) in relation to the company.

**(3)** Where:

(a) an application under subsection (2) is accompanied by a declaration in the prescribed form, made by or on behalf of the applicant, to the effect that:

(i) the company is not carrying on business or is not in operation; and

(ii) all the members of the company wish the registration of the company to be cancelled and the company to be dissolved; and

(b) the Commission is satisfied that the declaration is true;

the Commission may grant the application.

**(4)** Unless it has reason to suspect to the contrary, the Commission may assume without inquiry that a declaration accompanying an application made under subsection (2) is true.

**(5)** Within 7 days after the Commission grants an application made under subsection (2), the applicant shall publish a notice that is in the prescribed form and complies with subsection (5) in a daily newspaper circulating generally in each State or Territory in which the company has carried on business at any time within 5 years before the notice is so published.

**(6)** The notice shall:

(a) set out a copy of the declaration referred to in paragraph (3) (a); and

(b) state to the effect that, at the end of 3 months after the day of publication of the notice, the registration of the company will, unless cause to the contrary is shown to the Commission, be cancelled and the company will be dissolved.

**(7)** As soon as practicable after a notice is published under subsection (5), the applicant shall send a copy of the notice to:

(a) the Commission; and

(b) unless the applicant is the company—to the company.

**Power of Commission to deregister defunct company**

**574. (1)** At the end of the time mentioned in a notice sent by the Commission under subsection 572 (2) or (3) or published under subsection 573 (5), the Commission may, unless cause to the contrary is previously shown, by notice in writing published in the *Gazette*,cancel the registration of the company and, on the publication in the *Gazette* of the last-mentioned notice, the company is dissolved, but:

(a) the liability (if any) of every officer and members of the company continues and may be enforced as if the company had not been dissolved; and

(b) nothing in this subsection affects the power of the Court to wind up a company the registration of which has been cancelled.

**(2)** If the Commission is satisfied that the registration of a company was cancelled as the result of an error on the part of the Commission, the Commission may reinstate the registration of the company, and thereupon

the company shall be deemed to have continued in existence as if its registration had not been cancelled.

**(3)** If a person is aggrieved by the cancellation of the registration of a company, the Court, on an application made by the person at any time within 15 years after the cancellation, may, if satisfied that the company was, at the time of the cancellation, carrying on business or in operation or otherwise satisfied that it is just that the registration of the company be reinstated, order the reinstatement of the registration of the company.

**(4)** On the lodging of an office copy of an order under subsection (3), the company shall be deemed to have continued in existence as if its registration had not been cancelled.

**(5)** The Court may, in an order under subsection (3), give such directions and make such provisions (including directions and provisions relating to the retransfer of property vested in the Commission under section 576) as seem just for placing the company and all persons in the same position, so far as possible, as if the company’s registration had not been cancelled.

**(6)** Where the registration of a company is reinstated pursuant to subsection (2) or (3), the Commission shall cause notice of that fact to be published in the *Gazette,* but failure of the Commission to do so does not affect the validity of the reinstatement.

**Commission to act as representative of defunct company**

**575. (1)** Where, after a company has been dissolved, it is proved to the satisfaction of the Commission:

(a) that the company, if it still existed, would be legally or equitably bound to carry out, complete or give effect to some dealing, transaction or matter; and

(b) that, in order to carry out, complete or give effect to that dealing, transaction or matter, some purely administrative act, not being of a discretionary kind, should have been done by or on behalf of the company, or should be done by or on behalf of the company if the company still existed;

the Commission may, as representing the company or its liquidator under the provisions of this section, do that act or cause that act to be done.

**(2)** The Commission may execute or sign any relevant instrument or document adding a memorandum stating that it has done so pursuant to this section, and any such execution or signature has the same force, validity and effect as if the company, if it still existed, had duly executed the instrument or document.

**Outstanding property of defunct company to vest in Commission**

**576. (1)** Where, after a company has been dissolved, there remains any outstanding property, whether within or outside Australia but not including unpaid capital, whether called or uncalled, which was vested in the company, to which the company was entitled, or over which the company had a

disposing power, at the time when it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the company or its liquidator, the estate and interest in the property, at law or in equity, of the company or its liquidator at the time when the company was dissolved, together with all claims, rights and remedies that the company or its liquidator then had in respect of the property vests by force of this section in the Commission.

**(2)** Where any claim, right or remedy of the liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Commission may, for the purposes of this section, make, exercise or avail itself of that claim, right or remedy without such approval or concurrence.

**(3)** Where a company is dissolved, then, notwithstanding that the books of the company vest in the Commission by reason of subsection (1), the person who was the last director of the company or the persons who were the last directors of the company before the company was dissolved shall retain the books of the company (other than any books of the company that any liquidator of the company is required to retain under subsection 542 (2)) for a period of 3 years after the date on which the company was dissolved.

**Outstanding interests in property: how disposed of**

**577. (1)** Upon proof to the satisfaction of the Commission that there is vested in it by force of section 576 any estate or interest in property, whether solely or together with any other person, of a beneficial nature and not merely held in trust, the Commission may get in, sell or otherwise dispose of, or deal with, that estate or interest or any part of that estate or interest as it sees fit.

**(2)** The power of the Commission under subsection (1) to sell or otherwise dispose of, or deal with, any such estate or interest may be exercised either solely or together with any other person, by public auction, public tender or private contract and in such manner, for such consideration and upon such terms and conditions as the Commission thinks fit, and includes:

(a) power to rescind any contract and resell or otherwise dispose of, or deal with, that property as the Commission thinks expedient; and

(b) power to make, execute, sign and give such contracts, instruments and documents as the Commission thinks necessary.

**(3)** There is payable to the Minister, in respect of the exercise of the powers conferred upon the Commission by subsections (1) and (2), out of any income derived from, or the proceeds of sale or other disposition of, the estate or interest concerned, such commission as is prescribed.

**(4)** The Commission shall apply any moneys received by it in the exercise of any power conferred on it by this Division in defraying the costs and expenses of and incidental to the exercise of that power and in making

payments authorised by this Division, and shall pay the remainder (if any) of the moneys to the Minister to be dealt with under Part 9.7.

**(5)** Nothing in this section affects any other right or remedy against a liquidator or any other person.

**Liability of Commission and Commonwealth as to property vested in Commission**

**578.** Property vested in the Commission by operation of this Division is liable and subject to all charges, claims and liabilities imposed on or affecting that property by reason of any law as to rates, taxes, charges or any other matter or thing to which the property would have been liable or subject had the property continued in the possession, ownership or occupation of the company, but there shall not be imposed, on the Commission or the Commonwealth any duty, obligation or liability whatsoever to do or suffer any act or thing required by any such law to be done or suffered by the owner or occupier other than the satisfaction or payment of any such charges, claims or liabilities out of the property of the company so far as it is, in the opinion of the Commission, properly available for and applicable to such a payment.

**Accounts**

**579.** The Commission shall:

(a) keep a record of any property coming to its possession or under its control or to its knowledge vested in it by force of this Division and of its dealings with that property;

(b) keep accounts of all moneys arising from those dealings and of how they have been disposed of; and

(c) keep all accounts, vouchers, receipts and papers relating to that property and those moneys.

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

**Interpretation**

**580.** In this Division:

“external administration matter” means a matter relating to:

(a) winding up, under this Chapter, a company or a Part 5.7 body;

(b) winding up, outside Australia, a body corporate or a Part 5.7 body; or

(c) the insolvency of a body corporate or of a Part 5.7 body;

“prescribed country” means:

(a) a country prescribed for the purposes of this definition; or

(b) a colony, overseas territory or protectorate of a country so prescribed.

**Courts to act in aid of each other**

**581.** **(1)** All courts having jurisdiction in matters arising under this Act, the Judges of those courts and the officers of, or under the control of, those courts shall severally act in aid of, and be auxiliary to, each other in all external administration matters.

**(2)** In all external administration matters, the Court:

(a) shall act in aid of, and be auxiliary to, the courts of the excluded Territories, and of prescribed countries, that have jurisdiction in external administration matters; and

(b) may act in aid of, and be auxiliary to, the courts of other countries that have jurisdiction in external administration matters.

**(3)** Where a letter of request from a court of an excluded Territory, or of a country other than Australia, requesting aid in an external administration matter is filed in the Court, the Court may exercise such powers with respect to the matter as it could exercise if the matter had arisen within its own jurisdiction.

**(4)** The Court may request a court of an excluded Territory, or of a country other than Australia, that has jurisdiction in external administration matters to act in aid of, and be auxiliary to, it in an external administration matter.

**PART 5.7—WINDING UP BODIES OTHER THAN COMPANIES**

**Application of Part**

**582.** **(1)** This Part has effect in addition to, and not in derogation of, sections 342 and 350 and any provisions contained in this Act or any other Australian law with respect to the winding up of bodies, and the liquidator or Court may exercise any powers or do any act in the case of Part 5.7 bodies that might be exercised or done by him, her or it in the winding up of companies.

**(2)** Nothing in this Part affects the operation of the *Bankruptcy Act 1966.*

**(3)** A Part 5.7 body incorporated outside Australia may be wound up under this Part notwithstanding that it is being wound up or has been dissolved or has otherwise ceased to exist as a body corporate under or by virtue of the laws of the place under which it was incorporated.

**(4)** The effect that this Chapter has by virtue of section 583 or 584 is additional to, and does not prejudice, the effect that this Chapter has otherwise than by virtue of those sections.

**Winding up Type A bodies**

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

(a) the principal place of business of a Type A body in Australia shall, for all the purposes of the winding up, be deemed to be the registered office of the Type A body;

(b) a Type A body shall not be wound up voluntarily under this Chapter;

(c) the circumstances in which a Type A body may be wound up are as follows:

(i) if the Type A body is unable to pay its debts, has been dissolved, has ceased to carry on business in Australia, or has a place of business in Australia only for the purpose of winding up its affairs;

(ii) if the Court is of opinion that it is just and equitable that the Type A body should be wound up;

(iii) the Commission has stated in a report prepared under Division 1 of Part 3 of the Commission Act that, in its opinion:

(a) the Type A body cannot pay its debts and should be wound up; or

(b) it is in the interests of the public, of the members, or of the creditors, that the Type A body should be wound up.

**Winding up Type B bodies**

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

(a) the principal place of business in Australia of a Type B body shall, for all the purposes of the winding up, be deemed to be the registered office of the Type B body;

(b) a Type B body shall not be wound up voluntarily under this Chapter;

(c) the circumstances in which a Type B body may be wound up are as follows:

(i) if the Type B body is unable to pay its debts;

(ii) if the Type B body has been dissolved because it was unable to pay its debts.

**Insolvency of Part 5.7 body**

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

(a) a creditor, by assignment or otherwise, to whom the Part 5.7 body is indebted in a sum exceeding $1000 then due has served on the Part 5.7 body, by leaving at its principal place of business in Australia or by delivering to the secretary or a director or executive officer of the Part 5.7 body or by otherwise serving in such manner as the Court approves or directs, a demand, signed by or on behalf

of the creditor, requiring the body to pay the sum so due and the body has, for 3 weeks after the service of the demand, failed to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) an action or other proceeding has been instituted against any member for any debt or demand due or claimed to be due from the Part 5.7 body or from the member as such and, notice in writing of the institution of the action or proceeding having been served on the body by leaving it at its principal place of business in Australia or by delivering it to the secretary or a director or executive officer of the Part 5.7 body or by otherwise serving it in such manner as the Court approves or directs, the Part 5.7 body has not, within 10 days after service of the notice, paid, secured or compounded for the debt or demand or procured the action or proceeding to be stayed or indemnified the defendant to his, her or its reasonable satisfaction against the action or proceeding and against all costs, damages and expenses to be incurred by him, her or it by reason of the action or proceeding;

(c) execution or other process issued on a judgment, decree or order obtained in a court (whether an Australian court or not) in favour of a creditor against the Part 5.7 body or a member of the Part 5.7 body as such, or a person authorised to be sued as nominal defendant on behalf of the Part 5.7 body, is returned unsatisfied; or

(d) it is otherwise proved to the satisfaction of the Court that the Part 5.7 body is unable to pay its debts.

**Contributories in winding up of Part 5.7 body**

**586.** **(1)** On a Part 5.7 body being wound up, every person who:

(a) in any case—is liable to pay or contribute to the payment of:

(i) a debt or liability of the Part 5.7 body;

(ii) any sum for the adjustment of the rights of the members among themselves; or

(iii) the costs and expenses of winding up; or

(b) if the Part 5.7 body has been dissolved in its place of origin—was so liable immediately before the dissolution;

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

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

**Power of Court to stay or restrain proceedings**

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

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

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

**Outstanding property of defunct Part 5.7 body**

**588.** **(1)** This section applies where:

(a) a Type A body (in this section called the “body”) has been dissolved; or

(b) a Type B body (in this section also called the “body”) has been dissolved because it was unable to pay its debts;

and there remains in Australia any outstanding property, not including unpaid capital, whether called or uncalled, that was vested in the body, to which the body was entitled, or over which the body had a disposing power at the time when it was dissolved, but which was not got in, realised upon or otherwise disposed of or dealt with by the body or its liquidator.

**(2)** The estate and interest in the property, at law or in equity, of the body or its liquidator at that time, together with all claims, rights and remedies that the body or its liquidator then had in respect of the property, vests by force of this section in:

(a) if the body was incorporated in Australia or an excluded Territory— the person entitled to the property under the law of the body’s place of origin; or

(b) otherwise—the Commission.

**(3)** Where any claim, right or remedy of a liquidator may under this Act be made, exercised or availed of only with the approval or concurrence of the Court or some other person, the Commission may, for the purposes of this section, make, exercise or avail itself of the claim, right or remedy without such approval or concurrence.

**(4)** Section 577 applies in relation to property that vests in the Commission under this section in like manner as it applies in relation to an estate or interest in property referred to in section 577.

**(5)** Sections 578 and 579 apply in relation to property that vests in the Commission under this section in like manner as they apply in relation to property referred to in sections 578 and 579.

**PART 5.8—OFFENCES**

**Interpretation and application**

**589.** **(1)** Sections 590 to 593 (inclusive) apply to a company:

(a) that has been wound up or is in the course of being wound up;

(b) that has been in the course of being wound up, where the winding up has been stayed or terminated by an order under section 482;

(c) that has at any time been, or is, under official management;

(d) affairs of which are or have been under investigation;

(e) in respect of property of which a receiver, or a receiver and manager, has at any time been appointed, whether by the Court or under a power contained in an instrument, whether or not the appointment has been terminated;

(f) that has ceased to carry on business or is unable to pay its debts; or

(g) that has entered into a compromise or arrangement with its creditors.

**(2)** For the purposes of this Part, affairs of a company are or have been under investigation if, and only if:

(a) the Commission is investigating, or has at any time investigated, under Division 1 of Part 4 of the Commission Act:

(i) matters being, or connected with, affairs of the company; or

(ii) matters including such matters; or

(b) affairs of the company have at any time been under investigation under Part VII of the *Companies Act 1981* or the provisions of a law, or of a previous law, of a State or Territory that correspond to that Part.

**(3)** For the purposes of this Part, a company shall be deemed to have ceased to carry on business if, and only if, the Commission has:

(a) sent to the company by post a letter under subsection 572 (1) and has not, within the next succeeding period of one month from the date of the letter, received an answer to the effect that the company is carrying on business; or

(b) published a notice under subsection 572 (3).

**(4)** For the purposes of this Part, a company shall be deemed to be unable to pay its debts if, and only if, execution or other process issued on a judgment, decree or order of a court (whether or not an Australian court) in favour of a creditor of the company is returned unsatisfied in whole or in part.

**(5)** In this Part:

“appropriate officer” means:

(a) in relation to a company that has been, has been being or is being wound up—the liquidator;

(b) in relation to a company that has been or is under official management—the official manager;

(c) in relation to a company affairs of which are or have been under investigation—the Commission or the NCSC, as the case requires;

(d) in relation to a company in respect of property of which a receiver, or a receiver and manager, has been appointed— the receiver or the receiver and manager;

(e) in relation to a company that has ceased to carry on business or is unable to pay its debts—the Commission or the NCSC, as the case requires; and

(f) in relation to a company that has entered into a compromise or arrangement with its creditors—the person appointed by the Court to administer the compromise or arrangement;

“relevant day” means the day on which:

(a) in relation to a company that has been, has been being or is being wound up—under this Act the winding up commenced or is deemed to have commenced;

(b) in relation to a company that has been or is under official management—it was determined that the company should be placed under official management;

(c) in relation to a company affairs of which are or have been under investigation:

(i) if paragraph 589 (2) (a) applies—the investigation began; or

(ii) if paragraph 589 (2) (b) applies—a direction was given to the NCSC to arrange for the investigation;

(d) in relation to a company in respect of property of which a receiver, or a receiver and manager, has been appointed— the receiver, or the receiver and manager, was appointed;

(e) in relation to a company that is unable to pay its debts—the execution or other process was returned unsatisfied in whole or in part;

(f) in relation to a company that has ceased to carry on business— a letter was first sent to the company, or a notice was first published in relation to the company, as the case may be, under section 572; or

(g) in relation to a company that has entered into a compromise or arrangement with its creditors—the compromise or arrangement was approved by the Court.

**(6)** This Part applies in relation to a Division 2, 3 or 4 company:

(a) as if, in this Part (other than section 595) as so applying:

(i) a reference to the company included a reference to the company as it existed at a time before its registration day (including a time before the commencement of this subsection);

(ii) a reference to a provision of this Act included a reference to a law corresponding to that provision; and

(iii) a reference, in relation to a provision of this Act, to the Commission included a reference to the NCSC; and

(b) with such other modifications as the circumstances require.

**Offences by officers of certain companies**

**590. (1)** A person who, being a past or present officer of a company to which this section applies:

(a) does not, so far as the person is capable of doing so, disclose to the appropriate officer all the property of the company, and how and to whom and for what consideration and when any part of the property of the company was disposed of within 5 years next before the relevant day, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to, or in accordance with the directions of, the appropriate officer:

(i) all the property of the company in the person’s possession; or

(ii) all books in the person’s possession belonging to the company;

(c) has, within 5 years next before the relevant day or at a time on or after that day:

(i) concealed or removed any part of the property of the company to the value of $100 or more;

(ii) concealed any debt due to or by the company;

(iii) fraudulently parted with, altered or made any omission in, or been privy to fraudulent parting with, altering or making any omission in, any book affecting or relating to affairs of the company;

(iv) by any false representation or other fraud, obtained on credit, for or on behalf of the company, any property that the company has not subsequently paid for; or

(v) pawned, pledged or disposed of, otherwise than in the ordinary course of the business of the company, property of the company that has been obtained on credit and has not been paid for;

(d) makes any material omission in any statement or report relating to affairs of the company;

(e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his or her knowledge or belief;

(f) prevents the production to the appropriate officer of any book affecting or relating to affairs of the company;

(g) has, within 5 years next before the relevant day or at a time on or after that day, attempted to account for any part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses; or

(h) has, within 5 years next before the relevant day or at a time on or after that day, been guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to affairs of the company or to the winding up;

contravenes this subsection.

**(2)** It is a defence to a charge arising under subparagraph (1) (c) (i) in relation to the removal of property of a company, or under subparagraph (1) (c) (v) in relation to property of a company, if it is proved that the defendant had no intent to defraud.

**(3)** It is a defence to a charge arising under paragraph (1) (d) if it is proved that the defendant had no intent to defraud.

**(4)** It is a defence to a charge arising under paragraph (1) (f) if it is proved that the defendant had no intent to conceal the state of affairs of the company.

**(5)** Where a person pawns, pledges or disposes of any property in circumstances that amount to a contravention by virtue of subparagraph (1) (c) (v), a person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances contravenes this subsection.

**(6)** A person who takes in pawn or pledge or otherwise receives property in circumstances mentioned in subsection (5) and with the knowledge mentioned in that subsection shall be deemed to hold the property as trustee for the company concerned and is liable to account to the company for the property.

**(7)** Where, in proceedings under subsection (6), it is necessary to establish that a person has taken property in pawn or pledge, or otherwise received property:

(a) in circumstances mentioned in subsection (5); and

(b) with the knowledge mentioned in that subsection;

the matter referred to in paragraph (b) of this subsection may be established on the balance of probabilities.

**Liability where proper accounts not kept**

**591. (1) If:**

(a) a provision of section 289 was not complied with, in respect of a company to which this section applies, during the whole or any part of the period of 2 years immediately preceding the relevant day or the period between the incorporation of the company and the relevant day, whichever is the shorter; and

(b) the company was at any time during that period, or became at a later time, a company to which this section applies;

a director of the company who failed to take all reasonable steps to secure compliance by the company with the provision throughout that period and any officer of the company who is in default each contravene this subsection.

**(2)** In any proceedings against a person for failure to take all reasonable steps to secure compliance by a company with a provision of section 289, it is a defence if it is proved that the person had reasonable grounds to believe and did believe that a competent and reliable person was charged with the duty of seeing that that provision was complied with and was in a position to discharge that duty.

**Offences relating to incurring of debts or fraudulent conduct**

**592. (1) Where:**

(a) a company has incurred a debt;

(b) immediately before the time when the debt was incurred:

(i) there were reasonable grounds to expect that the company will not be able to pay all its debts as and when they become due; or

(ii) there were reasonable grounds to expect that, if the company incurs the debt, it will not be able to pay all its debts as and when they become due; and

(c) the company was, at the time when the debt was incurred, or becomes at a later time, a company to which this section applies;

any person who was a director of the company, or took part in the management of the company, at the time when the debt was incurred contravenes this subsection and the company and that person or, if there are 2 or more such persons, those persons are jointly and severally liable for the payment of the debt.

**(2)** In any proceedings against a person under subsection (1), it is a defence if it is proved:

(a) that the debt was incurred without the person’s express or implied authority or consent; or

(b) that at the time when the debt was incurred, the person did not have reasonable cause to expect:

(i) that the company would not be able to pay all its debts as and when they became due; or

(ii) that, if the company incurred that debt, it would not be able to pay all its debts as and when they became due.

**(3)** Proceedings may be brought under subsection (1) for the recovery of a debt whether or not the person against whom the proceedings are brought, or any other person, has been convicted of an offence under subsection (1) in respect of the incurring of that debt.

**(4)** In proceedings brought under subsection (1) for the recovery of a debt, the liability of a person under that subsection in respect of the debt may be established on the balance of probabilities.

**(5)** Where subsection (1) renders a person or persons liable to pay a debt incurred by a company, the payment by that person or either or any of those persons of the whole or any part of that debt does not render the company liable to the person concerned in respect of the amount so paid.

**(6)** Where:

(a) a company has done an act (including the making of a contract or the entering into of a transaction) with intent to defraud creditors of the company or of any other person or for any other fraudulent purpose; and

(b) the company was at the time when it does the act, or becomes at a later time, a company to which this section applies;

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

**(7)** A certificate issued by the proper officer of an Australian court stating that a person specified in the certificate:

(a) was convicted of an offence under subsection (1) in relation to a debt specified in the certificate incurred by a company so specified; or

(b) was convicted of an offence under subsection (6) in relation to a company specified in the certificate;

is, in any proceedings, *prima facie* evidence of the matters stated in the certificate.

**(8)** A document purporting to be a certificate issued under subsection (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly issued.

**Powers of Court**

**593. (1)** Where a person has been convicted of an offence under subsection 592 (1) in respect of the incurring of a debt, the Court, on the application of the Commission or the person to whom the debt is payable, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the person to whom the debt is payable of an amount equal to the whole of the debt or such part of it as the Court thinks proper.

**(2)** Where a person has been convicted of an offence under subsection 592 (6), the Court, on the application of the Commission or of a prescribed person, may, if it thinks it proper to do so, declare that the first-mentioned person shall be personally responsible without any limitation of liability for the payment to the company of the amount required to satisfy so much of the debts of the company as the Court thinks proper.

**(3)** In relation to a company in respect of which a conviction referred to in subsection (2) relates:

(a) the appropriate officer;

(b) a creditor or contributory of the company authorised by the Commission to make an application under that subsection; and

(c) if the company was a company to which section 592 applied by reason of paragraph 589 (1) (c)—a member of the company;

are prescribed persons for the purposes of that subsection.

**(4)** Where the Court makes a declaration under subsection (1) in relation to a person, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

**(5)** In particular, the Court may order that the liability of the person under the declaration shall be a charge:

(a) on a debt or obligation due from the company to the person; or

(b) on a right or interest under a charge on any property of the company held by or vested in the person or a person on the person’s behalf, or a person claiming as assignee from or through the person liable or a person acting on the person’s behalf.

**(6)** The Court may, from time to time, make such further order as it thinks proper for the purpose of enforcing a charge imposed under subsection (5).

**(7)** For the purpose of subsection (5), “assignee” includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without actual knowledge of any of the matters upon which the conviction or declaration was made.

**(8)** On the hearing of an application under subsection (1) or (2), the appropriate officer or other applicant may give evidence or call witnesses.

**Certain rights not affected**

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

**Inducement to be appointed liquidator or official manager**

**595.** A person shall not give, or agree or offer to give, to a member or creditor of a company any valuable consideration with a view to securing the person’s own appointment or nomination, or to securing or preventing the appointment or nomination of some other person, as the liquidator, provisional liquidator or official manager of the company, as receiver, or receiver and manager, of property of the company or as a trustee or other person administering or compromise or arrangement in relation to the company.

**Frauds by officers**

**596.** A person who, while an officer of a company:

(a) by false pretences or by means of any other fraud, induces a person to give credit to the company or to a related body corporate;

(b) with intent to defraud the company or a related body corporate, or members or creditors of the company or of a related body corporate, makes or purports to make, or causes to be made or to be purported to be made, any gift or transfer of, or charge on, or causes or connives at the levying of any execution against, property of the company or of a related body corporate; or

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

contravenes this section.

**PART 5.9—MISCELLANEOUS**

**Examination of persons concerned with corporations**

**597.** **(1)** In this section, a reference, in relation to a corporation, to a prescribed person, is a reference to an official manager, liquidator or provisional liquidator of the corporation or to any other person authorised by the Commission to make applications under this section or to make an application under this section in relation to that corporation.

**(2)** Where it appears to the Commission or to a prescribed person that:

(a) a person who has taken part or been concerned in the promotion, formation, management, administration or winding up of, or has otherwise taken part or been concerned in affairs of, a corporation has been, or may have been, guilty of fraud, negligence, default, breach of trust, breach of duty or other misconduct in relation to that corporation; or

(b) a person may be capable of giving information in relation to the promotion, formation, management, administration or winding up of, or otherwise in relation to affairs of, a corporation;

the Commission or prescribed person may apply to the Court for an order under this section in relation to the person.

**(3)** Where an application is made under subsection (2) in relation to a person, the Court may order that the person attend before the Court on a day and at a time to be fixed by the Court to be examined on oath on any matters relating to the promotion, formation, management, administration or winding up of, or otherwise relating to affairs of, the corporation concerned.

**(4)** An examination under this section shall be held in public except to such extent (if any) as the Court considers that, by reason of special circumstances, it is desirable to hold the examination in private.

**(5)** The Court, on making an order for an examination, or at any later time, on the application of any person concerned, may give such directions as to the matters to be inquired into, and, subject to subsection (4), as to the procedure to be followed (including, in the case of an examination in private, directions as to the persons who may be present), as it thinks fit.

**(6)** A person who is ordered under subsection (3) to attend before the Court shall not, without reasonable excuse:

(a) fail to attend as required by the order; or

(b) fail to attend from day to day until the conclusion of the examination.

**(7)** A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to take an oath.

**(8)** A person attending before the Court for examination pursuant to an order made under subsection (3) shall not refuse or fail to answer a question that he or she is directed by the Court to answer.

**(9)** A person attending before the Court for examination pursuant to an order made under subsection (3), if directed by the Court to produce any books in his or her possession or under his or her control relevant to the matters on which he or she is to be, or is being, examined, shall not refuse or fail to comply with the direction.

**(10)** Where the Court so directs a person to produce any books and the person has a lien on the books, the production of the books does not prejudice the lien.

**(11)** A person attending before the Court for examination pursuant to an order made under subsection (3) shall not make a statement that is false or misleading in a material particular.

**(12)** A person is not excused from answering a question put to him or her at an examination held pursuant to an order made under subsection (3) on the ground that the answer might tend to incriminate him or her but, where the person claims, before answering the question, that the answer might tend to incriminate him or her, neither the answer, nor any information, document or other thing obtained as a direct or indirect consequence of the person giving the answer, is admissible in evidence against the person in criminal proceedings other than proceedings under this section or other proceedings in respect of the falsity of the answer.

**(13)** The Court may order the questions put to a person and the answers given by him or her at an examination under this section to be recorded in writing and may require him or her to sign that written record.

**(14)** Subject to subsection (12), any written record of an examination so signed by a person, or any transcript of an examination of a person that is authenticated as provided by the rules, may be used in evidence in any legal proceedings against the person.

**(15)** An examination under this section may, if the Court so directs and subject to the rules, be held before such other court as is specified by the Court and the powers of the Court under this section may be exercised by that other court.

**(16)** A person ordered to attend before the Court or another court for examination under this section may, at his or her own expense, employ a solicitor, or a solicitor and counsel, and the solicitor or counsel, as the case may be, may put to the person such questions as the Court, or the other court, as the case may be, considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.

**(17)** The Court or another court before which an examination under this section takes place may, if it thinks fit, adjourn the examination from time to time.

**(18)** Where the Court that made the order under subsection (3) for an examination is satisfied that the order for the examination was obtained without reasonable cause, the Court may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, took part in the examination.

**Orders against persons concerned with corporations**

**598. (1)** In this section, a reference to a prescribed person, in relation to a corporation, shall be construed as a reference to an official manager, liquidator or provisional liquidator of the corporation or to any other person authorised by the Commission to make applications under this section or to make an application under this section in relation to that corporation.

**(2)** Subject to subsection (3), where, an application by the Commission or a prescribed person, the Court is satisfied that:

(a) a person is guilty of fraud, negligence, default, breach of trust or breach of duty in relation to a corporation; and

(b) the corporation has suffered, or is likely to suffer, loss or damage as a result of the frauds negligence, default, breach of trust or breach of duty;

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

**(3)** The Court shall not make an order against a person under subsection (2) unless the Court has given the person the opportunity:

(a) to give evidence;

(b) to call witnesses to give evidence;

(c) to bring other evidence in relation to the matters to which the application relates; and

(d) to employ, at the person’s own expense, a solicitor, or a solicitor and counsel, to put to the person, or to any other witness, such questions as the Court considers just for the purpose of enabling the person to explain or qualify any answers or evidence given by the person.

**(4)** The orders that may be made under subsection (2) against a person include:

(a) an order directing the person to pay money or transfer property to the corporation; and

(b) an order directing the person to pay to the corporation the amount of the loss or damage.

**(5)** Nothing in this section prevents any person from instituting any other proceedings in relation to matters in respect of which an application may be made under this section.

**Court may disqualify person from acting as director etc.**

**599. (1)** This section applies to a company:

(a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;

(b) that has been in the course of being wound up because of inability to pay its debts as and when they became due, where the winding up has been stayed or terminated by an order under section 482;

(c) that has been or is under official management;

(d) that has ceased to carry on business because it was unable to pay its debts as and when they became due;

(e) in respect of which a levy of execution was not satisfied;

(f) in respect of property of which a receiver, or a receiver and manager, has been appointed, whether by a court or pursuant to the powers contained in an instrument, whether or not the appointment has been terminated; or

(g) that has entered into a compromise or arrangement with its creditors.

**(2)** Unless cause to the contrary is shown, the Court may, on an application by the Commission and on being satisified as to the matters referred to in subsection (3), make an order prohibiting a person specified in the order from managing a corporation during such period not exceeding 5 years after the date of the order as is specified in the order.

**(3)** The Court shall not make an order under subsection (2) unless it is satisfied:

(a) that the person to whom the application for an order relates was given notice of the application;

(b) that, within the period of 7 years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after the commencement of this section, that person was a director of, or was concerned or took part in the management of, 2 or more companies to which this section applies; and

(c) that:

(i) in the case of each of those 2 companies; or

(ii) where the person was a director of, or was concerned or took part in the management of, more than 2 companies to which this section applies—in the case of each of 2 or more of those companies;

the manner in which affairs of the company had been managed was wholly or partly responsible for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver, or a receiver and manager, or entering into a compromise or arrangement with its creditors.

**(4)** A person who is subject to a section 599 order (whether made before or after the commencement of this section) shall not be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation.

**(5)** In this section, “company” means:

(a) a corporation; or

(b) a Part 5.7 body.

**Commission may order persons not to manage corporations**

**600. (1)** For the purposes of this section:

(a) a reference to a company is a reference to:

(i) a corporation; or

(ii) a Part 5.7 body;

and includes a reference to such a corporation or body that has been dissolved;

(b) a company shall be taken to be a relevant company at a particular time if, and only if, within the period of 7 years ending at that time, a liquidator of the company has, under:

(i) subsection 533 (1); or

(ii) a law corresponding to subsection 533 (1);

reported, or lodged a report with respect to, a matter relating to the ability of the company to pay its unsecured creditors; and

(c) a person shall be taken to be a relevant person in relation to a company that is or was a relevant company if, and only if, the person was a director of the company at any time during the period

of 12 months ending on the day of the beginning of the winding up of the company.

**(2)** The Commission may give to a person who is a relevant person in relation to 2 or more companies that are, at the time of service, relevant companies a notice in writing requiring the person to show cause why the Commission should not serve on the person a notice under subsection (3).

**(3)** Where the Commission:

(a) has served on a person a notice under subsection (2); and

(b) has given the person an opportunity of being heard in relation to the matter;

the Commission shall, unless it is satisfied that it is not appropriate to do so, serve on the person a notice in writing prohibiting the person, for such period not exceeding 5 years as is specified in the notice, from managing a corporation.

**(4)** Where:

(a) the Commission has served a notice under subsection (2) on a person who is a relevant person in relation to 2 or more companies that were, at the time of service, relevant companies; and

(b) those 2 companies have at any time been related to each other, or any of those companies has at any time been related to any other of those companies, as the case may be;

the Commission shall have regard to that fact in considering whether or not it is appropriate to serve on the person a notice under subsection (3).

**(5)** A person who is the subject of a section 600 notice (whether served before or after the commencement of this section) shall not, without the leave of the Court, be a director or promoter of, or be in any way (whether directly or indirectly) concerned in or take part in the management of, a corporation.

**Operation of certain Ordinances**

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

**(2)** Division 6 of Part 5.6 has effect subject to section 40 of the *Workmen’s Compensation Supplementation Fund Ordinance 1980.*

**(3)** Part 5.7 does not apply to:

(a) a society registered under the *Co-operative Societies Ordinance 1939*;or

(b) a body corporate constituted under the *Unit Titles Ordinance 1970.*

**(4)** An Ordinance may provide that, where an incorporated association is being wound up under Part 5.7 of this Act, specified provisions of the

Ordinance apply, and where an Ordinance so provides, that Part has effect subject to the specified provisions.

**(5)** An Ordinance may provide that the provisions of Part 5.7 of this Act shall, subject to the modifications and adaptations prescribed by the Ordinance, apply to and in relation to the winding up of an incorporated association, and where an Ordinance so provides, the provisions of that Part apply accordingly.

**(6)** In subsections (4) and (5):

“incorporated association” means an association, society, institution or body incorporated under the *Associations Incorporation Ordinance 1953*;

“Ordinance” means an Ordinance of the Capital Territory.

**(7)** This Act has effect subject to sections 23 and 24 of the *Trustee Companies Ordinance 1947.*

**CHAPTER 6—ACQUISITION OF SHARES**

**PART 6.1—INTERPRETATION**

**Effect of this Part**

**602.** The provisions of this Part have effect for the purposes of this Chapter, except so far as the contrary intention appears in this Chapter.

**Definitions**

**603.** Unless the contrary intention appears:

“announcement”, in relation to a dealer, has a meaning affected by section 606;

“appropriate dealer”, in relation to an announcement relating to shares in a class of shares in a listed company, means:

(a) if the company is included in the official list of the Exchange or of a second board of an Exchange subsidiary—a member of the Exchange; or

(b) otherwise—a member of the company’s home stock exchange;

“approved manner”, in relation to sending a document, has the meaning given by section 607;

“business rules”, in relation to a securities exchange or stock exchange, means rules, regulations or by-laws that have been made by the securities exchange or stock exchange or are contained in its constitution, and that govern:

(a) the activities or conduct of the securities exchange or stock exchange or of its members; or

(b) the activities or conduct of other persons in relation to a stock market of the securities exchange or stock exchange;

but does not include the listing rules of the securities exchange or stock exchange;

“closing phase”, in relation to the offer period in relation to offers made under a takeover announcement, means the 5 trading days of the target company’s home stock exchange immediately before the end of the offer period;

“defeating condition”, in relation to a takeover offer, means:

(a) a condition that will, in circumstances referred to in the condition, result in the rescission of, or entitle the offeror to rescind, a contract that results from an acceptance of the offer; or

(b) a condition that prevents a binding contract from resulting from an acceptance of the offer unless or until the condition is fulfilled;

“entitled” has:

(a) in relation to shares—the meaning given by section 609; or

(b) in relation to marketable securities (other than shares) of a body corporate—the meaning given by section 609 as applying by virtue of section 605;

“Exchange subsidiary” means a securities exchange, or a stock exchange, that is a subsidiary of the Exchange;

“full takeover scheme” means a takeover scheme under which each takeover offer relates to all the shares in the target company in the relevant class that the offeree holds;

“home stock exchange”, in relation to a listed company, means:

(a) if the company is included in the official list of the Exchange or of a second board of an Exchange subsidiary—the stock exchange designated to the company, for the purposes of the listing rules of the Exchange or of that subsidiary, as the company’s Home Exchange; or

(b) otherwise:

(i) if the company is included in the official list of only one stock exchange—that stock exchange; or

(ii) if the company is included in the official list of each of 2 or more stock exchanges—the stock exchange, being one of those stock exchanges, declared in writing by the Commission to be the company’s home stock exchange;

“invitation” means a statement, however expressed, that is not an offer but expressly or impliedly invites a holder of shares to offer to dispose of shares or a holder of a right, being a right to acquire a share or an interest in a share under an option, to offer to dispose of the right;

“listed company” means a company that is included in the official list of a stock exchange;

“listing rules”, in relation to a securities exchange or stock exchange, means rules, regulations or by-laws governing or relating to:

(a) the admission to, or removal from, the official list of the securities exchange or stock exchange of bodies corporate, governments, unincorporate bodies or other persons for the purposes of the quotation on the stock market of the securities exchange or stock exchange of securities of bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are included in that list;

whether those rules, regulations or by-laws:

(c) are made by the securities exchange or stock exchange or are contained in its constitution; or

(d) are made by another person and adopted by the securities exchange or stock exchange;

“marketable parcel”, in relation to shares in a listed company, means a marketable parcel of shares in that company within the meaning of the relevant business rules or listing rules of that company’s home stock exchange;

“marketable security”, in relation to a body corporate, means:

(a) a share in the body corporate;

(b) an option or right in respect of a share in the body corporate granted by the body corporate;

(c) a debenture issued by the body corporate; or

(d) a prescribed interest made available by the body corporate;

and includes a convertible note issued by the body corporate;

“notifiable securities exchange”, in relation to a listed company, means:

(a) the company’s home stock exchange; and

(b) any other securities exchange (other than the Exchange or an Exchange subsidiary), or stock exchange (other than the Exchange or an Exchange subsidiary), in an official list of which the company is included;

“odd lot”, in relation to shares in a listed company, has the meaning given by section 612;

“offer period” means the period during which offers made under a takeover scheme or under a takeover announcement remain open and, in relation to an offer that has been accepted, the period during which the offer would have remained open if it had not been accepted;

“offeror” means:

(a) a person who:

(i) sends, or proposes to send, a takeover offer, whether the person sends, or proposes to send, the offer himself, herself or itself or by an agent or nominee; or

(ii) makes, or proposes to make, offers to acquire shares in accordance with section 674; or

(b) 2 or more persons who:

(i) together send, or propose to send, a takeover offer, whether they send, or propose to send, the offer themselves or by an agent or nominee; or

(ii) together make, or propose to make, offers to acquire shares in accordance with section 674;

or either or any of those persons;

“ordinary course of trading”, in relation to a stock market, has, in subsection 620 (1) or (2) or 698 (7), a meaning affected by section 604;

“Part A statement” means a written statement that complies with the requirements of Part A in section 750;

“Part B statement” means a written statement that complies with the requirements of Part B in section 750;

“Part C statement” means a written statement that complies with the requirements of Part C in section 750;

“Part D statement” means a written statement that complies with the requirements of Part D in section 750;

“prescribed occurrence”, in relation to a target company, means:

(a) any one or more of the provisions of the constitution of the target company or of a subsidiary being altered in any of the ways mentioned in subsection 193 (1);

(b) the target company or a subsidiary resolving to reduce its share capital in any way;

(c) the target company or a subsidiary making an allotment of, or granting an option to subscribe for, any of its shares, or agreeing to make such an allotment or grant such an option;

(d) the target company or a subsidiary issuing, or agreeing to issue, convertible notes;

(e) the target company or a subsidiary disposing, or agreeing to dispose, of the whole, or a substantial part, of its business or property;

(f) the target company or a subsidiary charging, or agreeing to charge, the whole, or a substantial part, of its business or property;

(g) the target company or a subsidiary resolving that it be wound up;

(h) the appointment of a provisional liquidator of the target company or of a subsidiary;

(j) the making of an order by a court for the winding up of the target company or of a subsidiary;

(k) the target company or a subsidiary being placed under official management; or

(m) the appointment of a receiver, or a receiver and manager, in relation to the whole, or a substantial part, of the property of the target company or of a subsidiary;

“proportional takeover scheme” means a takeover scheme under which each takeover offer relates to a proportion of the shares in the target company in the relevant class that the offeree holds, being a proportion that is the same in respect of each offer;

“recorded”, in relation to a dealing in shares in a listed company, means recorded by a securities exchange;

“relevant official meeting”, in relation to an announcement relating to shares in a class of shares in a listed company, means an official meeting of:

(a) if the company is included in the official list of the Exchange or of a second board of an Exchange subsidiary—the Exchange; or

(b) otherwise—the company’s home stock exchange;

being an official meeting:

(c) held on a stock market of the company’s home stock exchange; and

(d) of a kind at which shares in that class are usually dealt in;

whether or not shares in that class are dealt in at that official meeting;

“remedial order” has the meaning given by section 613;

“renounceable option” means an assignable option to have an allotment of shares in a body corporate made to the holder of the option;

“representative”, in relation to a person, includes:

(a) in any case—an employee of the person; and

(b) if the person is a partner in a partnership that carries on a securities business:

(i) another partner in the partnership; or

(ii) an employee of the partnership;

“stock market”, in relation to a securities exchange or a stock exchange, includes, in the case of the Exchange, a stock market of a securities exchange or of a stock exchange, as the case may be, that is a subsidiary of the Exchange;

“takeover announcement” means an announcement made in accordance with Part 6.4;

“takeover offer” means an offer to acquire shares made under a takeover scheme;

“takeover period” means:

(a) in relation to a takeover scheme—the period:

(i) beginning when the Part A statement was served on the target company; and

(ii) ending at the end of 28 days after the day on which the statement was served or, if offers are sent pursuant to the statement before the end of those 28 days, at the end of the offer period; or

(b) in relation to a takeover announcement—the period:

(i) beginning when the announcement was made; and

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

“takeover scheme” means a takeover scheme referred to in section 634;

“target company” means:

(a) in relation to a takeover offer—the company for the acquisition of shares in which that offer has been, or is proposed to be, sent;

(b) in relation to a takeover scheme—the company shares in which are proposed to be acquired under the scheme; and

(c) in relation to a takeover announcement—the company in relation to shares in which the takeover announcement has been, or is proposed to be, made;

“trading day”, in relation to a securities exchange or stock exchange, means a day on which a stock market of that securities exchange or stock exchange is open for trading in securities.

**Acquisition of shares by “special” transaction**

**604.** A reference in subsection 620 (1) or (2) or 698 (7) to an acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange does not include a reference to an acquisition of shares by a transaction that, when it is reported to the relevant stock exchange, is, under the business rules or listing rules of that stock exchange, described as “special”.

**Acquisition and disposal of, entitlement to, and relevant interests in, marketable securities other than shares**

**605.** For the purpose of determining whether or not a person has a relevant interest in, acquires, disposes of, or is entitled to, a marketable security (other than a share) of a body corporate, the provisions (other than section 44) of Divisions 2 and 5 of Part 1.2 and sections 51 and 609 apply as if a reference in those provisions to a share (other than a reference to a voting share) were a reference to a marketable security (other than a share) of a body corporate.

**Announcement by representative of dealer**

**606.** An announcement that a representative of a member of a stock exchange makes, on the member’s behalf, at an official meeting of the stock exchange shall be deemed to be made by the member.

**Approved manner of sending documents**

**607.** **(1)** The Commission may, by notice served on a person, direct the person to send, or approve the person sending, in a specified manner specified documents that the person proposes to send under this Chapter.

**(2)** A person sends a document in an approved manner if, and only if, the person sends it:

(a) if there is a relevant direction by the Commission—in the manner specified in the direction;

(b) if there is no relevant direction but there is a relevant approval— in the manner specified in the approval or in the prescribed manner; or

(c) in any other case—in the prescribed manner.

**Doing acts**

**608.** A reference to a person doing an act or thing includes a reference to a person doing the act or thing together with any other person or persons.

**Entitlement to shares**

**609.** **(1)** The shares in a body corporate to which a person, being the body corporate itself or any other person, is entitled include:

(a) shares in which the first-mentioned person has a relevant interest;

(b) except where the first-mentioned person is a nominee body corporate in respect of which a certificate by the Commission is in force under subsection (3)—shares in which a person who is an associate of the first-mentioned person (otherwise than by virtue of paragraph 12 (1) (d), (f) or (g)) has a relevant interest; and

(c) shares to which the first-mentioned person is entitled by virtue of subsection (2).

**(2)** Where a person has, or proposes to enter into, an agreement with another person:

(a) because of which the first-mentioned person has or will have power (even if it is in any way qualified):

(i) to exercise;

(ii) to control, directly or indirectly, the exercise of; or

(iii) to influence substantially the exercise of;

any voting power attached to shares in which the other person has a relevant interest;

(b) under which the first-mentioned person:

(i) will or may acquire; or

(ii) may be required by the other person to acquire; shares in which the other person has a relevant interest; or

(c) under which the other person may be required to dispose of shares in accordance with the first-mentioned person’s directions;

then, whatever other effect the agreement may have, the first-mentioned person is entitled to those shares.

**(3)** The Commission may issue to a nominee body corporate a certificate declaring the nominee body corporate to be an approved nominee body corporate for the purposes of this Chapter and may, by notice served on the nominee body corporate, revoke the certificate.

**Inadvertence or mistake etc.**

**610.** In determining for the purposes of a provision of this Chapter, whether or not a person’s contravention of the provision was due:

(a) to the person’s inadvertence or mistake;

(b) to the person not being aware of a relevant fact or occurrence; or

(c) to circumstances beyond the person’s control;

the person’s ignorance of, or a mistake on the person’s part concerning, a matter of law shall be disregarded.

**Knowledge of employee or agent imputed to employer or principal**

**611.** In any proceedings under or arising out of this Chapter, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence of which an employee or agent of the person having duties or acting on behalf of the employer or principal in connection with the matter to which the proceedings relate was aware at the time.

**Odd lots**

**612.** **(1)** A parcel of shares in a listed company constitutes an odd lot if the number of shares in that parcel is less than one marketable parcel of shares in that company.

**(2)** When the number of shares in a parcel of shares in a listed company is greater than one marketable parcel of shares in that company and, after excluding so many of the shares in that parcel as constitute a marketable parcel or marketable parcels of shares in that company, a number of shares remains, that remaining number of shares constitutes an odd lot.

**Remedial orders**

**613.** **(1)** A reference to a remedial order, in relation to the Court, is a reference to any one or more of the following orders:

(a) an order restraining the exercise of any voting or other rights attached to shares;

(b) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of shares;

(c) an order restraining the acquisition or disposal of, or of an interest in, shares;

(d) an order directing the disposal of, or of an interest in, shares;

(e) an order vesting in the Commission shares or an interest in shares;

(f) an order directing a company not to register the transfer or transmission of shares;

(g) an order that an exercise of the voting or other rights attached to shares be disregarded;

(h) an order cancelling an agreement or offer relating to a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, or any other agreement or offer in connection with the acquisition of shares;

(j) an order declaring an agreement or offer relating to a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, or any other agreement or offer in connection with the acquisition of shares to be voidable.

**(2)** For the purposes of the application of subsection (1) in relation to section 739, references in subsection (1) to shares include references to:

(a) non-voting shares, and

(b) renounceable options and convertible notes.

**Persons to whom Chapter applies**

**614.** This Chapter applies in relation to:

(a) all natural persons, whether resident in Australia or not and whether Australian citizens or not; and

(b) all bodies corporate or unincorporate, whether incorporated or carrying on business in Australia or not;

and extends to acts done or omitted to be done outside Australia.

**PART 6.2—CONTROL OF ACQUISITION OF SHARES**

**Restrictions on acquisitions**

**615.** **(1)** Except as provided by this Chapter, a person shall not acquire shares in a company that is a corporation if:

(a) any person who:

(i) is not entitled to any voting shares in the company; or

(ii) is entitled to less than the prescribed percentage of the voting shares in the company;

would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the company; or

(b) any person who is entitled to not less than the prescribed percentage, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the company than immediately before the acquisition.

**(2)** Except as provided by this Chapter, a corporation shall not acquire shares in a company that is not a corporation if:

(a) any person who:

(i) is not entitled to any voting shares in the company; or

(ii) is entitled to less than the prescribed percentage of the voting shares in the company;

would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the company; or

(b) any person who is entitled to not less than the prescribed percentage, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the company than immediately before the acquisition.

**(3)** Except as provided by this Chapter, a person other than a corporation shall not acquire shares in a company that is not a corporation if:

(a) a corporation that:

(i) is not entitled to any voting shares in the company; or

(ii) is entitled to less than the prescribed percentage of the voting shares in the company;

would, immediately after the acquisition, be entitled to more than the prescribed percentage of the voting shares in the company; or

(b) a corporation that is entitled to not less than the prescribed percentage, but less than 90%, of the voting shares in the company would, immediately after the acquisition, be entitled to a greater percentage of the voting shares in the company than immediately before the acquisition.

**(4)** A person shall not offer to acquire, or issue an invitation in relation to, shares in a company if the person is prohibited by subsection (1), (2) or (3) from acquiring those shares.

**(5)** It is a defence to a prosecution of a person for a contravention of this section if it is proved that the contravention was due to inadvertence or mistake or to the person not being aware of a relevant fact or occurrence.

**(6)** An acquisition of shares is not invalid because of a contravention of this section.

**(7)** In this section:

“prescribed percentage” means:

(a) subject to paragraph (b)—20%; or

(b) where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section— that lesser percentage.

**Acquisitions permitted under takeover scheme**

**616.** Section 615 does not apply in relation to an acquisition of shares as a result of the acceptance of an offer to acquire those shares made under a takeover scheme.

**Certain acquisitions permitted under takeover announcements**

**617.** Section 615 does not apply in relation to an acquisition of shares in a listed company as a result of the acceptance of an offer to acquire those shares made under a takeover announcement.

**Acquisition of not more than 3% of voting shares permitted in each 6 months**

**618. (1)** Section 615 does not prohibit an acquisition of voting shares in a company because of the effect of the acquisition on the entitlement to voting shares in the company of a person (in this section called a “relevant person”) if:

(a) the relevant person has been entitled to not less than the prescribed percentage of the voting shares in the company for a continuous period of not less than 6 months ending on the day immediately before the day on which the acquisition takes place; and

(b) the number ascertained in accordance with the formula

100, open bracket, VA1 plus VA2 minus VD, close bracket, over V does not exceed 3.

**(2)** For the purposes of paragraph (1) (b):

**VA1** is the number of voting shares to be acquired;

**VA2** is the number of voting shares in the company:

(a) that were acquired by any person within the 6 months ending on the day immediately before the day on which the first-mentioned acquisition takes place, excluding any voting shares acquired by the person concerned by an allotment:

(i) in relation to which subsection 621 (1) or a corresponding law applies; and

(ii) that was made to the person concerned as a result of that person’s acceptance of an offer made in accordance with paragraph 621 (2) (b) or a corresponding law; and

(b) the acquisition of which by the person concerned increased the number of voting shares in the company to which the relevant person was entitled;

**VD** is the number of voting shares in the company:

(a) that were disposed of by any person during the 6 months ending on the day immediately before the day on which the first-mentioned acquisition takes place; and

(b) the disposal of which by the person concerned decreased the number of voting shares in the company to which the relevant person was entitled; and

**V** is the total number of voting shares in the company.

**(3)** In subsection (1):

“prescribed percentage” means:

(a) subject to paragraph (b), 19%; or

(b) where a lesser percentage is prescribed by regulations in force for the time being for the purposes of this section— that lesser percentage.

**Acquisition of shares in small companies or with consent of shareholders**

**619.** **(1)** Section 615 does not:

(a) prohibit the acquisition of shares in a company that does not have more than 15 members; or

(b) prohibit the acquisition of shares in a proprietary company that has more than 15 members where the members of the company have consented in writing to the provisions of this Chapter not applying with respect to the acquisition;

if the acquisition would not result in a contravention of section 615 in relation to the acquisition of shares in another company.

**(2)** For the purposes of subsection (1), 2 or more persons holding jointly shares in a company shall be deemed to be one member of the company.

**Acquisition on market during takeovers**

**620.** **(1)** Where:

(a) a Part A statement relating to offers under a full takeover scheme in respect of a class of shares in a company is served on the company; and

(b) no offer under the takeover scheme is subject to a defeating condition other than:

(i) a condition that a prescribed occurrence in relation to the company does not take place; or

(ii) another condition approved by the Commission;

section 615 does not prohibit the acquisition during the takeover period by the offeror of shares in that class at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.

**(2)** Where a takeover announcement is made in respect of a class of shares in a company, section 615 does not prohibit the acquisition during the takeover period by the offeror of shares in that class at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.

**(3)** Where:

(a) a Part A statement relating to offers under a takeover scheme is served on a company;

(b) after the Part A statement was served the offeror acquires shares in the target company;

(c) the acquisition of those shares would, but for subsection (1), have contravened section 615; and

(d) the offeror does not send the offers before the end of 28 days after the day on which the Part A statement was served on the target company;

the offeror is not entitled, without the consent of the Commission, to exercise any voting rights attached to the shares referred to in paragraph (b).

**Acquisition as a result of *pari passu* allotment**

**621. (1)** Section 615 does not prohibit the acquisition of shares in a company by an allotment if:

(a) the requirements set out in subsection (2) have been complied with in relation to the allotment; and

(b) the allotment:

(i) is made to a person as a result of the acceptance by that person of an offer made in accordance with paragraph (2) (b);

(ii) is made to a person as an underwriter or sub-underwriter in relation to the allotment; or

(iii) is made to a nominee in accordance with subsection (3).

**(2)** The requirements referred to in subsection (1) are as follows:

(a) the directors of the company must have passed a resolution agreeing to make available a number of shares specified in, or ascertained in accordance with, the resolution for allotment to all persons who were registered as the holders of shares in the company, or to all persons who were registered as the holders of voting shares in the company, on the date specified in the resolution;

(b) the company must have made an offer to each person to allot to the person such number of those shares as the person agrees to subscribe for, being a number that does not exceed the number specified in the offer in accordance with paragraph (c); and

(c) the number of shares to be specified in an offer for the purposes of paragraph (b) must be as nearly as practicable the number ascertained in accordance with the formula:

TA multiplied by NP over TC

where:

**TA** is the total number of shares agreed to be made available in accordance with paragraph (a);

**NP** is the number of shares in the company, or the number of voting shares in the company, as the case may be, held by the person to whom the offer is made immediately before the date specified in the resolution; and

**TC** is the total number of shares in the company, or the total number of voting shares in the company, as the case may be, immediately before that date.

**(3)** A company shall be deemed to comply with the requirements of subsection (2) in relation to the holders of shares in the company whose addresses as shown in the register of members are places outside Australia and the external Territories (in this subsection called “foreign shareholders”) if the company, in lieu of making offers to the foreign shareholders in accordance with that subsection:

(a) allots to a nominee approved:

(i) where the company is a listed company—by the company’s home stock exchange; or

(ii) where the company is not a listed company—by the Commission;

the number of shares in respect of which the company would, but for this subsection, be required to make offers to foreign shareholders in accordance with subsection (2);

(b) causes the shares so allotted to be offered for sale in such manner, at such price and on such other terms and conditions as are approved by that stock exchange or the Commission, as the case may be; and

(c) pays to each of the foreign shareholders the amount ascertained in accordance with the formula:

Net Proceeds of Sale multiplied by NS over TS

where:

**Net Proceeds of Sale** is the amount (if any) remaining after deducting from the proceeds of sale:

(i) the expenses of the sale; and

(ii) the amounts (if any) payable to the company in respect of the allotment of the shares;

**NS** is the number of shares in respect of which the company would, but for this subsection, be required to make an offer to the foreign shareholder concerned in accordance with subsection (2); and

**TS** is the total number of shares allotted to the nominee in accordance with paragraph (a).

**Acquisitions pursuant to prospectus**

**622. (1)** Section 615 does not apply in relation to an acquisition of shares in a company by an allotment or purchase pursuant to a prospectus:

(a) in relation to an invitation to subscribe for or buy the shares or an offer to accept subscriptions for or to sell the shares, being an invitation or offer issued or made to, or to persons who include, all the members of the company; and

(b) that has been lodged under Division 2 of Part 7.12 or a corresponding law and has been registered under that Division or corresponding law where such registration was required.

**(2)** Section 615 does not apply in relation to an acquisition of shares in a company by an allotment made in accordance with a proposal particulars of which were set out in a prospectus where:

(a) the prospectus was the first prospectus issued by the company;

(b) the person who acquired the shares was a promoter in respect of the prospectus; and

(c) the prospectus has been lodged under Division 2 of Part 7.12 or under a corresponding law.

**(3)** Section 615 does not apply in relation to an acquisition of shares by an allotment or purchase of shares pursuant to:

(a) an underwriting agreement particulars of which were set out in a prospectus that has been lodged under Division 2 of Part 7.12 or under a corresponding law; or

(b) a sub-underwriting agreement that is related to such an underwriting agreement;

where the prospectus contained an invitation to subscribe for or purchase the shares or an offer to accept subscriptions for or to sell the shares.

**Acquisitions approved by resolution of target company**

**623.** Section 615 does not apply in relation to an acquisition of shares in a company by virtue of an allotment or purchase if the company has agreed to the allotment or purchase by a resolution passed at a general meeting at which no votes were cast in relation to the resolution in respect of any shares held by, or by an associate of, the person to whom the first-mentioned shares were to be allotted, or by whom or from whom the first-mentioned shares were to be bought, as the case may be.

**Allotment by newly formed company**

**624.** Section 615 does not apply in relation to an acquisition of shares by an allotment made by a company that has not started any business and has not exercised any borrowing power.

**Acquisition under compromise or arrangement approved by Court**

**625.** Section 615 does not apply in relation to an acquisition of shares under a compromise or arrangement approved by the Court under Part 5.1 or under a corresponding law.

**Acquisition by liquidator**

**626.** Section 615 does not apply in relation to an acquisition of shares under section 507 or under a corresponding law.

**Acquisition by exercise of option or right**

**627.** Section 615 does not apply in relation to an acquisition of shares resulting from the exercise by a person of a renounceable option or of an option or right granted or conferred by a convertible note, where, if the person had acquired the shares when the person acquired the renounceable option or the convertible note, as the case may be, the acquisition of the shares would not, because of subsection 620 (1) or (2), or a corresponding law, have contravened section 615 or a corresponding law, as the case may be.

**Acquisition of shares as consideration for takeover offer**

**628.** Section 615 does not apply in relation to an acquisition of shares by a person as a result of the acceptance by that person of a takeover offer, where the shares constituted, or formed part of, the consideration for the takeover offer.

**Downstream acquisition resulting from acquisition of shares in a listed company**

**629.** Section 615 does not apply in relation to an acquisition of shares in a company as a result of the acquisition of shares in another company if:

(a) at the time of the last-mentioned acquisition, the other company is a listed company; and

(b) the acquisition of the shares in the other company:

(i) results from the acceptance of an offer to acquire those shares that was made under a takeover scheme or takeover announcement; or

(ii) would, but for subsection 620 (1) or (2), contravene section 615.

**Acquisition by exercise of power vested in lender**

**630.** Section 615 does not apply in relation to an acquisition of shares by a person whose ordinary business includes the lending of money where the acquisition results from the exercise by that person of a power in relation to the shares conferred on or vested in the person pursuant to, because of or in connection with a transaction in connection with the lending of money entered into by the person in the ordinary course of that business, other than a transaction entered into with an associate of the person.

**Acquisition by will or operation of law**

**631.** Section 615 does not apply in relation to an acquisition of shares by will or by operation of law.

**Acquisition of forfeited shares**

**632.** Section 615 does not apply in relation to an acquisition of forfeited shares at an auction conducted on a stock market of a stock exchange.

**Acquisitions permitted by regulations or by the Commission**

**633.** Section 615 does not apply in relation to:

(a) an acquisition of shares made in a prescribed manner or in prescribed circumstances;

(b) without limiting the generality of paragraph (a) of this section, an acquisition of shares in a prescribed company; or

(c) an acquisition of shares made with the Commission’s written approval.

**PART 6.3—TAKEOVER SCHEMES**

***Division 1*—*Nature of takeover offers***

**Offers must comply with this Division**

**634.** For the purposes of this Chapter, offers to acquire shares are made under a takeover scheme if, and only if, the offers relate only to a class of shares in a company (in this Division called the “relevant class”) and the requirements of this Division have been complied with.

**Full takeover schemes and proportional takeover schemes**

**635.** One of the following paragraphs must apply in relation to the offers:

(a) each offer relates to all the shares in the relevant class that the offeree holds;

(b) each offer relates to a proportion of the shares in the relevant class that the offeree holds, being a proportion that is the same in respect of each offer.

**Identical offers**

**636.** **(1)** The offers must be the same disregarding:

(a) the fact that the number of shares that may be acquired under each offer is limited by the number of shares held by the offeree; and

(b) any differences in the consideration specified for each share in the offers that are attributable only to the fact that the offers relate to shares having different accrued dividend entitlements or relate to shares on which different amounts (whether by way of capital or premium) are paid up.

**(2)** The offeror must send an offer in an approved manner to each holder of shares in the relevant class.

**Service of Part A statement and copy of offer on target company**

**637.** **(1)** The offeror must have, after the commencement of this Chapter but not earlier than 28 days and not later than 14 days before the day on which the offers are sent, served on the target company:

(a) a Part A statement relating to the offers that is signed:

(i) where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons; and

(ii) where the offeror is, or includes, a body corporate or bodies corporate, by not fewer than 2 directors of the body corporate, or by 2 directors of each of the bodies corporate, authorised to sign the statement by a resolution passed at a meeting of the directors, or, in the case of a body corporate that has only one director, by that director;

and has endorsed on it a statement that a copy of the Part A statement has been registered by the Commission and that the Commission takes no responsibility as to its contents and specifying the date on which the copy was so registered; and

(b) a copy of one of the proposed offers to which the Part A statement relates, being a copy that need not include the name or address of the offeree, the proposed date of the offer or any other date that is related to or dependent upon that date, or the particulars referred to in subsection 638 (4).

**(2)** The offeror must have, on the day on which the Part A statement was served under subsection (1):

(a) lodged a notice stating that the Part A statement has been so served; and

(b) if the target company is a listed company—served on each notifiable securities exchange in relation to that company a copy of each of the documents served on that company in accordance with subsection (1).

**Contents of offers**

**638. (1)** Each offer must be in writing.

**(2)** Each offer must have the same date, being a date that is not earlier than 3 days before the day on which the offer is sent and not later than that day.

**(3)** Each offer must state that it will, unless withdrawn, remain open during a period ending on a specified date, being a date that is not earlier than one month, or later than 6 months, after the date of the offer.

**(4)** Each offer must specify, in relation to each class of shares in the target company:

(a) the total number of shares in the class; and

(b) the number of shares in the class to which the offeror was entitled immediately before the offer was sent (which may be expressed as a number of shares or as a percentage of the total number of shares in the class).

**(5)** Each offer must, if it is subject to a defeating condition, specify a date, being a date that is not less than 7 days and not more than 14 days

before the last day of the offer period, for the publication of the notice referred to in subsection 663 (4).

**(6)** Each offer must set out how the obligations of the offeror are to be satisfied.

**(7)** Each offer must contain a provision setting out when the obligations of the offeror are to be satisfied, being a provision under which the consideration for the offer is, if the offer is accepted, to be paid or provided:

(a) unless the offer is subject to a defeating condition—on or before the thirtieth day after the offer is accepted; or

(b) if the offer is subject to a defeating condition—on or before the thirtieth day after the offer is accepted, or the offer, or the contract resulting from the acceptance of the offer, becomes unconditional, whichever happens later;

or, if that day is later than the twenty-first day after the end of the offer period, on or before the last-mentioned day.

**Part A Statement, and Part B Statement if available, to accompany offers**

**639.** **(1)** Each offer must be accompanied by a copy of the Part A statement referred to in paragraph 637 (1) (a).

**(2)** If the target company has, before the end of 14 days after the day on which it received that Part A statement, given to the offeror a Part B statement in relation to the offers, each offer must be accompanied by a copy of that Part B statement and a copy of any report that accompanied that Part B statement.

**Service on Commission of copies of documents accompanying offers**

**640.** The offeror must have lodged, not later than the last day on which an offer was sent, a copy of every document that accompanied the offers other than a document previously lodged under this Division.

**Offer price**

**641.** **(1)** If:

(a) the consideration that under each of the offers is to be paid or provided for the acquisition of the shares to which the offer relates consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum; and

(b) during the 4 months ending on the day on which the first of the offers is sent, the offeror, or an associate of the offeror, purchased or agreed to purchase shares in the relevant class;

the amount per share of that cash sum must be not less than:

(c) unless paragraph (d) applies—the highest price per share paid or agreed to be paid, pursuant to such a purchase or agreement to purchase, for any of the shares referred to in paragraph (b); or

(d) if the target company, at any time during that period:

(i) made, agreed to make, or announced a proposal to make, or to agree to make, an allotment of any of its shares;

(ii) granted, agreed to grant, or announced a proposal to grant, or to agree to grant, an option to subscribe for any of its shares;

(iii) issued, agreed to issue, or announced a proposal to issue, or to agree to issue, convertible notes; or

(iv) declared, or announced a proposal to declare, a dividend;

and an approval by the Commission of an amount in relation to the offers is in force under subsection (3)—the last-mentioned amount.

**(2)** Where a person has entered into an agreement for the purchase of a share or shares in a company, being an agreement that provides that the price payable for the share or any of the shares is a price specified in the agreement but may be varied in accordance with the terms of the agreement, any such variations shall be disregarded in determining, for the purposes of subsection (1), the price agreed to be paid for the share or shares pursuant to the agreement.

**(3)** Upon application by an offeror who proposes to send offers to acquire shares in a class of shares in a company, the Commission may, in writing, approve, for the purposes of subsection (1), a specified amount in relation to the offers.

**Offers not to contain certain conditions**

**642. (1)** None of the offers must be subject to a condition (however expressed, and whatever the purported effect of fulfilment or failure of the condition) the fulfilment or failure of which depends on, or on matters including, one or more of the following matters:

(a) whether the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers exceeds a particular number of shares;

(b) whether the percentage of shares in the relevant class to which the offeror becomes entitled exceeds a particular percentage;

(c) whether the number of offers accepted exceeds a particular number;

however the particular number or percentage was, or is to be, determined, whether or not the particular number or percentage is specified in the condition and, if it is so specified, however it is expressed.

**(2)** None of the offers must be subject to a condition (however expressed) that permits the offeror to acquire, or that may result in the offeror acquiring, shares in the relevant class from some but not all of the persons who accept the offers.

**(3)** Neither of subsections (1) and (2) limits the generality of the other.

**(4)** Subsection (1) does not apply in relation to a condition (however expressed) to which an offer is subject and the sole effect of which is to prevent:

(a) a binding contract from resulting from an acceptance of the offer; or

(b) an obligation of the offeror from arising under a contract resulting from an acceptance of the offer;

unless or until:

(c) the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers exceeds a particular number;

(d) the offeror becomes entitled to not less than a particular percentage of the shares in the relevant class; or

(e) the number of offers accepted exceeds a particular number;

whichever is specified in the condition.

**(5)** Subsection (1) does not apply in relation to a condition (however expressed) to which an offer is subject and the sole effect of which is that:

(a) a contract resulting from an acceptance of the offer will be rescinded;

(b) the offeror will be entitled to rescind such a contract; or

(c) the offeror will be relieved of an obligation arising under such a contract;

if:

(d) the number of shares in respect of which the offeror receives an acceptance or acceptances of one or more of the offers does not exceed a particular number;

(e) the offeror does not become entitled to not less than a particular percentage of the shares in the relevant class; or

(f) the number of offers accepted does not exceed a particular number;

whichever is specified in the condition.

**(6)** The document prepared by the Companies and Securities Law Review Committee, entitled “Report to the Ministerial Council on Partial Takeover Bids” and dated August 1985, is declared to be a relevant document for the purposes of section 15ab of the *Acts Interpretation Act 1901.*

***Division 2*—*Part* *A******statements and takeover offers***

**Additional matter in Part A statement**

**643.** A Part A statement may contain, in addition to the information referred to in Part A in section 750, such information as the offeror thinks fit, other than information that is false in a material particular or materially misleading.

**Registration of Part A statements and offers**

**644.** **(1)** A person shall not serve a statement that purports to be a Part A statement on a target company unless:

(a) a copy of the statement; and

(b) a copy of one of the proposed offers to which the statement relates, being a copy that need not include:

(i) the name or address of the offeree;

(ii) the date of the proposed offer or any other date that is related to or dependent upon that date; or

(iii) the particulars referred to in subsection 638 (4);

have been registered by the Commission within the 21 days ending on the day immediately before the day on which the statement is served.

**(2)** Subject to subsections (3) and (4), the Commission shall register the copies.

**(3)** The Commission shall refuse to register the copies if:

(a) it appears that the statement or the proposed offer does not comply, or that neither complies, with the requirements of this Act; or

(b) the Commission is of the opinion that the statement or the proposed offer contains, or that both contain, matter that is false in a material particular or materially misleading.

**(4)** The Commission shall refuse to register the copies unless, in relation to each report that, because of clause 18 in Part A in section 750, is set out in the copy of the statement, there is lodged a notice, signed by the person or persons by whom the report is made, to the effect that the person, or each of the persons, consents to the inclusion of the report in the statement in the form and context in which it is included.

**(5)** If, by 5 p.m. on the next day (being a day on which the office of the Commission at which the copies were lodged is open to the public) after the day on which the copies were lodged:

(a) the Commission has neither registered, nor refused to register, the copies; and

(b) the offeror has not, by notice to the Commission, withdrawn the copies;

the copies shall be deemed to have been registered by the Commission at that time.

**(6)** A statement served on a target company in contravention of this section shall, for the purposes of this Chapter other than this section and section 704, be deemed not to have been served.

**Extension of time for paying consideration**

**645. (1)** The Commission may, on application made by an offeror before the time by which the consideration specified in the takeover offer is required by the terms of the offer to be paid or provided, fix a later time as the time by which that consideration is to be paid or provided.

**(2)** Where a later time is so fixed, that later time shall be deemed to be specified in the offer, or, if the offer has been accepted, in the contract that resulted from the acceptance, in substitution for the time actually specified.

**(3)** An offeror shall ensure that the consideration specified in the takeover offer is paid or provided by the time so specified or deemed to be specified.

**Notice of offers to be served**

**646. (1)** Where takeover offers have been sent, the offeror shall, on the day on which the last of the offers is sent:

(a) serve notice on the target company that the offers have been sent and of the date of the offers;

(b) if the target company is a listed company—serve a copy of the notice on each notifiable securities exchange in relation to that company; and

(c) lodge a copy of the notice.

**(2)** A notice or a copy of a notice referred to in subsection (1) shall be accompanied by a copy of one of the offers and a copy of every document that accompanied that offer.

***Division 3*—*Part B statements***

**Part B statement**

**647. (1)** A target company shall:

(a) before the end of 14 days after the day on which it received a Part A statement, give a Part B statement to the offeror; or

(b) before the end of 14 days after the day on which it received a notice served under subsection 646 (1):

(i) give a Part B statement to the offeror; and

(ii) give a copy of that statement to each person to whom an offer to which the Part A statement relates was made.

**(2)** The Part B statement shall:

(a) be signed by all the directors or by not fewer than 2 directors authorised to sign the statement by a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or

(b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

**(3)** The Part B statement shall not refer to any report made by an expert (other than a report set out in the Part A statement or a report that accompanies the Part B statement in accordance with section 648) unless:

(a) the report is set out in the Part B statement; and

(b) the Part B statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

**(4)** A target company that gives a statement that purports to be a Part B statement under subsection (1) shall, on the day on which the statement is given:

(a) if the company is a listed company—serve on each notifiable securities exchange in relation to that company a copy of the statement and of every document accompanying the statement; and

(b) lodge:

(i) a copy of the statement and of every document accompanying the statement; and

(ii) in respect of any report accompanying the statement—a notice signed by the person or persons by whom the report is made to the effect that the person consents, or that each of those persons consents, to the report accompanying the Part B statement.

**(5)** A Part B statement may contain, in addition to the information referred to in Part B in section 750, such information (other than information that is false in a material particular or materially misleading) as the directors, or the liquidator or official manager, as the case may be, think or thinks fit.

**Offeror connected with target company**

**648. (1)** If:

(a) an offeror is entitled to not less than 30% of:

(i) the voting shares in the target company; or

(ii) if the voting shares in the target company are divided into 2 or more classes—the shares in one of those classes;

(b) an offeror is or includes a natural person who is a director of the target company; or

(c) an offeror is or includes a body corporate and a director of the target company is a director of that body corporate;

a Part B statement given in accordance with subsection 647 (1) shall be accompanied by a copy of a report made by an expert (other than an associate of the offeror or of the target company) setting out the relevant particulars, stating whether, in the expert’s opinion, the takeover offers are fair and reasonable and setting out the reasons for forming that opinion.

**(2)** The relevant particulars are:

(a) particulars of any relationship of the expert with the offeror, the target company or any associate of the offeror or of the target company, including, without limiting the generality of the foregoing, particulars of any circumstances in which the expert furnishes advice to or acts on behalf of the offeror, the target company or such an associate in the proper performance of the functions attaching to the expert’s professional capacity or to the expert’s business relationship with the offeror, the target company or the associate;

(b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the

expert’s ability to give an unbiased opinion in relation to the takeover offers; and

(c) particulars of:

(i) any fee; and

(ii) any pecuniary or other benefit, whether direct or indirect;

that the expert has received or will or may receive in connection with the making of the report.

**(3)** Where the target company obtains 2 or more reports each of which could be used for the purposes of compliance with subsection (1), the Part B statement given by the company shall be accompanied by a copy of each report.

***Division 4*—*Effect of offers in special circumstances***

**Acquisition by third party of shares subject to takeover offer**

**649**. Where:

(a) a takeover offer (in this section called the “original offer”) relating to particular shares (in this section called the “relevant shares”) has been made to a person under a full takeover scheme; or

(b) a takeover offer (in this section also called the “original offer”), relating to a proportion of particular shares (in this section also called the “relevant shares”) has been made to a person under a proportional takeover scheme;

and another person was at the time when the original offer was made, or becomes at any time during the period during which the original offer remains open and before the original offer is accepted, the holder of, or entitled to be registered as the holder of, shares (in this section called the “transferred shares”), being some or all of the relevant shares, the offeror shall be deemed:

(c) to have made at that time to the other person a corresponding takeover offer relating to:

(i) if paragraph (a) applies—the transferred shares; or

(ii) if paragraph (b) applies—the proportion of the transferred shares;

(d) to have made at that time to the person referred to in paragraph (a) or (b), as the case may be, a corresponding takeover offer relating to:

(i) if paragraph (a) applies—such (if any) of the relevant shares as are shares other than the transferred shares; or

(ii) if paragraph (b) applies—that proportion of such (if any) of the relevant shares as are shares other than the transferred shares; and

(e) despite section 653, to have withdrawn, immediately after that time, the original offer.

**Acceptance of takeover offers by trustees, nominees etc.**

**650. (1)** This section applies where:

(a) a takeover offer relating to particular shares (in this section called the “relevant shares”) in a class of shares in a company has been made to a person under a full takeover scheme; or

(b) a takeover offer relating to a proportion of particular shares (in this section also called the “relevant shares”) in a class of shares in a company has been made to a person under a proportional takeover scheme.

**(2)** If, at any time during the period during which the takeover offer remains open and before it is accepted, the relevant shares consist of 2 or more distinct portions, the takeover offer shall be deemed at that time to consist of separate takeover offers made to the person in relation to, or in relation to the relevant proportion of, the respective distinct portions of shares.

**(3)** An acceptance by the person of a takeover offer that is deemed to exist by virtue of subsection (2) in relation to, or in relation to the relevant proportion of, a distinct portion of shares is ineffective unless the person has given to the offeror a written notice stating that the relevant shares consist of distinct portions and the acceptance specifies the number of shares in the distinct portion to which the acceptance relates.

**(4)** If the person purports at a particular time to accept a takeover offer on the basis that it is a takeover offer that is deemed to exist by virtue of subsection (2) but the shares in relation to which, or in relation to a proportion of which, the person purported to accept the takeover offer do not consist of a distinct portion, the person contravenes this section but the acceptance is as valid as it would have been if those shares had consisted of a distinct portion.

**(5)** For the purposes of this section, where a person who holds particular shares in a class of shares in a company holds some, but not all, of the shares on account of a particular person, such of the shares as the first-mentioned person holds on account of the particular person shall be taken to constitute a distinct portion of the first-mentioned shares.

**(6)** For the purposes of this section, where a person holds particular shares in a class of shares in a company, such (if any) of the shares as the person does not hold on account of a person shall be taken to constitute a distinct portion of the first-mentioned shares.

**(7)** For the purposes of this section:

(a) a person who is, or is entitled to be registered as, the holder of particular shares shall be taken to hold the shares; and

(b) a person who:

(i) is entitled to be registered as the holder of particular shares; and

(ii) holds the person’s interest in the shares on account of a particular person;

shall be taken to hold the shares on account of the particular person.

**(8)** For the purposes of this section, where a person holds shares, or an interest in shares, as trustee for, as nominee for, or otherwise on behalf of or on account of, a person, the first-mentioned person shall be taken to hold the shares, or the interest in the shares, as the case may be, on account of the second-mentioned person.

**(9)** A person may, at the one time, accept 2 or more takeover offers that are deemed to exist by virtue of subsection (2) as if they were a single takeover offer in relation to, or in relation to the relevant proportion of, a distinct portion of shares.

**(10)** Where a person accepts a takeover offer that is deemed to exist by virtue of subsection (2), a corresponding takeover offer shall not, merely because of the offeror becoming, or becoming entitled to be registered as, the holder of any of the relevant shares as a result of the acceptance, be deemed by virtue of paragraph 649 (d) to have been made to the person.

**Avoidance of odd lots where takeover offer relates to proportion of offeree’s shares**

**651.** **(1)** Where:

(a) a takeover offer relating to a proportion of particular shares (in this subsection called the “offeree’s shares”) in a class of shares in a company has been made to a person under a proportional takeover scheme;

(b) the target company is a listed company;

(c) the relevant offer is accepted; and

(d) a proportion of the offeree’s shares, being the proportion to which the offer does not relate, consists of an odd lot of shares or consists of a marketable parcel or marketable parcels of shares and an odd lot of shares;

the offer shall, except for the purposes of paragraph 635 (b) and this subsection, be deemed always to have related to, to relate to, and to have been accepted in relation to, a number of shares in that class equal to the sum of:

(e) the number of shares of which the proportion referred to in paragraph (a) of this subsection consists; and

(f) the number of shares in that odd lot of shares.

**(2)** This section applies notwithstanding section 649 or 650.

**Offeror not entitled to bid for balance where takeover offer relates to proportion of offeree’s shares**

**652.** Where a takeover offer (in this section called the “relevant offer”) relating to a proportion of particular shares (in this section called the “relevant shares”) has been made to a person under a proportional takeover

scheme, an offer (other than an offer that the offeror is, by virtue of section 649, deemed to have made) that:

(a) was or is made by the offeror before, at or after the time when the relevant offer was made;

(b) was or is made to that person or to any other person; and

(c) relates to shares that are or include some or all of such of the relevant shares as are not shares to which the relevant offer relates;

shall be taken to have been, or to be, as the case may be, made otherwise than under the takeover scheme.

***Division 5*—*Withdrawal and variation of offers***

**Withdrawal of offers**

**653.** A takeover offer is not capable of being withdrawn without the written consent of the Commission, which may be given subject to such conditions (if any) as are specified in the consent.

**Circumstances in which offers may be varied**

**654.** **(1)** An offeror may not vary a takeover offer except:

(a) in accordance with this Division;

(b) in accordance with the regulations; or

(c) with the written consent of the Commission and in accordance with any conditions specified by the Commission in the consent.

**(2)** Where an offeror varies an offer under a takeover scheme as mentioned in paragraph (1) (a), the offeror shall, at the same time, make a corresponding variation to each other offer (other than an offer that has been accepted before the variation is made) under the takeover scheme.

**Variation of consideration**

**655.** **(1)** An offeror may vary an offer under a takeover scheme by doing one or more of the following in relation to the whole or a part of the consideration that is specified in the offer as the consideration for the acquisition of the shares to which the offer relates:

(a) where a cash sum is specified—by increasing the amount of that sum;

(b) where shares are, stock is, or debentures are, specified—by specifying a cash sum in addition to the shares, stock or debentures;

(c) where shares are specified—by increasing the number of those shares;

(d) where stock is specified—by increasing the amount of that stock;

(e) where debentures are specified—by increasing the rate of interest payable under those debentures;

(f) where debentures are specified—by increasing the amount of those debentures;

(g) where an option to acquire unissued shares is specified—by varying that option so as to increase the number of unissued shares that may be acquired under that option.

**(2)** Where the consideration specified in an offer under a takeover scheme as the consideration for the acquisition of the shares to which the offer relates is varied under subsection (1):

(a) if another offer under the takeover scheme has been accepted before the variation, the contract resulting from the acceptance of that other offer is varied so that the consideration under the contract is the consideration that would have been specified in that other offer if a corresponding variation had been made to that other offer before it was accepted; and

(b) if the consideration under the contract referred to in paragraph (a) has already been received, the offeree is entitled to receive the additional consideration immediately.

**(3)** An offeror may vary an offer under a takeover scheme in which the consideration specified does not include a cash sum or does not consist solely of a cash sum by offering as an alternative consideration to the consideration specified in the offer a consideration that consists solely of a cash sum.

**(4)** Where an offer under a takeover scheme is varied under subsection (3) so as to offer a cash sum as an alternative consideration and another offer under the takeover scheme was accepted before the variation:

(a) the contract resulting from the acceptance of that other offer shall be deemed to be varied so as to confer on the person who accepted that other offer the right, by written notice given to the offeror within the period mentioned in paragraph (b), to elect to accept the cash sum in lieu of the consideration that was specified in that other offer;

(b) the offeror shall as soon as practicable send to the person who accepted that other offer a written notice informing the person that the person may, before the end of one month beginning on the day after the day on which the notice was received, give written notice to the offeror electing to accept the cash sum in lieu of the consideration that was specified in that other offer; and

(c) if the consideration under the contract referred to in paragraph (a) was received by the person who accepted that other offer before the person received the notice from the offeror under paragraph (b) and the person gives notice to the offeror in accordance with this subsection electing to accept the cash sum in lieu of the consideration that was specified in that other offer—the person shall return the consideration (together with any necessary documents of transfer) with the notice of election and is entitled, upon the receipt of the consideration by the offeror, to receive the cash sum.

**Variation of offer period**

**656. (1)** An offeror may vary an offer under a takeover scheme:

(a) if the offer is subject to a defeating condition—before the publication of a notice under subsection 663 (4) in relation to offers under the takeover scheme; or

(b) if the offer is not subject to such a condition—before the end of the offer period;

by extending the offer period for a further period but, subject to subsection 657 (2), so that the total offer period does not exceed 12 months.

**(2)** Subsection (1) applies in relation to a takeover scheme subject to any condition specified in a consent under section 653 given in relation to an offer made under the takeover scheme.

**(3)** The references in subsection (1) to the offer period are, if that period has been extended by the previous exercise on one or more occasions of the power conferred by that subsection, references to the period as so extended.

**Manner of varying offers**

**657. (1)** Variations of offers under a takeover scheme shall be made by:

(a) serving on the target company a notice:

(i) signed in the same manner as a Part A statement is required by subsection 637 (1) to be signed;

(ii) setting out the terms of the proposed variation and particulars of such modifications of the Part A statement as are necessary having regard to the variation; and

(iii) where the effect of the proposed variation will be to postpone for more than one month the time by which the offeror’s obligations under the takeover scheme are to be satisfied— stating the effect of the provisions of section 658; and

(b) sending a copy of that notice in an approved manner to each person to whom an offer was made under the takeover scheme (including, subject to subsection (3), a person who has accepted an offer).

**(2)** Where an offeror purports, in accordance with subsection 656 (1), to vary an offer under a takeover scheme that is open for a period not exceeding 6 months so that the total offer period would exceed 6 months, the offeror shall, within the period of one month beginning 5 months after the date of the offer:

(a) serve on the target company a notice signed in the same manner as a Part A statement is required by subsection 637 (1) to be signed and setting out any information that the offeror would have been required to include in the Part A statement if the statement had been lodged for registration 5 months after the date of the offer, being information that differs from the information included in that Part A statement;

(b) send a copy of that notice in an approved manner to each person to whom an offer was made under the takeover scheme (including, subject to subsection (3), a person who has accepted an offer); and

(c) if the target company is a listed company—serve a copy of that notice on each notifiable securities exchange in relation to that company.

**(3)** It is not necessary to send under subsection (1) or (2) a copy of a notice to a person who has accepted an offer under the takeover scheme if the variation of offers under the takeover scheme relates only to an extension of the offer period and:

(a) the offers are not subject to a defeating condition; or

(b) the offers were subject to such a condition but at the time of the service of the notice on the target company the offers are free from the condition or the condition has been fulfilled.

**Effect of variation on offeree who has accepted offer**

**658**. Where an offeree who has accepted a takeover offer that is subject to a defeating condition receives a copy of a notice under subsection 657 (1) in relation to a variation of offers under the takeover scheme, being a variation the effect of which is to postpone for more than one month the time when the offeror’s obligations under the takeover scheme are to be satisfied:

(a) the offeree may withdraw the offeree’s acceptance of the offer by:

(i) giving written notice to the offeror within one month beginning on the day after the day on which the copy of the first-mentioned notice was received; and

(ii) returning with the notice any consideration received by the offeree together with any necessary documents of transfer; and

(b) if the offeree gives such a notice to the offeror and returns with the notice any such consideration and any necessary documents of transfer, the offeror shall return to the offeree, before the end of 14 days after the day on which the notice was received, any documents that were sent by the offeree to the offeror with the acceptance of the offer.

**Registration of notices of variation**

**659. (1)** An offeror is not entitled to serve a notice under section 657 unless a copy of the notice has been registered by the Commission.

**(2)** Where a copy of a notice is lodged for registration under subsection (1), the Commission shall not register the copy of the notice unless:

(a) in the case of a notice under subsection 657 (1)—the Commission is of the opinion that the proposed variation is permitted by this Division; and

(b) in the case of a notice under subsection 657 (1) or (2)—the notice appears to have been signed:

(i) if the offeror is, or includes, a natural person or natural persons—by that person or each of those persons; and

(ii) if the offeror is, or includes, a body corporate or bodies corporate—by a director or directors of the body corporate or of each of the bodies corporate.

**(3)** A copy of a notice referred to in subsection 657 (1) or (2) shall, when sent in accordance with paragraph 657 (1) (b) or (2) (b), have endorsed on it a statement that another copy of the notice has been registered by the Commission and that the Commission takes no responsibility as to the contents of the notice and specifying the date on which that other copy was so registered.

**Acquisition not affected by contravention**

**660.** An acquisition of shares as a result of the acceptance of a takeover offer is not invalid because:

(a) the offeror has purported to vary the takeover offer in accordance with this Division but has contravened a requirement of this Division;

(b) the offeror has purported to vary the takeover offer in accordance with the regulations but has contravened a requirement of the regulations; or

(c) the offeror has purported to vary the takeover offer with the consent of the Commission given under paragraph 654 (1) (c) but has contravened a condition imposed by the Commission under that paragraph.

**Section 645 not affected**

**661.** Nothing in this Division affects the operation of section 645.

***Division 6*—*Conditional offers and contracts***

**Takeover offers not to be subject to certain terms or conditions**

**662.** **(1)** An offeror shall not make a takeover offer that requires the offeree to approve or consent to:

(a) a payment or other benefit being made or given to a director, secretary or executive officer of the target company as compensation for loss of, or as consideration in connection with retirement from, office as director, secretary or executive officer, or any other office, in connection with the management of the target company or of a body corporate that is related to the target company; or

(b) a payment or other benefit being made or given to a director, secretary or executive officer of a body corporate that is related to the target company as compensation for loss of, or as consideration in connection with retirement from, office as director, secretary or executive officer, or any other office, in connection with the

management of the target company or of a body corporate that is related to the target company;

and any such requirement is void.

**(2)** An offeror shall not make a takeover offer subject to a defeating condition (however expressed) the fulfilment of which depends on:

(a) an opinion, belief or other state of mind of the offeror or of an associate of the offeror; or

(b) whether or not a particular event happens, being an event that is within the sole control of the offeror or of an associate of the offeror;

and, if a takeover offer is made subject to a condition in contravention of this subsection, the condition is void.

**(3)** An offeror shall not make a takeover offer that is subject to a condition of a kind referred to in subsection 642 (4) or (5) unless the particular number or percentage of shares, or the particular number of offers, as the case requires, is specified in the offer.

**(4)** The number of shares specified in accordance with subsection (3) may be expressed as a number of shares or as a percentage of the total number of shares in the class to which the takeover offer relates or of the total number of shares in that class of shares to which the offeror is not entitled.

**(5)** If subsection (3) is contravened, the condition is void.

**(6)** Where a number or percentage is specified in accordance with subsection (3), a provision in the takeover offer is void in so far as it purports to provide for the number or percentage to be varied.

**Declaration where takeover offers are conditional**

**663. (1)** Where an offeror makes a takeover offer that is subject to a defeating condition, the offeror may not, except in accordance with this section, whether expressly or impliedly and whether in writing or by conduct, declare the takeover offer or any contract resulting from the acceptance of the takeover offer to be free from the condition, and may not otherwise treat the takeover offer or any contract resulting from the acceptance of the takeover offer as being free from the condition.

**(2)** Where an offer under a takeover scheme is subject to a defeating condition, the offeror may declare the offer to be free from the condition if:

(a) it is a term of the offer that the offeror may do so not less than 7 days before the last day of the offer period and the offer is declared to be free from the condition in accordance with that term; and

(b) at the same time the offeror declares all other offers under the takeover scheme, and all contracts formed by the acceptance of offers under the takeover scheme, to be free from the condition.

**(3)** If an offeror declares all offers under a takeover scheme to be free from a defeating condition, the offeror shall as soon as practicable publish a notice stating that the offers are free from the condition and specifying the proportion of the number of shares in the class of shares to which the offers related to which, so far as the offeror knows, the offeror is entitled.

**(4)** The offeror shall, whether or not a notice has been published under subsection (3), publish on the prescribed date a notice stating:

(a) whether the offers have been declared to be free from the condition;

(b) whether the offers have become free from the condition by the operation of subsection 664 (2); and

(c) whether, so far as the offeror knows, the condition was, at the time of lodging the notice for publication, fulfilled.

**(5)** In subsection (4):

“prescribed date” means:

(a) the date specified in the takeover offers in accordance with paragraph 638 (5); or

(b) if the offer period has been extended as provided by Division 5—the date that is later than the date referred to in paragraph (a) by a period equal to the period of the extension.

**(6)** Where a notice under subsection (4) states that the offers have been declared to be, or that the offers have become, free from a defeating condition or that a defeating condition has been fulfilled, the notice shall also specify the proportion of the class of shares to which the offers related to which, so far as the offeror knows, the offeror is entitled.

**(7)** A notice under subsection (3) or (4) shall be published, in each State or Territory in which shares in the target company are listed for quotation on the stock market of a stock exchange, in a newspaper circulating generally in that State or Territory, as the case may be.

**(8)** Where a notice referred to in subsection (3) or (4) is lodged for publication, the offeror shall, on the first day on which the notice is lodged for publication:

(a) lodge a copy of the notice; and

(b) if the target company is a listed company—serve a copy of the notice on that company’s home stock exchange.

**(9)** Where:

(a) offers made under a takeover scheme have at any time been subject to a defeating condition; and

(b) at the end of the offer period:

(i) the offeror has not declared the offers to be free from the condition;

(ii) the offers have not become free from the condition by the operation of subsection 664 (2); and

(iii) the condition has not been fulfilled;

all contracts resulting from the acceptance of offers, and all acceptances that have not resulted in binding contracts, are void.

***Division 7*—*Effect of outside acquisitions***

**Effect on conditional offers**

**664. (1)** This section applies where:

(a) a takeover offer made in respect of shares in a company is subject to a condition of a kind referred to in subsection 642 (4) or (5); and

(b) during the takeover period the offeror becomes entitled to shares in the company in the same class as the first-mentioned shares otherwise than as a result of the acceptance of an offer under the takeover scheme.

**(2)** If the shares to which the offeror became entitled as mentioned in paragraph (1) (b) constitute more than 20% of the voting shares in the company, excluding any shares to which the offeror was entitled when the Part A statement was served, the offer is free from the condition.

**(3)** If subsection (2) does not free the offer from the condition, then, for the purpose of determining whether the condition has been fulfilled, the offeror shall be deemed to have become entitled to the shares referred to in paragraph (1) (b) as a result of receiving an acceptance or acceptances of an offer or offers under the takeover scheme.

**(4)** Subsection (3) does not apply for the purpose of determining the number of offers under a takeover scheme that have been accepted.

**Effect on offers**

**665.** Where:

(a) a takeover-offer is made in respect of shares in a company;

(b) the consideration payable under the offer consists solely of a cash sum or includes alternative considerations one of which consists solely of a cash sum;

(c) after the Part A statement was served on the target company and before the offer is accepted, the offeror purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum; and

(d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the cash sum payable under the offer for each share to which the offer relates;

the offer shall be deemed to be varied so that the cash sum payable for each share to which the offer relates is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c).

**Effect on contracts**

**666.** Where:

(a) a takeover offer made in respect of shares in a company is accepted;

(b) the consideration paid or payable under the contract resulting from the acceptance of the offer consisted or consists solely of a cash sum;

(c) after the acceptance of the offer and before the end of the offer period, the offeror purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum; and

(d) the amount paid or payable for any of the shares referred to in paragraph (c) is higher than the consideration paid or payable for each share under the contract referred to in paragraph (b);

that contract shall be deemed to be varied so that the consideration payable for each share under the contract is an amount equal to the highest amount paid or payable by the offeror for any of the shares referred to in paragraph (c) and, if the offeree has already received the whole or any part of the consideration under the contract, the offeree is entitled to receive immediately the additional consideration resulting from the variation.

**Notice to offerees where cash not the sole consideration**

**667.** **(1)** Where:

(a) a takeover offer made in respect of shares in a company is accepted;

(b) the consideration paid or provided or to be paid or provided under the contract resulting from the acceptance of the offer does not consist solely of a cash sum; and

(c) during the takeover period the offeror purchased or purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer under the takeover scheme, for a consideration that consists solely of a cash sum;

the offeror shall, before the end of 14 days after the last day of the offer period, give written notice to the offeree;

(d) setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c); and

(e) informing the offeree that the offeree may, before the end of 28 days after the day on which the notice is received, give written notice to the offeror electing to receive for each share in respect of which the offeree has accepted the offer an amount equal to that price in substitution for the consideration under the contract.

**(2)** Where an election is made under paragraph (1) (e):

(a) the offeree is entitled to receive the substituted amount for each share; and

(b) is entitled to receive that amount immediately or, if the offeree has already received the whole or any part of the consideration under the contract, immediately upon returning that consideration (together with any necessary documents of transfer) to the offeror.

**(3)** Where, in accordance with paragraph (2) (b), an offeree returns to a company any certificates (together with any necessary documents of transfer) in respect of shares allotted by that company as the consideration or part of the consideration for the acquisition of shares in a body corporate, the company may cancel the allotment of those shares.

**Notice to offerees where cash consideration to constitute a loan**

**668. (1)** Where:

(a) a takeover offer made in respect of shares in a company is accepted;

(b) the consideration under the contract resulting from the acceptance of the offer consists solely of a cash sum and it is a term of the contract that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of a deposit or loan; and

(c) during the takeover period the offeror purchased or purchases shares in the company in the same class as the first-mentioned shares, otherwise than as a result of the acceptance of an offer made under the takeover scheme, for a consideration that consists solely of a cash sum and the contract for the purchase of those shares does not contain a term of the kind mentioned in paragraph (b);

the offeror shall, before the end of 14 days after the last day of the offer period, give written notice to the offeree:

(d) setting out the highest price paid or payable by the offeror for any of the shares referred to in paragraph (c); and

(e) informing the offeree that the offeree may, before the end of 28 days after the day on which the notice is received, give written notice to the offeror electing to receive for each share in respect of which the offeree has accepted the offer an amount equal to that price in substitution for the consideration under the contract.

**(2)** Where an election is made under paragraph (1) (e):

(a) the contract referred to in paragraph (1) (b) shall be deemed not to have included the term referred to in that paragraph;

(b) the offeree is entitled to receive the substituted amount for each share to which the contract relates and is entitled to receive that amount immediately;

(c) the. offeree shall as soon as practicable return to the offeror any consideration that the offeree has received under the contract (excluding any consideration that has been applied, or an amount equivalent to which has been applied, in making a payment by way of deposit or loan in accordance with the term referred to in paragraph (1) (b)) and any document evidencing any payment by

way of a deposit or loan that the offeree has made in accordance with that term; and

(d) upon the payment of the substituted amount to the offeree, any debt due to the offeree arising out of any payment by way of a deposit or loan in accordance with the term referred to in paragraph (1) (b) or arising out of the application of the consideration under the contract is, by force of this paragraph, discharged.

***Division 8***—***Takeover approval provisions***

**Definitions**

**669.** In this Division:

“relevant day”, in relation to a takeover scheme, means the day that is the fourteenth day before the last day of the offer period;

“renew”, in relation to takeover approval provisions of a company, means renew under subsection 672 (2);

“takeover approval provisions”, in relation to a company, means provisions of the kind referred to in subsection 671 (1) that are contained in, or that it is proposed to insert, as the case requires, the constitution of the company.

**Effect of Division**

**670.** This Division applies notwithstanding anything contained in the business rules or listing rules of a securities exchange, in the constitution of a company, or in any agreement.

**Constitution may contain takeover approval provisions**

**671.** (1) Subject to this Division, the constitution of a company may contain provisions to the effect that, where offers have been made under a proportional takeover scheme in respect of shares in a class of shares in the company:

(a) the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under the takeover scheme is prohibited unless and until a resolution (in this subsection called “an approving resolution”) to approve the takeover scheme is passed in accordance with the provisions;

(b) a person (other than the offeror or an associate of the offeror) who, as at the end of the day on which the first offer under the takeover scheme was made, held shares in that class is entitled to vote on an approving resolution and, for the purpose of so voting, is entitled to one vote for each of the last-mentioned shares;

(c) an approving resolution shall be voted on in whichever of the following ways is specified in the provisions:

(i) at a meeting, convened and conducted by the company, of the persons entitled to vote on the resolution;

(ii) by means of a postal ballot conducted by the company in accordance with a procedure set out in the provisions;

or, if the provisions so provide, in whichever of those ways is determined by the directors of the company; and

(d) an approving resolution that has been voted on shall be taken to have been passed if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution is greater than such proportion (not exceeding one-half) as is specified in the provisions, and otherwise shall be taken to have been rejected.

**(2)** Except in so far as the constitution of a company otherwise provides, the provisions (whether of a law or of that constitution, or any other provisions) that apply in relation to a general meeting of the company shall apply, with such modifications as the circumstances require, in relation to a meeting that is convened under the takeover approval provisions of the company and shall so apply as if the last-mentioned meeting were a general meeting of the company.

**(3)** Where:

(a) takeover offers have been made under a proportional takeover scheme; and

(b) the constitution of the target company contains takeover approval provisions;

then:

(c) the directors of the company shall ensure that a resolution to approve the takeover scheme is voted on in accordance with those provisions before the relevant day in relation to the takeover scheme; and

(d) if the directors fail to ensure that such a resolution is so voted on, each of the directors contravenes this subsection.

**(4)** Where a resolution to approve a takeover scheme is voted on, in accordance with takeover approval provisions of the target company, before the relevant day in relation to the takeover scheme, the target company shall, on or before the relevant day:

(a) give to the offeror; and

(b) if the target company is a listed company—serve on each notifiable securities exchange in relation to that company;

a written notice stating that a resolution to approve the takeover scheme has been so voted on and that the resolution has been passed, or has been rejected, as the case requires.

**(5)** Where, as at the end of the day before the relevant day in relation to a proportional takeover scheme:

(a) the constitution of the target company in relation to the takeover scheme contains takeover approval provisions; and

(b) no resolution to approve the takeover scheme has been voted on in accordance with those provisions;

a resolution to approve the takeover scheme shall, for the purposes of those provisions, be deemed to have been passed in accordance with those provisions.

**(6)** Where:

(a) the constitution of a company contains takeover approval provisions; and

(b) a resolution to approve a proportional takeover scheme is voted on, in accordance with those provisions, before the relevant day in relation to the takeover scheme and is rejected;

then:

(c) despite section 653:

(i) all offers under the takeover scheme that have not, as at the end of the relevant day, been accepted; and

(ii) all offers under the takeover scheme that have been accepted and from whose acceptance binding contracts have not, as at the end of the relevant day, resulted;

shall be deemed to be withdrawn at the end of the relevant day;

(d) as soon as practicable after the relevant day, the offeror shall return to each person who has accepted an offer referred to in subparagraph (c) (ii) any documents that were sent by the person to the offeror with the acceptance of the offer;

(e) the offeror is entitled to rescind, and shall, as soon as practicable after the relevant day, rescind, each contract resulting from the acceptance of an offer made under the takeover scheme; and

(f) a person who has accepted an offer made under the takeover scheme is entitled to rescind the contract (if any) resulting from that acceptance.

**Provisions relating to the inclusion, effect and renewal of takeover approval provisions**

**672. (1)** Takeover approval provisions of a company, unless sooner omitted from the constitution of the company, cease to apply at the end of:

(a) unless paragraph (b) or (c) applies—3 years;

(b) if the constitution provides that the provisions apply for a specified period of less than 3 years and the provisions have not been renewed—the specified period; or

(c) if the provisions have been renewed on at least one occasion and the resolution, or the later or last of the resolutions, as the case requires, renewing the provisions states that the provisions are renewed for a specified period of less than 3 years—the specified period;

beginning:

(d) if the provisions were contained in the constitution at the time when the company was incorporated or formed and have not been renewed—at that time;

(e) if the provisions were inserted in the constitution and have not been renewed—when the provisions were so inserted; or

(f) if the provisions have been renewed on at least one occasion—when the provisions were renewed, or last renewed, as the case requires;

and, upon the provisions ceasing to apply, the constitution is, by force of this subsection, altered by omitting the provisions.

**(2)** A company may renew takeover approval provisions of the company in any manner in which the company may alter its constitution by inserting such provisions and, in relation to a renewal of such provisions, shall comply with the requirements of any law or of its constitution that apply in relation to such an alteration, being an alteration with respect to the manner in which the renewal may be effected.

**(3)** With every notice that:

(a) specifies the intention to propose:

(i) a resolution for the alteration of the constitution of a company by inserting takeover approval provisions; or

(ii) a resolution to renew takeover approval provisions of a company; and

(b) is sent to a person who is entitled to vote on the proposed resolution;

the company shall send a statement that:

(c) explains the effect of the proposed provisions, or of the provisions proposed to be renewed, as the case may be;

(d) explains the reasons for proposing the resolution and sets out the factual matters and principles underlying those reasons;

(e) states whether, as at the day on which the statement is prepared, any of the directors of the company is aware of a proposal by a person to acquire, or to increase the extent of, a substantial interest in the company and, if so, explains the extent (if any) to which such a proposal has influenced the decision to propose the resolution;

(f) in the case of a proposed resolution to renew takeover approval provisions—reviews both the advantages, and disadvantages, of the provisions proposed to be renewed for the directors, and the members, respectively, of the company during the period during which the provisions have been in effect; and

(g) discusses both the potential advantages, and the potential disadvantages, of the proposed provisions, or of the provisions proposed to be renewed, as the case may be, for the directors, and the members, respectively, of the company.

**(4)** Where, on a particular day, a company purports to:

(a) alter its constitution by inserting takeover approval provisions; or

(b) renew takeover approval provisions of the company;

then:

(c) shareholders who together hold not less than 10% of the issued shares in a class of shares in the company may, before the end of

21 daysafter that day, apply to the Court to have the purported alteration or renewal set aside; and

(d) unless and until an application made under paragraph (c) is finally determined by the making of an order setting aside the purported alteration or renewal, the company shall be deemed for all purposes (other than the purposes of such an application):

(i) to have validly altered its constitution by inserting the provisions referred to in paragraph (a); or

(ii) to have validly renewed the provisions referred to in paragraph (b);

as the case may be.

**(5)** An application under paragraph (4) (c) may be made, on behalf of the shareholders entitled to make the application, by such one or more of them as they appoint in writing.

**(6)** On an application under paragraph (4) (c), the Court, if it is satisfied that it is appropriate in all the circumstances to do so, may make an order setting aside the purported alteration or renewal, but otherwise shall dismiss the application.

**(7)** Before the end of 14 days after the day on which the Court makes in relation to a company an order of the kind referred to in subsection (6), the company shall lodge an office copy of the order.

**PART 6.4—TAKEOVER ANNOUNCEMENTS**

***Division 1*—*Offers constituted by announcement***

**Nature of offers**

**673.** For the purposes of this Chapter, offers to acquire shares in a listed company are made under a takeover announcement if, and only if:

(a) the offers are made in accordance with this Division; and

(b) the requirements of this Division that apply to the person on whose behalf the offers are made are complied with.

**Making of announcement**

**674.** **(1)** Subject to this Division, a person, or 2 or more persons together, may make offers to acquire shares in a class of shares in a listed company by causing an appropriate dealer to make on behalf of that person or those persons at a relevant official meeting an announcement to the effect that, during the period of one month beginning on the first trading day of the company’s home stock exchange after the end of 14 days after the day of the announcement, the dealer offers, on behalf of that person or those persons, to acquire, at a cash price per share specified in the announcement, all shares in that class in respect of which offers made by the announcement are accepted in accordance with section 675.

**(2)** Except with the consent of the Commission, a person is not entitled, or 2 or more persons together are not entitled, to make offers under subsection (1) in relation to shares in a company if that person, or either or any of those persons:

(a) is entitled to not less than 30% of the voting shares in the company; or

(b) in the case of a company the voting shares in which are divided into 2 or more classes of shares—is entitled to not less than 30% of the shares in one of those classes.

**Acceptance of offers**

**675. (1)** Offers that relate to shares in a class of shares in a company and are made by an announcement by an appropriate dealer in accordance with subsection 674 (1) may be accepted:

(a) in any case—at a relevant official meeting; or

(b) if the offers cannot be accepted at a particular relevant official meeting:

(i) because neither the dealer nor a representative of the dealer is present at the official meeting;

(ii) because dealings in shares in that class are not permitted at that official meeting; or

(iii) for any other reason;

by a notice that is signed by or on behalf of a holder of shares in that class and is served on the company’s home stock exchange on the day of that official meeting.

**(2)** Where:

(a) an appropriate dealer has made an announcement, in accordance with subsection 674 (1), at a relevant official meeting; and

(b) a notice accepting an offer made by the announcement is served on a stock exchange in accordance with this section;

the stock exchange shall, as soon as practicable, notify the dealer of the acceptance of the offer.

**Price to be specified**

**676. (1)** The price to be specified in an announcement made in accordance with subsection 674 (1) on behalf of an offeror in respect of shares in a class of shares in a company as the price per share at which shares will be acquired shall, if the offeror or an associate of the offeror, in the 4 months ending on the day immediately before the day of the announcement, purchased or agreed to purchase shares in that company in that class of shares, be not less than the highest price per share paid or agreed to be paid in respect of any of those shares pursuant to any such purchase or agreement to purchase.

**(2)** Where, in the 4 months ending on the day immediately before the day of a takeover announcement, the offeror or an associate of the offeror

has entered into an agreement for the purchase of a share or shares in the target company, being an agreement that provides that the price payable for the share or any of the shares is a price specified in the agreement but may be varied in accordance with the terms of the agreement, any such variations shall be disregarded in determining, for the purposes of subsection (1), the price agreed to be paid for the share or shares under the agreement.

**Acquisitions at higher price**

**677.** **(1)** Subject to subsection (2), nothing in this Division prohibits an offeror from acquiring at an official meeting of a stock exchange, in the ordinary course of trading on the stock market of that stock exchange, during the period beginning when the takeover announcement is made and ending immediately before the start of the closing phase of the offer period, shares to which the takeover announcement relates at a price that is higher than the price specified in the announcement or is higher than any price that is deemed by a previous operation of this subsection or of subsection 681 (2) to be specified in the announcement.

**(2)** If the offeror acquires shares at such a higher price during the period to which subsection (1) applies, that higher price shall, for the purposes of any offer that is accepted after the acquisition takes place, be deemed to be the price specified in the announcement unless and until another price is deemed by virtue of the operation of this subsection or of subsection 681 (2) to be specified in the announcement.

**(3)** During the closing phase of the offer period, the offeror shall not acquire shares to which the takeover announcement relates at a price that is higher than the price that, at the end of the period to which subsection (1) applies, is, or is deemed to be, the price specified in the announcement.

**Offer period**

**678.** Subject to section 684, offers made by an announcement in accordance with subsection 674 (1) remain open for the period of one month referred to in that subsection or, if that period has been extended in accordance with subsection 681 (3), for that period as so extended.

**Part C statements**

**679. (1)** An offeror who makes offers by an announcement in accordance with subsection 674 (1) in relation to shares in a company shall:

(a) on the day on which the announcement is made:

(i) serve on the target company a Part C statement relating to the offers that is signed:

(a) where the offeror is, or includes, a natural person or natural persons, by that person or by each of those persons; and

(b) where the offeror is, or includes, a body corporate or bodies corporate, by not fewer than 2 directors of the body corporate, or by 2 directors of each of the bodies

corporate, authorised to sign the statement by a resolution passed at a meeting of the directors, or, in the case of a body corporate that has only one director, by that director;

(ii) serve a copy of the statement on the target company’s home stock exchange; and

(iii) lodge a copy of the statement; and

(b) before the end of 14 days after the day on which the announcement is made, send a copy of the statement in an approved manner to each holder of shares in the class to which the announcement relates.

**(2)** A Part C statement may contain, in addition to the information referred to in Part C in section 750, such information as the offeror thinks fit, other than information that is false in a material particular or materially misleading.

**Service on Commission of copies of documents accompanying offers**

**680.** An offeror who makes offers by an announcement in accordance with subsection 674 (1) in relation to shares in a company shall lodge, not later than the last day on which a copy of the Part C statement is sent to a holder of shares in the class to which the announcement relates, a copy of every document that accompanied copies of the Part C statement sent to holders of shares in that class.

**Variation of offers**

**681. (1)** If, at any time during the takeover period in relation to a takeover announcement:

(a) the target company makes an allotment of, or grants an option to subscribe for, any of its shares, or agrees to make such an allotment or to grant such an option;

(b) the target company issues, or agrees to issue, convertible notes; or

(c) the target company declares a dividend;

the offeror may, with the consent of the Commission, cause an appropriate dealer to make on the offeror’s behalf at a relevant official meeting an announcement stating that a specified lower price per share is to be substituted for the price per share specified in the takeover announcement.

**(2)** Where such an announcement is made, the lower price shall, unless and until a different price is deemed to be specified in the takeover announcement by this subsection or subsection 677 (2), be deemed to be the price specified in the takeover announcement.

**(3)** An offeror who has made offers under a takeover announcement may cause an appropriate dealer to make on the offeror’s behalf:

(a) before the closing phase of the offer period; or

(b) if, during that closing phase, another offeror makes offers under a takeover scheme, or makes offers under a takeover announcement,

in respect of shares in the class to which the first-mentioned offers

relate—during that closing phase; an announcement at a relevant official meeting extending the offer period for a further period of one month, but so that the total offer period does not exceed 6 months.

**(4)** Where an offeror causes an announcement to be made under subsection (1) or (3) in relation to a company, the offeror shall, on the day on which the announcement is made:

(a) serve on the company and on the company’s home stock exchange; and

(b) lodge with the Commission;

a notice setting out the terms of the announcement.

**Liability of dealers**

**682.** (1) Where:

(a) an appropriate dealer makes an announcement, in accordance with this Division, at a relevant official meeting; and

(b) a person (whether on the person’s own behalf or on behalf of another) accepts an offer made by the announcement;

then:

(c) unless paragraph (d) applies—the dealer; or

(d) if the dealer is acting as agent for a member of a securities exchange—that member;

shall be deemed to have contracted as principal with that person to acquire the shares to which the acceptance relates, but nothing in this subsection affects the rights and obligations between the dealer, or that member, as the case may be, and the offeror.

**(2)** Where, in respect of a contract that resulted from the acceptance of an offer made under a takeover announcement, a member of a stock exchange who contracted, or is deemed by subsection (1) to have contracted, as principal with the person who accepted the offer was, when the contract was made, a partner in a partnership that carried on a securities business, any liabilities of the member arising because of the member so having contracted, or being deemed to have contracted, as principal are joint and several liabilities of the persons who were the partners in the partnership at that time.

***Division 2*—*Response of target company***

**Part D statement**

**683.** (1) Where a target company receives a Part C statement served under subsection 679 (1), the company shall, before the end of 14 days after the day on which the takeover announcement was made, serve a Part D statement on the company’s home stock exchange.

**(2)** The Part D statement shall:

(a) be signed by all the directors or by not fewer than 2 directors authorised to sign the statement by a resolution passed at a meeting of the directors or, in the case of a company that has only one director, by that director; or

(b) if the company is in the course of being wound up or is under official management—be signed by the liquidator or official manager, as the case may be.

**(3)** The Part D statement shall not refer to any report made by an expert (other than a report set out in the Part C statement) unless:

(a) the report is set out in the Part D statement; and

(b) the Part D statement contains or is accompanied by a statement that the person or each of the persons by whom the report is made consents to the inclusion of the report in the form and context in which it is included.

**(4)** On the day on which a statement that purports to be a Part D statement is served, the target company shall lodge, and give to the offeror, a copy of the statement and of every document accompanying the statement.

**(5)** A Part D statement may contain, in addition to the information referred to in Part D in section 750, such information (other than information that is false in a material particular or materially misleading) as the directors, or the liquidator or official manager, as the case may be, think or thinks fit.

***Division 3*—*Withdrawal and suspension of offers***

**Withdrawal of offers**

**684. (1)** If, during the takeover period in relation to a takeover announcement, a prescribed occurrence takes place, the offeror may, before the end of that period, by causing an appropriate dealer to make on the offeror’s behalf at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.

**(2)** An offeror is not entitled, because of any of the occurrences referred to in paragraphs (a) to (g), inclusive, of the definition of “prescribed occurrence” in section 603, to withdraw offers made under a takeover announcement if, at the time of the relevant occurrence, the offeror was entitled to more than 50% of the voting shares in the target company.

**(3)** If a takeover announcement is made on behalf of a natural person or on behalf of 2 or more persons at least one of whom is a natural person and, during the takeover period, that natural person or, if there are 2 or more natural persons, either or any of them:

(a) dies;

(b) becomes bankrupt; or

(c) is declared by a court to be incapable of managing his or her affairs;

such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the

person died, became bankrupt or was declared to be so incapable, as the case may be.

**(4)** If a takeover announcement is made on behalf of a body corporate or on behalf of 2 or more persons at least one of whom is a body corporate and, during the takeover period:

(a) that body corporate or, if there are 2 or more bodies corporate, either or any of them is placed under official management;

(b) an order is made by a court for the winding up of that body corporate or, if there are 2 or more bodies corporate, of either or any of them; or

(c) a provisional liquidator of that body corporate, or, if there are 2 or more bodies corporate, of either or any of them, is appointed;

such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the body corporate was placed under official management, the winding up order was made or the provisional liquidator was appointed, as the case may be.

**(5)** If, during the takeover period in relation to a takeover announcement, the relevant dealer in relation to the takeover announcement:

(a) in any case:

(i) becomes bankrupt; or

(ii) is directed by the board of a stock exchange or securities exchange of which the relevant dealer is a member to cease carrying on the business of dealing in securities; or

(b) where he or she carries on a securities business otherwise than in partnership:

(i) dies; or

(ii) is declared by a court to be incapable of managing his or her affairs;

such of the offers made under the takeover announcement as have not been accepted shall be deemed to have been withdrawn on the day on which the relevant dealer became bankrupt, was so directed, died or was so declared, as the case may be.

**(6)** In subsection (5):

“relevant dealer”, in relation to a takeover announcement, means:

(a) unless paragraph (b) applies—the appropriate dealer who made the announcement; or

(b) if the appropriate dealer who made the announcement is acting as agent for a member of a securities exchange—that member.

**(7)** During the takeover period in relation to a takeover announcement:

(a) the offeror may, with the consent of the Commission, by causing an appropriate dealer to make on the offeror’s behalf at a relevant

official meeting an announcement to that effect, withdraw such of the offers as have not been accepted; or

(b) the appropriate dealer who made the takeover announcement on behalf of the offeror may, with the consent of the Commission, by making at a relevant official meeting an announcement to that effect, withdraw such of the offers as have not been accepted.

**Suspension of acceptance of offers made under takeover announcement**

**685.** **(1)** Where a takeover announcement is made, the Commission may, during the takeover period, on the application of the offeror or the appropriate dealer who made the takeover announcement on behalf of the offeror, by written order declare that such of the offers as have not been accepted are not capable of being accepted while the order is in force.

**(2)** An order made under subsection (1) does not have the effect of extending the offer period.

**PART 6.5—PROVISIONS RELATING TO BOTH TAKEOVER OFFERS AND TAKEOVER ANNOUNCEMENTS**

***Division 1*—*Restrictions on offerors***

**Restriction on disposal of shares by offeror**

**686.** **(1)** Where a Part A statement is served on the target company, the offeror shall not, during:

(a) the takeover period; and

(b) if takeover offers are sent, in accordance with an order under section 738, pursuant to the Part A statement—the offer period;

dispose of any shares in the target company in the same class of shares as the shares to which the Part A statement relates unless another person (not being an associate of the offeror) has, after the Part A statement was served and before the disposal takes place, made a takeover offer or caused a takeover announcement to be made in respect of that class of shares in the target company.

**(2)** Where a takeover announcement is made in relation to shares in a company, the offeror shall not, during the takeover period, dispose of any shares in the target company in the same class of shares as the first-mentioned shares unless another person (not being an associate of the offeror) has, after the making of the announcement and before the disposal takes place, made a takeover offer or caused a takeover announcement to be made in respect of that class of shares in the target company.

***Division 2***—***Notification of acquisitions and disposals of shares in listed companies***

**Periods in respect of which notification to be given**

**687.** For the purposes of the application of this Division in relation to a listed company, each of the following periods is a relevant period:

(a) if a Part A statement is served on the company:

(i) the takeover period; and

(ii) if takeover offers are sent, in accordance with an order under section 738, pursuant to the statement—the offer period; and

(b) if a takeover announcement is made in relation to shares in the company—the takeover period.

**Persons by whom notification to be given**

**688.** **(1)** For the purposes of the application of this Division in relation to a listed company, a person is, at a relevant time, a prescribed person in relation to a period that is, because of the service of a Part A statement or the making of a takeover announcement, a relevant period in relation to the company if:

(a) the person is, or is one of the persons who constitute, the offeror; or

(b) the person is, at that time, entitled to more than the notifiable percentage of the voting shares in the company and is not, and is not an associate of, a person referred to in paragraph (a).

**(2)** For the purposes of paragraph (1) (b), the notifiable percentage is *5%* or, if a lesser percentage is prescribed by regulations in force for the time being for the purposes of that paragraph, that lesser percentage.

**Notifications by offeror**

**689.** A person who, at the start of a relevant period in relation to a listed company, is a prescribed person in relation to that period because of paragraph 688 (1) (a) shall:

(a) serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the first day of that period, a notice setting out:

(i) whether the person has become entitled or ceased to be entitled to any voting shares in the company since the start of that period and, if so, the notifiable particulars of those shares; and

(ii) whether the person is entitled to any voting shares in the company when the notice is served and, if so, the notifiable particulars of those shares; and

(b) if, during that period, the person becomes entitled or ceases to be entitled to any voting shares in the company and has not previously given a notice under this section to each notifiable securities exchange in relation to the company because of the person having become entitled or ceased to be entitled, as the case may be, to those shares, serve on that securities exchange, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person so became entitled or ceased to be entitled to shares in the company, a notice setting out:

(i) the notifiable particulars of those shares; and

(ii) if the person is entitled to any voting shares in the company when the notice is served—the notifiable particulars of those shares.

**Notifications by other persons acquiring more than 5% shareholding**

**690.** A person who, during a relevant period in relation to a listed company, becomes a prescribed person in relation to that period because of paragraph 688 (1) (b) (whether or not the person had previously been a prescribed person in relation to that period) shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person so became a prescribed person, a notice setting out:

(a) the notifiable particulars of the voting shares in the company to which the person was entitled when the person so became a prescribed person; and

(b) if the person is entitled to any voting shares in the company when the notice is served—the notifiable particulars of those shares.

**Notifications by person ceasing to hold more than 5% shareholding**

**691.** Where:

(a) during a relevant period in relation to a listed company, a person who is a prescribed person in relation to that period because of paragraph 688 (1) (b) ceases to be entitled to voting shares in the company; and

(b) as a result of so ceasing to be entitled to those shares the person ceases to be a prescribed person in relation to that period;

the person shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person ceased to be entitled to those shares, a notice setting out the notifiable particulars of those shares and of any other voting shares in the company to which the person became entitled or ceased to be entitled since the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, since the start of that period.

**Notifications of changes in shareholding exceeding 1% by persons with more than 5% shareholding**

**692.(1)** Where:

(a) during a relevant period in relation to a listed company, a person becomes entitled or ceases to be entitled to voting shares in the company at a time when the person is a prescribed person in relation to that period because of paragraph 688 (1) (b);

(b) the number of voting shares in the company to which the person is entitled immediately after becoming entitled or ceasing to be entitled to the first-mentioned shares:

(i) is greater or less than the number of voting shares in the company to which the person was entitled when the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, the number of voting shares in the company to which the person was entitled at the start of that period; and

(ii) is so greater or less by a number of voting shares that is not less than the notifiable percentage of the voting shares in the company; and

(c) the person has not ceased to be a prescribed person;

the person shall serve on each notifiable securities exchange in relation to the company, before 9.30 a.m. on the next trading day of that securities exchange after the day on which the person became entitled or ceased to be entitled to those first-mentioned shares, a notice setting out:

(d) the notifiable particulars of those first-mentioned shares and of any other voting shares in the company to which the person became entitled or ceased to be entitled since the person last served a notice under this Division in relation to the company during that period or, if the person has not previously served a notice during that period, since the start of that period; and

(e) if the person is entitled to any voting shares in the company when the notice is given—the notifiable particulars of those shares.

**(2)** For the purposes of subparagraph (1) (b) (ii), the notifiable percentage is:

(a) subject to paragraph (b), 1%; or

(b) if a lesser percentage is prescribed by regulations in force for the time being for the purposes of that subparagraph—that lesser percentage.

**(3)** Where each of 2 or more persons would, but for this subsection, be required to serve a notice under subsection (1) in relation to the same shares in a company because each of them has become entitled or each of them has ceased to be entitled to those shares, it is sufficient compliance with that subsection if one only of them serves the notice.

**Particulars to be notified**

**693. (1)** The notifiable particulars in relation to shares in a company to which a person is entitled (in this subsection called “relevant shares”) are:

(a) the number of relevant shares;

(b) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;

(c) if the person knows that another person is also entitled to the relevant shares—the name of that other person and a statement as to which of the persons entitled to the shares has a relevant interest in the shares; and

(d) such other matters (if any) as are prescribed.

**(2)** The notifiable particulars in relation to shares in a company to which a person has become entitled (in this subsection called “relevant shares”) are:

(a) the number of relevant shares;

(b) the consideration (if any) for the acquisition of each share (whether in the company or in another body corporate) by which the person became entitled to the relevant shares;

(c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;

(d) if the person became entitled to the relevant shares because of a contract that contained provisions of a prescribed kind—particulars of those provisions; and

(e) such other matters (if any) as are prescribed.

**(3)** The notifiable particulars in relation to shares in a company to which a person has ceased to be entitled (in this subsection called “relevant shares”) are:

(a) the number of relevant shares;

(b) the consideration (if any) for the disposal of each share (whether in the company or in another body corporate) by which the person ceased to be entitled to the relevant shares;

(c) if shares in the company are divided into 2 or more classes—the number of relevant shares in each class;

(d) if the person ceased to be entitled to the relevant shares because of a contract that contained provisions of a prescribed kind—particulars of those provisions; and

(e) such other matters (if any) as are prescribed.

**(4)** A notice served under this Division that specifies, in accordance with paragraph (2) (b) or (3) (b), consideration for 2 or more acquisitions of shares, 2 or more disposals of shares, or an acquisition or acquisitions of shares and a disposal or disposals of shares, shall, if the consideration in respect of 2 or more of the transactions consisted only of a cash sum, also specify separately the higher or highest such sum paid or payable or received or receivable for any of the shares referred to in that notice.

**Person need serve only one notice per day**

**694.** A person is not required on any day to serve more than one notice under this Division in relation to the same company.

**Defence**

**695.** In a prosecution of a person for failing to serve a notice on a securities exchange under this Division, it is a defence if it is proved that:

(a) when the person was required to serve the notice the person was not aware of a fact or occurrence that gave rise to the requirement; and

(b) the person did not become aware of that fact or occurrence before the end of the relevant period or, if the person became so aware before the end of that period, the person served the notice on the next trading day of the securities exchange after becoming so aware.

***Division 3*—*Notification of acquisition of shares in unlisted company***

**Notification of offeror’s entitlement**

**696. (1)** In this section:

“company” means a company that is not a listed company; “notifiable percentage” means:

(a) 25%;

(b) 50%;

(c) 75%; or

(d) 90%;

“relevant period”, in relation to a company on which a Part A statement has been served, means:

(a) the takeover period; and

(b) if takeover offers are sent, in accordance with an order under section 738, pursuant to the statement—the offer period;

“relevant person”, in relation to a relevant period in relation to a company, means the person who is, or each of the persons who constitute, the offeror in relation to the Part A statement concerned.

**(2)** Where:

(a) at a particular time during a relevant period in relation to a company, the percentage of the voting shares in the company to which a relevant person is entitled is less than a notifiable percentage; and

(b) immediately after that time, the percentage of the voting shares in the company to which the relevant person is entitled is equal to or greater than that notifiable percentage;

the relevant person shall, as soon as practicable, and in any event before the end of 2 business days after the day in which that time occurred, serve on the company a notice setting out the percentage of the voting shares in the company to which the relevant person is entitled when the notice is served.

**(3)** Where a company receives a notice under subsection (2), it shall make the notice available at its registered office for inspection without charge by any member of the company at any time during the remainder of the relevant period in relation to the company when the registered office is open.

***Division 4*—*Prohibition on additional benefits***

**Persons selling shares before the making of offers not to be given additional benefits in certain cases**

**697. (1)** Where:

(a) a person acquires shares in a class of shares in a company;

(b) within 6 months beginning on the day after the day on which the acquisition referred to in paragraph (a) took place, an offeror:

(i) makes takeover offers under a takeover scheme; or

(ii) causes a takeover announcement to be made;

in respect of shares in that class;

(c) at a particular time, whether before, at or after the end of the offer period, a person (in this subsection called the “relevant person”), being the offeror or an associate of the offeror:

(i) gives, offers to give, or agrees to give, a benefit to; or

(ii) receives, or agrees to receive, a benefit from;

a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares acquired as mentioned in that paragraph, or an associate of a person who so had such a relevant interest;

(d) the giving or receiving of the benefit, the offer to give the benefit, or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and

(e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including:

(i) if subparagraph (b) (i) applies—the amount or value of the consideration that, under an offer made under the takeover scheme (including such an offer as varied, deemed to be varied or proposed to be varied), is to be paid or provided for the acquisition of the shares to which the offer relates;

(ii) if subparagraph (b) (ii) applies—the price per share specified, or deemed to be specified, in the takeover announcement; or

(iii) the amount or value of the consideration for which the offeror acquires during the offer period (whether or not as a result of the acceptance of an offer made under the takeover scheme, or of an offer made under the takeover announcement, as the case may be), or under section 701 or 703, shares in that class, or for which the offeror proposes, offers, or proposes to offer, so to acquire such shares;

the relevant person contravenes this subsection.

**(2)** Where:

(a) a person acquires shares in a class of shares in a company;

(b) as at a particular time within 6 months beginning on the day after the day on which the acquisition referred to in paragraph (a) took place, an offeror:

(i) proposes to send takeover offers under a takeover scheme; or

(ii) proposes to cause a takeover announcement to be made; in respect of shares in that class;

(c) at the time referred to in paragraph (b), a person (in this subsection called the “relevant person”), being the offeror or an associate of the offeror:

(i) gives, offers to give, or agrees to give, a benefit to; or

(ii) receives, or agrees to receive, a benefit from;

a person who had, immediately before the acquisition referred to in paragraph (a), a relevant interest in any of the shares acquired as mentioned in that paragraph, or an associate of a person who so had such a relevant interest;

(d) the giving or receiving of the benefit, the offer to give the benefit or the agreement to give or receive the benefit, as the case may be, is attributable to, or is attributable to matters including, the acquisition referred to in paragraph (a); and

(e) the amount or value of the benefit was, or is to be, determined by reference to, or by reference to matters including:

(i) if subparagraph (b) (i) applies—the amount or value of the consideration that, under an offer proposed to be made under the takeover scheme, is to be paid or provided for the acquisition of the shares to which the offer relates;

(ii) if subparagraph (b) (ii) applies—the price per share proposed to be specified in the takeover announcement; or

(iii) the amount or value of the consideration for which the offeror proposes to acquire shares in that class (whether or not as a result of the acceptance of a proposed offer under the takeover scheme, or of an offer to be made under the proposed takeover announcement, as the case may be) during the period during which the proposed takeover offers, or offers to be made under the proposed takeover announcement, as the case may be, remain open, or for which the offeror proposes to acquire such shares under section 701 or 703;

the relevant person contravenes this subsection.

**(3)** An agreement is void to the extent that it purports to provide for:

(a) a person to give, offer to give, or agree to give, a benefit to a person; or

(b) a person to receive, or agree to receive, a benefit from a person;

in contravention of subsection (1) or (2).

**Offerees not to be given benefits except under takeover scheme or takeover announcement**

**698. (1)** Subject to subsection (5), if a Part A statement is served on a target company, the offeror, or an associate of the offeror, shall not, during the takeover period, give, offer to give or agree to give to a person whose shares may be acquired under the takeover scheme, or to an associate of such a person, any benefit not provided for under the takeover offers or, if the takeover offers are varied in accordance with Division 5 of Part 6.3, under the takeover offers as so varied.

**(2)** Subject to subsection (5), a person who proposes to send takeover offers within the next following 4 months (in this subsection called the “proposed offeror”), or an associate of such a person, shall not give, offer to give or agree to give to a person whose shares may be acquired under the takeover scheme, or to an associate of such a person, any benefit that the proposed offeror is not proposing to provide for under the takeover offers.

**(3)** Subject to subsection (5), if a takeover announcement is made in relation to shares in a company, the offeror, or an associate of the offeror, shall not, during the takeover period, give, offer to give or agree to give to a person whose shares may be acquired pursuant to the takeover announcement, or to an associate of such a person, any benefit not provided for under the terms of the takeover announcement or, if those terms have been varied under section 681, under the terms as so varied.

**(4)** Subject to subsection (5), a person who proposes to cause a takeover announcement to be made within the next following 4 months (in this subsection called the “proposed offeror”), or an associate of such a person, shall not give, offer to give or agree to give to a person whose shares may be acquired pursuant to the takeover announcement, or to an associate of such a person, any benefit that the proposed offeror is not proposing to provide for under the terms of the takeover announcement.

**(5)** Nothing in this section prohibits:

(a) the variation of a takeover offer as provided by Division 5 of Part 6.3; or

(b) the acquisition of shares in a company at an official meeting of a stock exchange in the ordinary course of trading on the stock market of that stock exchange.

***Division* 5—*Obligations of target company***

**Obligations of target company to provide information**

**699. (1)** Where a Part A statement or a Part C statement has been served on a target company, the offeror may request the company to supply a written statement setting out:

(a) the names and addresses (so far as they are known to the company) of the persons who, at the date of service of the Part A statement

or the Part C statement, as the case may be, held shares in, or renounceable options or convertible notes granted or issued by, the company;

(b) in respect of each person who held shares—the number of shares held;

(c) in respect of each person who held renounceable options—particulars of the renounceable options and the number of shares to which the options relate; and

(d) in respect of each person who held convertible notes—particulars of the convertible notes and the number of shares into which the notes may be converted.

**(2)** Where such a request is made, the company shall send the statement to the offeror:

(a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 7 days after the day on which payment of the amount is received by the company; or

(b) in a case to which paragraph (a) does not apply—before the end of 7 days after the day on which the request is made.

**Expenses of directors of target company**

**700.** Notwithstanding anything in the constitution of a company, the directors of the company are entitled to have refunded to them by the company any expenses reasonably incurred by them in the interest of the members of the company in relation to a takeover scheme involving the acquisition of shares in the company or in relation to a takeover announcement relating to shares in the company.

***Division 6—Rights of offerors and shareholders***

**Provisions relating to dissenting shareholders**

**701. (1)** For the purposes of this section:

(a) where takeover offers have been made under a full takeover scheme in respect of shares in a class of shares, the shares in respect of which the offers were made (other than shares to which the offeror was entitled when the first of the offers was made) are shares subject to acquisition;

(b) where a takeover announcement has been made in respect of shares in a class of shares, the shares in that class (other than shares to which the offeror is entitled) are shares subject to acquisition;

(c) a reference to outstanding shares is a reference to:

(i) shares subject to acquisition by virtue of paragraph (a) in respect of which a takeover offer was made but has not been accepted, excluding shares acquired by the offeror otherwise than under the takeover scheme; or

(ii) shares subject to acquisition by virtue of paragraph (b) in respect of which an offer made under a takeover

announcement has not been accepted, excluding shares acquired by the offeror otherwise than by the acceptance of offers made under the takeover announcement; and

(d) a reference to a dissenting offeree is a reference to:

(i) in relation to shares in respect of which takeover offers have been made—a person who is the holder of shares that are outstanding shares by virtue of subparagraph (c) (i); and

(ii) in relation to shares in respect of which a takeover announcement has been made—a person who is the holder of shares that are outstanding shares by virtue of subparagraph (c) (ii).

**(2)** Where:

(a) takeover offers have been made under a full takeover scheme, or a takeover announcement has been made, in respect of a class of shares;

(b) during the takeover period the number of shares in that class to which the offeror is entitled has become not less than 90% of the shares in that class (notwithstanding that that number of shares may subsequently become less than that percentage as a result of the issue of further shares in that class); and

(c) if the shares subject to acquisition constitute less than 90% of the shares in that class:

(i) three-quarters of the offerees have disposed of to the offeror (whether under the takeover scheme or by acceptance of offers made by the takeover announcement, as the case may be, or otherwise) the shares subject to acquisition that were held by them; or

(ii) at least three-quarters of the persons who were registered as the holders of shares in that class immediately before the day on which the Part A statement was served on the target company or the takeover announcement was made are not so registered at the end of one month after the end of the offer period;

the offeror may, before the end of 2 months after the end of the offer period, give notice, as prescribed, to a dissenting offeree to the effect that the offeror desires to acquire the outstanding shares held by the dissenting offeree.

**(3)** For the purposes of subparagraph (2) (c) (ii), 2 or more persons registered as holding shares jointly shall be deemed to be one person.

**(4)** An offeror to whom subsection (2) applies in relation to a particular company shall, on the first day on which the offeror gives a notice under that subsection in relation to that company, lodge a copy of that notice or, if on that day the offeror gives 2 or more notices under that subsection in relation to that company, a copy of any one of those notices.

**(5)** Where a notice is given under subsection (2), the offeror is entitled and bound, subject to this section, to acquire the shares to which the notice relates on the terms that were applicable in relation to the acquisition of shares under the takeover scheme or pursuant to the takeover announcement immediately before the end of the offer period.

**(6)** Subsection (5) does not apply in relation to a dissenting offeree where, on an application made by the dissenting offeree:

(a) before the end of one month after the day on which the notice was given under subsection (2); or

(b) before the end of 14 days after the day on which the dissenting offeree was given a statement under subsection (9);

whichever is the later, the Court orders that subsection (5) is not to apply in relation to the dissenting offeree.

**(7)** Where alternative terms were offered under a takeover offer to which this section applies, the dissenting offeree may, by written notice given to the offeror:

(a) before the end of one month after the day on which the notice was given under subsection (2); or

(b) before the end of 14 days after the day on which the dissenting offeree was given a statement under subsection (9);

whichever is the later, specify which of those terms the dissenting offeree prefers, and the terms so specified shall apply to the acquisition of the outstanding shares held by the dissenting offeree.

**(8)** If a dissenting offeree fails to give a notice before the time applicable under subsection (7), the offeror may, unless the Court otherwise orders, determine which of the terms referred to in that subsection is to apply to the acquisition of the outstanding shares of the dissenting offeree.

**(9)** A dissenting offeree may, by written notice given to the offeror before the end of one month after the day on which the notice under subsection (2) was given, ask for a written statement of the names and addresses of all other dissenting offerees and the offeror shall as soon as practicable give a written statement accordingly.

**(10)** Unless the Court, on an application made under subsection (6), has ordered to the contrary, the offeror shall, before the end of 14 days after:

(a) the end of one month after the day on which the notice under subsection (2) was given;

(b) the end of 14 days after the last day on which a statement under subsection (9) was given; or

(c) where an application has been made to the Court under subsection (6)—the day on which the application has been disposed of;

whichever last happens, serve a copy of the notice under subsection (2) on the company that issued the shares, together with an instrument of transfer of the shares signed on behalf of the holder of the shares by a person

appointed by the offeror and also signed by the offeror, and pay, allot or transfer to the target company the consideration for the transfer, and the target company shall thereupon register the offeror as the holder of those shares.

**(11)** The target company shall hold the consideration so received in trust for the former holder of the shares and shall as soon as practicable give written notice to the former holder that the consideration has been received and is being held by that company pending instructions from the former holder as to how it is to be dealt with.

**(12)** Where consideration held as provided by subsection (11) consists of or includes money, that money shall be paid into a bank account opened and maintained for that purpose only.

**Money or property unclaimed by dissenting shareholders**

**702. (1)** In this section:

“property” includes money;

“transferred” includes paid;

“unclaimed property” means property held in trust by a company for a person under section 701 for a period of not less than 2 years and in respect of which the company has not received from the person a request that the property be transferred to, or in accordance with the directions of, the person and includes any accretions and any property substituted for the whole or any part of that property.

**(2)** Where, at the end of the calendar year beginning next after the commencement of this section or at the end of any subsequent calendar year, a company holds any unclaimed property, the company shall, on or before 31 January next after the end of that year, enter particulars of that unclaimed property in an alphabetical register kept, in respect of that year, by the company at its registered office or at such other place in Australia as the Commission approves.

**(3)** A person may request the company to permit the person to inspect all or any of the registers kept by the company under this section and, where such a request is made, the company shall permit the person to inspect the register or registers concerned:

(a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 7 days after the day on which payment of that amount is received by the company; or

(b) in any other case—before the end of 7 days after the day on which the request is made.

**(4)** Where a company transfers property, particulars of which have been entered in a register, to the person entitled to it, the company may delete the relevant entry from the register.

**(5)** A company that keeps a register in respect of a calendar year shall, on or before the last day of February next after the end of that year, give

a copy of that register to the Minister for publication in the *Gazette* and shall provide with the copy a statutory declaration made by an officer of the company verifying that the copy is a true copy.

**(6)** All property particulars of which have been entered in a register and which the company has not transferred to the person entitled to it before the end of 12 months after the date of publication of a copy of the register in the *Gazette* shall, before the end of 28 days after the last day of that period, be transferred by the company to the Minister to be dealt with under Part 9.7.

**(7)** The company is thereafter discharged from liability to any person in respect of the property.

**(8)** The Minister may, at any time after receipt of a copy of a register, examine any of the accounts relating to the unclaimed property referred to in that register and may for that purpose require the company to produce to the Minister or to a person appointed by the Minister any document referring to that property.

**(9)** Where an error is found in the register, the Minister may direct that the register be amended and, if the Minister thinks it appropriate, that a copy of the amended register be published in the *Gazette.*

**(10)** The Minister may examine the accounting records of a company that has not given to the Minister a copy of a register kept under this section.

**(11)** Except as provided by subsection (7), this section does not deprive a person of any right or remedy to which the person is entitled against a liquidator or company.

**Rights of remaining shareholders and holders of options and notes**

**703. (1)** Where:

(a) a Part A statement has been served, or a takeover announcement has been made, in respect of a class of shares in a company; and

(b) during the takeover period the number of shares in that class to which the offeror is entitled becomes not less than 90% of the shares in that class (notwithstanding that that number of shares may subsequently become less than that percentage as a result of the issue of further shares in that class);

the offeror shall, before the end of one month after the end of the offer period, give notice, as prescribed, to the holders of remaining shares in that class who, when the notice is given, had not been given notice under subsection 701 (2) stating that the offeror became entitled to shares as mentioned in paragraph (b) and containing such other information (if any) as is prescribed.

**(2)** A holder of remaining shares referred to in subsection (1) may, before the end of 3 months after the day on which notice to that holder was given under that subsection, require the offeror to acquire shares in the

class concerned of which that holder is the holder and where, in the case of a takeover offer, alternative terms were offered in respect of shares in that class to which the takeover offer related, elect which of those terms that holder will accept.

**(3)** Where a shareholder gives notice under subsection (2) with respect to shares, the offeror is entitled and bound to acquire those shares:

(a) if a Part A statement was served—on the terms that were applicable in relation to the acquisition of shares under the takeover scheme immediately before the end of the offer period and, where alternative terms were applicable, on the terms for which the shareholder has elected or, where the shareholder has not elected, on whichever of the terms the offeror determines; or

(b) if a takeover announcement was made—on the terms that were applicable in relation to the acquisition of shares pursuant to the takeover announcement immediately before the end of the offer period;

or on such other terms as are agreed or as the Court, on the application of the offeror or shareholder, thinks fit to order.

**(4)** Where:

(a) a Part A statement has been served, or a takeover announcement has been made, as mentioned in paragraph (1) (a); and

(b) during the takeover period the number of voting shares in the company to which the offeror is entitled becomes not less than 90% of the voting shares in the company;

the offeror shall, before the end of one month after the offer period, give, as prescribed, a notice to the holders of non-voting shares in the company and to the holders of renounceable options or convertible notes granted or issued by the company stating that the offeror became entitled to shares as mentioned in paragraph (b) and containing such other information (if any) as is prescribed.

**(5)** A notice given under subsection (4) shall not propose terms for the acquisition by the offeror of the shares, renounceable option or convertible note to which the notice relates unless the notice is accompanied by a copy of a report made by an expert (other than an associate of the offeror or of the company that issued the shares, granted the option or issued the note) setting out the particulars referred to in subsection (7), stating whether, in the expert’s opinion, the terms proposed in the notice are fair and reasonable and giving the reasons for forming that opinion.

**(6)** Where an offeror obtains 2 or more reports, each of which could be used for the purposes of compliance with subsection (5), the notice given under subsection (4) shall not propose terms for the acquisition by the offeror of the shares, option or note to which the notice relates unless the notice is accompanied by a copy of each report.

**(7)** The particulars that are required by subsection (5) to be set out in a report made by an expert are:

(a) particulars of any relationship of the expert with the offeror, the company or any associate of the offeror or of the company, including, without limiting the generality of the foregoing, particulars of any circumstances in which the expert gives advice to or acts on behalf of the offeror, the company or such an associate in the proper performance of the functions attaching to the expert’s professional capacity or to the expert’s business relationship with the offeror, the company or the associate;

(b) particulars of any pecuniary or other interest of the expert that could reasonably be regarded as being capable of affecting the expert’s ability to give an unbiased opinion in relation to the proposed terms for the acquisition of shares, options or notes; and

(c) particulars of:

(i) any fee; and

(ii) any pecuniary or other benefit, whether direct or indirect;

that the expert has received or will or may receive in connection with the making of the report.

**(8)** Where a notice is given under subsection (4) to the holder of any non-voting shares, renounceable option or convertible note:

(a) the holder of the shares, option of note may, before the end of 3 months after the day on which the notice was given, require the offeror to acquire the shares, option or note; and

(b) if a holder of shares or of an option or note so gives notice with respect to the shares, option or note, the offeror is entitled and bound to acquire the shares, option or note on such terms as are agreed or as the Court, on the application of the offeror or holder, determines.

**(9)** Where an offeror has given a notice or notices under subsection (1) or (4), the offeror shall as soon as practicable lodge a copy of the notice or of one of the notices.

**PART 6.6—LIABILITY FOR MIS-STATEMENTS**

**Mis-statements in Part 6.12 statements etc.**

**704. (1)** Where:

(a) there is, in a statement that purports to be a Part A statement served under subsection 637 (1), in an offer that purports to be a takeover offer, in a statement that purports to be a Part C statement served under paragraph 679 (1) (a) or in a notice served or given under section 657 or subsection 701 (2) or 703 (1) or (4), matter that is false in a material particular or materially misleading; or

(b) there is an omission of material matter from such a statement, offer or notice;

a person to whom this subsection applies contravenes this subsection.

**(2)** The persons to whom subsection (1) applies are:

(a) the offeror;

(b) where false or misleading matter appeared in, or material matter was omitted from, a statement:

(i) if the offeror is or includes a body corporate—a person who was a director of that body corporate when the statement was served, other than:

(a) a director who was not present at the meeting at which the resolution authorising the signing of the statement was agreed to; or

(b) a director who voted against that resolution; and

(ii) subject to subsection (9), a person a notice of whose consent to the inclusion in the statement of a report made by the person has been lodged under subsection 644 (4); and

(c) where:

(i) false or misleading matter appeared in, or material matter was omitted from, an offer or notice; and

(ii) the offeror is or includes a body corporate;

a person who was a director of that body corporate when the offer was sent or the notice was given, as the case may be.

**(3)** Where:

(a) there is, in a statement that purports to be a Part B statement given under subsection 647 (1) or in a statement that purports to be a Part D statement served under subsection 683 (1), matter that is false in a material particular or materially misleading; or

(b) there is an omission of material matter from such a statement;

a person to whom this subsection applies contravenes this subsection.

**(4)** The persons to whom subsection (3) applies are:

(a) the target company;

(b) where the statement was signed as mentioned in paragraph 647 (2) (a) or 683 (2) (a)—a person who was a director of the target company when the statement was given or served, other than:

(i) a director who was not present at the meeting at which the resolution authorising the signing of the statement was agreed to; or

(ii) a director who voted against that resolution; and

(c) where the statement was signed as mentioned in paragraph 647 (2) (b) or 683 (2) (b)—the person who signed the statement.

**(5)** Where:

(a) there is:

(i) in a report that is set out in a statement that purports to be a Part B statement in accordance with paragraph 647 (3) (a) or accompanies a statement that purports to be a Part B statement in accordance with section 648;

(ii) in a report that is set out in a statement that purports to be a Part D statement in accordance with paragraph 683 (3) (a); or

(iii) in a report that accompanies a notice given under subsection 703 (4);

matter that is false in a material particular or materially misleading; or

(b) there is an omission of material matter from such a report; the person who made the report contravenes this subsection.

**(6)** It is a defence to a prosecution of a person for a contravention of subsection (1), (3) or (5) if it is proved:

(a) that, when the statement was served or given, the offer was sent, the notice was given or the report was made, the person:

(i) believed on reasonable grounds that the false matter was true;

(ii) believed on reasonable grounds that the misleading matter was not misleading;

(iii) in the case of an omission, believed on reasonable grounds that no material matter had been omitted; or

(iv) in the case of an omission, did not know that the omitted matter was material; and

(b) that:

(i) on the date of the information, the person so believed or did not so know; or

(ii) before that date, the person ceased so to believe or came to know that the omitted matter was material, and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

**(7)** A person who contravenes subsection (1), (3) or (5), whether or not the person has been convicted of an offence in respect of the contravention, is liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, offer, notice or report for any loss or damage suffered by that person by relying on the false or misleading matter or because of the omission of material matter.

**(8)** It is a defence to an action under subsection (7) if:

(a) any matter referred to in paragraph (6) (a) is proved; and

(b) where the action is brought by a person who acted on the faith of the contents of the relevant statement, offer, notice or report, it is also proved that:

(i) when the plaintiff so acted, the defendant believed as mentioned in subparagraph (6) (a) (i), (ii) or (iii) or did not know that the omitted matter was material; or

(ii) before the plaintiff so acted, the defendant ceased so to believe or came to know that the omitted matter was material, and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter or the omission.

**(9)** A person referred to in subparagraph (2) (b) (ii) contravenes subsection (1), and is liable to pay compensation under subsection (7), only in respect of false or misleading matter in the report referred to in that subparagraph or an omission of material matter from that report.

**Mis-statements in public statements, advertisements etc.**

**705. (1)** Where:

(a) a person proposes, or 2 or more persons together propose, to send a takeover offer, or to cause a takeover announcement to be made, in respect of shares in a company;

(b) the person, or either or any of the persons, referred to in paragraph (a), or an associate of the person or of either or any of the persons, or, if the person or either or any of the persons or an associate of the person or of either or any of the persons is a body corporate, an officer of the body corporate or an associate of such an officer:

(i) makes or issues an oral or written statement to the public, or publishes an advertisement, relating to a prescribed matter; or

(ii) sends a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and

(c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;

the person who made or issued the statement, published the advertisement or sent the document contravenes this subsection.

**(2)** Where:

(a) the directors of a company have reason to believe that a person proposes, or 2 or more persons together propose, to send a takeover offer, or to cause a takeover announcement to be made, in respect of shares in the company;

(b) the target company or a body corporate that is related to the target company, or an officer of the target company or of such a body corporate or an associate of such an officer:

(i) makes or issues an oral or written statement to the public, or publishes an advertisement, relating to a prescribed matter; or

(ii) sends a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company; and

(c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;

the person who made or issued the statement, published the advertisement or sent the document contravenes this subsection.

**(3)** Where:

(a) a takeover offer is sent, or a takeover announcement is made, in respect of shares in a company;

(b) at any time during the period beginning when the takeover offer is sent or the takeover announcement is made and ending at the end of the offer period, a person to whom this subsection applies:

(i) makes or issues an oral or written statement to the public, or publishes an advertisement, in connection with the offers under the takeover scheme or in connection with the takeover announcement, relating to a prescribed matter; or

(ii) sends, in connection with the offers under the takeover scheme or in connection with the takeover announcement, a document relating to a prescribed matter to any of the holders of shares in, or of renounceable options or convertible notes granted or issued by, the target company (other than a document required by this Chapter to be so sent); and

(c) there is in the statement or advertisement, or in the document, matter that is false in a material particular or materially misleading;

that person contravenes this subsection.

**(4)** The persons to whom subsection (3) applies are:

(a) the offeror or an associate of the offeror;

(b) the target company;

(c) an officer of the target company or an associate of such an officer; or

(d) if the offeror or an associate of the offeror is a body corporate—an officer of the body corporate or an associate of such an officer.

**(5)** For the purposes of subsections (1), (2) and (3):

(a) a reference to a document includes a reference to a disc, tape, cinematograph film or other article from which sounds or images can be reproduced; and

(b) a prescribed matter is a matter relating to affairs of, or to marketable securities issued or to be issued by:

(i) the target company or a body corporate that is related to the target company;

(ii) the offeror or a body corporate that is related to the offeror; or

(iii) any other offeror in relation to the target company, or any body corporate that is related to such an offeror.

**(6)** It is a defence to a prosecution of a person for a contravention of subsection (1), (2) or (3) if it is proved:

(a) that, when the statement was made or issued, the advertisement was published or the document was sent, the person:

(i) believed on reasonable grounds that the false matter was true; or

(ii) believed on reasonable grounds that the misleading matter was not misleading; and

(b) that:

(i) on the date of the information, the person so believed; or

(ii) before that date, the person ceased so to believe and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

**(7)** A person who contravenes subsection (1), (2) or (3), whether or not the person has been convicted of an offence in respect of the contravention, is liable, subject to this section, to pay compensation to a person who acts, or refrains from acting, on the faith of the contents of the relevant statement, advertisement or document for any loss or damage suffered by that person by relying on the false or misleading matter.

**(8)** It is a defence to an action under subsection (7) if:

(a) any matter referred to in paragraph (6) (a) is proved; and

(b) where the action is brought by a person who acted on the faith of the contents of the relevant statement, advertisement or document, it is also proved that:

(i) when the plaintiff so acted, the defendant believed as mentioned in subparagraph (6) (a) (i) or (ii); or

(ii) before the plaintiff so acted, the defendant ceased so to believe and as soon as practicable gave reasonable notice containing such matters as were necessary to correct the false or misleading matter.

**Existing causes of action not affected**

**706.** Nothing in this Part affects any cause of action existing apart from this Part.

**PART 6.7—SUBSTANTIAL SHAREHOLDINGS**

**Companies in relation to which Part applies**

**707.** **(1)** In this Part:

“company” means:

(a) a listed company; or

(b) a company, other than a listed company, that is for the time being declared by the Minister, by order published in the *Gazette*,to be a company in relation to which this Part applies.

**(2)** The Minister may, by order published in the *Gazette*, revoke or vary an order published under subsection (1).

**Substantial shareholdings and substantial shareholders**

**708.** **(1)** For the purposes of this Part, a person has a substantial shareholding in a body corporate if, and only if, the person is entitled to not less than the prescribed percentage of:

(a) where the voting shares in the body are not divided into 2 or more classes—those voting shares; or

(b) where the voting shares in the body are divided into 2 or more classes—the shares in one of those classes.

**(2)** For the purposes of this Part, the voting shares in a body corporate to which a person is entitled do not include voting shares in which an associate of the person has a relevant interest if a certificate issued by the Commission to that associate under subsection (3) in respect of those shares is in force.

**(3)** The Commission may issue to a person a certificate declaring that specified shares in which that person has a relevant interest are to be disregarded for the purpose of ascertaining the voting shares to which another person specified in the certificate is entitled, and may, by written notice to the first-mentioned person, revoke the certificate.

**(4)** For the purposes of this Part, a person who has a substantial shareholding in a body corporate is a substantial shareholder in that body.

**(5)** In this section:

“prescribed percentage” means:

(a) subject to paragraph (b), 5%; or

(b) where another percentage is prescribed by regulations in force for the time being for the purposes of this section— that other percentage.

**(6)** For the purposes of this Part, a notifiable change in the entitlement of a person to shares in a body corporate shall be taken to occur if, and only if, there occurs a change in the relevant interest or relevant interests

of the person, or in the relevant interest or relevant interests of an associate of the person, in voting shares in the body.

**(7)** For the purposes of subsection (6), but without limiting the generality of that subsection, where a person acquires, or disposes of, voting shares in a body corporate, a change in the relevant interest or relevant interests of the person in voting shares in the body shall be deemed to occur.

**(8)** For the purposes of this Part:

(a) a person who becomes required to give notice under subsection 709 (1) or (2) shall be taken to have become, at the time when the person became a substantial shareholder in the company, required to give a substantial shareholding notice to the company; and

(b) a person who becomes required to give a notice under subsection 710 (1) or (2) shall be taken to have become, immediately after the change referred to in paragraph 710 (1) (a) or (2) (a), as the case may be, required to give a substantial shareholding notice to the company.

**Substantial shareholder to notify company of interests**

**709. (1)** A person who is a substantial shareholder in a company that is a corporation shall give a written notice to the company in accordance with this section.

**(2)** A corporation that is a substantial shareholder in a company that is not a corporation shall give a notice to the company in accordance with this section.

**(3)** A notice by a person under subsection (1) or (2) shall:

(a) be in such form (if any) as is prescribed;

(b) state:

(i) the person’s name and address;

(ii) the prescribed particulars of the voting shares in the company in which the person or an associate of the person has a relevant interest or relevant interests (including, unless the interest or interests cannot be related to a particular share or shares, the name of the person who is registered as the holder);

(iii) the prescribed particulars of each such interest;

(iv) the prescribed particulars of any agreement, or any other circumstances, because of which the person or the associate acquired that interest or has that interest; and

(v) such other particulars (if any) as are prescribed; and

(c) be accompanied by the prescribed documents.

**(4)** A person required to give a notice under subsection (1) or (2) shall give the notice before the end of 2 business days after the day on which that person becomes aware of the relevant interest or interests because of which the person is a substantial shareholder.

**(5)** The notice shall be so given notwithstanding that the person has ceased to be a substantial shareholder before the end of the period referred to in subsection (4).

**Substantial shareholder to notify company of changes in interests**

**710. (1)** Where:

(a) there occurs at a particular time a notifiable change in the entitlement of a person to shares in a company that is a corporation;

(b) immediately before the change, the person was a substantial shareholder in the company; and

(c) immediately after the change, the person is a substantial shareholder in the company and is entitled to a percentage of the shares in a class of voting shares in the company that is greater than, or less than, by 1% or more of the shares in that class, the percentage of the shares in that class to which the person was entitled at the time (in this section called the “relevant time”) when the person last became required to give a substantial shareholding notice to the company;

the person shall give a notice to the company in accordance with this section.

**(2)** Where:

(a) there occurs at a particular time a notifiable change in the entitlement of a corporation to shares in a company that is not a corporation;

(b) immediately before the change, the corporation was a substantial shareholder in the company; and

(c) immediately after the change, the corporation is a substantial shareholder in the company and is entitled to a percentage of the shares in a class of voting shares in the company that is greater than, or less than, by 1% or more of the shares in that class, the percentage of the shares in that class to which the person was entitled at the time (in this section also called the “relevant time”) when the corporation last became required to give a substantial shareholding notice to the company;

the corporation shall give a notice to the company in accordance with this section.

**(3)** A notice by a person under subsection (1) or (2) shall:

(a) be in such form (if any) as is prescribed;

(b) set out the person’s name;

(c) set out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period beginning at the relevant time and ending immediately after the time referred to in paragraph (1) (a) or (2) (a), as the case may be:

(i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;

(ii) the date of the change and the prescribed particulars of the change; and

(iii) the prescribed particulars of any agreement, or any other circumstances, because of which the change occurred; and

(d) be accompanied by the prescribed documents.

**(4)** A person required to give a notice under subsection (1) or (2) shall give the notice before the end of 2 business days after the day on which that person becomes aware of the change referred to in paragraph (1) (a) or (2) (a), as the case may be.

**Person who ceases to be a substantial shareholder to notify company**

**711. (1)** A person who ceases at a particular time (in this section called the “relevant time”) to be a substantial shareholder in a company that is a corporation shall give a notice to the company in accordance with this section.

**(2)** A corporation that ceases at a particular time (in this section also called the “relevant time”) to be a substantial shareholder in a company that is not a corporation shall give a notice to the company in accordance with this section.

**(3)** A notice by a person under subsection (1) or (2) shall:

(a) be in such form (if any) as is prescribed;

(b) set out the person’s name;

(c) set out, in relation to each notifiable change in the entitlement of the person to shares in the company (not being a prescribed change) that occurred during the period beginning at the time when the person last became required to give a substantial shareholding notice to the company and ending at the relevant time:

(i) whether the change was a change in a relevant interest or relevant interests of an associate of the person and, if so, the name of the associate;

(ii) the date of the change and the prescribed particulars of the change; and

(iii) the prescribed particulars of any agreement, or any other circumstances, because of which the change occurred;

(d) set out the date on which the person ceased to be a substantial shareholder in the company and the prescribed particulars of any agreement, or any other circumstances, because of which the person ceased to be a substantial shareholder in the company; and

(e) be accompanied by the prescribed documents.

**(4)** A person required to give a notice under subsection (1) or (2) shall give the notice before the end of 2 business days after the day on which the

person becomes aware that the person or an associate has ceased to have a relevant interest or relevant interests in a share or shares in the company to the extent necessary to make the person a substantial shareholder in the company.

**References to operation of Division 5 of Part 1.2**

**712.** The circumstances required to be stated in a notice under section 709, 710 or 711 include circumstances because of which, having regard to the provisions of Division 5 of Part 1.2:

(a) a person has a relevant interest in voting shares;

(b) a change has occurred in a relevant interest in voting shares; or

(c) a person has ceased to be a substantial shareholder in a company;

as the case may be.

**Copy of notice to be served on securities exchanges**

**713.** A person who gives a notice under section 709, 710 or 711 to a listed company shall, on the day on which the person gives the notice, serve a copy of the notice on the company’s home stock exchange.

**Commission may extend period for giving notice under this Part**

**714.** **(1)** The Commission may, on the application of a person who is required to give a notice under this Part, extend, or further extend, the period for giving the notice.

**(2)** An application for an extension under subsection (1) may be made, and the power of the Commission under that subsection may be exercised, notwithstanding that the period referred to in that subsection has ended.

**Company to keep register of substantial shareholders**

**715.** **(1)** A company shall keep a register in which it shall as soon as practicable enter:

(a) in alphabetical order the names of persons from whom it has received notices under section 709 or a corresponding law; and

(b) against each name so entered, the information given in the notice and, where it has received a notice under section 710 or 711 or a corresponding law, the information given in that notice.

**(2)** The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(3)** A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 21 days after the day on which payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—before the end of 21 days after the day on which the request is made or within such longer period as the Commission approves.

**(4)** A company is not, because of anything done under this Part:

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to;

a right of a person to or in relation to a share in the company.

**Civil remedy where Part contravened**

**716. (1)** A person who contravenes section 709, 710 or 711, whether or not the person has been convicted of an offence in respect of the contravention, is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.

**(2)** A person who contravenes section 715 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

**(3)** If 2 or more persons each contravene section 715 because of the same act or omission, the liability of those persons under subsection (2) of this section in respect of the contravention is joint and several.

**PART 6.8—POWER TO OBTAIN INFORMATION AS TO BENEFICIAL OWNERSHIP OF SHARES**

**Definitions**

**717.** In this Part:

“company” has the same meaning as in Part 6.7;

“primary notice”, in relation to shares in a company, means a written notice addressed to the holder of the shares requiring the holder to give to the body giving the notice a written statement setting out:

(a) full particulars of the holder’s relevant interest in the shares and of the circumstances because of which the holder has that interest; and

(b) so far as is known to the holder:

(i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;

(ii) full particulars of each such interest and of the circumstances because of which the other person has that interest; and

(iii) full particulars of the name and address of each person (if any) who has given to the holder of the shares relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given;

“relevant instructions”, in relation to shares, means instructions or directions:

(a) in relation to the acquisition or disposal of the shares;

(b) in relation to the exercise of any voting or other rights attached to the shares; or

(c) in connection with any other matter relating to the shares;

“secondary notice”, in relation to shares in a company, means a written notice addressed to a person requiring the person to give to the body giving the notice a written statement setting out:

(a) full particulars of any relevant interest that the person has in any of the shares and of the circumstances because of which the person has that interest; and

(b) so far as is known to the person:

(i) full particulars of the name and address of every other person (if any) who has a relevant interest in any of the shares;

(ii) full particulars of each such interest, and of the circumstances because of which the other person has that interest; and

(iii) full particulars of the name and address of each person (if any) who has given to the person to whom the notice is addressed relevant instructions in relation to any of the shares and of those relevant instructions, and the date or dates on which those relevant instructions were given.

**Primary notice**

**718. (1)** The Commission may give to the holder of particular voting shares in a company that is a corporation a primary notice in relation to those shares.

**(2)** A company that is a corporation, or a member of such a company, may by writing request the Commission to give notices under this Part in relation to specified voting shares in the company.

**(3)** On receiving a request under subsection (2), the Commission shall, unless it considers that in all the circumstances it would be unreasonable to

do so, give to the holder of the shares a primary notice in relation to the shares.

**(4)** A company that is a corporation may give to the holder of particular voting shares in the company a primary notice in relation to the shares.

**Secondary notice**

**719.** **(1)** Where the Commission receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in a company that is a corporation, information that:

(a) another person has a relevant interest in any of the shares; or

(b) another person has given relevant instructions in relation to any of the shares;

the Commission:

(c) if subsection 718 (3) or this subsection required the notice to be given—shall, subject to subsection (2); or

(d) otherwise—may;

give to the other person a secondary notice in relation to the first-mentioned shares.

**(2)** The Commission need not comply with subsection (1) if it considers that in all the circumstances it would be unreasonable to give such a secondary notice to the other person.

**(3)** Where a company that is a corporation receives, pursuant to a primary notice or secondary notice given to a person in relation to particular shares in the company, information that:

(a) another person has a relevant interest in any of the shares; or

(b) another person has given relevant instructions in relation to any of the shares;

the company may give to the other person a secondary notice in relation to the first-mentioned shares.

**Withdrawal of request under subsection 718 (2)**

**719a. (1)** A person may by writing withdraw a request made by the person under subsection 718 (2), even if the Commission has already given at least one notice because of the request.

**(2)** After a request is withdrawn under subsection (1), neither of subsections 718 (3) and 719 (1) requires the Commission to give a notice or further notice because of the request.

**Commission may provide information obtained pursuant to a notice**

**720.** Where the Commission receives information pursuant to a primary notice or secondary notice in relation to shares in a company that is a corporation, the Commission:

(a) in any case—may provide the information to the company; and

(b) if, because of a request made by a person under subsection 718 (2), subsection 718 (3) or 719 (1) required the notice to be given—shall provide the information to the person, other than such of the information as the Commission considers it would be unreasonable in all the circumstances so to provide.

**Request by person to whom notice given**

**721.** **(1)** A person who receives a primary notice or secondary notice in relation to shares in a company that is a corporation may, before the end of 2 business days after the day on which the notice was received, lodge a written request that, for special reasons set out in the request:

(a) the information should not be given to the body that gave the notice;

(b) if the Commission gave the notice—the information, if given to the Commission, should not be provided under section 720, or should be so provided only in a particular form; or

(c) if the company gave the notice—the information should only be given to the company in a particular form.

**(2)** Where the Commission is satisfied that there are special reasons why:

(a) particular information should not be given to the body that gave the notice;

(b) if the Commission gave the notice—particular information, if given to the Commission, should not be provided under section 720, or should be so provided only in a particular form; or

(c) if the company gave the notice—particular information should only be given to the company in a particular form;

the Commission may give to the person a certificate referring to the information and stating that:

(d) the information need not be given to that body;

(e) the information, when given to the Commission, will not be provided under section 720, or will be so provided only in a specified form; or

(f) the information need only be given to the company in a specified form;

as the case may be.

**(3)** Where the Commission is not satisfied as mentioned in subsection (2), the Commission shall, by written notice to the person, refuse the request.

**Compliance with notices**

**722.** **(1)** A person who receives a primary notice or secondary notice in relation to shares in a company that is a corporation shall, unless before the end of 2 business days after the day on which the person receives the notice the person lodges a request under subsection 721 (1) in relation to

particular information that the notice requires the person to give, comply with the notice before the end of 2 business days after that day.

**(2)** Where a company that is a corporation gives to a person a primary notice or secondary notice in relation to shares in the company, the person shall, forthwith after lodging a request under subsection 721 (1) in relation to particular information that the notice requires the person to give, notify the company in writing of the request.

**Consequences of Commission’s decision on a request**

**723.** Within 2 business days after the day on which the Commission notifies a person of its decision on a request that the person lodged under subsection 721 (1) in relation to a primary notice or secondary notice in relation to shares in a company that is a corporation, the person shall:

(a) if the Commission has given to the person pursuant to the request a certificate under subsection 721 (2):

(i) except as provided in the certificate, comply with the notice;

(ii) if the company gave the notice and the certificate states that specified information need only be given to the company in a specified form—give the information to the company in that form; and

(iii) if the company gave the notice—give a copy of the certificate to the company; or

(b) otherwise—comply with the notice.

**Fee for complying with a notice given by a company under this Part**

**723a. (1)** The regulations may prescribe fees that companies are to pay to persons for complying with notices given under this Part.

**(2)** Where:

(a) a company gives to a person a notice under this Part;

(b) the regulations prescribe a fee that the company is to pay to the person for complying with the notice; and

(c) but for this subsection, the person would be required to comply with subsection 722 (1) or section 723, in relation to the notice, before the end of a particular period;

the person is to be taken to be required to comply with that subsection or section before the end of:

(d) the period referred to in paragraph (c); or

(e) the period of 2 business days beginning on the day when the company so pays the fee;

whichever ends later.

**(3)** Where:

(a) because of subsection (2), a company pays to a person a fee for complying with a notice given to the person by the company under this Part; and

(b) the person contravenes subsection 722 (1) or section 723 in relation to the notice;

the company may recover from the person as a debt the amount of the fee, even if the person later complies with the notice.

**(4)** A company’s rights and remedies under subsection (3) are additional to, and do not prejudice, any other right or remedy of the company.

**Register of notices**

**724. (1)** A company that is a corporation shall keep in accordance with this section a register of the information received by the company under this Part or a corresponding law.

**(2)** The register shall either contain:

(a) the name of each holder of voting shares in the company to whom the information relates;

(b) against each such name:

(i) the name and address of each other person (if any) who, according to information received by the company under this Part or a corresponding law, has a relevant interest in any of the shares, together with particulars of the interest and of the circumstances because of which the other person has the interest; and

(ii) the name and address of each person who, according to information received by the company under this Part or a corresponding law, has given relevant instructions in relation to any of the shares, together with particulars of the relevant instructions; and

(c) in relation to each item of information entered in the register, the date on which the item was so entered;

or be in such other form as the Commission approves.

**(3)** The register shall be open for inspection:

(a) by any member of the company—without charge; and

(b) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**(4)** A person may request a company to give to the person a copy of the register or any part of the register and, where such a request is made, the company shall send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount—before the end of 21 days after the day on which payment of the amount is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—before the end of 21 days after the day on which the request is made or within such longer period as the Commission approves.

**(5)** Information that is required by subsection (2) to be entered in a register shall be so entered by the company before the end of 2 business days after the day on which the company receives the information.

**No notice of rights**

**725.** A company that is a corporation is not, because of anything done under this Part or a corresponding law:

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to;

the right of a person to or in relation to a share in the company.

**Civil liability**

**726.** **(1)** A person who contravenes section 722 or 723 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage, unless it is proved that the contravention was due to the inadvertence or mistake of the first-mentioned person or to the first-mentioned person not being aware of a relevant fact or occurrence.

**(2)** A person who contravenes section 724 is liable to pay, to any person who suffers loss or damage as a result of the contravention, damages in respect of that loss or damage.

**(3)** If 2 or more persons each contravene section 722, 723 or 724 because of the same act or omission, the liability of those persons under this section in respect of the contravention is joint and several.

**Exceptions to criminal or civil liability**

**727.** A person:

(a) is not guilty of an offence by virtue of a contravention of section 722 or 723; and

(b) is not liable to pay damages under subsection 726 (1);

in respect of a failure to give information that a primary notice or secondary notice in relation to shares in a company required the person to give if it is proved that:

(c) when the notice was received, the information appeared on a register kept by the company under section 715 or 724; or

(d) the giving of the notice was for any reason frivolous or vexatious.

**PART 6.9—POWERS OF COMMISSION AND CORPORATIONS AND SECURITIES PANEL, AND ANCILLARY POWERS OF COURT**

**Power of Commission to exempt from compliance with this Chapter**

**728.** **(1)** The Commission may, on application by the person or persons concerned or by a person or persons included in the class or classes of

persons concerned, by writing, exempt a specified person or persons, or a specified class or classes of persons, subject to such conditions (if any) as are specified in the exemption, from compliance, either generally or in a particular case or classes of cases, with this Chapter or a specified provision or provisions of this Chapter.

**(2)** The Commission shall cause a copy of the intrument by which an exemption was given under subsection (1) to be published in the *Gazette.*

**(3)** A person who is exempted by the Commission, subject to a condition, from compliance with this Chapter or a provision or provisions of this Chapter shall not contravene the condition.

**Power of Court to enforce exemption condition**

**729.** Where a person has contravened a condition to which an exemption under section 728 is subject, the Court, on the application of the Commission, may order the person to comply with the condition.

**Power of Commission to modify operation of this Chapter**

**730.** **(1)** The Commission may, to the extent that the Constitution permits, on application by the person or persons concerned or by a person or persons included in the class or classes of persons concerned, declare, in writing, that this Chapter shall apply in relation to a specified person or persons, or a specified class or classes of persons, either generally or in a particular case or classes of cases, as if a specified provision or provisions of this Chapter were omitted or were modified or varied in a specified manner, and, when such a declaration is made, this Chapter applies accordingly.

**(2)** The Commission shall cause a copy of an instrument by which a declaration was made under subsection (1) to be published in the *Gazette.*

**Commission to take account of certain matters**

**731.** In exercising any of its powers under section 728 or 730, the Commission shall take account of the desirability of ensuring that the acquisition of shares in companies takes place in an efficient, competitive and informed market and, without limiting the generality of the foregoing, shall have regard to the need to ensure:

(a) that the shareholders and directors of a company know the identity of any person who proposes to acquire a substantial interest in the company;

(b) that the shareholders and directors of a company have a reasonable time in which to consider any proposal under which a person would acquire a substantial interest in the company;

(c) that the shareholders and directors of a company are supplied with sufficient information to enable them to assess the merits of any proposal under which a person would acquire a substantial interest in the company; and

(d) that, as far as practicable, all shareholders of a company have equal opportunities to participate in any benefits accruing to shareholders

under any proposal under which a person would acquire a substantial

interest in the company; but nothing in this section requires the Commission to exercise any of its powers in a particular way in a particular case.

**Occurrence of unacceptable circumstances**

**732.** For the purposes of this Part, unacceptable circumstances shall be taken to have occurred if, and only if:

(a) the shareholders and directors of a company:

(i) in the case of a company that is a corporation—did not know the identity of a person who proposed to acquire a substantial interest in the company; or

(ii) in the case of a company that is not a corporation—did not know the identity of a corporation that proposed to acquire a substantial interest in the company;

(b) the shareholders and directors of a company:

(i) in the case of a company that is a corporation—did not have a reasonable time in which to consider a proposal under which a person would acquire a substantial interest in the company; or

(ii) in the case of a company that is not a corporation—did not have a reasonable time in which to consider a proposal under which a corporation would acquire a substantial interest in the company;

(c) the shareholders and directors of a company:

(i) in the case of a company that is a corporation—were not supplied with sufficient information to enable them to assess the merits of a proposal under which a person would acquire a substantial interest in the company; or

(ii) in the case of a company that is not a corporation—were not supplied with sufficient information to enable them to assess the merits of a proposal under which a corporation would acquire a substantial interest in the company; or

(d) the shareholders of a company:

(i) in the case of a company that is a corporation—did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any associate of a shareholder, in connection with the acquisition, or proposed acquisition, by any person of a substantial interest in the company; or

(ii) in the case of a company that is not a corporation—did not all have reasonable and equal opportunities to participate in any benefits, or to become entitled to participate in any

benefits, accruing, whether directly or indirectly and whether immediately or in the future, to any shareholder or to any associate of a shareholder, in connection with the acquisition, or proposed acquisition, by any corporation of a substantial interest in the company.

**Declarations by Corporations and Securities Panel**

**733. (1)** Where it appears to the Commission that unacceptable circumstances have, or may have, occurred:

(a) in relation to an acquisition of shares in a company; or

(b) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, a company;

the Commission may apply to the Corporations and Securities Panel for a declaration under subsection (3) in relation to the acquisition or conduct.

**(2)** An application under subsection (1) may only be made before the end of:

(a) unless paragraph (b) applies—the period of 60 days after the day on which the acquisition took place, or the conduct was engaged in; or

(b) if the Panel extends that period of 60 days for a further period not exceeding, or for further periods not exceeding in total, 30 days— that further period, or the later or last of those further periods.

**(3)** Where, on an application under subsection (1), the Panel is satisfied:

(a) that unacceptable circumstances have occurred:

(i) in relation to an acquisition of shares in the company; or

(ii) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, the company; and

(b) having regard to the matters referred to in section 731 and any other matters the Panel considers relevant, that it is in the public interest to do so;

the Panel may by writing declare the acquisition to have been an unacceptable acquisition, or the conduct to have been unacceptable conduct, as the case may be.

**(4)** The Panel may only make a declaration under subsection (3) before the end of whichever of the following ends last:

(a) the period of 90 days after the day on which the acquisition took place, or the conduct was engaged in, as the case may be;

(b) the period of 30 days after the day on which the application was made;

(c) such other period as the Court orders on an application made by the Panel within the period referred to in paragraph (b).

**(5)** The Panel may only make a declaration under subsection (3) if it has given each person to whom the declaration relates an opportunity to

appear at a hearing before the Panel and to make submissions and give evidence to the Panel in relation to the matter.

**(6)** Where the Panel makes a declaration under subsection (3), the Panel shall, as soon as practicable:

(a) give to each person to whom the declaration relates a copy of:

(i) the instrument by which the declaration was made; and

(ii) a written statement of the Panel’s reasons for deciding to make the declaration; and

(b) cause to be published in the *Gazette* a copy of the instrument by which the declaration was made.

**(7)** The validity of a declaration under subsection (3) is not affected by failure to comply with subsection (6) in relation to the declaration.

**(8)** Nothing in section 731 requires the Panel to perform a function, or exercise a power, in a particular way in a particular case.

**Power of Panel to make orders**

**734. (1)** This section applies where, under subsection 733 (3), the Corporations and Securities Panel:

(a) declares an acquisition of shares in a company to have been an unacceptable acquisition; or

(b) declares conduct engaged in by a person in relation to shares in, or the affairs of, a company to have been unacceptable conduct.

**(2)** On the application of the Commission, the Panel may, whether or not it has previously made an order under this section in reliance on the declaration, make in writing one or more of the following orders:

(a) any order that it thinks necessary or desirable to protect the rights or interests of any person affected by the acquisition or conduct or to ensure, as far as possible, that a takeover scheme or takeover announcement, or a proposed takeover scheme or proposed takeover announcement, in relation to shares in the company proceeds in the manner in which it would have proceeded if that acquisition had not taken place or that conduct had not been engaged in;

(b) without limiting the generality of paragraph (a):

(i) an order directing a person to supply specified information to the holders of shares in the company;

(ii) an order prohibiting the exercise of voting or other rights attached to specified shares;

(iii) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of specified shares;

(iv) an order prohibiting the acquisition or disposal of, or of an interest in, specified shares;

(v) an order directing the disposal of, or of an interest in, specified shares;

(vi) an order directing a company not to register a transfer or transmission of specified shares, being a transfer or transmission occurring after the commencement of this section;

(vii) an order that an exercise of the voting or other rights attached to specified shares be disregarded;

(viii) an order directing a company not to issue shares to a person who holds shares in the company, being shares that were proposed to be issued to the person because the person holds shares in the company or pursuant to an offer or invitation made or issued to the person because the person holds shares in the company;

(ix) an order cancelling, or declaring to be voidable, an agreement or offer that was made after the commencement of this section and that relates to a takeover scheme or takeover announcement, or to a proposed takeover scheme or proposed takeover announcement, or is otherwise connected with the acquisition of shares;

(x) an order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to those shares;

(c) for the purpose of securing compliance with any order made under paragraph (a) or (b), an order directing a person to do, or to refrain from doing, a specified act.

**(3)** The Panel may, by written order, vary or revoke, or suspend the operation of, an order made under subsection (2).

**(4)** The Commission shall cause a copy of an order made under subsection (2) and of any order by which it is revoked or varied, or its operation is suspended, to be published in the *Gazette* and served:

(a) on each person to whom the order is directed; and

(b) where it relates to specified shares in a company—on the company.

**(5)** A person shall not contravene an order in force under subsection (2).

**(6)** The Panel shall not make an order, or vary an order that is in force, under subsection (2) unless it has given each person to whom the order is directed an opportunity to appear at a hearing before the Panel and to make submissions and give evidence to the Panel in relation to the matter.

**(7)** The Panel shall not make an order under this section if it is satisfied that the order would unfairly prejudice any person.

**(8)** Where the Panel makes an order, or varies an order that is in force, under subsection (2), the Panel shall give to each person to whom the order is directed a copy of a written statement of the Panel’s reasons for the decision to make or vary the order.

**Miscellaneous provisions relating to orders by Panel**

**735. (1)** The Panel may, before making a declaration under subsection

733 (3) or an order under section 734, direct the Commission to give notice of the application to such persons as the Panel thinks fit, or to publish notice of the application in such manner as the Panel thinks fit, or both.

**(2)** Where an application is made to the Panel for an order under section 734, the Panel or the President of the Panel may, if in the opinion of the Panel or President, as the case may be, it is desirable to do so, make, before the Panel considers the application, an interim order, being an order of the kind to which the application relates that is expressed to apply pending the determination of the application.

**(3)** The provisions of subsections 734 (3), (4), (5) and (7), of subsections (5), (6), (7) and (8) of this section, and of section 736, apply in relation to an interim order under subsection (2) of this section as if such an order were an order under subsection 734 (2).

**(4)** In addition to, and without limiting, their application as mentioned in subsection (3), the provisions referred to in that subsection apply, as so mentioned, as if the President were the Panel.

**(5)** An order by the Panel under section 734 may include such ancillary or consequential provisions as the Panel thinks reasonable and appropriate.

**(6)** Without limiting the nature of the orders that may be made by the Panel under section 734 directing the disposal of, or of an interest in, shares in a company, such an order may include one or more of the following provisions:

(a) a provision that the disposal shall be made within such time and subject to such conditions (if any) as the Panel thinks fit, including, if the Panel thinks fit, a condition that the disposal shall not be made to a particular person or persons or to a particular class or classes of persons;

(b) a provision that a specified person shall pay to the company the amount of, or an amount equal to the value of, any profit made by, or benefit accruing to, the person as a result of, or in connection with, the disposal of, or of an interest in, the shares.

**(7)** If the Panel makes an order of the kind referred to in subparagraph 734 (2) (b) (vii), the exercise of rights attached to shares shall be disregarded as provided in the order.

**(8)** If the Panel makes an order of a kind referred to in subparagraph 734 (2) (b) (ix), then, by force of this subsection, the agreement or offer specified in the order is cancelled, or becomes voidable, as the case requires, as from the making of the order or such later time as is so specified.

**Orders by the Court where Panel order contravened**

**736.** Where a person contravenes an order made by the Panel under section 734, the Court may, on application by the Commission, make such order or orders as it considers necessary for the purpose of securing compliance with the Panel’s order, including, but not limited to:

(a) a remedial order; and

(b) an order directing a person to do, or to refrain from doing, a specified act.

**Commission may publish report about application to Panel or Court**

**736a. (1)** This section applies where the Commission:

(a) applies under subsection 733 (1) for a declaration under subsection 733 (3) in relation to an acquisition of shares in a company or conduct engaged in in relation to shares in, or the affairs of, a company;

(b) applies for an order to be made under subsection 734 (2) in reliance on such a declaration; or

(c) applies for an order to be made under section 736 for the purpose of securing compliance with an order made under subsection 734 (2) in reliance on such a declaration.

**(2)** The Commission may publish in any way it considers appropriate a report, statement or notice, whether or not in writing, that:

(a) states that the application has been made;

(b) names the company; and

(c) if the Commission considers that the report, statement or notice should name any other person to whom:

(i) if paragraph (1) (a) applies—the declaration, if made, would relate; or

(ii) if paragraph (1) (b) or (c) applies—an order applied for would, if made, be directed;

names that other person.

**(3)** Nothing in this section limits by implication a function or power of the Commission, the Panel or any other person or body.

**PART 6.10—POWERS OF COURT**

**Orders where prohibited acquisitions take place**

**737.** **(1)** Where a person has acquired shares in a company in contravention of section 615, the Court, on the application of the Commission, the company, a member of the company or the person from whom the shares were acquired, may make such order or orders as it thinks just, including but without limiting the generality of the foregoing:

(a) a remedial order; and

(b) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

**(2)** Where, at the hearing of an application under subsection (1), it is proved to the satisfaction of the Court that:

(a) a person is entitled to shares in a company because another person who is an associate of the first-mentioned person has a relevant interest in those shares; and

(b) that other person became entitled to that relevant interest because of an acquisition of shares (whether in that company or in another body corporate) that took place within 6 months ending on the day immediately before the day on which the application was filed with the Court;

then, in determining for the purposes of the application whether the acquisition referred to in paragraph (b) was made in contravention of section 615, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) constitutes *prima facie* evidence that the other person was an associate of the first-mentioned person immediately after the acquisition took place.

**Orders where offers not sent pursuant to Part A statement**

**738. (1)** Where:

(a) a Part A statement relating to offers under a takeover scheme, being offers relating to shares in a class of shares in a target company, is served on the company;

(b) after the Part A statement was served the offeror acquires shares in that class;

(c) the acquisition of those shares would, but for subsection 620 (1), have contravened section 615; and

(d) the offeror does not send the offers before the end of 28 days after the day on which the Part A statement was served;

the Court, on the application of the Commission, may make such order or orders as it thinks just, including, but without limiting the generality of the foregoing:

(e) a remedial order;

(f) an order directing the offeror, within such time as is specified in the order, to send in an approved manner to each holder of shares in that class an offer to which the Part A statement relates; and

(g) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

**(2)** Where, under paragraph (1) (f), the Court orders a person to send offers, the Court may also order the person:

(a) to send with each offer a notice setting out such information as the Court specifies; and

(b) within a period specified in the order, to serve on the target company, lodge with the Commission, and, if the target company is a listed company, serve on each notifiable securities exchange in relation to that company, a copy of the notice.

**(3)** Where offers are sent pursuant to an order made by the Court under paragraph (1) (f), the offers shall be deemed to be made under a takeover scheme.

**Orders to protect rights under takeover schemes or announcements**

**739. (1)** Where:

(a) a statement that purports to be a Part A statement relating to offers under a takeover scheme has been served on a target company or a takeover announcement has been made;

(b) an application for an order under this section is made to the Court by the Commission, the offeror, the target company or a person who holds shares in the target company or held shares in the target company when the statement was so served or the takeover announcement was made; and

(c) the Court is satisfied that a provision of this Chapter has been contravened;

the Court may make such orders as it thinks necessary or desirable to protect the interests of a person affected by the takeover scheme or takeover announcement (including a person who is the holder of non-voting shares in, or renounceable options or convertible notes granted or issued by, the target company).

**(2)** Where an offeror contravenes a condition specified in a consent given under section 653, the Court, on the application of the Commission, the target company, or a person affected by the contravention, may make such orders as the Court thinks necessary or desirable to protect the interests of a person affected by the contravention.

**(3)** The orders that may be made under subsection (1) or (2) include one or more of the following orders:

(a) an order directing:

(i) where the Court is acting under subsection (1)—the offeror or the target company; or

(ii) where the Court is acting under subsection (2)—the offeror;

to supply to the holders of shares in the target company such information as is specified in the order;

(b) where a person has failed to do an act or thing that the person was required by this Chapter or the condition to do—an order directing that person to do that act or thing within a period specified in the order, notwithstanding that the period specified in this Chapter or the condition, as the case may be, for the doing of that act or thing has ended;

(c) a remedial order;

(d) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

**(4)** In this section, “shares”, in relation to a company, includes:

(a) non-voting shares in the company; and

(b) renounceable options and convertible notes granted or issued by the company.

**Powers of Court in relation to unfair or unconscionable agreements, payments or benefits**

**740. (1)** Subject to subsection (4), this section applies to:

(a) an agreement entered into by a body corporate that is a corporation for the making of a payment by the body corporate to, or for the provision of a benefit by the body corporate for, a person who is a director, secretary or executive officer of the body corporate or of a body corporate that is related to the body corporate; or

(b) a payment or benefit made or provided by a body corporate that is a corporation, otherwise than under an agreement, to or for such a person;

where the agreement is entered into or the payment or benefit is made or provided by the body corporate:

(c) if the body corporate is a company:

(i) before the end of 12 months after the day on which a Part A statement has been served on, or a takeover announcement has been made in respect of shares in, the body corporate; or

(ii) at a time when the directors of the body corporate have reason to believe that a takeover offer or takeover announcement is to be made in respect of shares in the body corporate; or

(d) if the body corporate is not a company:

(i) before the end of 12 months after the day on which a Part A statement has been served on, or a takeover announcement has been made in respect of shares in, a company that is related to the body corporate; or

(ii) at a time when the directors of the body corporate have reason to believe that a takeover offer or takeover announcement is to be made in respect of shares in a company that is related to the body corporate.

**(2)** Subject to subsection (4), this section also applies to:

(a) an agreement entered into by a body corporate that is not a corporation for the making of a payment by the body corporate to, or for the provision of a benefit by the body corporate for, a person who is a director, secretary or executive officer of the body corporate or of a body corporate that is related to the body corporate; or

(b) a payment or benefit made or provided by a body corporate that is not a corporation, otherwise than under an agreement, to or for such a person;

where the agreement is entered into or the payment or benefit is made or provided by the body corporate:

(c) before the end of 12 months after the day on which a Part A statement has been served on, or a takeover announcement has been made in respect of shares in, a company, being a corporation, that is related to the body corporate; or

(d) at a time when the directors of the body corporate have reason to believe that a takeover offer or takeover announcement is to be made in respect of shares in a company, being a corporation, that is related to the body corporate.

**(3)** For the purposes of paragraphs (1) (a) and (2) (a), a body corporate that enters into an agreement with a person for the employment of, or for the performance of services by, that person for a fixed period shall be taken to have entered into an agreement for the provision of a benefit for that person.

**(4)** This section does not apply to an agreement that has been entered into, or to a payment or benefit that has been made or provided, by the company (in this subsection called the “target company”) to shares in which the Part A statement or takeover announcement relates, or in respect of shares in which the directors believe that a takeover offer or takeover announcement is to be made, or by a body corporate that is related to the target company, if:

(a) the agreement, payment or benefit has been approved by an ordinary resolution of the target company (whether before or after the agreement was entered into or the payment or benefit was made or provided); and

(b) where the person who is entitled to receive, or has received, the payment or benefit, or an associate of that person, was a member of the target company when the resolution was passed—that member did not vote, either personally or by proxy, on the resolution.

**(5)** Where:

(a) a body corporate enters into an agreement, or makes or provides a payment or benefit, to which this section applies;

(b) an application for an order under this subsection is made to the Court by:

(i) the body corporate;

(ii) the Commission;

(iii) a person who holds, or persons who together hold, shares in the body corporate or in a related body corporate that represent not less than 10% of the total of the nominal values of the shares in the body corporate or in the related body corporate, as the case may be;

(c) the application is made within 12 months, or such longer period as the Court thinks reasonable in the circumstances, after the day on which the agreement was entered into, or the payment or benefit was made or provided, as the case may be; and

(d) the Court is satisfied that the entering into the agreement, or the making or provision of the payment or benefit, was unfair or unconscionable having regard to the interests of the body corporate;

the Court may:

(e) in the case of an agreement:

(i) make an order declaring the agreement or any part of the agreement to be void and, if the Court thinks fit, to have always been void; and

(ii) if the Court thinks it just to do so—make an order directing any person to whom a payment was made or for whom a benefit was provided under the agreement, or another person specified in the order, to make a payment or transfer property to the body corporate or to do any other act for the benefit of the body corporate;

(f) in the case of a payment or benefit—if the Court thinks it just to do so, make an order directing the person to whom the payment was made or for whom the benefit was provided, or another person specified in the order, to make a payment or transfer property to the body corporate or to do any other act for the benefit of the body corporate; and

(g) in either case—make any other order that the Court thinks appropriate.

**Powers of Court with respect to defaulting substantial shareholder**

**741. (1)** Where a person (in this section called the “substantial shareholder”) is, or at any time after the commencement of this Chapter has been, a substantial shareholder in a company and has contravened section 709, 710 or 711, the Court, on the application of the Commission or of the company, whether or not the contravention continues, may make such order or orders as it thinks just, including (without limiting the generality of the foregoing):

(a) a remedial order; and

(b) for the purpose of securing compliance with any other order made under this section, an order directing the company or any other person to do or refrain from doing a specified act.

**(2)** Where, at the hearing of an application under this section, it is proved to the satisfaction of the Court that:

(a) a person is entitled to shares in a company because another person who is an associate of the first-mentioned person has a relevant interest in those shares; and

(b) that other person became entitled to that relevant interest within 6 months ending on the day immediately before the day on which the application was filed with the Court;

then, in determining for the purposes of the application whether the first-mentioned person failed to comply with section 709, 710 or 711, the proof to the satisfaction of the Court of the matters mentioned in paragraphs (a) and (b) of this subsection constitutes *prima facie* evidence that the other person was an associate of the first-mentioned person from the time when that other person became entitled to that relevant interest until the date of the hearing.

**(3)** In this section, “company” has the same meaning as in Part 6.7.

**Powers of Court where beneficial ownership of shares not disclosed**

**742. (1)** Where:

(a) a person has contravened section 722 or 723 in relation to a notice given to the person under section 718 or 719 in relation to shares in a company (whether or not the contravention still continues); or

(b) a person has, in a statement given pursuant to a notice given to the person under section 718 or 719 in relation to shares in a company, stated that the person does not know particular information in relation to any of the shares or in relation to a person:

(i) who has a relevant interest in any of the shares; or

(ii) who has given in relation to any of the shares relevant instructions within the meaning of section 717;

the following provisions of this section apply.

**(2)** On the application of:

(a) the Commission;

(b) the company; or

(c) a member of the company who was entitled, or members of the company who were together entitled, to not less than 5% of the total voting rights of all the members having at the date of the notice a right to vote at general meetings of the company;

the Court may make in relation to any of the shares such order or orders as it thinks just, including, but without limiting the generality of the foregoing:

(d) a remedial order; and

(e) for the purpose of securing compliance with any other order made under this subsection, an order directing the company or any other person to do or refrain from doing a specified act.

**(3)** Where a person has contravened section 722 or 723 in relation to a notice given under section 718 or 719 in relation to shares in a company, the Court shall not make an order under this section in relation to any of the shares if it is satisfied:

(a) that, when the notice was given, the information that the notice required to be given to the Commission appeared on a register kept by the company under section 715 or 724; or

(b) that the giving of the notice was for any reason frivolous or vexatious.

**(4)** A company is not, because of anything done under this section:

(a) to be taken for any purpose to have notice of; or

(b) put upon inquiry as to;

the right of a person to or in relation to a share in the company.

**(5)** In this section, “company” has the same meaning as in Part 6.7.

**Contravention due to inadvertence etc.**

**743.** **(1)** Where a person has contravened a provision of this Chapter and, on application by any interested person, the Court is satisfied that, in all the circumstances the contravention ought to be excused, the Court may make an order declaring any act, document or matter not to be invalid because of the contravention and to have effect, and at all times to have had effect, as if there had been no such contravention.

**(2)** If the Court is satisfied that in all the circumstances a contravention of section 615, 709, 710, 711, 722 or 723 ought to be excused, the Court shall not make an order under section 737, 741 or 742, as the case may be, other than:

(a) an order restraining the exercise of voting or other rights attached to shares; or

(b) an order that an exercise of voting or other rights attached to shares be disregarded.

**(3)** The circumstances to which the Court may have regard in deciding whether or not a contravention of a provision by a person ought to be excused include the contravention having been due to the person’s inadvertence or mistake, to the person not having been aware of a relevant fact or occurrence or to circumstances beyond the control of the person.

**(4)** This section applies notwithstanding anything contained in any other provision of this Chapter.

**Miscellaneous provisions relating to orders**

**744.** **(1)** In this section:

“relevant provision” means section 729, 736, 737, 738, 739, 740, 741, 742 or 743.

**(2)** The Court shall not make an order under a relevant provision if it is satisfied that the order would unfairly prejudice any person.

**(3)** The Court may, before making an order under a relevant provision, direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

**(4)** Where an application is made to the Court for an order under a relevant provision other than section 738, the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, make an interim order, being an order of the kind to which the application relates that is expressed to apply pending the determination of the application, and an interim order so made shall, for the purposes of subsections (6), (10) and (11), be taken to be an order under that provision.

**(5)** Where the Commission applies to the Court for an order under a relevant provision, the Court shall not require the Commission or any other person, as a condition of making an interim order under subsection (4), to give any undertakings as to damages.

**(6)** An order under a relevant provision may include such ancillary or consequential provisions as the Court thinks just and reasonable.

**(7)** Without limiting the nature of the orders that may be made by the Court under a relevant provision directing the disposal of, or of an interest in, shares in a company, such an order may include one or more of the following provisions:

(a) a provision that the disposal shall be made within such time and subject to such conditions (if any) as the Court thinks just, including, if the Court thinks fit, a condition that the disposal shall not be made to a particular person or persons or to a particular class or classes of persons;

(b) a provision that a specified person is liable to pay to the company any profit made by the person as a result of, or in connection with, the disposal of, or of an interest in, the shares;

(c) a provision that a specified person shall, for all purposes connected with the disposal of, or of an interest in, the shares, be deemed to hold the shares or interest as a trustee for the beneficial owner of the shares or interest.

**(8)** The Court may direct that, where a share or an interest in a share is not disposed of in accordance with an order of the Court under a relevant provision, the share or interest shall vest in the Commission.

**(9)** Where a share or an interest in a share vests in the Commission by an order under a relevant provision or by a direction under subsection (8):

(a) the Commission may, subject to any directions of the Court, get in, sell or otherwise dispose of, or deal with, the share or interest as it sees fit;

(b) the provisions of section 577 (other than subsection 577 (1)) apply in relation to the share or interest as if:

(i) a reference in those provisions to the power of the Commission under subsection 577 (1), or to the power conferred upon the Commission by subsection 577 (1), were a reference to the power conferred on the Commission by paragraph (a) of this subsection;

(ii) a reference in those provisions to property, or to an estate or interest in property, were a reference to the share or interest; and

(iii) the reference in subsection 577 (4) to any power conferred on the Commission by Division 8 of Part 5.6 included a reference to the power conferred on the Commission by paragraph (a) of this subsection; and

(c) sections 578 and 579 apply in relation to the share or interest in the same manner as they apply in relation to property vested in the Commission by Division 8 of Part 5.6.

**(10)** The Court may rescind, vary or discharge an order made by it under a relevant provision or suspend the operation of such an order.

**(11)** A person shall not contravene an order made under a relevant provision.

**(12)** Subsection (11) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

**(13)** In the application of a provision of this section in relation to orders under section 739, the expression “share” has, in that provision, the meaning given by subsection 739 (4).

**PART 6.11—MISCELLANEOUS**

**Recording of resolutions**

**745.** The person who records the minute of a resolution passed for the purposes of this Chapter at a meeting of the directors of a body corporate shall record in the minute the name of any director who is absent from the meeting when the resolution is passed, the name of any director who votes against the resolution and the name of any director who is present when the resolution is passed and abstains from voting on the resolution.

**Announcements of proposed takeover bids**

**746.** **(1)** In this section:

(a) a reference to making a takeover bid is a reference to:

(i) making takeover offers; or

(ii) causing a takeover announcement to be made; and

(b) a reference to making a takeover bid in accordance with a public announcement to the effect that a takeover bid is proposed to be made is a reference to making a takeover bid the terms and conditions of which are the same as, or not substantially less favourable to the shareholders in the target company than, the terms and conditions of the takeover bid referred to in the public announcement.

**(2)** Subject to subsection (3), a person shall not make a public announcement to the effect that the person proposes, or that the person and

another person or other persons together propose, to make takeover offers, or to cause a takeover announcement to be made, if:

(a) the person knows that the announcement is false or is recklessly indifferent to whether it is true or false; or

(b) the person has no reasonable grounds for believing that the person, or the person and the other person or persons, as the case may be, will be able to perform obligations arising under the takeover scheme or takeover announcement, or arising under this Chapter in connection with the takeover scheme or takeover announcement, if a substantial proportion of the takeover offers, or of the offers made under the takeover announcement, as the case may be, are accepted.

**(3)** Subsection (2) does not apply in relation to a person in respect of a public announcement unless the person is a corporation or the proposed takeover offers or proposed takeover announcement relates to a corporation.

**(4)** Subject to subsection (5), where a person makes a public announcement to the effect that the person proposes, or that the person and another person or other persons together propose, to make a takeover bid in relation to shares in a company, the person shall, before the end of 2 months after the day on which the announcement was made or such further period as the Commission permits in writing make a takeover bid in relation to shares in that company in accordance with the public announcement.

**(5)** Subsection (4) does not require a person to make a takeover bid in relation to shares in a company unless either the person or the company is a corporation.

**(6)** A person who:

(a) makes a public announcement in contravention of subsection (2) and fails, in contravention of subsection (4), to make a takeover bid in accordance with the announcement; and

(b) is convicted of an offence in respect of one of those contraventions;

is not liable to be convicted of an offence in respect the other contravention.

**(7)** In any proceedings, if there is produced a certificate by the Commission stating that the Commission has not, under subsection (4), permitted a further period for a specified person or persons to make a takeover bid in relation to shares in a specified company, it shall be presumed, unless the contrary is proved, that no such further period was permitted.

**(8)** A person who makes a public announcement in contravention of subsection (2) or fails, in contravention of subsection (4), to make a takeover bid in accordance with a public announcement (whether or not the person has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person who suffered loss as a result of entering into a transaction with respect to shares in reliance on the public announcement.

**(9)** The amount of the compensation that a person is liable to pay under subsection (8) is the difference between the price of the shares at which the transaction was entered into and the price of the shares at which the transaction would have been likely to be entered into if the person had not made the public announcement.

**(10)** A person:

(a) is not guilty of an offence in respect of a contravention of subsection (4); and

(b) is not liable to pay compensation under subsection (8);

in respect of a failure to make a takeover bid in accordance with a public announcement made by the person if it is proved that:

(c) as a result of circumstances that existed at the time of the making of the public announcement but of which the person had no knowledge and could not reasonably Have been expected to have knowledge; or

(d) as a result of a change in circumstances after the making of the announcement, other than a change in circumstances caused, whether directly or indirectly, by the person;

the person could not reasonably have been expected to make the takeover bid.

**(11)** Neither section 1314 nor subsection 1324 (2) applies in relation to a failure, in contravention of subsection (4) of this section, to make a takeover bid in accordance with a public announcement.

**Service of documents and publication of notices**

**747. (1)** Where a document (other than a document that is required to be signed) is required by a provision of this Chapter, or of a regulation made for the purposes of subsection 748 (1) or (2), to be served on a securities exchange, the document may be served by sending to the securities exchange, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.

**(2)** Where a document is required by a provision of this Chapter, or of a regulation made for the purposes of subsection 748 (1) or (2), to be served on a securities exchange or lodged on a particular day:

(a) if that day is not a trading day of that securities exchange—the document shall be served on that securities exchange on the next day that is a trading day of that securities exchange; or

(b) if the office of the Commission is not open on that day—the document shall be lodged at that office on the next day on which that office is open.

**(3)** Where a person is required by a provision of this Chapter to lodge, or serve on a securities exchange, a copy of a notice sent by the person, it is not necessary for the copy to include the name or address of the person to whom the notice was sent.

**(4)** Where by a provision of this Chapter a person is required to publish a notice in a newspaper and, due to circumstances beyond the control of the person, the notice is not published in accordance with the provision, the provision shall be deemed to have been complied with if the person:

(a) did all things that would, but for those circumstances, have resulted in publication of the notice in accordance with the provision; and

(b) published the notice on the first practicable date after those circumstances ceased to exist.

**Regulations**

**748.** **(1)** The regulations may vary the requirements of any statement set out in Part 6.12, either by omitting or altering any such requirement or by adding additional requirements, and any reference in this Chapter to the requirements of a statement set out in Part 6.12 is a reference to those requirements as so varied for the time being.

**(2)** The regulations may require the serving on a securities exchange or securities exchanges, or the lodging with the Commission, or both, of:

(a) a signed copy of a prescribed document, being a document made or given under this Chapter and not required by this Chapter to be so served or lodged; or

(b) a notice in the prescribed form, and containing the prescribed particulars, of such a document.

**(3)** The regulations may make provision as to what constitutes a class of shares for the purposes of this Chapter.

**PART 6.12—STATEMENTS**

**Interpretation of certain clauses in section 750**

**749.** **(1)** This section has effect for the purposes of:

(a) clause 12 in Part A in section 750;

(b) clause 8 in Part B in section 750;

(c) clause 9 in Part C in section 750; and

(d) clause 8 in Part D in section 750;

and of this section.

**(2)** Subsections 237 (14), (15) and (19) apply as if:

(a) this section and those clauses were provisions of section 237;

(b) a reference in those subsections to a company were a reference to the target company; and

(c) paragraph (a) of the definition of “prescribed office” in subsection 237 (19) included a reference to an office of secretary or executive officer.

**(3)** An excluded benefit is a benefit:

(a) in relation to the giving of which subsection 237 (6) would apply; or

(b) that is a payment in relation to which paragraph (e) of the definition of “exempt benefit” in subsection 237 (19) would apply;

if a reference in subsection 237 (6), or in that definition, as the case may be, to a company were a reference to the target company.

**Part A, B, C and D statements**

**750.** The following Parts set out the requirements with which Part A statements, Part B statements, Part C statements and Part D statements are to comply:

**PART A—STATEMENT TO BE GIVEN BY OFFEROR UNDER TAKEOVER SCHEME**

**Offer period**

**1.** The statement shall set out the period during which the offers are intended to remain open.

**Particulars of corporate offeror**

**2.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall:

(a) specify the names, occupations and addresses of all the directors of the body corporate or of each body corporate;

(b) contain a summary of the principal activities of the body corporate or of each body corporate; and

(c) if the body corporate or either or any of the bodies corporate is included in a group of bodies corporate consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of bodies corporate.

**Offeror’s entitlement in target**

**3.** The statement shall:

(a) set out full particulars of the shares in the target company to which the offeror is entitled or, if there are no such shares, set out a statement to that effect; and

(b) set out full particulars of marketable securities (other than shares) of the target company to which the offeror is entitled or, if there are no such securities to which the offeror is entitled, set out a statement to that effect.

**Transactions in target by offeror or associates during previous 4 months**

**4.** The statement shall set out particulars of all acquisitions or disposals of shares in the target company by the offeror, or any associate of the offeror, in the 4 months ending on the day immediately before the day on

which the statement is lodged for registration, including particulars of the price per share in relation to each acquisition or disposal.

**Transactions in offeror by offeror or associates during previous 4 months**

**5.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by any person included in, or any associate of, the offeror, in the 4 months ending on the day immediately before the day on which the statement is lodged for registration, including particulars of the price per share in relation to each acquisition or disposal.

**Alterations to capital structure of offeror or subsidiary during previous 5 years**

**6.** Where the offeror is or includes a body corporate or bodies corporate and:

(a) shares may be acquired for a consideration that is or includes marketable securities of that body corporate or of any of those bodies corporate; or

(b) each offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to that body corporate or any of those bodies corporate;

the statement shall set out, in respect of that body corporate or each of those bodies corporate:

(c) full particulars of any alterations in the capital structure of the body corporate during the 5 years immediately before the date on which the statement is lodged for registration and particulars of the dates of any such alterations and the source of any increase in its capital; and

(d) full particulars of any alterations in the capital structure of any body corporate that, at any time during the 5 years referred to in paragraph (c), was a subsidiary of the body corporate referred to in that paragraph, being alterations occurring at any time during those 5 years when the body corporate was a subsidiary of the body corporate referred to in that paragraph, and particulars of the date on which any such body corporate became a subsidiary or ceased to be a subsidiary, the date of any such alteration in its capital structure and the source of any increase in its capital.

**Particulars of natural person offeror**

**7.** Where the offeror is or includes a natural person or natural persons, the statement shall:

(a) specify the name, address and occupation of that person or of each of those persons;

(b) set out a summary of the principal business activities of that person or of each of those persons; and

(c) specify the bodies corporate (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that the person holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word “Group”.

**Proposed acquisition by offeror of other shares, or of options or notes**

**8.** Where:

(a) the offeror has sent offers or invitations relating to:

(i) the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the takeover offers relate; or

(ii) the acquisition of renounceable options or convertible notes granted or issued by the target company;

being offers or invitations that are open or expressed to be open on the day on which the statement is served on the target company; or

(b) the offeror proposes to send, while the takeover offers remain open, offers or invitations relating to:

(i) the acquisition of shares in the target company (whether voting shares or not) of a different class from the shares to which the takeover offers relate; or

(ii) the acquisition of renounceable options or convertible notes granted or issued by the target company;

the statement shall set out the terms or proposed terms of those offers or invitations.

**Proposed terms for acquiring non-voting shares, options or notes**

**9.** Where the offeror intends, if required under subsection 703 (4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, renounceable options or convertible notes, the statement shall set out those proposed terms.

**Pre-emption clauses in target’s constitution**

**10.** The statement shall:

(a) set out particulars of any restriction on the right to transfer shares to which the offers relate contained in the constitution of the target company that has the effect of requiring the holders of the shares, before transferring them, to offer them for purchase to members of the target company or to any other person; and

(b) if there is any such restriction, set out the arrangements (if any) being made to enable the shares to be transferred.

**How cash consideration to be provided**

**11.** If the consideration for the acquisition of the shares to which the takeover offers relate or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 9 is to be satisfied in whole or in part by the payment of cash, the statement shall set out:

(a) if the offeror is to provide some or all of the cash from the offeror’s own funds—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and

(b) if the offeror is not to provide all of the cash, or is not to provide any of it, from the offeror’s own funds:

(i) particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from that person’s or those persons’ own funds; and

(ii) particulars of the arrangements by which that cash will be provided by that other person or those other persons.

**Proposed benefits to officers of target etc.**

**12.** Where, in connection with the offers:

(a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or

(b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

(c) in the case of a prescribed benefit that is a payment—the amount of the payment; or

(d) in any other case—the money value of the prescribed benefit.

**Other agreements with directors of target**

**13.** Where there is any other agreement made between the offeror and any of the directors of the target company in connection with or conditional upon the outcome of the offers, the statement shall set out particulars of any such agreement.

**Change in target’s financial position**

**14.** The statement shall set out whether, so far as is known to the offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror.

**Agreement by offeror to transfer shares acquired under offers**

**15.** Where there is any agreement whereby any shares acquired by the offeror pursuant to the offers will or may be transferred to any other person, the statement shall set out:

(a) the names of the persons who are parties to the agreement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement, the name of the transferee; and

(b) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement and, if the transferee is not a party to the agreement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect.

**Escalation clauses**

**16.** Where there is any agreement for the acquisition of shares in the target company by the offeror or by an associate of the offeror, being an agreement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or an associate of that person or of either or any of those persons may, at any time after an offer is sent, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement was entered into, the statement shall set out full particulars of that agreement.

**Other material information**

**17.** The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is known to the offeror and has not previously been disclosed to the holders of shares in the target company.

**Information required by regulations to be disclosed**

**18.** If the statement:

(a) is included in a class of Part A statements in relation to which regulations are in force for the purposes of this paragraph;

(b) relates to an offer to acquire shares in a class of offers in relation to which regulations are in force for the purposes of this paragraph; or

(c) relates to an offer to acquire shares where the consideration specified in the offer as the consideration for the acquisition of shares is or includes marketable securities in a class of marketable securities, or is or includes marketable securities of a body corporate in a class of bodies corporate, in relation to which regulations are in force for the purposes of this paragraph;

the statement shall set out the prescribed matters and contain the prescribed reports, being reports each of which either indicates by way of note any adjustments as respects the figures of any profit or loss or assets and liabilities dealt with by the report that appear necessary to the person making the report or makes those adjustments and indicates that adjustments have been made.

**Information about other bodies corporate**

**19.** Where:

(a) the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a body corporate that is not, or is not included in, the offeror; or

(b) the offer is subject to a condition requiring the making of a payment (whether by way of making a loan, subscribing for shares or otherwise) by the offeree to a body corporate that is not, or is not included in, the offeror;

the statement shall contain the same information as would have to be given under a requirement of any other provision of this Part if the body corporate were the offeror.

**Offeror’s intentions about business, assets and employees of target**

**20.** **(1)** The statement shall set out particulars of the offeror’s intentions regarding:

(a) the continuation of the business of the target company;

(b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and

(c) the future employment of the present employees of the target company.

**(2)** Without limiting the generality of subclause (1), if the offeror has not made a decision on a matter referred to in paragraph (1) (a), (b) or (c) but is considering a possible course of action, or 2 or more possible courses of action, in relation to that matter, the statement shall set out that fact and specify the course of action or courses of action concerned and the reason why the offeror has not made a decision on the matter.

**Requirements where consideration includes marketable securities**

**21.** **(1)** This clause applies only where the consideration to be offered in exchange for shares in the target company consists, in whole or in part, of marketable securities issued, or to be issued, by a body corporate.

**(2)** Where the marketable securities are listed for quotation on the stock market of a securities exchange, the statement shall state the fact, specify the securities exchange concerned and specify:

(a) the latest recorded sale price before the date on which the statement is lodged for registration;

(b) the highest and lowest recorded sale prices during the 3 months ending on the day immediately before that date and the respective dates of the relevant sales; and

(c) where the takeover offers have been the subject of a public announcement in newspapers or by any other means before the statement is served on the target company, the latest recorded sale price before the public announcement.

**(3)** Where the marketable securities are listed for quotation on, or dealt in on, more than one securities exchange, it is sufficient compliance with paragraphs (2) (a) and (c) if information with respect to the marketable securities is given in relation to the securities exchange at which there has been the greatest number of recorded dealings in the securities in the 3 months ending on the day immediately before the day on which the statement is served on the target company.

**(4)** Where the securities are not listed for quotation on the stock market of a securities exchange, the statement shall set out all the information that the offeror has as to the number of the securities that have been sold in the 3 months ending on the day immediately before the day on which the statement is served on the target company and the amount of those securities and the prices at which they were sold and, if the offeror does not have any such information, a statement to that effect.

**(5)** Where marketable securities are to be issued, the information required under subclauses (2), (3) and (4) shall be given in respect of such marketable securities as have been issued and are of the same class as those to be issued.

**PART B—STATEMENT TO BE GIVEN BY TARGET COMPANY TO WHICH TAKEOVER SCHEME RELATES**

**Recommendations in relation to offers**

**1.** The statement shall set out:

(a) except in the case of a target company that is in the course of being wound up or is under official management, in relation to each director of the target company:

(i) if the director desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the director recommends the acceptance of offers made or to be made by the offeror or recommends against such acceptance and, in either case, the reasons for so recommending;

(ii) if the director is not available to consider the offers—that the director is not so available and the reasons for being not so available; or

(iii) in any other case—that the director does not desire to make, or does not consider himself or herself justified in making, a

recommendation and the reasons for not so desiring or for so considering; or

(b) in the case of a target company that is in the course of being wound up or is under official management, in relation to each liquidator or each official manager, as the case requires:

(i) if the liquidator or official manager, as the case may be, desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the liquidator or official manager, as the case may be, recommends the acceptance of offers made or to be made by the offeror or recommends against such acceptance and, in either case, the reasons for so recommending; or

(ii) in any other case—that the liquidator or official manager, as the case may be, does not desire to make, or does not consider himself or herself justified in making, a recommendation and the reasons for not so desiring or for so considering.

**Directors’ entitlement in target**

**2.** The statement shall set out the number, description and amount of marketable securities of the target company to which each director of the company is entitled or, in the case of a director who is not entitled to any, that fact.

**Whether directors intend to accept offers**

**3.** The statement shall set out in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held:

(a) whether the director intends to accept any offer that has been or may be made in respect of those shares; or

(b) that the director has not decided whether to accept such an offer.

**Directors who did not approve Part B statement**

**4.** The statement shall set out the name of any director of the target company who voted against the relevant resolution authorising the Part B statement and, if the director so requires, a statement by that director setting out the reasons for so voting.

**Directors’ entitlement in offeror**

**5.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out whether any director of the target company is entitled to any marketable securities of that body corporate or of any of those bodies corporate and, if so, the number, description and amount of those marketable securities.

**Transactions in offeror by target or associates during previous 4 months**

**6.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by the target company, or any associate of the target company, in the 4 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal.

**Transactions in target by associates during previous 4 months**

**7.** The statement shall set out particulars of all acquisitions or disposals of shares in the target company by any associate of the target company in the 4 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company, including particulars of the price per share in relation to each acquisition or disposal.

**Proposed benefits to officers of target etc.**

**8.** Where:

(a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or

(b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

(c) in the case of a prescribed benefit that is a payment—the amount of the payment; or

(d) in any other case—the money value of the prescribed benefit.

**Other agreements by directors of target**

**9.** Where there is any other agreement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers, the statement shall set out particulars of any such agreement.

**Interest of director of target in contract with offeror**

**10.** The statement shall set out whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest.

**Sales of shares in target in previous 6 months**

**11.** If the shares to which the offers relate are not listed for quotation on the stock market of a stock exchange, the statement shall set out all the information that the target company has as to the number of any such

shares that have been sold in the 6 months ending on the day immediately before the day on which the Part A statement relating to the offers was served on the target company and the amount of those shares and the prices at which they were sold.

**Changes in target’s financial position**

**12.** The statement shall set out whether, so far as is known to:

(a) in the case of a Part B statement that is signed as mentioned in paragraph 647 (2) (a)—any of the directors of the target company; or

(b) in the case of a Part B statement that is signed as mentioned in paragraph 647 (2) (b)—the liquidator or official manager, as the case may be;

the financial position of the target company has materially changed since the date of the last balance-sheet of the company, being a balance-sheet that has been laid before the company in general meeting or sent to shareholders in accordance with section 315 or a corresponding law, and, if so, full particulars of any such change or changes.

**Other material information**

**13.** The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer, being information that is known to:

(a) in the case of a Part B statement that is signed as mentioned in paragraph 647 (2) (a)—any of the directors of the target company; or

(b) in the case of a Part B statement that is signed as mentioned in paragraph 647 (2) (b)—the liquidator or official manager, as the case requires;

and has not previously been disclosed to the holders of shares in the target company.

**PART C—STATEMENT TO BE GIVEN BY OFFEROR UNDER TAKEOVER ANNOUNCEMENT**

**Particulars of offers, including offer period**

**1.** The statement shall set out full particulars of the offers under the takeover announcement, including the period for which the offers will, unless withdrawn, remain open.

**Particulars of corporate offeror**

**2.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall:

(a) specify the names, occupations and addresses of all the directors of the body corporate or of each body corporate;

(b) contain a summary of the principal activities of the body corporate or of each body corporate; and

(c) if the body corporate or either or any of the bodies corporate is included in a group of bodies corporate consisting of a holding company and a subsidiary or subsidiaries—contain a summary of the principal activities of the group of bodies corporate.

**Offeror’s entitlement in target**

**3.** The statement shall:

(a) set out full particulars of the shares in the target company to which the offeror is entitled, or, if there are no such shares, set out a statement to that effect; and

(b) set out full particulars of marketable securities (other than shares) of the target company to which the offeror is entitled or, if there are no such securities to which the offeror is entitled, set out a statement to that effect.

**Particulars of natural person offeror**

**4.** Where the offeror is or includes a natural person or natural persons, the statement shall:

(a) specify the name, address and occupation of that person or of each of those persons;

(b) set out a summary of the principal business activities of that person or of each of those persons; and

(c) specify the bodies corporate (if any) of which that person or any of those persons is a director or other officer, it being sufficient, where a person is a director of one or more subsidiaries of the same holding company, to specify that the person holds one or more directorships in a group of companies that may be described by the name of the holding company with the addition of the word “Group”.

**Transactions in target by offeror or associates during previous 4 months**

**5.** The statement shall set out particulars of all acquisitions or disposals of shares in the target company by the offeror, or any associate of the offeror, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

**Transactions in offeror by offeror or associates during previous 4 months**

**6.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by any person included in, or any associate of, the offeror, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

**Proposed terms for acquisition of non-voting shares, options or notes**

**7.** Where the offeror intends, if required under subsection 703 (4) to give notice to the holders of any non-voting shares in, renounceable options granted by, or convertible notes issued by, the target company, to propose terms for the acquisition of those shares, options or notes, the statement shall set out those proposed terms.

**How cash consideration to be provided**

**8.** The statement shall set out:

(a) if the offeror is to provide from the offeror’s own funds some or all of the cash payable as consideration for the acquisition of shares to which the takeover announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 7—particulars sufficient to identify the cash amounts held by the offeror for or in respect of payment of the consideration; and

(b) if the offeror is not to provide from the offeror’s own funds all of the cash payable as consideration for the acquisition of shares to which the takeover announcement relates or for the acquisition of any shares, renounceable options or convertible notes referred to in clause 7, or is not to provide any of that cash from the offeror’s own funds:

(i) particulars sufficient to identify the other person who is, or each of the other persons who are, to provide, whether directly or indirectly, some or all of the cash from that person’s or those persons’ own funds; and

(ii) particulars of the arrangements by which that cash will be provided by that other person or those other persons.

**Proposed benefits to officers of target etc.**

**9.** Where, in connection with the takeover announcement:

(a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or

(b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

(c) in the case of a prescribed benefit that is a payment—the amount of the payment; or

(d) in any other case—the money value of the prescribed benefit.

**Other agreements with directors of target**

**10.** Where there is any other agreement made between the offeror and any of the directors of the target company in connection with or conditional upon the outcome of the takeover announcement, the statement shall set out particulars of any such agreement.

**Change in target’s financial position**

**11.** The statement shall set out whether, so far as is known to the offeror, the financial position of the target company has materially changed since the date of the last balance-sheet laid before the company in general meeting and, if so, full particulars of the change known to the offeror.

**Agreement by offeror to transfer shares acquired under offers**

**12.** Where there is any agreement whereby any shares acquired by the offeror pursuant to the takeover announcement will or may be transferred to any other person, the statement shall set out:

(a) the names of the persons who are parties to the agreement, the number, description and amount of the shares that will or may be so transferred and, if the transferee is not a party to the agreement, the name of the transferee; and

(b) the number, description and amount of any shares in the target company held by or on behalf of each of the persons who are parties to the agreement and, if the transferee is not a party to the agreement, by or on behalf of the transferee or, if no such shares are so held, a statement to that effect.

**Escalation clauses**

**13.** Where there is any agreement for the acquisition of shares in the target company by the offeror or by an associate of the offeror, being an agreement under which the person, or either or any of the persons, from whom the shares have been or are to be acquired or an associate of that person or of either or any of those persons may, at any time after the takeover announcement is made, become entitled to any benefit, whether by way of receiving an increased price for those shares or by payment of cash or otherwise, that is related to, dependent upon, or calculated in any way by reference to, the consideration payable for shares acquired after the agreement was entered into, the statement shall set out full particulars of that agreement.

**Other material information**

**14.** The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer under the takeover announcement, being information that is known to the offeror and has not previously been disclosed to the holders of shares in the target company.

**Offeror’s intentions about business, assets and employees of target**

**15. (1)** The statement shall set out particulars of the offeror’s intentions regarding:

(a) the continuation of the business of the target company;

(b) any major changes to be made to the business of the target company, including any redeployment of the fixed assets of the target company; and

(c) the future employment of the present employees of the target company.

**(2)** Without limiting the generality of subclause (1), if the offeror has not made a decision on a matter referred to in paragraph (1) (a), (b) or (c) but is considering a possible course of action, or 2 or more possible courses of action, in relation to that matter, the statement shall set out that fact and specify the course of action or courses of action concerned and the reason why the offeror has not made a decision on the matter.

**PART D—STATEMENT TO BE GIVEN BY TARGET COMPANY TO WHICH TAKEOVER ANNOUNCEMENT RELATES**

**Recommendations in relation to offers**

**1.** The statement shall set out:

(a) except in the case of a target company that is in the course of being wound up or is under official management, in relation to each director of the target company:

(i) if the director desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the director recommends the acceptance of offers under the takeover announcement or recommends against such acceptance and, in either case, the reasons for so recommending;

(ii) if the director is not available to consider the offers—that the director is not so available and the reasons for being not so available; or

(iii) in any other case—that the director does not desire to make, or does not consider himself or herself justified in making, a recommendation and the reasons for not so desiring or for so considering; or

(b) in the case of a target company that is in the course of being wound up or is under official management, in relation to each liquidator or each official manager, as the case requires:

(i) if the liquidator or official manager, as the case may be, desires to make, and considers himself or herself justified in making, a recommendation in relation to the offers—whether the liquidator or official manager, as the case may be, recommends the acceptance of offers under the takeover

announcement or recommends against such acceptance and, in either case, the reasons for so recommending; or

(ii) in any other case—that the liquidator or official manager, as the case may be, does not desire to make, or does not consider himself or herself justified in making, a recommendation and the reasons for not so desiring or for so considering.

**Directors’ entitlement in target**

**2.** The statement shall set out the number, description and amount of marketable securities of the target company to which each director of the company is entitled or, in the case of a director who is not entitled to any, that fact.

**Whether directors intend to accept offers**

**3.** The statement shall set out in respect of each director of the target company by whom, or on whose behalf, shares in the target company are held:

(a) whether the director intends to accept any offer that has been made in respect of those shares; or

(b) that the director has not decided whether to accept such an offer.

**Directors who did not approve Part** C **statement**

**4.** The statement shall set out the name of any director of the target company who voted against the relevant resolution authorising the Part D statement and, if the director so requires, a statement by that director setting out the reasons for so voting.

**Directors’ entitlement in offeror**

**5.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out whether any director of the target company is entitled to any marketable securities of that body corporate or of any of those bodies corporate and, if so, the number, description and amount of those marketable securities.

**Transactions in offeror by target or associates during previous 4 months**

**6.** Where the offeror is or includes a body corporate or bodies corporate, the statement shall set out particulars of all acquisitions or disposals of shares in that body corporate or any of those bodies corporate by the target company, or any associate of the target company, in the 4 months ending on the day immediately before the day of the takeover announcement, including particulars of the price per share in relation to each acquisition or disposal.

**Transactions in target by associates during previous 4 months**

**7.** The statement shall set out particulars of all acquisitions or disposals of shares in the target company by any associate of the target company in the 4 months ending on the day immediately before the day of the takeover

announcement, including particulars of the price per share in relation to each acquisition or disposal.

**Proposed benefits to officers of target etc.**

**8.** Where:

(a) a prescribed benefit (other than an excluded benefit) will or may be given to a person in connection with the retirement of a person from a prescribed office in relation to the target company; or

(b) a prescribed benefit will or may be given to a prescribed person in relation to the target company in connection with the transfer of the whole or any part of the undertaking or property of the target company;

the statement shall set out particulars with respect to the prescribed benefit, including:

(c) in the case of a prescribed benefit that is a payment—the amount of the payment; or

(d) in any other case—the money value of the prescribed benefit.

**Other agreements by directors of target**

**9.** Where there is any other agreement made between any director of the target company and any other person in connection with or conditional upon the outcome of the offers under the takeover announcement, the statement shall set out particulars of any such agreement.

**Interest of director of target in contract with offeror**

**10.** The statement shall set out whether any director of the target company has an interest in any contract entered into by the offeror and, if so, particulars of the nature and extent of each such interest.

**Changes in target’s financial position**

**11.** The statement shall set out whether, so far as is known to:

(a) in the case of a Part D statement that is signed as mentioned in paragraph 683 (2) (a)—any of the directors of the target company; or

(b) in the case of a Part D statement that is signed as mentioned in paragraph 683 (2) (b)—the liquidator or official manager, as the case may be;

the financial position of the target company has materially changed since the date of the last balance-sheet of the company, being a balance-sheet that has been laid before the company in general meeting or sent to shareholders in accordance with section 315 or a corresponding law, and, if so, full particulars of any such change or changes.

**Other material information**

**12.** The statement shall set out any other information material to the making of a decision by an offeree whether or not to accept an offer made under the takeover announcement, being information that is known to:

(a) in the case of a Part D statement that is signed as mentioned in paragraph 683 (2) (a)—any of the directors of the target company; or

(b) in the case of a Part D statement that is signed as mentioned in paragraph 683 (2) (b)—the liquidator or official manager, as the case requires;

and has not previously been disclosed to the holders of shares in the target company.

**PART 6.13—TRANSITIONAL**

**Application**

**751.** This Part has effect despite anything in Parts 6.1 to 6.12, inclusive.

**Definition**

**752.** In this Part, unless the contrary intention appears: “State or Territory Acquisition of Shares Law” means:

(a) the *Companies (Acquisition of Shares) Act 1981*;

(b) the *Companies (Acquisition of Shares) (New South Wales) Code*;

(c) the *Companies (Acquisition of Shares) (Victoria) Code*;

(d) the *Companies (Acquisition of Shares) (Queensland) Code*;

(e) the *Companies (Acquisition of Shares) (Western Australia) Code*;

(f) the *Companies (Acquisition of Shares) (South Australia) Code*;

(g) the *Companies (Acquisition of Shares) (Tasmania) Code*;or

(h) the *Companies (Acquisition of Shares) (Northern Territory) Code.*

**Acquisitions pursuant to Part A statements served before commencement of Chapter**

**753.** If, before the commencement of this Chapter, a statement in relation to offers to acquire shares in a company, being a statement that constituted a Part A statement for the purposes of a State or Territory Acquisition of Shares law, was served in accordance with that law on the company, this Chapter does not apply in relation to:

(a) an acquisition of shares in the company as a result of the acceptance of an offer dispatched pursuant to the statement;

(b) any other acquisition of shares in the company that, because of the service of the statement or the dispatching of offers pursuant to the statement, would not, if this Act had not been enacted, contravene that law; or

(c) any other act, matter or thing relating to, consequential upon, or otherwise connected with, an acquisition referred to in paragraph (a) or (b).

**Acquisitions pursuant to takeover announcements made before commencement of Chapter**

**754.** If, before the commencement of this Chapter, an announcement containing offers to acquire shares in a company, being an announcement that constituted a takeover announcement for the purposes of a State or Territory Acquisition of Shares law, was made in accordance with that law, this Chapter does not apply in relation to:

(a) an acquisition of shares in the company as a result of the acceptance of an offer made by the announcement;

(b) any other acquisition of shares in the company that, because of the making of the announcement, would not, if this Act had not been enacted, contravene that law; or

(c) any other act, matter or thing relating to, consequential upon, or otherwise connected with, an acquisition referred to in paragraph (a) or (b).

**Application of State or Territory laws to excluded acquisitions not affected**

**755.** Nothing in this Chapter affects the continued operation of any State or Territory Acquisition of Shares law in relation to:

(a) an acquisition of shares in relation to which, by virtue of this Part, this Chapter does not apply; or

(b) any other act, matter or thing relating to, consequential upon, or otherwise connected with, such an acquisition.

**Acts of NCSC deemed to be acts of Commission**

**756.** **(1)** Where:

(a) the NCSC, or a delegate of the NCSC, has, before the commencement of this Chapter, done, in relation to a particular matter, any act under a provision of a State or Territory Acquisition of Shares law that corresponds to a provision of this Chapter; and

(b) this Chapter applies in relation to that matter;

that act has effect, for the purposes of the application of this Chapter in relation to that matter, as if it Had been done by the Commission under that provision of this Chapter.

**(2)** Without limiting the generality of subsection (1), a reference in that subsection to an act having been done includes a reference to a certificate having been issued, a direction, consent, approval, permission or exemption having been given, a condition having been specified, an extension of time having been granted or a declaration having been made.

**Acts done before commencement of Chapter**

**757.** In this Chapter, unless the contrary intention appears, a reference (other than a reference to the service or receipt of a Part A statement or to the making of a takeover announcement) to an act or thing having been done or to an event having occurred includes a reference to such an act or thing having been done or to such an event having occurred, as the case may be, before the commencement of this Chapter.

**Notices of substantial shareholdings**

**758.** Where:

(a) a person would, but for this section, be required to give a notice to a company in accordance with section 709; and

(b) the person was, immediately before the commencement of this Chapter, a substantial shareholder in the company for the purposes of a law corresponding to Part 6.7 and had complied with the requirements of that law in relation to the person’s shareholding in that company;

the person is not required to give a notice under section 709 to the company.

**Information as to beneficial ownership of shares**

**759.** Part 6.8 does not affect the continued operation of any law corresponding to that Part in respect of any act, matter or thing that occurred before the commencement of this Chapter.

**CHAPTER 7—SECURITIES**

**PART 7.1—INTERPRETATION**

**Effect of this Part**

**760.** The provisions of this Part have effect for the purposes of this Chapter, except so far as the contrary intention appears in this Chapter.

**Definitions**

**761.** Unless the contrary intention appears:

“authority”, in relation to a government, includes an instrumentality or agency;

“business rules”, in relation to a body corporate, means:

(a) in the case of a body corporate that conducts, or proposes to conduct, a stock market—the provisions of the constitution of the body corporate and any other rules, regulations or bylaws made by the body corporate, other than rules, regulations or by-laws that are listing rules of the body corporate; and

(b) otherwise—the provisions of the constitution of the body corporate and any other rules, regulations or by-laws made by the body corporate;

“comply with”, in relation to the business rules or listing rules of a securities exchange, includes give effect to those rules;

“eligible exchange” means:

(a) the Exchange; or

(b) a securities exchange that is neither the Exchange nor an Exchange subsidiary;

“listing rules”, in relation to a body corporate that conducts, or proposes to conduct, a stock market, means rules, regulations or by-laws governing or relating to:

(a) the admission to, or removal from, the official list of the body corporate of bodies corporate, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market of the body corporate of securities of bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or

(b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list;

whether those rules, regulations or by-laws:

(c) are made by the body corporate or are contained in the constitution of the body corporate; or

(d) are made by another person and adopted by the body corporate;

“marketable parcel”, in relation to securities that are listed for quotation on the stock market of a securities exchange, means a marketable parcel of those securities within the meaning of the relevant business rules or listing rules of that securities exchange;

“odd lot” has the meaning given by section 763;

“participating exchange” means an eligible exchange that is a member of SEGC;

“shares”, in relation to a body corporate, includes units in shares in the body;

“trading day”, in relation to a stock exchange, means:

(a) in the case of the Exchange—a day on which a stock market of an Exchange subsidiary; or

(b) in any case—a day on which a stock market of the stock exchange;

is open for trading in securities;

“trust account”, in relation to a person, means, in the case of a person who holds, or has at any time held, a dealers licence, an account that a condition existing by virtue of section 866 provides or provided for the person to maintain.

**Conduct**

**762. (1)** A reference to engaging in conduct is a reference to doing or refusing to do any act, including the making of, or the giving effect to a provision of, an agreement.

**(2)** A reference to conduct, when that expression is used as a noun otherwise than as mentioned in subsection (1), is a reference to the doing of, or the refusing to do, any act, including the making of, or the giving effect to a provision of, an agreement.

**(3)** Where, in a proceeding under this Chapter in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body, it is sufficient to show that a director, servant or agent of the body, being a director, servant or agent by whom the conduct was engaged in within the scope of the person’s actual or apparent authority, had that state of mind.

**(4)** Conduct engaged in on behalf of a body corporate:

(a) by a director, servant or agent of the body within the scope of the person’s actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;

shall be deemed to have been engaged in also by the body corporate.

**(5)** Where, in a proceeding under this Chapter in respect of conduct engaged in by a person other than a body corporate, it is necessary to establish the state of mind of the person, it is sufficient to show that a servant or agent of the person, being a servant or agent by whom the conduct was engaged in within the scope of the servant’s or agent’s actual or apparent authority, had that state of mind.

**(6)** Conduct engaged in on behalf of a person other than a body corporate:

(a) by a servant or agent of the person within the scope of the actual or apparent authority of the servant or agent; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a servant or agent of the first-mentioned person, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the servant or agent;

shall be deemed to have been engaged in also by the first-mentioned person.

**(7)** A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person’s reasons for the person’s intention, opinion, belief or purpose.

**Odd lot**

**763. (1)** A parcel of securities constitutes an odd lot if the number of securities in that parcel is less than one marketable parcel of those securities.

**(2)** When the number of securities in a parcel of securities is greater than one marketable parcel of those securities and, after excluding so many of the securities in that parcel as constitute a marketable parcel or marketable parcels of those securities, a number of securities remains, that remaining number of securities constitutes an odd lot.

**References to doing acts**

**764.** In this Chapter, unless the contrary intention appears, a reference to doing any act or thing includes a reference to causing, permitting or authorising the act or thing to be done.

**Misleading representation**

**765. (1)** When a person makes a representation with respect to any future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation shall be taken to be misleading.

**(2)** For the purposes of the application of subsection (1) in relation to a proceeding concerning a representation made by a person with respect to any future matter, the person shall, unless the person adduces evidence to the contrary, be deemed not to have had reasonable grounds for making the representation.

**(3)** Subsection (1) shall be deemed not to limit by implication the meaning of a reference to a misleading representation, a representation that is misleading in a material particular or conduct that is misleading or is likely or liable to mislead.

**Trading in securities**

**766. A** reference to a securities exchange permitting trading in securities on a stock market of the securities exchange includes a reference to the securities exchange listing the securities for quotation, or otherwise permitting the securities to be quoted, on a stock market of the securities exchange.

**PART 7.2—SECURITIES EXCHANGES**

**Conducting unauthorised stock markets**

**767. (1)** A corporation shall not establish or conduct, assist in establishing or conducting, or hold itself out as conducting, an unauthorised stock market.

**(2)** A person shall not establish or conduct, assist in establishing or conducting, or hold himself, herself or itself out as conducting, an unauthorised stock market on which:

(a) eligible securities, or securities including eligible securities, are regularly traded; or

(b) 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 eligible securities, or securities including eligible securities.

**(3)** A person who conducts an unauthorised stock market contravenes this subsection if:

(a) a corporation trades in securities on that stock market; or

(b) information is provided on that stock market about the prices at which, or the consideration for which, particular persons, or particular classes of persons, being persons that are or include corporations, propose, or may reasonably be expected, to sell, purchase or exchange securities.

**(4)** A person who conducts an unauthorised stock market contravenes this subsection if:

(a) a person trades in eligible securities on that stock market; or

(b) information is provided on that stock market 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 eligible securities.

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**Trading on unauthorised stock markets**

**768. (1)** A corporation shall not trade in securities on an unauthorised stock market.

**(2)** A person shall not, on a corporation’s behalf, trade in securities on an unauthorised stock market.

**(3)** A person shall not trade in eligible securities on an unauthorised stock market.

**Approval of stock exchange**

**769. (1)** A body corporate that proposes to establish or conduct a stock market may apply to the Commission in writing for approval by the Minister as a stock exchange.

**(2)** The Minister may by writing approve the body as a stock exchange if, and only if, he or she is satisfied that:

(a) the body is an eligible corporation;

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

(i) for the standards of training and experience, and other qualifications, for membership;

(ii) for the exclusion from membership of:

**(**a) any person who is not of good character and high business integrity; and

(b) any body corporate where a director of the body corporate, a person concerned in the management of the body corporate or a person who has control, or substantial control, of the body corporate is not of good character and high integrity;

(iii) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules, of this Chapter or of the conditions of a licence held by the member;

(iv) for the monitoring of compliance with, and for enforcement of, the body’s business rules;

(v) with respect to the conditions under which securities may be listed for trading on the stock market of the proposed stock exchange;

(vi) with respect to the conditions governing dealings in securities by members;

(vii) with respect to the class or classes of securities that may be dealt with by members; and

(viii) generally for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public;

(c) the body has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an

amendment to the rules so adopted made by another person is of no effect until the body adopts the amendment;

(d) the listing rules made or adopted by the body make satisfactory provision:

(i) with respect to conditions under which securities may be traded on the stock market of the proposed stock exchange; and

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

(e) either the body will be a participating exchange or there will be enough money in the body’s fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 7.9; and

(f) the interests of the public will be served by the granting of its approval.

**(3)** An approval by the Ministerial Council, under a law corresponding to subsection (2), of a body corporate as a stock exchange that was in force immediately before the commencement of this Part has effect as if it were an approval by the Minister under that subsection.

**Approval of approved securities organisation**

**770. (1)** A body corporate that proposes to establish or conduct a stock market may apply to the Commission in writing for approval by the Minister as an approved securities organisation.

**(2)** The Minister may by writing approve the body as an approved securities organisation if, and only if, he or she is satisfied that:

(a) the body is an eligible corporation;

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

(i) for efficient, honest, fair, competitive and informed trading in securities on the stock market or stock markets of the proposed approved securities organisation;

(ii) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules, of this Chapter or of the conditions of a licence held by the member;

(iii) or the monitoring of compliance with, and for enforcement of, the body’s business rules; and

(iv) generally for the carrying on of the business of the organisation with due regard to the interests of the public;

and, without limiting the generality of the foregoing, make satisfactory provision in relation to such of the following matters as appear to the Minister to be relevant in relation to the application:

(v) the admission of members;

(vi) dealings in securities by members;

(vii) the listing of securities for trading on the stock market or stock markets of the organisation;

(viii) trading in securities on that stock market or those stock markets;

(ix) the clearing and settlement of dealings in securities that result from trading in securities on that stock market or those stock markets;

(x) the quotation of securities on, and the reporting of trading in securities on, that stock market or those stock markets;

(c) the body has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment of the rules so adopted made by another person is of no effect until the body adopts the amendment;

(d) the listing rules made or adopted by the body make satisfactory provision:

(i) with respect to conditions under which securities may be traded on the stock market or stock markets of the organisation; and

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

(e) either the body will be a participating exchange or there will be enough money in the body’s fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 7.9; and

(f) the interests of the public will be served by the granting of its approval.

**(3)** An approval by the Ministerial Council, under a law corresponding to subsection (2), of a body corporate as an approved securities organisation that was in force immediately before the commencement of this Part has effect as if it were an approval by the Minister under that subsection.

**Exempt stock market**

**771.** **(1)** The Minister may by writing declare a specified stock market to be, subject to any specified conditions, an exempt stock market.

**(2)** Without limiting the matters to which the Minister may have regard in considering whether or not to vary or revoke a declaration in force under subsection (1), he or she may, in so considering, have regard to a breach of a condition specified in the declaration.

**(3)** A declaration by the Ministerial Council, under a law corresponding to subsection (1), of a stock market as an exempt stock market that was in force immediately before the commencement of this Part has effect as if it were a declaration by the Minister under that subsection.

**Publication of instruments executed under section 769, 770 or 771**

**772.** The Commission shall cause a copy of an instrument executed under subsection 769 (2), 770 (2) or 771 (1) to be published in the *Gazette.*

**Auction, by licensed auctioneer, of forfeited shares**

**773.** For the purposes of this Part, a holder of a licence under an Australian law relating to the licensing of auctioneers does not conduct a stock market merely by conducting, on a stock market of a securities exchange, an auction of forfeited shares.

**Commission to be notified of amendments to rules**

**774. (1)** As soon as practicable after:

(a) an amendment is made, by way of rescission, alteration or addition, to the business rules of a securities exchange; or

(b) a securities exchange makes or adopts an amendment, by way of rescission, alteration or addition, to its listing rules;

the securities exchange shall lodge written notice of the amendment.

**(2)** The notice shall:

(a) set out the text of the amendment;

(b) specify the date on which the amendment was made or adopted; and

(c) contain an explanation of the purpose of the amendment.

**(3)** If the notice is not given within 21 days after the amendment is made or adopted, the amendment ceases to have effect.

**(4)** As soon as practicable after receiving a notice, the Commission shall send a copy to the Minister.

**(5)** Within 28 days after the receipt of a notice by the Commission, the Minister may disallow the whole or a specified part of the amendment to which the notice relates.

**(6)** As soon as practicable after the whole or a part of an amendment is disallowed, the Commission shall give notice of the disallowance to the securities exchange and, upon receipt by the securities exchange of the notice, the amendment, to the extent of the disallowance, ceases to have effect.

**(7)** If:

(a) a notice was duly given by a securities exchange to the NCSC before the commencement of this Part under a law corresponding to this section;

(b) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and

(c) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2) (b)) applies as if the amendment had been made or adopted, as the case may be on the date of commencement of this Part.

**Power of Commission to prohibit trading in particular securities**

**775. (1)** Where the Commission forms the opinion that it is necessary to prohibit trading in particular securities of a body corporate on a stock market of a securities exchange in order to protect persons buying or selling the securities or in the interests of the public, the Commission may give written notice to the securities exchange stating that it has formed that opinion and setting out the reasons for that opinion.

**(2)** If, after receiving the notice, the securities exchange does not take action to prevent trading in the securities on a stock market of the securities exchange and the Commission is still of the opinion that it is necessary to prohibit trading in the securities on such a stock market, the Commission may, by written notice to the securities exchange, prohibit trading in the securities on such a stock market during a period of not more than 21 days.

**(3)** Where the Commission gives a notice to a securities exchange under subsection (2), the Commission shall:

(a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and

(b) as soon as practicable give to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.

**(4)** The body corporate may request the Commission in writing to refer the matter to the Minister.

**(5)** Where such a request is made, the Commission shall immediately refer the matter to the Minister, who may, if he or she thinks fit, direct the Commission to revoke the notice and, if such a direction is given, the Commission shall immediately revoke the notice.

**(6)** A securities exchange shall not permit trading in securities on a stock market of the securities exchange in contravention of a notice under subsection (2).

**(7)** Where a notice duly given to a securities exchange by the NCSC under a law corresponding to subsection (2) was in force immediately before the commencement of this Part and the period for which trading in the securities to which the notice relates on the stock market specified in the notice was prohibited by the notice had not ended before that commencement:

(a) the notice shall be deemed to be a notice duly given to that securities exchange on that commencement by the Commission under that subsection and prohibiting trading in those securities on that stock market for the unexpired portion of that period;

(b) a copy of the notice and a statement sent to the corporation before that commencement under a law corresponding to paragraph (3) (a) shall be deemed to have been duly sent by the Commission under that paragraph;

(c) a written report given to the Ministerial Council before that commencement under a law corresponding to paragraph (3) (b) shall be deemed to have been duly given by the Commission under that paragraph to the Minister and a copy of that report sent to the securities exchange under that corresponding law shall be deemed to have been sent by the Commission under that paragraph;

(d) any request made by the corporation before that commencement under a law corresponding to subsection (4) to refer the matter to the Ministerial Council shall be deemed to have been a request duly made under that subsection to refer the matter to the Minister; and

(e) if the matter had been referred by the NCSC to the Ministerial Council before that commencement under a law corresponding to subsection (5) the matter shall be deemed to have been referred by the Commission to the Minister under that subsection.

**Securities exchanges to provide assistance to Commission**

**776. (1)** A securities exchange shall provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions.

**(2)** Where a securities exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the securities exchange, it shall as soon as practicable lodge written particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine (if any) and the period of the suspension (if any).

**(3)** A person authorised by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Chapter to the trading floor or trading floors of a securities exchange.

**(4)** A person shall not refuse or fail, without lawful excuse, to allow a person authorised by the Commission access in accordance with subsection (3) to a trading floor of a securities exchange.

**(5)** In this section:

“trading floor”, in relation to a securities exchange, means a place or facility maintained or provided by the securities exchange for:

(a) the making or acceptance, by members of the securities exchange, or by such members and other persons, of offers to sell, buy or exchange securities;

(b) the making, by members of the securities exchange, or by such members and other persons, of offers or invitations that are intended, or may reasonably be expected, to result, whether directly or indirectly, in the making or acceptance of offers to sell, buy or exchange securities; or

(c) the provision of information concerning the prices at which, or the consideration for which, particular persons, or

particular classes of persons, propose, or may reasonably be expected, to sell, buy or exchange securities.

**Power of Court to order compliance with or enforcement of business rules or listing rules of securities exchange**

**777.** **(1)** Where a person who is under an obligation to comply with or enforce the business rules or listing rules of a securities exchange fails to comply with or enforce any of those business rules or listing rules, as the case may be, the Court may, on the application of the Commission, the securities exchange or a person aggrieved by the failure and after giving to the person aggrieved by the failure and the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with or enforcement of those business rules or listing rules.

**(2)** For the purposes of subsection (1), a corporation that is, with its -agreement, consent or acquiescence, included in the official list of a securities exchange, or an associate of such a corporation, shall be deemed to be under an obligation to comply with the listing rules of that securities exchange to the extent to which those rules purport to apply in relation to the corporation or associate, as the case may be.

**Gaming and wagering laws not applicable to certain option contracts**

**778.** Nothing in an Australian law relating to gaming or wagering prevents the entering into of, or affects the validity or enforceability of:

(a) an option contract entered into on a stock market of a securities exchange or on an exempt stock market conducted by a corporation; or

(b) an option contract that is an eligible security and is entered into on a stock market of a securities exchange or on an exempt stock market.

**Qualified privilege in respect of disciplinary proceedings**

**779.** **(1)** In this section:

“disciplinary proceeding”, in relation to a securities exchange, means:

(a) a proceeding under the business rules of the securities exchange that may result in the disciplining of a member of the securities exchange; or

(b) an appeal under the business rules of the securities exchange from a proceeding of a kind referred to in paragraph (a);

“disciplining”, in relation to a member of a securities exchange, includes expulsion from, or suspension of, membership of the securities exchange;

“member”, in relation to a securities exchange, includes a person who is under an obligation to comply with or enforce the business rules of the securities exchange.

**(2)** A securities exchange, or a member, officer or employee of a securities exchange, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the securities exchange.

**(3)** Where:

(a) an Exchange subsidiary is acting on behalf of the Exchange; or

(b) an officer or employee of an Exchange subsidiary is acting on behalf of the Exchange or of a member, officer or employee of the Exchange;

in connection with a disciplinary proceeding of the Exchange, the Exchange subsidiary and an officer or employee of the Exchange subsidiary have qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, the disciplinary proceeding.

**(4)** A person has qualified privilege in respect of the publication of:

(a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or

(b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;

a disciplinary proceeding of a securities exchange.

**PART 7.3—PARTICIPANTS IN THE SECURITIES INDUSTRY**

***Division 1***—***Dealers and investment advisers***

**Dealers**

**780. (1)** A corporation shall not carry on, or hold itself out as carrying on, a securities business unless the corporation holds a dealers licence or is an exempt dealer.

**(2)** A person shall not, in the course of a securities business carried on by the person:

(a) deal in eligible securities;

(b) deal in securities on a corporation’s behalf; or

(c) deal in securities in eligible circumstances;

unless the person holds a dealers licence or is an exempt dealer.

**(3)** A person shall not hold himself, herself or itself out as carrying on:

(a) a business of dealing in eligible securities, or in securities including eligible securities;

(b) a business of dealing in securities on behalf of corporations, or persons including corporations; or

(c) a business of dealing in securities in eligible circumstances, or in circumstances including eligible circumstances;

unless the person holds a dealers licence or is an exempt dealer.

**(4)** A person shall not:

(a) in the course of a securities business carried on by the person; or

(b) in connection with holding himself, herself or itself out as carrying on a securities business;

use an eligible communications service unless the person holds a dealers licence or is an exempt dealer.

**Investment advisers**

**781. (1)** A corporation shall not:

(a) carry on an investment advice business; or

(b) hold itself out to be an investment adviser;

unless the corporation is a licensee or an exempt investment adviser.

**(2)** A person shall not, in the course of an investment advice business carried on by the person:

(a) advise a person about eligible securities;

(b) give a person a securities report about eligible securities;

(c) advise a corporation about securities;

(d) give a corporation a securities report;

(e) do in eligible circumstances any of the following:

(i) advise a person about securities;

(ii) give a person a securities report; or

(f) advise a person, or give a person an analysis or report, about dealing in securities in eligible circumstances;

unless the person is a licensee or an exempt investment adviser.

**(3)** A person shall not hold himself, herself or itself out to be an investment adviser who or that:

(a) advises persons about eligible securities, or securities including eligible securities;

(b) gives to persons securities reports about eligible securities, or securities including eligible securities;

(c) advises corporations, or persons including corporations, about securities;

(d) gives securities reports to corporations, or to persons including corporations; or

(e) does in eligible circumstances, or circumstances including eligible circumstances, any of the following:

(i) advise persons about securities;

(ii) give securities reports to persons;

unless the person is a licensee or an exempt investment adviser.

**(4)** A person shall not:

(a) in the course of an investment advice business carried on by the person; or

(b) in connection with holding himself, herself or itself out to be an investment adviser;

use an eligible communications service unless the person is a licensee or an exempt investment adviser.

**Application for a licence**

**782.** **(1)** A person may apply to the Commission, in the prescribed form and manner, for a dealers licence or an investment advisers licence.

**(2)** The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.

**(3)** An application duly made to the NCSC before the commencement of this Part under a law corresponding to subsection (1) that had not been dealt with by the NCSC before that commencement shall be deemed to be an application duly made to the Commission under that subsection.

**Grant of licence to natural person**

**783.** **(1)** This section has effect where a natural person applies for a licence.

**(2)** The Commission shall grant the licence if:

(a) the application was made in accordance with section 782;

(b) the person is not an insolvent under administration;

(c) it is satisfied that the person’s educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for;

(d) it has no reason to believe that the person is not of good fame and character; and

(e) it has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.

**(3)** Otherwise, the Commission shall refuse the application.

**(4)** In determining whether or not it has reason to believe as mentioned in paragraph (2) (d) or (e), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

**(5)** A licence granted under a law corresponding to this section and in force at the commencement of this Part shall be deemed to have been granted under this section.

**Grant of licence to body corporate**

**784.** **(1)** This section has effect where a body corporate applies for a licence.

**(2)** The Commission shall grant the licence if:

(a) the application was made in accordance with section 782;

(b) the applicant is not an externally-administered body corporate;

(c) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and

(d) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

**(3)** Otherwise, the Commission shall refuse the application.

**(4)** In determining whether or not it has reason to believe as mentioned in paragraph (2) (d), the Commission shall have regard, in relation to each responsible officer of the applicant, to:

(a) whether or not the officer is an insolvent under administration;

(b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;

(c) any reason the Commission has to believe that the officer is not of good fame and character; and

(d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

**(5)** A licence granted under a law corresponding to this section and in force at the commencement of this Part shall be deemed to have been granted under this section.

**Effect of certain provisions**

**785. (1)** Sections 783 and 784 apply subject to sections 836, 837 and 839 and the regulations.

**(2)** Nothing in subsection 783 (4) or 784 (4) limits the matters to which the Commission may have regard:

(a) in deciding on an application for a licence; or

(b) in connection with performing or exercising any other function or power under this Part.

**Conditions of licence**

**786. (1)** A licence is subject to:

(a) such conditions and restrictions as are prescribed; and

(b) subject to section 837, such conditions and restrictions as the Commission imposes when granting the licence or at any time when the licence is in force.

**(2)** Without limiting the generality of subsection (1), conditions and restrictions referred to in paragraph (1) (a) or (b) may include:

(a) conditions and restrictions relating to the limitation of the liability that may be incurred by the holder of a dealers licence in connection with a business of dealing in securities;

(b) conditions and restrictions relating to the incurring and disclosure of liabilities arising otherwise than in connection with a business of dealing in securities;

(c) conditions and restrictions relating to the financial position of the holder of a dealers licence, whether in relation to the business of dealing in securities carried on by the holder or otherwise;

(d) a condition requiring the holder of a dealers licence or of an investment advisers licence to lodge and maintain with the Commission a security approved by the Commission for such amount not exceeding the prescribed amount as is, from time to time, determined by the Commission in relation to the holder of that licence;

(e) conditions about what the holder of a licence is to do, by way of supervision and otherwise, in order to prevent the holder’s representatives from contravening:

(i) a securities law; or

(ii) another condition of the licence; and

(f) conditions about what the holder of a licence is to do to ensure that each representative of the holder has adequate qualifications and experience having regard to what the representative will do on the holder’s behalf in connection with a securities business or investment advice business carried on by the holder.

**(3)** Without limiting the generality of paragraph (2) (c), the conditions referred to in that paragraph may include:

(a) a condition that the assets of the holder of a dealers licence include, or do not include, assets of a particular kind or kinds; and

(b) a condition that the sum of the values of the assets of a particular kind or kinds included in the assets of the holder of a dealers licence be not less than, or not more than, an amount ascertained in accordance with the condition.

**(4)** A condition referred to in paragraph (3) (b) may provide for the values of assets of a dealer for the purposes of the application of that condition to be ascertained in a manner specified in, or determined in accordance with, the condition.

**(5)** The provision that may be made in a condition referred to in paragraph (3) (b) for ascertaining the amount referred to in that paragraph may be, but is not limited to, a provision that the amount shall be:

(a) a specified percentage of the sum of the values of all the assets of the holder of a dealers licence;

(b) a specified percentage of the sum of the values of all the assets of the holder of the dealers licence that are included in a specified class or classes of those assets;

(c) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence; or

(d) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence that are included in a specified class or classes of those liabilities.

**(6)** A reference in this section to the assets of the holder of a dealers licence is a reference to all the assets of the holder of the licence, whether or not the assets are used in, or in connection with, the business of dealing in securities carried on by the holder.

**(7)** Subject to section 837, the Commission may, at any time, revoke or vary conditions or restrictions imposed under paragraph (1) (b).

**(8)** Where the Commission imposes, or varies or revokes, conditions or restrictions under this section in relation to a licence granted to a member of a securities exchange, the Commission shall inform the securities exchange and, if the member is a partner in a member firm, the member firm.

**(9)** Where a security is lodged with the Commission pursuant to a condition to which a licence is subject in accordance with paragraph (2) (d), the security may be applied by the Commission in such circumstances, for such purposes and in such manner as is prescribed.

**Licensee to notify breach of licence condition**

**787.** **(1)** It is a condition of a licence that, within one day after the happening of an event constituting a contravention of a condition of the licence, the licensee shall lodge a written notice setting out particulars of the event.

**(2)** A contravention of a condition existing by virtue of subsection (1) shall be disregarded if:

(a) when the condition required the licensee to lodge the notice, the licensee was unaware of a fact or occurrence that gave rise to the requirement; and

(b) in a case where the licensee has since become aware of that fact or occurrence—the licensee lodged the notice as soon as practicable after becoming so aware.

**Giving information and statements to Commission**

**788.** **(1)** It is a condition of a dealers licence that the licensee shall:

(a) lodge such written information or statements in relation to the securities business carried on by the licensee as the Commission from time to time directs; and

(b) if the Commission requires the licensee to cause a statement specified in a direction given for the purposes of the condition to be audited by a registered company auditor before it is lodged—comply with the requirement.

**(2)** The Commission may extend the period for compliance with a direction given for the purposes of a condition existing by virtue of subsection (1).

**Register of Licence Holders**

**789. (1)** The Commission shall keep a Register of Licence Holders for the purposes of this Chapter.

**(2)** The Commission shall include in the Register, in relation to each licence, a copy of:

(a) the licence; and

(b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.

**(3)** The Commission shall enter in the Register, in relation to each licence:

(a) the name of the licensee;

(b) if the licensee is a body corporate—the name of each director, and of each secretary, of the body;

(c) the day on which the licence was granted;

(d) in relation to each business to which the licence relates:

(i) the address of the principal place at which the business is carried on;

(ii) the addresses of the other places (if any) at which the business is carried on; and

(iii) if the business is carried on under a name or style other than the name of the holder of the licence—that name or style;

(e) particulars of any suspension of the licence; and

(f) any other prescribed matters.

**(4)** Where a person no longer holds a particular licence, the Commission shall remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.

**(5)** A person may inspect and make copies of, or take extracts from, the Register.

**Notifying change in particulars**

**790.** It is a condition of a licence that the licensee shall, within 21 days after:

(a) in the case of a dealers licence—the licensee ceases to carry on the business to which the licence relates;

(b) in the case of an investment advisers licence—the licensee ceases to act as, or to hold himself, herself or itself out to be, an investment adviser; or

(c) there is a change in a matter particulars of which are required by virtue of paragraph 789 (3) (a), (b), (d) or (f) to be entered, in relation to the licence, in the Register of Licence Holders;

lodge written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

**Annual statement of licensee**

**791.** **(1)** It is a condition of a licence that the licensee shall lodge, in respect of each year or part of a year during which the licence is in force, a statement in the prescribed form that:

(a) sets out the number of persons who, when the statement is lodged, hold proper authorities from the licensee; and

(b) contains any other prescribed information.

**(2)** A person who has been, but is no longer, a licensee shall lodge, in respect of each year or part of a year during which the licence was in force, a statement in the prescribed form that:

(a) sets out the number of persons who, when the person last ceased to be a licensee, held proper authorities from the licensee; and

(b) contains any other prescribed information.

**Time for lodging annual statement**

**792.** It is a condition of a licence that a statement provided for by a condition of the licence existing by virtue of section 791 shall be lodged:

(a) if the licence is a dealers licence—during the period within which a condition of the licence existing by virtue of section 860 provides for a profit and loss account and balance sheet to be lodged; or

(b) otherwise—within one month immediately before the anniversary of the date on which the licence was granted.

**Commission may extend period for lodging statement**

**793.** **(1)** The Commission may extend the period for lodging a statement under section 791.

**(2)** Where an extension was granted by the NCSC before the commencement of this Part under a law corresponding to this section for the purposes of a law corresponding to section 791 and the period as extended ends after the commencement of this Part, the extension shall be deemed to have been granted by the Commission under this section.

***Division 2*—*Agreements with unlicensed persons***

***Subdivision A—Agreements affected***

**Certain persons not clients**

**794.** A reference in this Division to a client does not include a reference to a person who is:

(a) a dealer;

(b) an investment adviser; or

(c) one of 2 or more persons who together constitute a dealer or investment adviser.

**Agreements with unlicensed corporations**

**795.** Where, during a period when a corporation (in this section and Subdivision B called the “non-licensee”):

(a) in contravention of subsection 780 (1), carries on, or holds itself out as carrying on, a securities business; or

(b) in contravention of subsection 781 (1), carries on an investment advice business or holds itself out to be an investment adviser;

the non-licensee and a client of the non-licensee enter into an agreement that:

(c) constitutes, or relates to, a dealing or proposed dealing in securities; or

(d) relates to advising the client about securities, or giving the client securities reports;

Subdivision B applies, whether or not anyone else is a party to the agreement.

**Agreements with other unlicensed dealers and investment advisers**

**796.** Where a person (in this section and Subdivision B called the “non-licensee”) who carries on a securities business or investment advice business enters into an agreement with a client of the non-licensee, being an agreement that:

(a) constitutes, or relates to, a dealing or proposed dealing in securities involving a contravention by the non-licensee of subsection 780 (2); or

(b) relates to advising the client about securities, or giving the client securities reports, in circumstances involving a contravention by the non-licensee of subsection 781 (2);

Subdivision B applies, whether or not anyone else is a party to the agreement.

**Agreements with other unlicensed persons**

**797.** Where, during a period when a person (in this section and Subdivision B called the “non-licensee”):

(a) in contravention of subsection 780 (3), holds himself, herself or itself out as carrying on a business of a particular kind; or

(b) in contravention of subsection 781 (3), holds himself, herself or itself out to be an investment adviser of a particular kind;

the non-licensee and a client of the non-licensee enter into an agreement that:

(c) constitutes, or relates to, a dealing or proposed dealing in:

(i) if the client is a corporation—securities; or

(ii) otherwise—eligible securities;

or a dealing or proposed dealing, in eligible circumstances, in securities; or

(d) relates to advising the client, or giving the client analyses or reports, about:

(i) if the client is a corporation—securities; or

(ii) otherwise—eligible securities;

or to doing in eligible circumstances any of the following:

(iii) advising the client about securities;

(iv) giving to the client securities reports;

Subdivision B applies, whether or not anyone else is a party to the agreement.

***Subdivision B*—*Effect on agreements***

**Client may give notice of rescission**

**798. (1)** Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

**(2)** The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

**(3)** The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

**(4)** The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:

(a) the non-licensee did not hold a dealers licence; or

(b) the non-licensee did not hold a dealers licence and did not hold an investment advisers licence;

as the case requires.

**(5)** If, at a time when a dealers licence or investment advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a dealers licence or investment advisers licence, as the case may be.

**(6)** None of subsections (2), (3) and (4) limits the generality of either of the others.

**(7)** Subject to this section, the client may give a notice under this section whether or not:

(a) the notice will result under section 799 in rescission of the agreement; or

(b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 800.

**Effect of notice under section 798**

**799.** A notice given under section 798 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

**Client may apply to Court for partial rescission**

**799a. (1)** If the client gives a notice under section 798 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 799, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

**(2)** The Court may extend the period for making an application under subsection (1).

**(3)** If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 799 and the application were for orders under section 800.

**(4)** On an application under subsection (1), the Court may make an order:

(a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and

(b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

**(5)** If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 800 to have been rescinded under section 799.

**(6)** An order under subsection (4) does not affect the application of section 802 or 804 in relation to the agreement as originally made or as varied by the order.

**Court may make consequential orders**

**800.** **(1)** Subject to subsection (2), on rescission of the agreement under section 799, the Court, on the application of the client or the non-licensee, may make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

**(2)** The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

**Agreement unenforceable against client**

**801.** **(1)** This section:

(a) applies while both of the following are the case:

(i) the client is entitled to give a notice under section 798;

(ii) a notice so given will result under section 799 in rescission of the agreement; and

(b) applies after the agreement is rescinded under section 799; but does not otherwise apply.

**(2)** The non-licensee is not entitled, as against the client:

(a) to enforce the agreement, whether directly or indirectly; or

(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

**Non-licensee not entitled to recover commission**

**802.** **(1)** Without limiting the generality of section 801, this section:

(a) applies while the client is entitled to give a notice under section 798; and

(b) applies after the client so gives a notice, even if the notice does not result under section 799 in rescission of the agreement;

but does not otherwise apply.

**(2)** The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*)any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

**Onus of establishing non-application of section 801 or 802**

**803.** For the purposes of determining, in a proceeding in an Australian court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 801 (2) or 802 (2), it shall be presumed, unless the contrary is proved, that section 801 or 802, as the case may be, applies, or applied at that time, as the case may be.

**Client may recover commission paid to non-licensee**

**804.** **(1**) Without limiting the generality of section 800, if the client gives a notice under section 798, the client may, even if the notice does not result under section 799 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

**(2)** The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

**Remedies under this Division additional to other remedies**

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

***Division 3*—*Representatives***

**Representatives of dealers**

**806.** A natural person shall not do an act as a representative of a dealer (other than an exempt dealer) unless:

(a) the dealer holds a dealers licence; and

(b) the person holds a proper authority from the dealer.

**Representatives of investment advisers**

**807.** A natural person shall not do an act as a representative of an investment adviser (other than an exempt investment adviser) unless:

(a) the investment adviser:

(i) is also a dealer and holds a dealers licence; or

(ii) holds an investment advisers licence; and

(b) the person holds a proper authority from the investment adviser.

**Defence**

**808.** It is a defence to a prosecution for a contravention of section 806 or 807 constituted by an act done by a person as a representative of another person if it is proved that:

(a) but for the revocation or suspension of a licence held by the other person, the act would not have been such a contravention;

(b) when he or she did the act, the first-mentioned person:

(i) believed in good faith that the other person held the licence; and

(ii) was unaware of the revocation or suspension; and

(c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or suspension.

**Body corporate not to act as representative**

**809.** A body corporate shall not do an act as a representative of a dealer or of an investment adviser.

**Licensee to keep register of holders of proper authorities**

**810.** **(1)** It is a condition of a licence that the licensee shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.

**(2)** The register shall be in writing or in such other form as the Commission approves.

**(3)** The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:

(a) a copy of the proper authority;

(b) the person’s name;

(c) the person’s current residential address;

(d) unless the person’s current business address is the same as the licensee’s—the person’s current business address; and

(e) any other prescribed information.

**(4)** A copy of a proper authority of a person from the licensee that subsection (3) provides for the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.

**(5)** Information that subsection (3) provides for the register to contain in relation to a person shall be entered in the register within 2 business days after:

(a) the person begins to hold a proper authority from the licensee; or

(b) the licensee receives the information; whichever happens later.

**(6)** Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:

(a) in any case:

(i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and

(ii) remove from the last-mentioned part;

the copy of the proper authority that was included in the last-mentioned part; and

(b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:

(i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and

(ii) remove from the last-mentioned part;

the information that has been entered in the last-mentioned part in relation to the person.

**(7)** Information that has been entered under paragraph (6) (b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.

**Licensee to notify Commission of location and contents of register**

**811. (1)** In this section:

“register”, in relation to a licensee, means a register that the licensee keeps for the purposes of a condition of the licence existing by virtue of section 810.

**(2)** It is a condition of a licence that, within 14 days after establishing a register, the licensee shall lodge written notice of where the register is kept.

**(3)** It is a condition of a licence that the licensee shall, as soon as practicable after changing the place where a register is kept, lodge written notice of the new place where the register is kept.

**(4)** It is a condition of a licence that, within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:

(a) a copy of the first-mentioned proper authority; and

(b) a written notice stating that the person began to hold that proper authority on that day.

**(5)** It is a condition of a licence that, within the period within which subsection 810 (5) provides for the licensee to enter in a register information that the register is, by virtue of paragraph 810 (3) (b), (c), (d) or (e), to contain, the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.

**(6)** It is a condition of a licence that, within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

**Inspection and copying of register**

**812.** **(1)** In this section:

“register”, in relation to a licensee, means a register that the licensee keeps for the purposes of a condition of the licence existing by virtue of section 810.

**(2)** It is a condition of a licence that the licensee shall ensure that a register is open for inspection without charge.

**(3)** It is a condition of a licence that, where a person requests the licensee in writing to give to the person a copy of the whole, or of a specified part, of a register, the licensee shall comply with the request within 2 business days after:

(a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or

(b) in any other case—receiving the request.

**Disclosure to non-dealer**

**813.** A person (in this section called the “representative”) shall not do as a representative of another person (in this section called the “principal”) an act by virtue of which the principal deals in securities with a non-dealer

on the principal’s own account unless the representative has informed the non-dealer that the principal is acting in the transaction as principal and not as agent.

**Commission may require production of authority**

**814.** **(1)** Where the Commission has reason to believe that a person:

(a) holds a proper authority from a licensee; or

(b) has done an act as a representative of another person;

then, whether or not the Commission knows who the licensee or other person is, it may require the first-mentioned person to produce:

(c) any proper authority from a licensee; or

(d) any invalid securities authority from a person; that the first-mentioned person holds.

**(2)** A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

**Commission may give licensee information about representative**

**815.** **(1)** Where the Commission believes on reasonable grounds that:

(a) a person (in this section called the “holder”) holds, or will hold, a proper authority from a licensee;

(b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and

(c) the information is true;

the Commission may give the information to the licensee.

**(2)** Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:

(a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or

(b) the licensee taking action pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

**(3)** A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

**(4)** Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).

**(5)** A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).

**(6)** A person to whom information is given in accordance with this section shall not:

(a) give any of the information to a court; or

(b) produce in a court a document that sets out some or all of the information;

except:

(c) for a purpose connected with:

(i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;

(ii) the licensee taking action pursuant to such a decision; or

(iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose;

(d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;

(e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or

(f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

**(7)** A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:

(a) taking action by way of making, terminating, or varying the terms and conditions of; or

(b) otherwise taking action in relation to;

a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with:

(c) if one of those persons is a corporation—a securities business or investment advice business; or

(d) otherwise—an eligible securities business or eligible investment advice business;

carried on by the first-mentioned person.

**(8)** In this section:

“court” means an Australian court, or a court of an excluded Territory or of a country outside Australia and the external Territories.

**Holder of authority may be required to return it**

**816. (1)** Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.

**(2)** Where a person holds an invalid securities authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid securities authority to the other person within a specified period of not less than 2 business days.

**(3)** A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

***Division 4*—*Liability of principals for representatives’ conduct***

**Conduct engaged in as a representative**

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

**Liability where identity of principal unknown**

**818.** **(1)** This section applies for the purposes of a proceeding in an Australian court where:

(a) a person (in this section called the “representative”) engages in particular eligible securities conduct while the person is a representative of 2 or more persons (in this section called the “indemnifying principals”); and

(b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the “unknown principal”) but it is not proved for those purposes who the unknown principal is.

**(2)** If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

**(3)** If 2 or more of the indemnifying principals are parties to the proceeding, each of those 2 or more is liable in respect of that conduct as if he, she or it were the unknown principal.

**Liability of principals where act done in reliance on representative’s conduct**

**819.** **(1)** This section applies where:

(a) at a time when a person (in this section called the “representative”) is a representative of only one person (in this section called the “indemnifying principal”) or of 2 or more persons (in this section called the “indemnifying principals”), the representative:

(i) engages in particular eligible securities conduct; or

(ii) proposes, or represents that the representative proposes, to engage in particular eligible securities conduct;

(b) another person (in this section called the “client”) does, or omits to do, a particular act because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:

(i) on behalf of some person (in this section called the “assumed principal”) whether or not identified, or identifiable, at that time by the client; and

(ii) in connection with a securities business or investment advice business carried on by the assumed principal; and

(c) it is reasonable to expect that a person in the client’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;

whether or not that conduct is or would be within the scope of the representative’s employment by, or authority from, any person.

**(2)** If:

(a) subparagraph (1) (a) (i) applies; or

(b) subparagraph (1) (a) (ii) applies and the representative engages in that conduct;

then:

(c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or

(d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

**(3)** Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1) (b).

**(4)** If:

(a) there are 2 or more indemnifying principals;

(b) 2 or more of them are parties (in this subsection called the “indemnifying parties”) to a proceeding in an Australian court;

(c) it is proved for the purposes of the proceeding:

(i) that the representative engaged in that conduct as a representative of some person; and

(ii) who that person is; and

(d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

**Presumptions about certain matters**

**820.** **(1)** Where it is proved, for the purposes of a proceeding in an Australian court, that a person (in this subsection called the “representative”) engaged in particular conduct while the person was a representative of:

(a) only one person (in this subsection called the “indemnifying principal”); or

(b) 2 or more persons (in this subsection called the “indemnifying principals”);

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

(c) the indemnifying principal; or

(d) as a representative of some person among the indemnifying principals;

as the case may be.

**(2)** Where, for the purposes of establishing in a proceeding in an Australian court that section 819 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

**No contracting out of liability for representative’s conduct**

**821.** **(1)** For the purposes of this section, a liability of a person:

(a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or

(b) arising under section 819 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;

is a liability of the first-mentioned person in respect of the other person.

**(2)** Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

**(3)** Subsection (2) does not apply in relation to an agreement in so far as it:

(a) is a contract of insurance;

(b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or

(c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.

**(4)** A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

**Effect of Division**

**822.** **(1)** Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

**(2)** Nothing in section 817, 818, or 819:

(a) affects a liability arising otherwise than by virtue of this Division;

(b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or

(c) makes a person guilty of an offence.

**Additional operation of Division**

**823.** **(1)** This Division has, by force of this subsection, the effect it would have if:

(a) the reference in paragraph 818 (1) (a) to 2 or more persons were a reference to 2 or more corporations;

(b) a reference (other than the first) in paragraph 819 (1) (a) to a person or persons were a reference to a corporation or corporations, as the case may be; and

(c) a reference in section 818 or 819 to eligible securities conduct were a reference to any conduct.

**(2)** This Division has, by force of this subsection, the effect it would have if:

(a) the reference in section 817 to a third person were a reference to a third person, being a corporation;

(b) the reference in paragraph 819 (1) (b) to another person were a reference to another person, being a corporation;

(c) a reference in section 818 or 819 to eligible securities conduct were a reference to any conduct; and

(d) section 94 (except as it has effect for the purposes of paragraphs 818 (1) (b) and 819 (4) (c)) were amended by omitting from subsection 94 (1) and paragraph 94 (3) (a) all the words after “in connection” and substituting “with a securities business or investment advice business carried on by the other person”.

**(3)** The effect that this Division has by force of subsection (1) or (2) is additional to, and does not prejudice, the effect that this Division has otherwise than by force of that subsection.

***Division 5*—*Excluding persons from the securities industry***

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

**824.** The Commission may, by written order, revoke a licence held by a natural person if the person:

(a) becomes an insolvent under administration;

(b) is convicted of serious fraud;

(c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or

(d) asks the Commission to revoke the licence.

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

**825.** The Commission may, by written order, revoke a licence held by a body corporate if:

(a) the body ceases to carry on business;

(b) the body becomes an externally-administered body corporate;

(c) the body asks the Commission to revoke the licence; or

(d) a director, secretary or executive officer of the body contravenes this Chapter because:

(i) he or she does not hold a licence; or

(ii) a licence held by him or her is suspended.

**Power to revoke licence after a hearing**

**826.** **(1)** Subject to section 837, the Commission may, by written order, revoke a licence if:

(a) the application for the licence contained matter that was false in a material particular or materially misleading;

(b) there was an omission of material matter from the application for the licence;

(c) the licensee contravenes a securities law;

(d) the licensee contravenes a condition of the licence;

(e) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;

(f) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:

(i) is an officer of the body; and

(ii) was not an officer of the body when the licence was granted;

are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;

(g) the licensee is a body corporate and the Commission is satisfied that:

(i) an officer of the body performs, or will perform, in connection with the holding of the licence, duties that are or include

duties (in this paragraph called the “different duties”) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer’s educational qualifications and experience were adequate; and

(ii) the officer’s educational qualifications or experience are or is inadequate having regard to the different duties;

(h) the licensee is a body corporate and:

(i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or

(ii) an order is made under section 830 against such a director, secretary or executive officer;

(j) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a dealers licence or an investment advisers licence, as the case requires; or

(k) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.

**(2)** In determining whether or not it has reason to believe as mentioned in paragraph (1) (e) or (k) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

**Power to suspend licence instead of revoking it**

**827. (1)** Subject to section 837, where:

(a) section 824 or 825 empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or

(b) the Commission is empowered by virtue of paragraph 826 (1) (c), (d), (f), (g), (h), (j) or (k) to revoke a licence;

the Commission may, if it considers it desirable to do so, instead:

(c) by written order, suspend the licence for a specified period; or

(d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 780 or 781 would prohibit the licensee from doing if he, she or it did not hold the licence.

**(2)** The Commission may at any time, by written order, vary or revoke an order in force under this section.

**(3)** For the purposes of sections 780, 781, 806 and 807, a licensee shall be deemed not to hold the licence at any time during a period for which the licence is suspended.

**(4)** Where an order in force under this section prohibits the licensee as mentioned in paragraph (1) (d):

(a) the licensee shall not contravene the order; and

(b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 806 and 807 apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

**Power to make banning order where licence revoked or suspended**

**828.** Subject to section 837, where the Commission:

(a) revokes under section 824;

(b) revokes by virtue of paragraph 826 (1) (a), (b), (c), (d), (j) or (k);

(c) revokes by virtue of paragraph 826 (1) (e);

(d) suspends by virtue of paragraph 827 (1) (a); or

(e) suspends by virtue of paragraph 827 (1) (b);

a licence held by a natural person, it may also make a banning order against the person.

**Power to make banning order against unlicensed person**

**829.** Subject to section 837, the Commission may make a banning order against a natural person (other than a licensee) if:

(a) he or she becomes an insolvent under administration;

(b) he or she is convicted of serious fraud;

(c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;

(d) he or she contravenes a securities law;

(e) the Commission has reason to believe that he or she is not of good fame and character;

(f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:

(i) a representative of a dealer; or

(ii) a representative of an investment adviser; or

(g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:

(i) a representative of a dealer; or

(ii) a representative of an investment adviser.

**Nature of banning order**

**830.** (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:

(a) in any case—permanently; or

(b) except where the Commission is empowered by virtue of paragraph 828 (c) or 829 (e) to make the order—for a specified period;

from doing an act as:

(c) a representative of a dealer;

(d) a representative of an investment adviser; or

(e) a representative of a dealer or of an investment adviser;

whichever the order specifies.

**(2)** The Commission shall not vary or revoke a banning order except under section 831, 832, or 833.

**Exceptions to banning order**

**831.** **(1)** An order made against a person under subsection 830 (1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

**(2)** Subject to section 837, the Commission may, at any time, by written order, vary a banning order against a person:

(a) by adding a provision that permits the person as mentioned in subsection (1);

(b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;

(c) by omitting such a provision and substituting another such provision; or

(d) by omitting such a provision.

**Variation or revocation of banning order on application**

**832.** **(1)** Subject to sections 833 and 837, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.

**(2)** If:

(a) the person is not an insolvent under administration;

(b) the Commission has no reason to believe that the person is not of good fame and character; and

(c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:

(i) a representative of a dealer; or

(ii) a representative of an investment adviser; the Commission shall, by written order:

(d) if only one of subparagraphs (c) (i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a dealer, or of an investment adviser, as the case may be; or

(e) in any other case—revoke the banning order.

**(3)** Otherwise, the Commission shall refuse the application.

**(4)** In determining whether or not it has reason to believe as mentioned in paragraph (2) (b) or (c), the Commission shall have regard to any

conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

**(5)** Nothing in subsection (4) limits the matters to which the Commission may have regard:

(a) in deciding on the application; or

(b) in connection with performing or exercising any other function or power under this Part.

**Revocation of banning order in certain cases**

**833.** Where:

(a) section 832 requires the Commission to vary a banning order so that it no longer has a particular operation; and

(b) the order has no other operation;

the Commission shall, by written order, instead revoke the banning order.

**Effect and publication of orders under this Division**

**834.** **(1)** An order by the Commission under this Division takes effect when served on the person to whom the order relates.

**(2)** As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:

(a) if the order is made under section 824, 825, 826, 827 or 830 or revokes a banning order—the first-mentioned order; or

(b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;

and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.

**(3)** Where:

(a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;

(b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 831 (1); and

(c) in the Commission’s opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;

the notice may, instead of setting out a copy of that provision, set out a summary of the provision’s effect.

**Contravention of banning order**

**835.** A person shall not contravene a banning order relating to the person.

**Banned person ineligible for licence**

**836.** The Commission shall not grant a dealers licence or an investment advisers licence to a person if a banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a dealer, or of an investment adviser, as the case may be.

**Opportunity for hearing**

**837.** **(1)** The Commission shall not:

(a) refuse, otherwise than by virtue of section 836 or subsection 839 (1), an application for a licence;

(b) impose conditions on a licence;

(c) vary the conditions of a licence;

(d) revoke or suspend a licence otherwise than by virtue of section 824 or 825 or paragraph 827 (1) (a);

(e) make, otherwise than by virtue of paragraph 828 (a) or (d) or 829 (a), (b) or (c), an order under section 830 against a person;

(f) make under subsection 831 (2) an order varying a banning order against a person; or

(g) refuse an application by a person under section 832; unless the Commission complies with subsection (2) of this section.

**(2)** The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:

(a) to appear at a hearing before the Commission that takes place in private; and

(b) to make submissions and give evidence to the Commission in relation to the matter.

**Disqualification by the Court**

**838.** **(1)** Where the Commission:

(a) revokes under section 824 or 825 or subsection 826 (1) a licence held by a person; or

(b) makes under section 830 against a person an order that is to operate otherwise than only for a specified period;

the Commission may apply to the Court for an order or orders under this section in relation to the person.

**(2)** On an application under subsection (1), the Court may make one or more of the following:

(a) an order disqualifying the person, permanently or for a specified period, from holding:

(i) a dealers licence;

(ii) an investment advisers licence; or

(iii) a dealers licence or an investment advisers licence;

whichever the order specifies;

(b) an order prohibiting the person, permanently or for a specified period, from doing an act as:

(i) a representative of a dealer;

(ii) a representative of an investment adviser; or

(iii) a representative of a dealer or of an investment adviser;

whichever the order specifies;

(c) such other order as it thinks fit;

or may refuse the application.

**(3)** The Court may revoke or vary an order in force under subsection (2).

**Effect of orders under section 838**

**839.** **(1)** The Commission shall not grant a dealers licence or an investment advisers licence to a person whom an order in force under section 838 disqualifies from holding a dealers licence or an investment advisers licence, as the case may be.

**(2)** A person shall not contravene an order that:

(a) is of a kind referred to in paragraph 838 (2) (b);

(b) is in force under section 838; and

(c) relates to the person.

**Effect of previous orders under laws corresponding to section 838**

**840.** **(1)** This section applies where, immediately before the commencement of section 838, a person was, for the purposes of subsection 60 (5) of the *Securities Industry Act 1980* or a law corresponding to that subsection, disqualified, or deemed to be disqualified, either permanently or for a period, because of an order of an Australian court, from holding a licence under that Act or a corresponding law.

**(2)** As from that commencement, the order has effect for the purposes of this Act as if it were:

(a) in force under subsection 838 (2);

(b) an order disqualifying the person, permanently or for that period, as the case may be, from holding a dealers licence or an investment advisers licence; and

(c) an order prohibiting the person, permanently or for that period, as the case may be, from doing an act as a representative of a dealer or of an investment adviser.

**(3)** The effect that the order has by force of subsection (2) is in addition to, and does not prejudice, its effect otherwise than by force of that subsection.

**PART 7.4—CONDUCT OF SECURITIES BUSINESS**

***Division 1*—*Regulation of certain activities***

**Certain representations prohibited**

**841.** **(1)** A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any way to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.

**(2)** A statement that a person is the holder of a licence is not a contravention of this section.

**Issue of contract notes**

**842.** **(1)** This section applies:

(a) in relation to a dealer (other than an exempt dealer) that is a corporation, in relation to a transaction of sale or purchase of securities;

(b) in relation to a dealer that is neither an exempt dealer nor a corporation, in relation to a transaction of sale or purchase of securities that is entered into in the course of an eligible securities business carried on by the dealer; or

(c) in relation to an exempt dealer, in relation to a transaction of sale or purchase of securities that is entered into in the course of an eligible securities business that the exempt dealer carries on in a capacity of personal representative of a dead dealer.

**(2)** A dealer shall, in respect of a transaction of sale or purchase of securities, immediately give a contract note that complies with subsection (3) to:

(a) where the transaction took place in the ordinary course of business on a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction;

(b) where the transaction did not take place in the ordinary course of business on a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction; and

(c) where the transaction did not take place in the ordinary course of business on a stock market and the dealer entered into the transaction as principal—the person with whom the dealer entered into the transaction.

**(3)** A contract note given by a dealer under subsection (2) shall specify:

(a) the name or style under which the dealer carries on business as a dealer and the address of the principal place at which the dealer so carries on business;

(b) each securities exchange (if any) of which the dealer is a member;

(c) if the dealer is dealing as principal with a person who is not the holder of a dealers licence—that the dealer is so dealing;

(d) the name of the person to whom the dealer gives the contract note;

(e) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business on a stock market, a statement to that effect;

(f) the number, or amount and description, of the securities that are the subject of the contract;

(g) the price per unit of the securities;

(h) the amount of the consideration;

(j) the amount of commission charged;

(k) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and

(m) if an amount is to be added to, or deducted from, the settlement amount in respect of the right to a benefit bought or sold together with the securities—the first-mentioned amount and the nature of the benefit.

**(4)** A dealer shall not include in a contract note given under subsection (2), as the name of the person with or for whom the dealer has entered into the transaction, a name that the dealer knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

**(5)** A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person:

(a) dealing or entering into a transaction on behalf of an associate of the dealer;

(b) dealing in securities on behalf of a body corporate in which the dealer has a controlling interest; or

(c) where the dealer carries on business as a dealer in partnership— dealing in securities on behalf of a body corporate in which the dealer’s interest and the interests of the dealer’s partners together constitute a controlling interest.

**(6)** For the purposes of this section:

(a) a dealer who is a member of a securities exchange shall not be taken to have entered into a transaction as principal merely because the transaction was entered into with another dealer who is a member of a securities exchange; and

(b) a transaction takes place in the ordinary course of business on a stock market if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

**(7)** Despite Division 2 of Part 1.2, a person is not an associate of another person for the purposes of this section merely because the first-mentioned person is:

(a) a partner of the other person otherwise than because the first-mentioned person carries on a business of dealing in securities in partnership with the other person; or

(b) a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

**Dealings and transactions on a dealer’s own account**

**843. (1)** This section applies:

(a) in relation to a dealer that is a corporation, in relation to a dealing in, or a transaction of sale or purchase of, securities; or

(b) in relation to a dealer that is not a corporation, in relation to a dealing in, or a transaction of sale or purchase of, securities that is entered into in the course of an eligible securities business carried on by the dealer.

**(2)** Subject to subsection (5), a dealer shall not, on the dealer’s own account, deal in securities with a non-dealer without first informing the non-dealer that the dealer is acting in the transaction as principal and not as agent.

**(3)** A dealer who, on the dealer’s own account, enters into a transaction of sale or purchase of securities with a non-dealer shall state in the contract note that the dealer is acting in the transaction as principal and not as agent.

**(4)** Subject to subsections (5) and (6), a dealer who, on the dealer’s own account (otherwise than merely because the dealer enters into a transaction on behalf of an associate of the dealer), enters into a transaction of sale or purchase of securities with a non-dealer shall not charge the non-dealer brokerage, commission or any other fee in respect of the transaction.

**(5)** Subsections (2) and (4) do not apply in relation to a transaction of sale or purchase of an odd lot of securities that is entered into by a dealer who is a member of a securities exchange and specialises in transactions relating to odd lots of securities.

**(6)** Subsection (4) does not apply in relation to a transaction of sale or purchase of securities that a dealer enters into under an approved deed within the meaning of Division 5 of Part 7.12 if the dealer charges brokerage, commission or any other fee in respect of the transaction only in accordance with the approved deed.

**(7)** Where a dealer contravenes subsection (2), (3) or (4) in relation to a contract, then:

(a) if the contract is for the sale of securities by the dealer to a person— the person may, if the person has not disposed of them; or

(b) if the contract is for the purchase of securities by the dealer from a person—the person may;

rescind the contract by written notice given to the dealer within 14 days after the person receives the contract note.

**(8)** Nothing in subsection (7) affects any right that a person has apart from that subsection.

**Dealer to give priority to clients’ orders**

**844.** **(1)** This section applies:

(a) in relation to a dealer that is a corporation, in relation to a transaction of sale or purchase of securities; or

(b) in relation to a dealer that is not a corporation, in relation to a transaction of sale or purchase of securities that is entered into in the course of an eligible securities business carried on by the dealer.

**(2)** A dealer shall not, except as permitted by subsection (3), enter into, as principal or on behalf of an associate of the dealer, a transaction of purchase or sale of securities that are permitted to be traded on a stock market of a securities exchange if a client of the dealer who is not an associate of the dealer has instructed the dealer to buy or sell, as the case may be, securities of the same class and the dealer has not complied with the instruction.

**(3)** Subsection (2) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of an associate of the dealer if:

(a) the instructions from the client concerned required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be bought or sold and the dealer has been unable to buy or sell the securities because of those conditions; or

(b) the transaction is entered into in prescribed circumstances.

**Dealings by employees of holders of licences**

**845.** **(1)** A person who is a dealer or an investment adviser and an employee of that person shall not, as principals, jointly buy or subscribe for, or agree to buy or subscribe for, eligible securities.

**(2)** A person who is a partner in a partnership that carries on a securities business or an investment advice business and an employee of the partnership shall not, as principals, jointly buy or subscribe for, or agree to buy or subscribe for, eligible securities.

**(3)** A person who is a dealer or investment adviser, or who is a partner in a partnership that carries on a securities business or an investment advice business, shall not give credit to an employee of the person or partnership,

as the case may be, or to a person who the first-mentioned person knows is an associate of such an employee if:

(a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to buy or subscribe for eligible securities; or

(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of buying or subscribing for eligible securities.

**(4)** A person who is an employee of a sole trader or member firm in connection with a business of dealing in securities carried on by the sole trader or member firm shall not, as principal, buy or agree to buy eligible securities or rights or interests in eligible securities unless the sole trader or member firm acts as the agent of the person in respect of the transaction.

**(5)** A reference in subsection (1) or (3) to an employee of a person who is a dealer or investment adviser includes, in the case of a body corporate that is a dealer or investment adviser, a reference to an officer of the body.

**(6)** The reference in subsection (4) to an employee of a sole trader or member firm includes, in the case of a sole trader that is a body corporate or a member firm a partner in which is a body corporate, a reference to an officer of the body.

***Division 2*—*Short selling of securities***

**Short selling**

**846. (1)** Subject to this section and the regulations, a person shall not sell eligible securities to a buyer unless, at the time of the sale:

(a) the person has or, where the person is selling as agent, the person’s principal has; or

(b) the person believes on reasonable grounds that the person has, or where the person is selling as agent, the person’s principal has;

a presently exercisable and unconditional right to vest the securities in the buyer.

**(2)** For the purposes of subsection (1):

(a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in the person or in accordance with the directions of the person has at that time a presently exercisable and unconditional right to vest the securities in another person; and

(b) a right of a person to vest securities in another person is not conditional merely because the securities are charged or pledged in favour of another person to secure the repayment of money.

**(3)** Subsection (1) does not apply in relation to:

(a) a sale of securities by the holder of a dealers licence who is a member of a securities exchange and specialises in transactions relating to odd lots of securities, being a sale made by the holder as principal solely for the purpose of:

(i) accepting an offer to buy an odd lot of securities; or

(ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of a sale of one marketable parcel of those securities;

(b) a sale of securities as part of an arbitrage transaction;

(c) a sale of securities by a person who before the time of sale has entered into a contract to buy those securities and who has a right to have those securities vested in the person that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase;

(ii) the receipt by the person of a proper instrument of transfer in respect of the securities;

(iii) the receipt by the person of the documents that are, or are documents of title to, the securities;

(d) a sale of securities where:

(i) the person who sold the securities is not an associate of the body corporate that issued or made available the securities;

(ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the buyer within 3 business days after the date of the transaction effecting the sale; and

(iii) if the sale is made on the stock market of a securities exchange:

(a) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and

(b) the price per unit is above the price at which the immediately preceding ordinary sale was made unless the price at which the immediately preceding ordinary sale was made was higher than the next preceding different price at which an ordinary sale had been made;

and the securities exchange is informed as soon as practicable that the sale has been made short in accordance with this subparagraph; or

(e) a sale of securities where:

(i) the securities are included in a class of securities in relation to which there is in force a declaration, made by the board of a securities exchange as provided by the business rules of

the securities exchange, to the effect that the class is a class of securities to which this paragraph applies;

(ii) the sale is made as provided by the business rules of the securities exchange; and

(iii) at the time of the sale, neither the person who sold the securities, nor any person on behalf of whom the first-mentioned person sold the securities, was an associate, in relation to the sale, of the body corporate that issued or made available the securities.

**(4)** A person who requests a holder of a dealers licence to make a sale of securities that would contravene subsection (1) but for paragraph (3) (b), (d) or (e) shall, when making the request, inform the holder of the licence that the sale is a short sale.

**(5)** A person who, on a stock market of a securities exchange, makes, whether as principal or agent, a sale of securities that would contravene subsection (1) but for paragraph (3) (d) shall endorse on any document evidencing the sale that is given to the person who, whether as principal or agent, buys the securities a statement that the sale was a short sale.

**(6)** For the purposes of this section, a person who:

(a) purports to sell securities;

(b) offers to sell securities;

(c) holds himself, herself or itself out as entitled to sell securities; or

(d) instructs a dealer to sell securities; shall be deemed to sell the securities.

**Power of Commission to prohibit short selling in certain cases**

**847. (1)** Where the Commission forms the opinion that it is necessary to prohibit eligible securities, or a particular class of eligible securities, from being sold on a stock market of a securities exchange in a manner that, but for paragraph 846 (3) (e), would contravene subsection 846 (1), in order to protect persons who might suffer financial loss if they were to buy or sell those securities in that manner or in order to protect the public interest, the Commission may give written notice to the securities exchange stating that it has formed that opinion and setting out the reasons for that opinion.

**(2)** If, after receiving such a notice:

(a) the securities exchange does not take action to prevent the selling on a stock market of the securities exchange of the securities, or class of securities, specified in the notice in the manner referred to in subsection (1); and

(b) the Commission is still of the opinion that it is necessary to prohibit the selling on that stock market of the securities, or class of securities, in that manner;

the Commission may, by a further written notice given to the securities exchange, prohibit the selling on that stock market of the securities, or class of securities, in that manner during a period of not more than 21 days.

**(3)** As soon as practicable after giving a notice to a securities exchange under subsection (2), the Commission shall give to the Minister a written report setting out the reasons for the giving of the notice and send a copy of the report to the securities exchange.

**(4)** On receiving the report, the Minister may direct the Commission to revoke the notice given under subsection (2), and, if such a direction is given, the Commission shall immediately revoke the notice.

**(5)** A securities exchange shall not permit the selling of securities on a stock market of the securities exchange in a way that contravenes a notice given under subsection (2).

**(6)** Where a notice duly given to a securities exchange by the NCSC under a law corresponding to subsection (2) in relation to securities or a class of securities was in force immediately before the commencement of this Part and the period for which selling of the securities or class of securities on the stock market specified in the notice in the manner so specified was prohibited by the notice had not ended before that commencement:

(a) the notice shall be deemed to be a notice duly given to that securities exchange on that commencement by the Commission under that subsection and prohibiting selling on that stock market of those securities or that class of securities in that manner for the unexpired portion of that period; and

(b) a written report given to the Ministerial Council before that commencement under a law corresponding to subsection (3) shall be deemed to have been duly given by the Commission under that subsection to the Minister and a copy of the report sent to the securities exchange under that corresponding law shall be deemed to have been sent by the Commission under that subsection.

***Division 3*—*Recommendations about securities***

**Recommendation made by partner or officer**

**848.** For the purposes of this Division (other than section 851):

(a) a recommendation made by a partner shall be deemed to have been made by each partner in the partnership; and

(b) a recommendation made by a director, executive officer or secretary of a body corporate shall be deemed to have also been made by the body corporate.

**Client to be told if adviser’s interests may influence recommendation**

**849.** **(1)** This section applies where a securities adviser makes a securities recommendation to a person (in this section called the “client”) who may reasonably be expected to rely on it.

**(2)** The securities adviser shall:

(a) if the recommendation is made orally—when making the recommendation, disclose to the client orally; or

(b) if the recommendation is made in writing—set out in that writing, in such a way as to be no less legible than the other material in that writing;

particulars of:

(c) any commission or fee, or any other benefit or advantage, whether pecuniary or not and whether direct or indirect, that the securities adviser or an associate has received, or will or may receive, in connection with the making of the recommendation or a dealing by the client in securities as a result of the recommendation; and

(d) any other pecuniary or other interest, whether direct or indirect, of the securities adviser or an associate, that may reasonably be expected to be capable of influencing the securities adviser in making the recommendation.

**(3)** Subsection (2) does not apply in relation to a commission or fee that the securities adviser has received, or will or may receive, from the client.

**(4)** If by making the recommendation the securities adviser does an act as a representative of another person, then:

(a) without limiting the generality of Division 2 of Part 1.2, the other person is an associate for the purposes of subsection (2); and

(b) subsection (2) does not apply in relation to a commission or fee that the other person has received, or will or may receive, from the client.

**(5)** For the purposes of Division 2 of Part 1.2, the making of securities recommendations is the matter to which a reference to an associate in subsection (2) relates.

**(6)** Despite Division 2 of Part 1.2 and subsection (5), a person (in this subsection called the “alleged associate”) is not an associate for the purposes of subsection (2) merely because of being:

(a) a partner of the securities adviser otherwise than because of carrying on a securities business in partnership with the securities adviser; or

(b) a director of a body corporate of which the securities adviser is also a director, whether or not the body carries on a securities business;

unless the securities adviser and the alleged associate act jointly, or otherwise act together, or under an arrangement between them, in relation to making securities recommendations.

**Defences to alleged breach of subsection 849 (2)**

**850. (1)** Where:

(a) a person:

(i) when making a recommendation orally, fails to disclose; or

(ii) when making a recommendation in writing, fails to set out in that writing;

as required by subsection 849 (2), particulars of a matter; and

(b) it is proved that the person was not, and could not reasonably be expected to have been, aware of that matter when making the recommendation;

the failure is not a contravention of that subsection.

**(2)** Where:

(a) a dealer or investment adviser, or a representative of a dealer or investment adviser:

(i) when making a recommendation orally, fails to disclose; or

(ii) when making a recommendation in writing, fails to set out in that writing;

as required by subsection 849 (2), particulars of a matter;

(b) in the case of a representative of a dealer or investment adviser— by making the recommendation, the representative does an act as a representative of the dealer or investment adviser;

(c) it is proved that the dealer or investment adviser had in operation, throughout a period beginning before the decision to make the recommendation was made and ending after the recommendation was made, arrangements to ensure that:

(i) the natural person who made the decision knew nothing about that matter before the end of that period; and

(ii) no advice with respect to the making of the recommendation was given to the person by anyone who knew anything about that matter; and

(d) it is also proved that:

(i) the person in fact knew nothing about that matter before the end of that period; and

(ii) no such advice was so given;

the failure is not a contravention of that subsection.

**(3)** Neither of subsections (1) and (2) limits the generality of the other.

**Adviser must have reasonable basis for recommendation**

**851. (1)** A securities adviser who:

(a) makes a securities recommendation to a person who may reasonably be expected to rely on it; and

(b) does not have a reasonable basis for making the recommendation to the person;

contravenes this section.

**(2)** For the purposes of subsection (1), a securities adviser does not have a reasonable basis for making a securities recommendation to a person unless:

(a) in order to ascertain that the recommendation is appropriate having regard to the information the securities adviser has about the person’s investment objectives, financial situation and particular needs, the securities adviser has given such consideration to, and conducted such investigation of, the subject matter of the recommendation as is reasonable in all the circumstances; and

(b) the recommendation is based on that consideration and investigation.

**(3)** A person who contravenes subsection (1) is not guilty of an offence.

**Adviser who breaches this Division liable to compensate client**

**852.** This section applies where:

(a) a securities adviser contravenes section 849 or 851 in relation to a securities recommendation to a person (in this section called the “client”);

(b) the client, in reliance on the recommendation, does, or omits to do, a particular act;

(c) it is reasonable, having regard to the recommendation and all other relevant circumstances, for the client to do, or omit to do, as the case may be, that act in reliance on the recommendation; and

(d) the client suffers loss or damage as a result of that act or omission.

**(2)** Subject to subsections (3) and (4), the securities adviser is liable to pay damages to the client in respect of that loss or damage.

**(3)** In the case of a contravention of section 849, the securities adviser is not so liable if it is proved that a reasonable person in the client’s circumstances could be expected to have done, or omitted to do, as the case may be, that act in reliance on the recommendation even if the securities adviser had complied with that section in relation to the recommendation.

**(4)** In the case of a contravention of section 851, the securities adviser is not so liable if it is proved that the recommendation was, in all the circumstances, appropriate having regard to the information that, when making the recommendation, the securities adviser had about the client’s investment objectives, financial situation and particular needs.

**Qualified privilege for adviser when complying with this Division**

**853.** A securities adviser who:

(a) makes a securities recommendation in relation to eligible securities to a person who may reasonably be expected to rely on it; and

(b) in so making the recommendation, contravenes neither of subsections 849 (2) and 851 (1);

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has qualified privilege in respect of a statement the securities adviser makes to the person, whether orally or in writing, in the course of, or in connection with, so making the recommendation.

**PART 7.5—DEALERS’ ACCOUNTS AND AUDIT**

**Interpretation**

**854.** In this Part, unless the contrary intention appears:

(a) a reference to a licence is a reference to a dealers licence; and

(b) a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership is a reference to such a book, security, trust account or business of or in relation to the partnership.

**Application of Part**

**855.** **(1)** This Part applies in relation to the holder of a licence and in relation to the securities business carried on by the holder of a licence.

**(2)** A condition existing by virtue of this Part does not affect, and shall be deemed never to have affected, the operation of Parts 3.6 and 3.7 in relation to a company that is the holder of a dealers licence or in relation to a securities business that is carried on by such a company.

**Dealers’ accounting records**

**856.** **(1)** This section applies where a person (in this section called the “dealer”) holds a licence.

**(2)** It is a condition of the licence that the dealer shall:

(a) keep such accounting records as correctly record and explain the transactions and financial position of the securities business carried on by the dealer; and

(b) keep those records (in this section called “the records”) as provided by this section.

**(3)** The records shall be kept in such a way as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time.

**(4)** The records shall be kept in such a way as will enable profit and loss accounts and balance sheets of the securities business carried on by the dealer to be conveniently and properly audited.

**(5)** The records shall be kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language.

**(6)** The records shall be kept in sufficient detail to show particulars of:

(a) all money received or paid by the dealer, including money paid to, or disbursed from, a trust account;

(b) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller of each of those securities;

(c) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the dealer;

(d) all the assets and liabilities (including contingent liabilities) of the dealer;

(e) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;

(f) all securities that are not the property of the dealer and for which the dealer or a nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;

(g) all purchases and sales of options made by the dealer and all fees (being option money) arising from them;

(h) all arbitrage transactions entered into by the dealer; and (j) all underwriting transactions entered into by the dealer.

**(7)** The records shall be kept in sufficient detail to show separately particulars of every transaction by the dealer.

**(8)** The records shall specify the day on which, or the period during which, each transaction by the dealer took place.

**(9)** The records shall contain copies of acknowledgments of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.

**(10)** The records shall be kept in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of:

(a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;

(b) the dealer or, where the dealer carries on business in partnership, the partners of the firm;

(c) other dealers; and

(d) employees of the dealer.

**(11)** An entry in the records shall, unless the contrary is proved, be deemed to have been made by, or with the authority of, the dealer.

**(12)** It is a condition of the licence that where any of the records is not kept in writing in the English language, the dealer shall, if required to convert the accounting records concerned into writing in the English language

by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

**(13)** The dealer does not contravene a condition existing by virtue of this section merely because some or all of the records are kept as a part of, or in conjunction with, the records relating to any other business that is carried on by the dealer.

**(14)** It is a condition of the licence that, where any of the records are kept outside Australia, the dealer shall:

(a) cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared; and

(b) if required by the Commission to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.

**(15)** Nothing in this section limits the generality of anything else in it.

**Appointment of auditor by dealer**

**857. (1)** It is a condition of a licence that the licensee shall, within one month after beginning to hold the licence, appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors to audit the licensee’s accounts, other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the licensee.

**(2)** Subject to this section, a person is ineligible to act as auditor of the holder of a licence if:

(a) the person is not a registered company auditor;

(b) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding $5,000 to the holder or, if the holder is a body corporate, to a related body corporate; or

(c) the person is:

(i) in the case of a holder who is a natural person—a partner or employee of the holder; or

(ii) in the case of a holder that is a body corporate:

(a) an officer of the body corporate;

(b) a partner, employer or employee of an officer of the body corporate; or

(c) a partner or employee of an employee of an officer of the body corporate.

**(3)** Subject to this section, a firm is ineligible at a particular time to act as auditor of the holder of a licence, unless:

(a) at least one member of the firm is a registered company auditor who is ordinarily resident in a State or Territory;

(b) where the business name under which the firm is carrying on business is not registered under a prescribed law of a State or Territory—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member’s full name and the member’s address as at that time;

(c) no member of the firm, and no body corporate in which any member of the firm is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding $5,000 to the holder or, where the holder is a body corporate, to a related body corporate;

(d) no member of the firm is:

(i) in the case of a holder who is a natural person—a partner or employee of the holder; or

(ii) in the case of a holder that is a body corporate;

(a) an officer of the body corporate;

(b) a partner, employer or employee of an officer of the body corporate; or

(c) a partner or employee of an employee of an officer of the body corporate; and

(e) in the case of a holder that is a body corporate, no officer of the body corporate receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

**(4)** A reference in subsection (2) or (3) to indebtedness to a body corporate does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of section 409 where:

(a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and

(b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as that person’s principal place of residence.

**(5)** For the purposes of subsections (2) and (3), a person shall be deemed to be an officer of a body corporate if:

(a) in any case—the person is an officer of a related body corporate; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person in relation to the body corporate—the person has, at any time within the immediately preceding 12 months, been an officer or promoter of the body corporate or of a related body corporate.

**(6)** For the purposes of this section, a person is not an officer of a body corporate merely because of being or having been the liquidator of that body corporate or of a related body corporate.

**(7)** For the purposes of this section, a person is not an officer of a body corporate merely because of having been appointed as auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or merely because of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.

**(8)** Subject to this section, a person or firm shall not, while ineligible by virtue of this section to act as auditor of the holder of a licence:

(a) consent to be appointed as auditor of the holder;

(b) act as auditor of the holder; or

(c) prepare a report that an auditor of the holder is to prepare under this Chapter.

**(9)** The appointment of a firm as auditor of the holder of a licence shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.

**(10)** Where a firm that has been appointed as auditor of the holder of a licence is re-constituted because of the death, retirement or withdrawal of a member or members or because of the admission of a new member or new members, or both:

(a) a person who was deemed under subsection (9) to be an auditor of the holder and has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the holder as from the day of the person’s retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 858 does not apply to that resignation;

(b) a person who is a registered company auditor and is so admitted to the firm shall be deemed to have been appointed as an auditor of the holder as from the date of the admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the holders;

but nothing in this subsection affects the operation of subsection (3).

**(11)** Except as provided by subsection (10), the appointment of the members of a firm as auditors of the holder of a licence that is deemed by subsection (9) to have been made because of the appointment of the firm as auditor of the holder is not affected by the dissolution of the firm.

**(12)** A report or notice that purports to be made or given by a firm appointed as auditor of the holder of a licence is not duly made or given

unless it is signed in the firm name and in his or her own name by a member of the firm who is a registered company auditor.

**(13)** It is a condition of a licence that, where a person or firm is appointed as an auditor of the licensee under subsection (1) (other than an appointment that is deemed to be made by virtue of subsection (10)) or under subsection (16), the licensee shall within 14 days after the appointment lodge a written notice stating that the licensee has made the appointment and specifying the name of the person or firm.

**(14)** A person shall not:

(a) if the person has been appointed auditor of the holder of a licence— knowingly disqualify himself or herself while the appointment continues from acting as auditor of the holder; or

(b) if the person is a member of a firm that has been appointed auditor of the holder of a licence—knowingly disqualify the firm while the appointment continues from acting as auditor of the holder.

**(15)** An auditor of the holder of a licence holds office until death, until removal or resignation from office in accordance with section 858 or until becoming prohibited by subsection (8) from acting as auditor of the holder.

**(16)** It is a condition of a licence that, within 14 days after a vacancy occurs in the office of an auditor of the licence, if there is no surviving or continuing auditor of the licensee, the licensee shall appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy, other than a person who, or a firm that, is ineligible by virtue of this section to act as auditor of the licensee.

**(17)** While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

**(18)** It is a condition of a licence that the licensee shall not appoint a person or firm as auditor of the licensee unless that person or firm has, before the appointment, consented by written notice given to the licensee to act as auditor and has not withdrawn the consent by written notice given to the licensee.

**(19)** This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 327 applies.

**Removal and resignation of auditors**

**858. (1)** It is a condition of a licence that the licensee:

(a) shall remove an auditor of the licensee from office if the auditor becomes ineligible by virtue of section 857 to act as auditor of the licensee; and

(b) may, with the Commission’s consent, remove an auditor of the licensee from office.

**(2)** An auditor of the holder of a licence may, by written notice given to the holder, resign as auditor of the holder if:

(a) the auditor has, by written notice given to the Commission, applied for consent to the resignation and, at or about the same time as the auditor gave notice to the Commission, gave written notice to the holder of the application; and

(b) the auditor has received the consent of the Commission.

**(3)** The Commission shall, as soon as practicable after receiving an application from an auditor under subsection (2), notify the auditor and the holder whether it consents to the resignation.

**(4)** A statement by an auditor in an application under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings in an Australian court against the auditor other than proceedings for a contravention of section 1308; and

(b) may not be made the ground of a prosecution (other than a prosecution for a contravention of section 1308), action or suit against the auditor;

and a certificate by the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

**(5)** Subject to subsection (6), the resignation of an auditor takes effect on:

(a) the date (if any) specified for the purpose in the notice of resignation;

(b) the date on which the Commission gives its consent to the resignation; or

(c) the date (if any) fixed by the Commission for the purpose; whichever last occurs.

**(6)** Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, because of paragraph 857 (3) (a), of acting as auditor of the holder of a licence, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the holder, be deemed to be the auditor of the holder until the member obtains the consent of the Commission to the retirement or withdrawal.

**(7)** This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 329 applies.

**Fees and expenses of auditors**

**859.** The reasonable fees and expenses of an auditor of the holder of a licence are payable by the holder and it is a condition of the licence that the holder shall pay those fees and expenses.

**Dealer’s accounts**

**860. (1)** In this section:

“financial year”, in relation to a licensee, means:

(a) where the licensee is not a body corporate—the year ending on 30 June; and

(b) where the licensee is a body corporate—the financial year of the body corporate;

“prescribed day”, in relation to a financial year of a licensee, means:

(a) where the licensee is not a body corporate—the day that is 2 months after the end of that financial year; or

(b) where the licensee is a body corporate—the day that is 3 months after the end of that financial year;

or where, in either case, an extension of time is approved under subsection (3), the day on which the period of the extension ends.

**(2)** It is a condition of a licence that the licensee shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this section or ended on or after that date but before the date on which the licensee started to carry on business as a dealer, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed and lodge them before the prescribed day for that financial year, together with an auditor’s report containing the prescribed information and matters.

**(3)** The Commission may, on application made by the holder of a licence and the holder’s auditor before the end of the period of 2 months or, as the case requires, the period of 3 months referred to in the definition of “prescribed day” in subsection (1) or, if that period has been extended by an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension of the period.

**(4)** An approval under subsection (3) may be given subject to such conditions (if any) as the Commission imposes.

**(5)** Where an approval under subsection (3) in relation to a licensee is given subject to conditions, it is a condition of the licence that the licensee shall comply with those conditions.

**Auditor to report to Commission on certain matters**

**861. (1)** Where an auditor, in the performance of duties as auditor of the holder of a licence, becomes aware of a prescribed matter, the auditor shall, within 7 days after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the holder and to each securities exchange of which the holder is a member.

**(2)** In this section:

“prescribed matter” means a matter that, in the opinion of the auditor:

(a) has adversely affected, is adversely affecting or may adversely affect the ability of the holder to meet the holder’s obligations as a dealer; or

(b) constitutes or may constitute a contravention of section 872 or of a condition of the licence.

**Securities exchange to report to Commission on certain matters**

**862.** **(1)** Where, in relation to a dealer who is a member of a securities exchange, the securities exchange becomes aware of a prescribed matter, the securities exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the dealer.

**(2)** In this section:

“prescribed matter”, in relation to a dealer, means a matter that, in the opinion of the securities exchange concerned:

(a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet the dealer’s obligations as a dealer; or

(b) constitutes or may constitute a contravention of section 872 or of a condition of a licence held by the dealer.

**Qualified privilege for auditor**

**863.** **(1)** An auditor of the holder of a licence has qualified privilege in respect of:

(a) a statement that the auditor makes, orally or in writing, in the course of his or her duties as auditor; or

(b) the lodging of a report, or the sending of a report to the holder, or to a securities exchange, under section 861.

**(2)** A person has qualified privilege:

(a) in respect of the publishing of a document prepared by an auditor of the holder of a licence in the course of the auditor’s duties or required by or under this Chapter to be lodged, whether or not the document has been lodged; or

(b) in respect of the publishing of a statement made by such an auditor as mentioned in subsection (1).

**Securities exchange may impose additional obligations on members**

**864.** Nothing in this Part or in Part 7.6 prevents a securities exchange from imposing on a member of that securities exchange any obligations or requirements (other than obligations or requirements inconsistent with this

Chapter or with a condition of a licence held by the member) that the securities exchange thinks fit with respect to:

(a) the audit of books (including the audit of books by an auditor appointed by the securities exchange);

(b) the information to be furnished in reports from auditors; or

(c) the keeping of books.

**PART 7.6—MONEY AND SCRIP OF DEALERS’ CLIENTS**

**Interpretation and application**

**865.** **(1)** A reference in this Part to a licence is a reference to a dealers licence.

**(2)** This Part (other than section 872) applies in relation to the holder of a licence and in relation to a securities business carried on by the holder of a licence.

**Dealer to keep trust account**

**866.** **(1)** It is a condition of a licence that the licensee shall open and maintain:

(a) an account, designated as a trust account, with an Australian bank; or

(b) 2 or more such accounts.

**(2)** Where a condition of a licence prohibits the licensee from holding money in trust for the licensee’s clients, subsection (1) does not apply in relation to the licensee unless and until the licensee receives money that a condition existing by virtue of section 867 provides for the licensee to pay into a trust account.

**What is to be paid into dealer’s trust account**

**867.** **(1)** It is a condition of a licence that the licensee shall pay into a trust account:

(a) money held by the licensee in trust for a client; and

(b) without limiting the generality of paragraph (a), money received by the licensee from a client, other than:

(i) money received in respect of brokerage or any other proper charge;

(ii) money received in payment or part payment for securities delivered to the licensee before the money is received; or

(iii) money in relation to which the licensee is required to comply with section 872.

**(2)** A licensee need not comply with a condition existing by virtue of subsection (1) in relation to a payment order that:

(a) is payable to, or to the order of, a specified person or bearer; and

(b) the licensee receives from, or on behalf of, a client with express or implied instructions that it is to be delivered to the person to whom it is payable;

unless the payee in the payment order is the licensee, a partner of the licensee or a firm in which the licensee is a partner.

**When money to be paid into trust account**

**868.** Where a condition existing by virtue of section 867 provides for a licensee to pay money into a trust account, it is a condition of the licence that the licensee shall pay the money into a trust account on or before the next day after the licensee receives it on which it can be so paid.

**Withdrawals from trust account**

**869.** **(1)** It is a condition of a licence that the licensee shall not withdraw money from a trust account except:

(a) to make a payment to, or in accordance with the written directions of, a person entitled to the money;

(b) to make a payment under section 889 to a stock exchange;

(c) to defray brokerage or any other proper charge;

(d) to pay to the licensee money to which the licensee is entitled, being money that was paid into the trust account but need not have been so paid; or

(e) to make a payment that is otherwise authorised by law.

**(2)** Nothing in a condition existing by virtue of this Part affects a lawful claim or lien that a person:

(a) has against or on money held in a trust account of a person; or

(b) has, before money received for the purchase of securities or from the sale of securities is paid into a trust account of a person, against or on that money.

**Withdrawal against uncleared cheque**

**870. (1)** This section applies where the holder of a licence withdraws from a trust account of the holder some or all of the amount of a cheque:

(a) that has been paid into the account; and

(b) that has not been paid, and payment of which has not been refused, by the banker on which it is drawn.

**(2)** The holder does not, merely because of the withdrawal, contravene a condition of the licence existing by virtue of section 869.

**(3)** It is a condition of the licence that, if the banker later refuses payment of the cheque, the holder shall, within one business day after being notified of the refusal, pay into the trust account by cash or bank cheque an amount equal to the amount of the withdrawal.

**Trust money not available in respect of dealer’s own debts**

**871.** Subject to this Part, money in a trust account of the holder of a licence is not available for the payment of a debt or liability of the licensee and is not liable to be attached, or taken in execution, under the order or process of an Australian court at the instance of a person suing in respect of such a debt or liability.

**Money lent to dealer**

**872.** **(1)** This section applies where a person (in this section called the “client”) lends money to a dealer in connection with:

(a) if the dealer or the client is a corporation—a securities business carried on by the dealer; or

(b) otherwise—an eligible securities business carried on by the dealer.

**(2)** The dealer shall pay the money into an account that:

(a) the dealer maintains with an Australian bank; and

(b) contains no money other than money lent to the dealer;

and shall so pay the money on or before the next day after the dealer receives it on which it can be paid into that account.

**(3)** The dealer shall give to the client a document (in this section called the “disclosure document”), in the prescribed form, setting out:

(a) the terms and conditions on which the loan is made and accepted; and

(b) the purpose for which, and the manner in which, the dealer is to use the money.

**(4)** The dealer shall keep the money in the account until the client gives the dealer a written acknowledgment that the client has received the disclosure document.

**(5)** The dealer shall not use the money except:

(a) for the purpose, and in the manner, set out in the disclosure document; or

(b) for any other purpose, or in any other manner, agreed on in writing by the dealer and the client after the dealer gives the disclosure document to the client.

**Scrip in dealer’s custody**

**873.** **(1)** This section applies where the holder of a licence (in this section called the “dealer”) receives for safe custody scrip that is the property of another person (in this section called the “client”) and for which the dealer, or a nominee controlled by the dealer, is accountable.

**(2)** If the client requests that the body corporate that issued or made available the securities underlying the scrip register the scrip in the name of such a nominee, it is a condition of the licence that the dealer shall cause the body corporate so to register them.

**(3)** If the client requests that the scrip be deposited in safe custody with an Australian bank with which the dealer maintains an account, it is a condition of the licence that the dealer shall cause the scrip to be so deposited.

**(4)** If:

(a) neither of subsections (2) and (3) applies; and

(b) the scrip is not registered in the client’s name by the body corporate that issued or made available the securities underlying the scrip;

it is a condition of the licence that the dealer shall cause the scrip to be so registered.

**(5)** It is a condition of the licence that the dealer shall not deposit the scrip as security for a loan or advance to the dealer unless:

(a) the client owes the dealer an amount in connection with a transaction entered into by the dealer on the client’s behalf;

(b) the dealer gives the client a written notice that identifies the scrip and states that the dealer proposes so to deposit it; and

(c) the amount, or the total of the amounts, that the client so owes on the day of the deposit is not less than the amount of the loan or advance.

**(6)** If the dealer deposits the scrip as permitted by a condition existing by virtue of subsection (5), it is a condition of the licence that the dealer:

(a) shall, within one business day after the amount or amounts first referred to in paragraph (5) (c) are repaid, withdraw the scrip from that deposit; and

(b) if, at the end of 3 months after the day of that deposit, or at the end of any subsequent interval of 3 months, the scrip has not been withdrawn from that deposit—give the client written notice of that fact.

**Court may freeze certain bank accounts of dealers and former dealers**

**874. (1)** Subsection (3) of this section applies where, on application by the Commission, the Court is satisfied that a person holds, or has at any time held, a licence and that:

(a) there are reasonable grounds for believing that there is a deficiency in:

(i) a trust account of the person; or

(ii) an account maintained by the person under subsection 872 (2);

(b) there has been undue delay, or unreasonable refusal, on the person’s part in paying, applying or accounting for trust money as provided for by a condition of the licence or by the business rules of a securities exchange of which the person is or has been a member; or

(c) without limiting the generality of paragraph (b) of this subsection, the person has contravened:

(i) a condition of the licence existing by virtue of section 868; or

(ii) subsection 872 (2).

**(2)** Subsection (3) also applies where, on application by the Commission, the Court is satisfied that a person holds, or has at any time held, a licence and is carrying on, or last carried on, a securities business otherwise than in partnership and that:

(a) the licence has been revoked or suspended;

(b) the person is incapable, through mental or physical incapacity, of managing his or her affairs;

(c) the person no longer carries on a securities business; or

(d) the person has died.

**(3)** The Court may by order restrain dealings in respect of specified bank accounts of the person, subject to such terms and conditions as the Court imposes.

**Interim order freezing bank accounts**

**875.** **(1)** Before considering an application under section 874, the Court may, if it considers it desirable to do so, grant an interim order that is an order of the kind applied for and is expressed to apply until the application is determined.

**(2)** The Court shall not require the Commission or any other person, as a condition of granting an order under subsection (1), to give an undertaking as to damages.

**Duty of banker to make full disclosure**

**876.** Where an order made under section 874 is directed to a banker, the banker shall:

(a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and

(b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker’s books relating to that person.

**Further orders and directions**

**877.** **(1)** Where an order is made under section 874 or 875, the Court may, on application by the Commission or a person whom the order affects, make a further order that does one or more of the following:

(a) deals with such ancillary matters as the Court thinks necessary or desirable;

(b) directs that specified amounts in a bank account affected by the first-mentioned order be paid to the Commission or a person nominated by the Commission;

(c) varies or discharges the first-mentioned order or an order under this section.

**(2)** An order under this section may be made subject to such terms and conditions as the Court imposes.

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

**878.** **(1)** An order made under section 877 may include directions to the person to whom the money is paid directing that the person:

(a) shall pay the money into a separate trust account;

(b) is authorised to prepare a scheme for distributing the money to persons who claim, within 6 months after the person receives the money, to be entitled to the money and satisfy the person that they are so entitled; or

(c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.

**(2)** Where a person prepares a scheme for a distribution of money under subsection (1), the person shall apply to the Court for approval of the scheme and for directions in respect of it.

**(3)** The Court may give such directions as to the money held in a separate trust account under subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money shall be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

**PART 7.7—REGISTERS OF INTERESTS IN SECURITIES**

**Interpretation**

**879.** **(1)** In this Part:

“financial journalist” means a person who is not a licensee and, in the course of the person’s business or employment contributes advice, or prepares analyses or reports, about securities for publication:

(a) in a newspaper or periodical;

(b) in the course of, or by means of, transmissions made by means of an information service; or

(c) in sound recordings, video recordings or data recordings;

“Register”, in relation to a person to whom this Part applies, means the Register required to be kept by the person under subsection 881 (1).

**(2)** If:

(a) there is in force a written certificate issued by or on behalf of a securities exchange certifying that a member of that securities exchange is recognised by that securities exchange as specialising in transactions relating to odd lots of securities; and

(b) the member concerned enters into a transaction in relation to an odd lot of securities;

this Part does not apply in relation to any relevant interest in securities acquired by the member as a result of that transaction or in relation to any change effected by that transaction in the member’s relevant interest in any securities.

**Application of Part**

**880.** **(1)** This Part applies to a person who:

(a) holds a licence;

(b) holds a proper authority from a person who holds a licence; or

(c) is a financial journalist.

**(2)** This Part applies in relation to securities if, and only if, they are eligible securities and:

(a) securities of a public company or of a public company of a State or Territory; or

(b) securities of a body corporate or other person included in the official list of a securities exchange.

**Register to be maintained**

**881.** **(1)** A person to whom this Part applies shall keep a Register, in accordance with the prescribed form or in the prescribed manner, at a place in Australia for the purposes of this Part.

**(2)** Where:

(a) a person is at the commencement of this Part, or becomes after that commencement, a person to whom this Part applies; and

(b) the person is aware at that commencement or upon becoming such a person, as the case may be, that the person has a relevant interest in securities;

the person shall, within 7 days after the date of commencement of this Part or the day on which the person becomes such a person, as the case may be, if the person has not already done so, enter, as prescribed, in the Register particulars of those securities and of the nature of the person’s relevant interest in those securities.

**(3)** Where a person to whom this Part applies becomes aware that the person has a relevant interest in securities, the person shall, within 7 days after the day on which the person becomes so aware, enter, as prescribed, in the Register particulars of those securities and of the nature of the person’s relevant interest in those securities.

**(4)** Where there is a change in the relevant interest of a person to whom this Part applies in securities, the person shall, within 7 days after the day on which the person becomes aware of the change, enter particulars of the change in the Register.

**(5)** For the purposes of this section, where a person to whom this Part applies begins or ceases to have a relevant interest in securities, there shall be deemed to be a change in the relevant interest of that person in those securities.

**(6)** Where a person to whom this Part applies is required by this section to enter in the Register particulars of any securities and of the nature of the person’s relevant interest in those securities, or particulars of a change in the person’s relevant interest in any securities, the particulars to be entered include:

(a) the date on which the person began or ceased to have the relevant interest or on which the change occurred;

(b) the number of securities to which the relevant interest relates or related;

(c) if the relevant interest was acquired or disposed of or the change occurred for valuable consideration—the amount of the consideration and, if the consideration did not consist wholly of money, the nature of the part of the consideration that did not consist of money; and

(d) if the securities are not registered in the name of the person—the name of the person who is registered as the holder of the securities or, if any other person is entitled to become registered as the holder of the securities, the name of that other person.

**(7)** The Register may include particulars of matters relating to securities in relation to which this Part does not apply.

**Commission to be notified of certain matters on establishment of Register**

**882. (1)** An applicant for a licence shall include in the application written notice of where the applicant intends to keep the Register under subsection 881 (1).

**(2)** Within 14 days after beginning to keep the Register, a person who holds a proper authority from a licensee shall lodge written notice of:

(a) where the Register is kept; and

(b) the name and business address of each licensee from whom the first-mentioned person holds a proper authority.

**(3)** Within 14 days after beginning to keep the Register, a financial journalist shall lodge written notice of:

(a) where the Register is kept;

(b) the name and business address of the financial journalist’s employer (if any); and

(c) the newspapers and periodicals to which the financial journalist contributes.

**Commission to be notified of changes in certain matters**

**883. (1)** As soon as practicable after changing the place where the Register is kept, a person to whom this Part applies shall lodge written notice of the new place where the Register is kept.

**(2)** Where, at a particular time during the period beginning when a person complies with subsection 882 (2) and ending immediately after the person next ceases to be a person to whom this Part applies, the person begins or ceases to hold a proper authority from a particular licensee, the person shall, as soon as practicable after that time, lodge written notice of that fact and of the licensee’s name and business address.

**(3)** Where, at a particular time during the period beginning when a person complies with subsection 882 (3) and ending immediately after the person next ceases to be a person to whom this Part applies, the person:

(a) begins or ceases to be employed as a financial journalist by a particular employer; or

(b) begins or ceases to contribute as a financial journalist to a particular newspaper or periodical;

the person shall, as soon as practicable after that time, lodge written notice of that fact and of:

(c) the employer’s name and business address; or

(d) the name of the newspaper or periodical;

as the case may be.

**(4)** As soon as practicable after:

(a) the name or business address of a licensee from whom a person to whom this Part applies holds a proper authority;

(b) the name or business address of an employer who employs a person to whom this Part applies as a financial journalist; or

(c) the name of a newspaper or periodical to which a person to whom this Part applies contributes as a financial journalist;

ceases to be the name or business address of the licensee or employer, or the name of the newspaper or periodical, as the case may be, as last notified by the person under section 882 or this section, the person shall lodge written notice of the new name or business address.

**Defences**

**884. (1)** It is a defence to a prosecution for contravening section 881, 882 or 883 if it is proved that the contravention was due to the defendant not being aware of a fact or occurrence the existence of which was necessary to constitute the contravention and that:

(a) the defendant was not so aware on the date of the information;

(b) the defendant became so aware less than 14 days before the date of the information; or

(c) the defendant became so aware not less than 14 days before the date of the information and complied with the relevant section within 14 days after becoming so aware.

**(2)** For the purposes of this Part, a person shall, unless the contrary is proved, be presumed to have been aware at a particular time of a fact or occurrence relating to securities if an employee or agent of the person, being an employee or agent having duties or acting in relation to the employer’s or principal’s interest in the relevant securities, was aware of that fact or occurrence at that time.

**Power of Commission to require production of Register**

**885.** **(1)** The Commission may require a person to whom this Part applies to produce the Register for inspection by a person authorised by the Commission at such place and within such period as the Commission specifies and the authorised person may make a copy of, or take extracts from, the Register.

**(2)** A person to whom this Part applies shall comply with any requirement made of the person under subsection (1).

**Power of Commission to require certain information**

**886.** The Commission may, by written notice, require a person (in this section called the “principal”) to supply the Commission with:

(a) the name and address of the person who contributed or prepared specified advice or a specified analysis or report; or

(b) the names and addresses of all persons who, during a specified period, contributed or prepared any advice, analysis or report;

being advice, or an analysis or report, about eligible securities that was published:

(c) in a newspaper or periodical owned or published by the principal;

(d) in the course of, or by means of, transmissions that:

(i) the principal makes by means of an information service; or

(ii) are made by means of an information service that the principal owns, operates or makes available; or

(e) in sound recordings, video recordings, or data recordings, that the principal makes available as mentioned in paragraph 77 (6) (c).

**Power of Commission to supply copy of Register**

**887.** The Commission may supply a copy of a Register or an extract from a Register to any person who, in the opinion of the Commission, should in the public interest be informed of the matters disclosed in the Register or extract.

**PART 7.8—DEPOSITS WITH STOCK EXCHANGES**

**Interpretation**

**888.** In this Part, unless the contrary intention appears: “stock exchange” does not include an Exchange subsidiary.

**Deposits to be lodged by member organisations**

**889.** **(1)** This section applies where a licensee is, or is a partner in a partnership that is, a member organisation of a stock exchange.

**(2)** Subject to this section, it is a condition of the licence that the licensee or partnership, as the case may be, shall, as provided in this section, lodge and keep a deposit with:

(a) if the licensee or partnership is a member organisation of each of 2 or more stock exchanges—the nominated stock exchange; or

(b) otherwise—the stock exchange referred to in subsection (1).

**(3)** It is a condition of the licence that, if:

(a) while the licensee or partnership, as the case may be, is a member organisation of at least one stock exchange, he, she or it becomes a member organisation of another stock exchange; or

(b) the licensee or partnership ceases to be a member organisation of a particular stock exchange but remains a member organisation of each of 2 or more other stock exchanges;

the licensee or partnership shall as soon as practicable inform in writing each stock exchange of which he, she or it is a member organisation of the name of the stock exchange with which he, she or it proposes to lodge and keep a deposit.

**(4)** In subsection (2):

“nominated stock exchange” means the stock exchange named in notices given as provided for by the condition existing by virtue of subsection (3) or, if notices have been so given on 2 or more occasions, in the most recent notices so given.

**(5)** The deposit is payable out of money in a trust account of the licensee or partnership, as the case may be.

**(6)** An amount paid from such a trust account as, or as part of, the deposit continues to be money in the trust account even though it has been lodged with a stock exchange.

**(7)** A contravention of the condition existing by virtue of subsection (2) shall be disregarded if it was attributable to the making, out of a trust account of the licensee or partnership, as the case may be, of a payment that:

(a) paragraph 869 (1) (a), (c), (d) or (e) authorised the licensee or partnership to make out of that trust account; and

(b) the licensee or partnership was unable to make without committing the contravention.

**Deposit to be proportion of trust account balance**

**890. (1)** It is a condition of a licence that the deposit to be lodged and kept for the purposes of a condition of the licence existing by virtue of section 889 shall be an amount equal to two-thirds (or, where a lesser proportion is prescribed, that proportion) of:

(a) if the licensee or partnership, as the case may be, keeps 2 or more trust accounts—the lowest aggregate of the balances in those trust accounts; or

(b) otherwise—the lowest balance in the trust account of the licensee or partnership;

during the 3 months ending on the quarter day last past.

**(2)** A deposit need not be lodged or kept for the purposes of a condition existing by virtue of this Part if, but for this subsection, the amount of the deposit would be less than $3,000.

**(3)** It is a condition of a licence that, if by virtue of a condition of the licence existing by virtue of subsection (1) the amount of a deposit to be lodged and kept with a stock exchange increases, the licensee or partnership, as the case may be, shall so lodge the amount of the increase within 5 trading days of that stock exchange after the relevant quarter day that is the last day of the period by reference to which the amount required to be so lodged is calculated.

**Deposits to be invested by stock exchange**

**891. (1)** Where a stock exchange receives a deposit from a person or partnership under a condition existing by virtue of section 889, the stock exchange holds the deposit in trust for the person or partnership and shall invest the deposit:

(a) on interest-bearing term deposit with an Australian bank; or

(b) on deposit with an eligible money market dealer.

**(2)** A participating exchange shall pay into the Fund money received by way of interest in respect of amounts invested by it under subsection (1).

**(3)** A stock exchange (other than a participating exchange) shall pay money received by way of interest in respect of amounts invested by it under subsection (1) into its fidelity fund.

**(4)** A stock exchange shall, on demand being made by a person or partnership who has lodged a deposit with the stock exchange, pay to the person or partnership an amount on deposit with the stock exchange under a condition existing by virtue of section 889.

**(5)** Nothing in subsection (4) affects a condition existing by virtue of section 889.

**(6)** It is a condition of a licence that where the licensee, or a partnership in which the licensee is a partner, receives an amount under subsection (4) from a stock exchange, the licensee or partnership, as the case may be, shall pay the amount into a trust account of the licensee or partnership, as the case may be.

**(7)** The Fund shall guarantee the repayment by a participating exchange of the amount of a deposit received by the participating exchange from a person or partnership.

**(8)** The fidelity fund of a stock exchange (other than a participating exchange) shall guarantee the repayment by the stock exchange of the amount of a deposit received by the stock exchange from a person or partnership.

**Accounts in respect of deposits**

**892.** **(1)** A stock exchange shall establish and keep proper accounts of deposits received by the stock exchange under this Part or a corresponding law and shall, within 1 month after each quarter day, cause a balance-sheet to be made out as at that day.

**(2)** A stock exchange shall appoint a registered company auditor to audit its accounts relating to deposits.

**(3)** An auditor appointed by a stock exchange shall audit the accounts relating to deposits received by the stock exchange and each balance sheet and shall cause a report on the accounts and balance-sheet to be given to the board of the stock exchange within one month after the balance-sheet is made out.

**(4)** A stock exchange shall lodge a copy of each report given to the board of the stock exchange under this section and of the balance-sheet to which the report relates within 14 days after the report was given to the board.

**Claims not affected by this Part**

**893.** Nothing done under this Part or under a condition existing by virtue of this Part affects:

(a) a claim or lien that a member organisation of a stock exchange has in relation to a deposit; or

(b) the rights or remedies of a person other than a member organisation of a stock exchange.

**PART 7.9—FIDELITY FUNDS**

**Interpretation**

**894.** In this Part:

“participating exchange” means:

(a) a participating exchange for the purposes of Part 7.10; or

(b) an Exchange subsidiary.

**Fidelity funds**

**895.** **(1)** A securities exchange (other than a participating exchange) shall keep a fidelity fund, which shall be administered by the board on behalf of the securities exchange.

**(2)** The assets of a fidelity fund of a securities exchange are the property of the securities exchange but shall be kept separate from all other property and shall be held in trust for the purposes set out in this Part.

**(3)** A securities exchange that, immediately before the commencement of this section, kept a fidelity fund under a law corresponding to this Part shall, after that commencement, keep that fidelity fund in accordance with, and for the purposes of, this Part.

**Money constituting fidelity fund**

**896.** The fidelity fund of a securities exchange shall consist of:

(a) in the case of a fidelity fund established after the commencement of this Part, any amount that is paid to the credit of the fund by the securities exchange on the establishment of the fund;

(b) money paid into the fidelity fund under subsection 902 (5) or 904 (5);

(c) the interest on money invested by the securities exchange under Part 7.8;

(d) the interest and profits from time to time accruing from the investment of the fidelity fund;

(e) money paid into the fidelity fund by the securities exchange;

(f) money recovered by or on behalf of the securities exchange in the exercise of a right of action conferred by this Part;

(g) money paid by an insurer under a contract of insurance or indemnity entered into by the securities exchange under section 917; and

(h) any other money lawfully paid into the fund.

**Fund to be kept in separate bank account**

**897.** The money in a fidelity fund, until invested or applied in accordance with this Part, shall be kept in a separate account in an Australian bank.

**Payments out of fund**

**898.** Subject to this Part, there shall be paid out of the fidelity fund of a securities exchange in such order as the board of the securities exchange considers proper:

(a) the amounts of all claims, including costs, allowed by the board or established against the securities exchange under this Part;

(b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the securities exchange or the board of the

securities exchange of the rights, powers and authorities vested in it by this Part in relation to the fund;

(c) all premiums payable in respect of contracts of insurance or indemnity entered into by the securities exchange under section 917;

(d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the securities exchange or the board in relation to the fund; and

(e) all other moneys payable out of the fund in accordance with the provisions of this Chapter.

**Payment to the credit of the fidelity fund of a futures exchange or futures association**

**899. (1)** Where a body corporate that is a securities exchange, or that is related to a securities exchange, becomes a futures organisation for the purposes of Part 8.6:

(a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval:

(i) the payment of an amount specified in the approval out of the fidelity fund kept under this Part by the body corporate, or by the securities exchange, as the case may be; and

(ii) the payment of that amount to the credit of the fidelity fund established or to be established by the body corporate under that Part; and

(b) if the Minister does so, that amount shall, in accordance with the conditions (if any) so specified:

(i) be paid out of the fidelity fund referred to in subparagraph (a) (i); and

(ii) be paid to the credit of the fidelity fund referred to in subparagraph (a) (ii).

**(2)** An approval given by the Ministerial Council before the commencement of this section under a law corresponding to subsection (1) shall be deemed to be an approval given by the Minister under that subsection and any reference in the approval to a fidelity fund established or to be established under a law corresponding to Part 8.7 shall be deemed to be a reference to a fidelity fund established or to be established under that Part.

**Accounts of fund**

**900. (1)** A securities exchange shall establish and keep proper accounts of its fidelity fund and shall, before 31 August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30 June.

**(2)** A securities exchange shall appoint a registered company auditor to audit the accounts of the fidelity fund.

**(3)** The auditor appointed by a securities exchange shall audit the accounts of the fidelity fund and shall audit each balance sheet and give a report on the accounts and balance sheet to the board of the securities exchange not later than one month after the balance sheet is made out.

**(4)** A securities exchange shall lodge a copy of each report given to the board of the securities exchange under this section and of the balance sheet to which the report relates within 14 days after the report was given to the board.

**Management sub-committee**

**901. (1)** The board of a securities exchange may, by resolution, appoint a management sub-committee of not fewer than 3 nor more than 5 members of the securities exchange, at least one of whom is also a member of the board.

**(2)** The board may, by resolution, delegate to a sub-committee all or any of its powers, authorities and discretions under a provision of this Part (other than this section, section 904, subsection 907 (8), (10) or (11) or section 909).

**(3)** A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.

**(4)** A delegation under this section may at any time, by resolution of the board, be varied or revoked.

**(5)** The board may at any time, by resolution, remove a member of a sub-committee and may, by resolution, fill a vacancy arising in the membership of the sub-committee.

**(6)** A management sub-committee appointed by the board of a securities exchange before the commencement of this Part under a corresponding law and in existence immediately before that commencement shall be deemed to have been appointed by the board of the securities exchange on that commencement under this section.

**(7)** If the board of a securities exchange referred to in subsection (6) had before the commencement of this Part delegated to a management subcommittee referred to in that subsection any powers, authorities or discretions under the corresponding law so referred to and had not revoked the delegation before that commencement, the board shall be deemed to have, on that commencement, delegated to the management sub-committee its corresponding powers, authorities and discretions under this Part.

**Contributions to fund**

**902. (1)** A person shall not be admitted to membership of a securities exchange or to a partnership in a member firm recognised by a securities exchange unless the person has paid a securities exchange (application for membership) fidelity fund contribution.

**(2)** A person who is a member of a securities exchange is not entitled to continue to be such a member or to continue to be a partner in a member firm recognised by a securities exchange unless the person, on or before 31 March in each year, pays a securities exchange (membership) fidelity fund contribution.

**(3)** A contribution under subsection (1) or (2) is payable to the Secretary to the Department on behalf of the Commonwealth.

**(4)** Where a contribution payable by a person under subsection (1) or (2) is paid into the Consolidated Revenue Fund, an amount equal to the contribution so paid is payable to the relevant securities exchange out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(5)** An amount paid to a securities exchange under subsection (4) shall be paid by the securities exchange into the fidelity fund kept by the securities exchange.

**(6)** This section has effect subject to section 919.

**Provisions where fund exceeds $2,000,000**

**903. (1)** In this section:

“relevant person”, in relation to a securities exchange, means a member of the securities exchange:

(a) who has made 20 or more annual payments of the contribution referred to in subsection 902 (2); and

(b) in respect of whom a payment from the fund has not been made or, if such a payment has been made, has been repaid to the fund.

**(2)** Where the amount in a fidelity fund of a securities exchange exceeds $2,000,000 or such lesser amount as is prescribed, a relevant person is, subject to this section, exempt from making further annual payments of the contribution referred to in subsection 902 (2).

**(3)** Where the amount in a fidelity fund of a securities exchange exceeds $2,000,000 or such lesser amount as is prescribed, the following paragraphs apply in relation to relevant persons who are natural persons:

(a) on the retirement from business of such a relevant person, the board may, in its discretion, pay to that person an amount determined in accordance with subsection (5);

(b) on the death of such a relevant person without any payment having been made to that person under paragraph (a), the board may, in its discretion, pay an amount determined in accordance with subsection (5) to his or her personal representative or to any person who was wholly or partly dependent on the relevant person at the time of his or her death.

**(4)** Where the amount in a fidelity fund of a securities exchange exceeds $2,000,000 or such lesser amount as is prescribed, the board may, in its

discretion, pay to a relevant person, being a body corporate, that ceases to be a member of the securities exchange an amount determined in accordance with subsection (5).

**(5)** The amount that may, under subsection (3) or (4), be paid out of a fidelity fund to or in respect of a relevant person is the total amount of the annual payments made by the relevant person of the contribution referred to in subsection 902 (2) or such proportion of that amount as is for the time being determined by the board either generally or in relation to the particular relevant person, either with or without simple interest at a rate not exceeding 3% per annum.

**(6)** A determination of the board under subsection (5) shall be in writing and may be in respect of any person or any class of persons.

**(7)** The securities exchange may, by written notice published in the *Gazette*:

(a) suspend the operation of paragraph (3) (a) or (b); or

(b) revoke any such suspension;

but, where the operation of one of those paragraphs is for the time being suspended, the securities exchange shall not suspend the operation of the other paragraph.

**(8)** Where the amount in a fidelity fund is, because of payments made out of the fund, less than $1,000,000 or such lesser amount as is prescribed and the securities exchange determines that a person who because of subsection (2) is exempt from making annual payments of the contribution referred to in subsection 902 (2) should again be required to make annual payments of that contribution, the person is liable to make payments of that contribution accordingly.

**Levy in addition to annual contributions**

**904. (1)** If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 898, the securities exchange concerned may determine that a securities exchange fidelity fund levy be paid by each member of the exchange who is liable to make annual payments of the contribution referred to in subsection 902 (2), and, where such a determination is made, a securities exchange fidelity fund levy is payable by each member accordingly.

**(2)** A person is not required to pay by way of securities exchange fidelity fund levy under this section more than $5,000 in total or more than $1,000 in any period of 12 months.

**(3)** A securities exchange fidelity fund levy is payable to the Secretary to the Department on behalf of the Commonwealth within the prescribed period and in the prescribed manner.

**(4)** Where a securities exchange fidelity fund levy payable by a member of a securities exchange under subsection (1) is paid into the Consolidated Revenue Fund, an amount equal to the levy so paid is payable to the

securities exchange out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(5)** An amount paid to a securities exchange under subsection (4) shall be paid by the securities exchange into the fidelity fund kept by the securities exchange.

**(6)** This section has effect subject to section 919.

**Power of securities exchange to make advances to fund**

**905.** **(1)** A securities exchange may, from its general funds, give or advance, on such terms as the board thinks fit, any sums of money to its fidelity fund.

**(2)** Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the securities exchange.

**Investment of fund**

**906.** Money in a fidelity fund that is not immediately required for its purposes may be invested by the securities exchange in any way in which trustees are for the time being authorised by a law in force in a State or Territory to invest trust funds or on deposit with an eligible money market dealer.

**Application of fund**

**907.** **(1)** Subject to this Part, a securities exchange shall hold and apply its fidelity fund for the purpose of compensating persons who have, whether before or after the commencement of this Part, suffered pecuniary loss because of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by:

(a) a member of the securities exchange who, when the loss was suffered, was a sole trader;

(b) a person who, when the loss was suffered, was a partner in a member firm; or

(c) an employee of such a member or firm;

in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with that member’s or firm’s business of dealing in securities, was or were entrusted to or received by the member, a partner in the firm, or an employee of the member or firm (whether before or after the commencement of this Part):

(d) on behalf of another person; or

(e) because the member, or the firm or a partner in the firm, was a trustee of the money, securities, documents of title or other property.

**(2)** Where a right to compensation does not arise under subsection (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than the amount that the official receiver or trustee certifies is required to make up or reduce the total deficiency

arising because the available assets of a bankrupt, being a member of a securities exchange who is a sole trader or being a partner in a member firm recognised by a securities exchange, are insufficient to satisfy the debts arising from dealings in securities that have been proved in the bankruptcy by creditors of the bankrupt.

**(3)** Subsection (2) applies in the case of a member of a securities exchange or a partner in a member firm recognised by a securities exchange who has made a composition with creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in the same way as that subsection applies in the case of such a member or partner who has become bankrupt.

**(4)** For the purposes of subsection (2) as applying by virtue of subsection (3):

(a) the reference in subsection (2) to a trustee is a reference to a controlling trustee within the meaning of Part X of the *Bankruptcy Act 1966*;

(b) the reference to debts proved in the bankruptcy is a reference to provable debts in relation to the composition or deed within the meaning of that Part; and

(c) references to the bankrupt are references to the person who made the composition or executed the deed.

**(5)** Where a right to compensation does not arise under subsection (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to a liquidator of a body corporate that is being wound up (being a body corporate that is a member of a securities exchange) an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts arising from dealings in securities that have been proved in the winding up by creditors of the body corporate.

**(6)** Except as otherwise provided in the following provisions of this section, the amount or the sum of the amounts that may be paid under this Part:

(a) for the purpose of compensating pecuniary loss as referred to in subsection (1); or

(b) for the purpose of making payments under subsection (2) or (5); shall not exceed, in respect of a member of a securities exchange who is a sole trader or in respect of a member firm recognised by a securities exchange, $500,000.

**(7)** For the purpose of calculating the amount or sum referred to in subsection (6), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.

**(8)** If a securities exchange considers, having regard to the ascertained or contingent liabilities of the fidelity fund, that the assets of the fund so permit, the securities exchange may, by notice published in the *Gazette*,

increase the total amount that may be applied from the fund under subsection (6), and from the date of the publication of the notice until the notice is revoked or varied the amount specified in the notice is the total amount that may be applied as provided by this section.

**(9)** A notice that was published by a securities exchange before the commencement of this Part under a law corresponding to subsection (8) and had not been revoked before that commencement shall be deemed to have been published under that subsection and to relate to the total amount that may be applied from the fidelity fund of the securities exchange under subsection (6).

**(10)** A notice under subsection (8) may be revoked or varied by the securities exchange by notice published in the *Gazette.*

**(11)** If a securities exchange, having regard to the ascertained or contingent liabilities of the fidelity fund, considers that the assets of the fund so permit, the securities exchange may apply out of the fund such sums in excess of the amount limited by or under this section as the securities exchange, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as referred to in subsection (1) or making a payment under subsection (2) or (5).

**(12)** If:

(a) any money, securities, documents of title to securities or other property has been entrusted to or received by, a former member of securities exchange or an employee of such a former member;

(b) because of a defalcation, or the fraudulent misuse of the securities, documents of title or other property, by the former member or employee, the person by or from whom the securities, documents of title or other property was so entrusted or received suffered pecuniary loss; and

(c) when the money, securities, documents of title or other property was so entrusted or received, the person suffering the pecuniary loss had reasonable grounds for believing and did believe that the former member was a member of the securities exchange concerned;

a reference in this section to a member of a securities exchange includes a reference to that former member.

**(13)** A reference in this section to an employee of a member or former member of a securities exchange includes, in the case of a member or former member that is a body corporate, a reference to an officer of the body corporate.

**(14)** A reference in this section to a defalcation, or to a fraudulent misuse of securities or documents of title to securities or of other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever occurring.

**Claims against the fund**

**908. (1)** Subject to this Part, a person who has, whether before or after the commencement of this Part, suffered pecuniary loss as referred to in subsection 907 (1) is entitled to claim compensation from the fidelity fund of the relevant securities exchange and to take proceedings in the Court as provided in this Part against the securities exchange to establish that claim.

**(2)** A person does not have a claim against a fidelity fund of a securities exchange in respect of:

(a) pecuniary loss suffered before 1 July 1981 or on a day on which the securities exchange was a participating exchange; or

(b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member of the securities exchange or of a partner or partners in a member firm recognised by the securities exchange.

**(3)** Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a securities exchange is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the amount or value of all money or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.

**(4)** In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation less any amount attributable to costs and disbursements, at the rate of 5% per annum (or, if another rate is prescribed, that other rate) calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

**(5)** A claim duly made before the commencement of this Part against the fidelity fund of a securities exchange under a law corresponding to this section shall be deemed to have been duly made against that fidelity fund under this section.

**Rights of innocent partner in relation to fund**

**909. (1)** Where all persons who have submitted claims under section 908 have been fully compensated in accordance with the provisions of this Part for pecuniary loss as referred to in subsection 907 (1) suffered in relation to money or other property entrusted to or received by **a** partner in a member firm recognised by a securities exchange, any other partner in that firm who has made payment to a person in compensation for loss suffered by that person in relation to that money or property is subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund if the board, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

**(2)** If a partner in a member firm feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receiving notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.

**(3)** The appellant shall, on the day on which notice of appeal is lodged with the Court, lodge a copy of the notice with the securities exchange.

**(4)** The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same way and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction.

**(5)** Without limiting the generality of subsection (4), if the Court is of opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of securities or documents of title to the securities or of other property from which the pecuniary loss arose and acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the relevant securities exchange, of the person to whom the appellant made such a payment.

**Notice calling for claims against fund**

**910. (1)** A securities exchange may publish, in each State and Territory, in a daily newspaper circulating generally in the State or Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

**(2)** A claim for compensation from a fidelity fund of a securities exchange in respect of a pecuniary loss shall be made in writing to the securities exchange:

(a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

(b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss;

and a claim that is not so made is barred unless the securities exchange otherwise determines.

**(3)** A securities exchange, a member of a board of a securities exchange or a member or employee of a securities exchange has qualified privilege in respect of the publication of a notice under subsection (1).

**(4)** A notice duly published by a securities exchange before the commencement of this Part under a law corresponding to subsection (1) shall be deemed to have been duly published under that subsection.

**Power of board to settle claims**

**911. (1)** Subject to this Part, a board may allow and settle a proper claim for compensation from a fidelity fund of a securities exchange at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

**(2)** Subject to subsection (3), a person shall not bring proceedings under this Part against a securities exchange without leave of the board unless:

(a) the board has disallowed the claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money, securities, documents of title to securities or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against:

(i) the member of the securities exchange in relation to whom the claim arose; and

(ii) all other persons who are liable in respect of the loss suffered by the claimant;

other than any right or remedy that the claimant may have under section 908 or a corresponding law against another securities exchange.

**(3)** A person who has been refused leave by the board of a securities exchange under subsection (2) may apply to the Court for leave to bring proceedings against the securities exchange and the Court may make such order in the matter as it thinks just.

**(4)** A board, after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund of a securities exchange, shall serve notice of the disallowance in the prescribed form on the claimant or the claimant’s solicitor.

**(5)** Proceedings against a securities exchange in respect of a claim that has been disallowed by a board shall not be brought after 3 months after the service of the notice of disallowance referred to in subsection (4).

**(6)** In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse even if the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the securities exchange.

**(7)** The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, even if:

(a) the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted; or

(b) the evidence on which the board or Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

**Form of order of Court establishing claim**

**912.** **(1)** Where in proceedings brought to establish a claim the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order:

(a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and

(b) direct the board to allow the claim as so declared and deal with it in accordance with this Part.

**(2)** In any such proceedings all questions of costs are in the discretion of the Court.

**Power of securities exchange to require production of securities**

**913.** A securities exchange may at any time require a person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of:

(a) exercising its rights against a member of the securities exchange or a partner or the partners in a member firm recognised by the securities exchange or any other person; or

(b) enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property;

and in default of delivery of any such securities, documents or statements of evidence by the first-mentioned person, the board of the securities exchange may disallow any claim by that person under this Part.

**Subrogation of securities exchange to rights etc. of claimant on payment from fund**

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

**Payment of claims only from fund**

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

**Provision where fund insufficient to meet claims or where claims exceed total amount payable**

**916.** **(1)** Where the amount in a fidelity fund of a securities exchange is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made:

(a) the amount in the fund shall, subject to subsection (2), be apportioned among the claimants in such manner as the board thinks equitable; and

(b) such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fund and paid out of the fund when moneys are available in the fund.

**(2)** Where the total of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcation or fraudulent misuses of property by or in connection with a sole trader or partner in a member firm recognised by a securities exchange exceeds the total amount that may, under section 907, be paid under this Part in respect of that sole trader or member firm:

(a) the total amount shall be apportioned among the claimants in such manner as the board thinks equitable; and

(b) on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may subsequently arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that sole trader or member firm are discharged.

**Power of securities exchange to enter into contracts of insurance or indemnity**

**917.** **(1)** A securities exchange may enter into a contract with a person carrying on fidelity insurance business under which the securities exchange will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.

**(2)** Such a contract may be entered into in relation to members of the securities exchange generally, in relation to particular members named in the contract, or in relation to members generally excluding particular members named in the contract.

**(3)** Each of the following persons, namely, a securities exchange, a member or employee of a securities exchange or board and a member of a management sub-committee has qualified privilege in respect of the publication of a statement that a contract entered into under this section does or does not apply with respect to a particular member of the securities exchange.

**Application of insurance money**

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

**Contributions and levies not payable unless imposed by another Act**

**919.** A person is not liable to pay a contribution under subsection 902 (1) or (2) or a levy under subsection 904 (1) unless the contribution or levy, as the case may be, is imposed by an Act other than this Act.

**PART 7.10—THE NATIONAL GUARANTEE FUND**

***Division 1*—*Interpretation***

**Interpretation**

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

“claim” means a claim under Division 6, 7 or 8;

“eligible exchange” means:

(a) the Exchange; or

(b) a securities exchange that is neither the Exchange nor an Exchange subsidiary;

“excluded person” has the meaning given by section 921;

“Fund provisions” means the provisions of this Part;

“minimum amount” means:

(a) if a determination is in force under section 936—the amount specified in the determination as the minimum amount of the Fund for the purposes of the Fund provisions; or

(b) in any other case—$15,000,000;

“obligations”, in relation to a member or member organisation of a participating exchange, in relation to a person, includes obligations arising under a law, under the participating exchange’s business rules or under an agreement between:

(a) in any case—the member or member organisation and the person; or

(b) if the member is a partner in a member organisation of the participating exchange—the last-mentioned member organisation and the person;

“orderly market” means an orderly market on a stock market of a participating exchange or of an Exchange subsidiary;

“participating exchange” means an eligible exchange that is a member of SEGC;

“previous Board” means the board of NSEGC;

“property” includes money and scrip;

“quoted securities”, in relation to a transaction, means securities that, when the agreement for the transaction is made, are quoted on a stock market of a participating exchange or of an Exchange subsidiary;

“relative”, in relation to a person, means a parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister, of the person;

“relevant Act” means the *Australian Stock Exchange and National Guarantee Fund Act 1987*;

“relevant commencement” means 1 April 1987;

“reportable transaction” means a sale or purchase, by a member organisation (in this definition called the “first dealer”) of a participating exchange, of quoted securities, where:

(a) in any case—the participating exchange’s business rules, as in force when the agreement for the sale or purchase is made, require the first dealer to report the sale or purchase to the participating exchange; or

(b) if the sale or purchase is to or from, as the case may be, a member organisation (in this definition called the “second dealer”) of a participating exchange—the last-mentioned participating exchange’s business rules, as in force when the agreement for the sale or purchase is made, require the second dealer to report to the last-mentioned participating exchange the purchase or sale of the securities by the second dealer from or to, as the case may be, the first dealer;

“settlement documents”, in relation to a transaction, means documents the supply of which in accordance with the agreement for the transaction:

(a) if the agreement has not been discharged—is sufficient; or

(b) if the agreement has been discharged, whether by performance or otherwise—would, if the agreement had not been discharged, be sufficient;

to discharge the obligations of the seller under the agreement, in so far as those obligations relate to the supply of documents in connection with the transaction;

“transaction” means a sale or purchase of securities.

**(2)** For the purposes of this Part, a sale and purchase of securities shall be taken to consist of 2 distinct transactions, namely, the sale of the securities by the seller to the buyer and the purchase of the securities by the buyer from the seller.

**(3)** Except so far as the contrary intention appears, a reference in this Part to a sale, or to a purchase, includes a reference to a sale or purchase the agreement for which is made outside Australia.

**(4)** A reference in this Part to carrying on a business of a particular kind is a reference to carrying on a business of that kind, whether or not as part of, or in conjunction with, any other business.

**(5)** A reference in this Part to a business being carried on includes a reference to the business being carried on both within and outside Australia.

**(6)** A person who, or a partner in a partnership that, contravenes a provision of this Part is not guilty of an offence.

**Excluded persons**

**921. (1)** In this Part, “excluded person”, in relation to a member of a participating exchange, means:

(a) in any case—the member;

(b) if the member is a member organisation of the participating exchange and is not a body corporate:

(i) a person who is the spouse, or who is a relative, of the member;

(ii) a trustee of a trust in relation to which the member or a person of a kind referred to in subparagraph (i) is capable of benefiting; or

(iii) a body corporate of which the member is an officer, or in which the member or a person of a kind referred to in subparagraph (i) has, or the member and such a person, the member and 2 or more such persons, or 2 or more such persons, together have, a controlling interest;

(c) if the member is a member organisation of the participating exchange and is a body corporate:

(i) a person who is an officer of the body corporate;

(ii) a body corporate that is related to the first-mentioned body corporate;

(iii) a person who is the spouse, or who is a relative, of a person of a kind referred to in subparagraph (i);

(iv) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (iii) is capable of benefiting; or

(v) a body corporate in which a person of a kind referred to in subparagraph (i) or (iii) has, or 2 or more such persons together have, a controlling interest;

(d) if the member is a partner in a member organisation of the participating exchange and is not a body corporate:

(i) a person who is a partner in the member organisation;

(ii) a person who is the spouse, or who is a relative, of a partner (not being a body corporate) in the member organisation;

(iii) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i) or (ii) is capable of benefiting;

(iv) a person who is an officer of a body corporate that is a partner in the member organisation; or

(v) a body corporate of which a person of a kind referred to in subparagraph (i), (ii) or (iii) is an officer, or in which such a person has, or 2 or more such persons together have, a controlling interest; or

(e) if the member is a partner in a member organisation of the participating exchange and is a body corporate:

(i) a person who is an officer of a body corporate that is a partner in the member organisation;

(ii) a body corporate that is related to the first-mentioned body corporate;

(iii) a person who is a partner in the member organisation;

(iv) a person who is the spouse, or who is a relative, of a person (other than a body corporate) of a kind referred to in subparagraph (i) or (iii);

(v) a trustee of a trust in relation to which a person of a kind referred to in subparagraph (i), (iii) or (iv) is capable of benefiting; or

(vi) a body corporate in which a person of a kind referred to in subparagraph (i), (iii) or (iv) has, or 2 or more such persons together have, a controlling interest.

**(2)** A reference in subsection (1) to a relative of a person includes a reference to a relative of the spouse (if any) of the person.

**(3)** A reference in subsection (1) to an officer of a body corporate is a reference to:

(a) a director, secretary or executive officer of the body corporate; or

(b) a person who is an officer of the body corporate by virtue of paragraph (b), (c), (d) or (e) of the definition of “officer” in section 9.

**Becoming insolvent**

**922. (1)** For the purposes of this Part, a corporation becomes insolvent at a particular time if, and only if, at that time:

(a) the corporation commences to be wound up, comes under official management or ceases to carry on business;

(b) a receiver, or a receiver and manager, of property of the corporation is appointed, whether by a court or otherwise; or

(c) the corporation enters into a compromise or arrangement with its creditors.

**(2)** For the purposes of this Part, a body corporate other than a corporation becomes insolvent at a particular time if, and only if, at that time, the body:

(a) commences to be wound up on the ground that it cannot pay its debts;

(b) comes under official management; or

(c) enters into a compromise or arrangement with its creditors.

**(3)** For the purposes of this Part, a natural person becomes insolvent at a particular time if, and only if, at that time:

(a) a creditor’s petition or a debtor’s petition is presented under Division 2 or 3, as the case may be, of Part IV of the *Bankruptcy Act 1966* against:

(i) the person;

(ii) a partnership in which the person is a partner; or

(iii) 2 or more joint debtors who include the person;

(b) the person’s property becomes subject to control under Division 2 of Part X of the *Bankruptcy Act 1966*;

(c) the person executes a deed of assignment or deed of arrangement under Part X of the *Bankruptcy Act 1966*;or

(d) the person’s creditors accept a composition under Part X of the *Bankruptcy Act 1966.*

**(4)** A reference in subsection (3) to a Division or Part of the *Bankruptcy Act 1966* includes a reference to provisions of a law of an external Territory, or a country other than Australia or an external Territory, that correspond to that Division or Part.

**Permitted investments**

**923.** For the purposes of this Part, money shall be taken to be invested in a permitted manner if, and only if, it is invested:

(a) in a way in which trustees are for the time being authorised by a law in force in a State or Territory to invest trust funds; or

(b) on deposit with an eligible money market dealer.

**Additional operation of certain provisions**

**924.** In addition, and without prejudice, to the effect that it has otherwise than by force of this section, a provision of this Part that is expressed to require or prohibit the doing of an act by SEGC, by the Board, or by a management sub-committee appointed under section 927, shall be read as also requiring each corporation that is a member of SEGC to ensure that SEGC, the Board, or that sub-committee, as the case may be, does that act, or refrains from doing that act, as the case may be.

***Division 2*—*Securities Exchanges Guarantee Corporation***

**Minister to nominate**

**925.** **(1)** Subject to subsection (3), the Minister may nominate in writing as the Securities Exchanges Guarantee Corporation a body corporate (whether incorporated before or after the commencement of this Part) that is a company limited by guarantee.

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

**(3)** The Minister shall not nominate a body corporate under subsection (1) unless the Minister is satisfied that:

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

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

(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;

(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;

(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)** The body corporate that, immediately before the commencement of this Part, was NSEGC shall be deemed to have been nominated by the Minister under subsection (1) as the Securities Exchanges Guarantee Corporation.

**Functions and powers under Fund provisions**

**926. (1)** In addition to the legal capacity and powers that it has by virtue of section 161, SEGC has such functions and powers as are conferred on it by the provisions of this Part.

**(2)** Section 162 does not apply in relation to a function or power conferred as mentioned in subsection (1).

**Management sub-committee**

**927.** **(1)** The Board may, by resolution, appoint a management subcommittee of not fewer than 3 nor more than 5 persons, at least one of whom is a member of the Board.

**(2)** The Board may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section, section 944, and subsections 954 (5) and 969 (3)).

**(3)** A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.

**(4)** A delegation by the Board under this section may, at any time, by resolution of the Board, be varied or revoked.

**(5)** The Board may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.

**(6)** Any power, authority or discretion exercised under this section by, or by a majority of, a sub-committee shall be deemed to have been exercised by the Board.

**(7)** Any remuneration or expenses paid to a member of a sub-committee appointed under this section shall be deemed to be expenses incurred in the administration of the Fund.

**Commission to be notified of amendments to business rules**

**928. (1)** Where an amendment is made, by way of rescission, alteration or addition, to its business rules, SEGC shall, as soon as practicable after the making of the amendment, give written notice of the amendment to the Commission.

**(2)** A notice under subsection (1) shall:

(a) set out the text of the amendment;

(b) specify the date on which the amendment was made; and

(c) contain an explanation of the purpose of the amendment.

**(3)** If the notice required to be given by subsection (1) is not given within 21 days after the making of the amendment, the amendment ceases to have effect.

**(4)** Where the Commission receives a notice under this section, it shall as soon as practicable send a copy of the notice to the Minister.

**(5)** The Minister may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.

**(6)** Where the Minister disallows the whole or a part of an amendment to which a notice under this section relates, the Commission shall as soon as practicable give notice of the disallowance to SEGC and, upon receipt by SEGC of the notice of disallowance, the amendment, to the extent of the disallowance, ceases to have effect.

**(7)** If:

(a) a notice of an amendment to the business rules of NSEGC was given by NSEGC to the NCSC before the commencement of this Part under a corresponding law;

(b) the amendment had not ceased to have effect before that commencement;

(c) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and

(d) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2) (b)) applies as if the amendment had been an amendment to the business rules of SEGC made on the date of commencement of this Part.

***Division 3*—*The National Guarantee Fund***

**Establishment**

**929. (1)** SEGC shall establish and keep a fund, to be known as the National Guarantee Fund, which shall be administered by the Board on behalf of SEGC.

**(2)** The assets of the Fund are the property of SEGC, but shall be kept separate from all other property and shall be held in trust for the purposes set out in the Fund provisions.

**(3)** The assets of the previous Fund immediately before the commencement of this Part are assets of the Fund kept under this Part.

**Property constituting Fund**

**930.** The Fund shall consist of:

(a) money and property that, immediately before the commencement of this Part, formed part of the previous Fund;

(b) money paid into the Fund under subsection 985 (1);

(c) property that has vested in SEGC, and become part of the Fund by virtue of subsection 985 (2);

(d) money paid into the Fund under subsection 891 (2);

(e) money paid into the Fund under subsection 938 (9), 940 (6) or 941 (5);

(f) the interest and profits from time to time accruing from the investment of the Fund and paid into the Fund under subsection 935 (2);

(g) money recovered by or on behalf of SEGC in the exercise of a right of action that SEGC has by virtue of the Fund provisions;

(h) money paid by an insurer under a contract of insurance or indemnity entered into by SEGC under section 982;

(j) money paid to SEGC by a person making a claim under section 950 in respect of a purchase of securities; and

(k) all other money or other property lawfully paid into, or forming part of, the Fund.

**Fund to be kept in separate bank account**

**931.** The money in the Fund shall, until invested or applied in accordance with the Fund provisions, be kept in an account, or, at the discretion of the Board, in 2 accounts, in an Australian bank separate from any account or accounts in which money not forming part of the Fund is kept.

**Payments out of Fund**

**932. (1)** Subject to this Part, there shall be paid out of the Fund, in such order as the Board considers appropriate:

(a) amounts, including costs, disbursements and interest, that the Fund provisions require to be paid in connection with claims;

(b) all legal and other expenses incurred in investigating or defending claims or incurred in relation to the Fund or in the exercise by SEGC or the Board of the rights and powers vested in it by the Fund provisions in relation to the Fund;

(c) money payable to a participating exchange under section 944;

(d) to the extent that the money referred to in section 935 is insufficient for the purpose, premiums payable in respect of contracts of insurance or indemnity entered into by SEGC under section 982;

(e) to the extent that the money referred to in section 935 is insufficient for the purpose, the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by SEGC or the Board in relation to the Fund; and

(f) any other money payable out of the Fund in accordance with this Chapter.

**(2)** In paragraphs (1) (a) and (b), “claim” means a claim under Division 6, 7 or 8 or a claim that, for the purposes of Division 10, is a transferred claim in relation to a joining exchange.

**(3)** Where:

(a) an amount is payable out of the Fund in connection with a claim by a person against SEGC under Division 6 or 7 that has been allowed; and

(b) an amount is payable out of the Fund in connection with a claim by a person against SEGC under Division 8 that has been allowed;

then, regardless of the order in which those persons became respectively entitled to make those claims, the amount referred to in paragraph (a) shall be paid out of the Fund in priority to the amount referred to in paragraph (b).

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**Accounts of Fund**

**933.** **(1)** SEGC shall establish and keep proper accounts of the Fund and shall, before 31 August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30 June.

**(2)** SEGC shall appoint a registered company auditor to audit the accounts of the Fund.

**(3)** The auditor shall audit the accounts of the Fund and each balance sheet and shall give a report on the accounts and balance sheet to the Board within one month after the balance sheet is made out.

**(4)** SEGC shall, within 14 days after a report is given to the Board, give to the Commission a copy of the report and a copy of the balance sheet.

**(5)** SEGC shall cause a copy of each report, and a copy of the balance sheet to which it relates, to be laid before the annual general meeting of each participating exchange next following the making of that report.

**(6)** A person appointed by NSEGC before the commencement of this Part under a corresponding law whose appointment was in force immediately before that commencement shall be deemed to have been appointed by SEGC under subsection (2).

**Investment of Fund**

**934.** **(1)** Money in the Fund that, in the opinion of the Board, is not immediately required for the purposes of SEGC may be invested by SEGC in a permitted manner.

**(2)** Property in which money is invested under subsection (1) forms part of the Fund.

**(3)** Subject to subsection (4), the Board may, with the approval of the Commission, appoint a person to invest on behalf of SEGC money to which subsection (1) applies.

**(4)** The Commission shall not grant approval to the appointment of a person under subsection (3) unless it is satisfied that:

(a) the person has appropriate qualifications and expertise to perform the duties of the appointment; and

(b) SEGC has adequate indemnity insurance in respect of its liabilities for any negligence, or any defalcation or fraudulent misuse of property, by the person in the performance of those duties or has made other satisfactory provisions for meeting those liabilities.

**(5)** A person appointed under subsection (3) shall perform the duties of the appointment in accordance with the directions of the Board and subject to such conditions (if any) as the Board imposes.

**Interest and profits from investment of Fund**

**935.** **(1)** The interest and profits from time to time accruing from the investment of the Fund shall be applied by SEGC to pay:

(a) the expenses incurred in the administration of the Fund, including the salaries and wages of persons employed by SEGC or the Board in relation to the Fund; and

(b) all premiums payable in respect of contracts of insurance or indemnity entered into by SEGC under section 982.

**(2)** An amount of interest or profit that accrues from the investment of the Fund and is not immediately required for the purposes referred to in subsection (1) shall be paid into the Fund.

**Minimum amount of Fund**

**936.** **(1)** SEGC may, with the written approval of the Minister, determine, by notice published in the *Gazette,* an amount (whether greater than, or less than, $15,000,000) to be the minimum amount of the Fund for the purposes of the Fund provisions.

**(2)** A written approval given by the Ministerial Council before the commencement of this Part under a corresponding law in relation to the previous Fund shall be deemed to be an approval duly given by the Minister under this section in relation to the Fund.

***Division 4*—*Levies where Fund less than minimum amount***

**Definition**

**937.** In this Division:

“dealer” means a member organisation of a participating exchange.

**Levy on reportable transactions**

**938.** **(1)** In this section:

“appropriate participating exchange”, in relation to a leviable dealer, means a participating exchange of which the dealer is a member organisation;

“leviable dealer”, in relation to a transaction, means:

(a) if, when the transaction is entered into, a determination under subsection (6) is in force in relation to a class of transactions that includes the first-mentioned transaction—the dealer prescribed by the determination; or

(b) otherwise:

(i) in the case of a sale of securities—the dealer selling the securities; or

(ii) in the case of a purchase of securities—the dealer buying the securities.

**(2)** Where the amount in the Fund is less than the minimum amount, SEGC may, whether or not it also makes a determination under section 940, determine in writing that a levy is payable on reportable transactions.

**(3)** A levy under subsection (2) is payable in respect of a reportable transaction included in a class of transactions, or in any of 2 or more classes of transactions, determined in writing by SEGC for the purposes of the levy.

**(4)** Where SEGC makes or varies a determination under subsection (3), it shall give to each participating exchange a copy of the determination, or of the variation and of the determination as varied, as the case may be.

**(5)** Where an amount of a levy is payable under this section in respect of a reportable transaction, the leviable dealer in relation to the transaction shall:

(a) pay the amount of the levy to an appropriate participating exchange as agent for the Commonwealth; and

(b) if, but for this subsection, the dealer would not be required by a provision of a law or by the participating exchange’s business rules to give to the participating exchange particulars of the transaction sufficient to enable the participating exchange to ascertain the amount of levy—so give such particulars;

within the period, and in the manner, specified by the participating exchange in writing either generally or in relation to a class of transactions that includes the first-mentioned transaction.

**(6)** SEGC may make a written determination prescribing, in relation to a class or classes of reportable transactions, the dealer who is to be the leviable dealer in relation to a transaction in that class or in any of those classes.

**(7)** A participating exchange shall, within the period, and in the manner, specified in writing by the Secretary to the Department, pay to the Secretary on behalf of the Commonwealth an amount of levy paid to the participating exchange under subsection (5).

**(8)** Where an amount of levy under this section is paid into the Consolidated Revenue Fund, an amount equal to the amount so paid is payable to SEGC out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(9)** An amount paid to SEGC under subsection (8) shall be paid into the Fund.

**(10)** This section has effect subject to section 942.

**Revocation of levy on reportable transactions**

**939.** If SEGC revokes a determination made under subsection 938 (2), the revocation does not affect a liability to pay an amount of levy that became payable before the revocation.

**Levy on participating exchanges**

**940.** **(1)** Where the amount in the Fund is less than the minimum amount, SEGC may, whether or not it also makes a determination under subsection 938 (2), determine in writing that a levy is payable:

(a) unless paragraph (b) applies—by the Exchange; or

(b) if there are 2 or more participating exchanges that are securities exchanges—by one, or by each of 2 or more, of those participating exchanges.

**(2)** A levy payable by a participating exchange shall be paid to the Secretary to the Department on behalf of the Commonwealth within the period, and in the manner, determined in writing by SEGC for the purposes of the levy.

**(3)** Where a levy is payable under this section, SEGC shall give to each participating exchange a notice setting out the amount of the levy payable by that exchange.

**(4)** For the purpose of paying the whole or a part of a levy under this section, a participating exchange may borrow money on such terms as the board of the participating exchange thinks fit.

**(5)** Where an amount of levy under this section is paid into the Consolidated Revenue Fund, or an amount of levy under section 941 that is paid into the Consolidated Revenue Fund is applied under paragraph 941 (4) (a) in or towards payment of levy under this section, an amount equal to the amount so paid or applied is payable to SEGC out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(6)** An amount paid to SEGC under subsection (5) shall be paid into the Fund.

**(7)** This section has effect subject to section 942.

**Levy by participating exchange on members or member organisations**

**941.** **(1)** A participating exchange by which a levy is payable under section 940 may determine that members, or member organisations, of the participating exchange who or that carry on businesses of dealing in securities shall pay a levy for payment towards the first-mentioned levy.

**(2)** A levy payable under a determination by a participating exchange under subsection (1) is payable by a member, or member organisation, as the case requires, of the participating exchange who or that, when the determination is made:

(a) carries on a business of dealing in securities; and

(b) is included in a class, or in any of 2 or more classes, of members, or of member organisations, of the participating exchange determined in writing by the participating exchange for the purposes of the levy.

**(3)** The amount of a levy payable under a determination by a participating exchange under subsection (1) shall be paid to the Secretary to the Department on behalf of the Commonwealth within the period, and in the manner, specified in writing by the participating exchange either generally or in relation to particular members, particular classes of members, particular member organisations, or particular classes of member organisations, of the participating exchange.

**(4)** Where an amount of a levy payable under this section is paid into the Consolidated Revenue Fund:

(a) the Secretary to the Department shall apply the amount in or towards payment of the levy referred to in section 940; and

(b) if the total of the amounts so applied exceeds the amount of the levy referred to in paragraph (a);

an amount equal to the excess is payable to SEGC out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(5)** An amount paid to SEGC under subsection (4) shall be paid into the Fund.

**(6)** This section has effect subject to section 942.

**Levies not payable unless imposed by another Act**

**942.** A person is not liable to pay a levy under section 938, 940 or 941 unless the levy is imposed by an Act other than this Act.

***Division 5*—*Securities industry development accounts***

**Interpretation**

**943.** In this Division:

“development account” means an account kept for the purposes of subsection 945 (1).

**Payments where Fund exceeds minimum amount**

**944.** **(1)** Where the amount in the Fund exceeds the minimum amount, the Board may, in its discretion, determine in writing that a specified amount equal to the whole or a part of the excess be paid out of the Fund:

(a) if the Exchange is the only participating exchange—to the Exchange; or

(b) if there are 2 or more participating exchanges;

(i) to a specified participating exchange; or

(ii) to 2 or more specified participating exchanges in specified proportions.

**(2)** Where there are 2 or more participating exchanges, a determination under subsection (1) shall be fair and equitable having regard, in relation to each participating exchange, to:

(a) the amounts that have been paid into the Fund and that are attributable to, or to members or member organisations of, that participating exchange; and

(b) the amounts that have been paid out of the Fund and that are so attributable.

**(3)** Where a determination is made in accordance with this section, the amount specified in the determination shall be paid out of the Fund in accordance with the determination.

**(4)** For the purposes of subsection (2), where:

(a) money in the fidelity fund of a securities exchange has been paid into the Fund under subsection 985 (1); or

(b) property of the fidelity fund of a securities exchange (other than money in that fidelity fund) has vested in SEGC, and become part of the Fund, by virtue of subsection 985 (2);

the amount of that money shall be taken, or an amount equal to the value of that property shall be deemed, as the case may be, to have been paid into the Fund and to be attributable to:

(c) in the case of an Exchange subsidiary—the Exchange; or

(d) otherwise—that securities exchange.

**(5)** For the purposes of subsection (2), where an amount is paid out of the Fund in connection with a claim that is, for the purposes of Division 10, a transferred claim in relation to a securities exchange, the amount shall be taken to be attributable to:

(a) in the case of an Exchange subsidiary—the Exchange; or

(b) otherwise—that securities exchange.

**Payments into and out of development account**

**945. (1)** Subject to this section, a participating exchange shall keep money paid to it under section 944 in a separate account designated as a securities industry development account.

**(2)** A participating exchange shall not make a payment out of a development account unless the payment is made:

(a) for a purpose in relation to which an approval is in force under subsection (3) in relation to the payment; or

(b) into the Fund.

**(3)** The Minister may approve in writing, in relation to payments to be made out of development accounts, purposes that are permitted purposes when the approval is given.

**(4)** An approval under subsection (3) may include conditions relating to the payments to which the approval relates.

**(5)** A participating exchange that makes, in contravention of subsection (2), a payment out of a development account shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.

**(6)** A participating exchange that:

(a) makes as permitted by virtue of paragraph (2) (a) a payment out of a development account; and

(b) contravenes a condition that, when the payment was made, was included in an approval in force under subsection (3) in relation to the payment;

shall pay into the account, from its general funds, an amount equal to the amount of the first-mentioned payment.

**(7)** In this section:

“permitted purpose” means:

(a) a purpose relating to the development of the securities industry in Australia or in a part of Australia;

(b) a prescribed purpose; or

(c) without limiting the generality of paragraph (a) or (b), a purpose of reimbursing a person in respect of money that the person spent, before the relevant commencement, for a purpose of a kind referred to in paragraph (a) or (b);

“securities industry” means the industry associated with:

(a) dealings in eligible securities;

(b) dealings in securities by, or on behalf of, corporations; or

(c) dealings in securities in eligible circumstances.

**Investment**

**946. (1)** Money that is in a development account kept by a participating exchange and is not immediately required for the purpose of making payments as permitted by subsection 945 (2) may be invested by the participating exchange in a permitted manner.

**(2)** The interest and profits from time to time accruing from the investment of money in a development account shall be paid into the account.

**Accounts**

**947.** A participating exchange that is a securities exchange shall, in respect of each financial year at any time during which there is money in a development account kept by the participating exchange, lodge with the Commission, within 3 months after the end of that financial year, a statement containing, in relation to payments out of such an account during that year, such information as is prescribed.

***Division 6—Contract guarantees***

**Definitions**

**948.** In this Division, unless the contrary intention appears:

“claim” means a claim under this Division against SEGC;

“completion period”, in relation to a sale or purchase of eligible securities by a dealer, means:

(a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or

(b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

“dealer” means a person who, or a partnership that, is or has at any time been a member organisation of a participating exchange;

“prescribed period”, in relation to a sale or purchase of eligible securities by a dealer, means:

(a) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the agreement for the sale or purchase is made, prescribe a period, for the purposes of this paragraph, in relation to a class of sales or purchases that includes the sale or purchase—that period; or

(b) otherwise—a period that is reasonable, having regard to all the circumstances relating to the sale or purchase;

“purchase price”, in relation to a purchase of eligible securities by a dealer on behalf of a person, means the total of:

(a) the amount of the consideration for the purchase; and

(b) any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by the person to the dealer in connection with the purchase;

“reportable transaction” means a transaction, entered into before or after the commencement of this Part in relation to eligible securities, that is or has at any time been a reportable transaction as defined in subsection 920 (1).

**Claim by selling dealer in respect of default by buying dealer**

**949. (1)** Where, as at the end of the completion period in relation to a reportable transaction that is a sale by a dealer to another dealer:

(a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, under the agreement for the sale, settlement documents in relation to the sale; and

(b) the other dealer has not paid to the first-mentioned dealer, under that agreement, the consideration for the sale;

the first-mentioned dealer may make a claim in respect of the sale.

**(2)** A dealer may make a single claim under this section in respect of the total amount of the unpaid consideration in respect of 2 or more sales.

**(3)** If the business rules of an Exchange subsidiary purport to authorise that subsidiary to make under this section on behalf of a dealer a claim that the dealer is entitled to make, that subsidiary is entitled to make that claim on behalf of that dealer.

**(4)** If an Exchange subsidiary is entitled under subsection (3) to make claims under this section on behalf of 2 or more dealers, that subsidiary is entitled to make a single claim under this section on behalf of both or all of those dealers in respect of the sum of the amounts in respect of which it is entitled to make separate claims on behalf of each of those dealers.

**(5)** Where a dealer, or an Exchange subsidiary on behalf of a dealer, makes a claim in respect of a sale of eligible securities by the dealer to another dealer and the Board is satisfied that:

(a) subsection (1) or (3) entitles the claimant to make the claim;

(b) the dealer has:

(i) for the purposes of the claim, supplied to SEGC; or

(ii) under the agreement for the sale, supplied to the other dealer;

settlement documents in relation to the sale;

(c) the consideration for the sale has not been paid to the dealer under the agreement for the sale; and

(d) the agreement has not been discharged or otherwise terminated; SEGC shall allow the claim and pay to the claimant an amount equal to the amount of the consideration.

**(6)** A claim made under subsection (2) or (4) shall be treated for the purposes of subsection (5) as if it consisted of a separate claim in respect of each of the sales to which it relates.

**Claim by buying dealer in respect of default by selling dealer**

**950. (1)** Where, as at the end of the completion period in relation to a reportable transaction that is a purchase by a dealer from another dealer:

(a) the first-mentioned dealer has supplied, or is ready, willing and able to supply, to the other dealer, under the agreement for the purchase, the consideration for the purchase; and

(b) the other dealer has not supplied to the first-mentioned dealer, under that agreement, settlement documents in relation to the purchase;

the first-mentioned dealer may make a claim in respect of the purchase.

**(2)** Where a dealer makes a claim in respect of a purchase of eligible securities by the claimant from another dealer and the Board is satisfied that:

(a) subsection (1) entitles the claimant to make the claim;

(b) the claimant has:

(i) for the purposes of the claim, paid to SEGC; or

(ii) under the agreement for the purchase, paid to the other dealer;

the amount of the consideration for the purchase;

(c) settlement documents in relation to the purchase have not been supplied to the claimant under the agreement for the purchase; and

(d) the agreement has not been discharged or otherwise terminated;

SEGC shall allow the claim and, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

**Claim by selling client in respect of default by selling dealer**

**951. (1)** Where, as at the end of the prescribed period in relation to a reportable transaction that is a sale by a dealer on behalf of a person:

(a) the person:

(i) in a case to which subparagraph (ii) does not apply—has supplied to the dealer settlement documents for the purposes of the sale; or

(ii) if the dealer has been suspended by the participating exchange concerned and the suspension has not been removed—has supplied, or is ready, willing and able to supply, to the dealer settlement documents for the purposes of the sale; and

(b) the dealer’s obligations to the person in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;

the person may make a claim in respect of the sale.

**(2)** Where a person is entitled to make claims under subsection (1) in respect of 2 or more sales by the one dealer, the person may make a single claim in respect of 2 or more of those sales but a claim so made shall be treated for the purposes of subsection (3) as if it consisted of a separate claim in respect of each of those sales.

**(3)** Where a person makes a claim in respect of a sale of eligible securities by a dealer on behalf of the claimant and the Board is satisfied that:

(a) subsection (1) entitles the claimant to make the claim;

(b) the claimant has:

(i) under the agreement for the sale, supplied to the dealer; or

(ii) for the purposes of the claim, supplied to SEGC; settlement documents in relation to the sale; and

(c) the dealer’s obligations to the claimant in respect of the sale, in so far as they relate to the consideration for the sale, have not been discharged;

SEGC shall allow the claim and pay to the claimant the amount of that consideration less so much (if any) of the total of any brokerage fees and other charges, and any stamp duty and other duties and taxes, payable by

the claimant in connection with the sale as has not already been paid by the claimant.

**Claim by buying client in respect of default by buying dealer**

**952. (1)** Where, as at the end of the prescribed period in relation to a reportable transaction that is a purchase by a dealer on behalf of a person:

(a) the person:

(i) in a case to which subparagraph (ii) does not apply—has paid to the dealer the purchase price in relation to the purchase; or

(ii) if the dealer has been suspended by the participating exchange concerned and the suspension has not been removed—has paid, or is ready, willing and able to pay, to the dealer the purchase price in relation to the purchase; and

(b) the dealer’s obligations to the person in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;

the person may make a claim in respect of the purchase.

**(2)** Where a person is entitled to make claims under subsection (1) in respect of 2 or more purchases by the one dealer, the person may make a single claim in respect of 2 or more of those purchases but a claim so made shall be treated for the purposes of subsection (3) as if it consisted of a separate claim in respect of each of those purchases.

**(3)** Where a person makes a claim in respect of a purchase of eligible securities by a dealer on behalf of the claimant and the Board is satisfied that:

(a) subsection (1) entitles the claimant to make the claim;

(b) the claimant has:

(i) under the agreement for the purchase, paid to the dealer; or

(ii) for the purposes of the claim, paid to SEGC; the amount of the consideration for the purchase; and

(c) the dealer’s obligations to the claimant in respect of the purchase, in so far as they relate to settlement documents in relation to the purchase, have not been discharged;

SEGC shall allow the claim and, subject to section 953, supply to the claimant settlement documents in relation to the purchase.

**Cash settlement of claim where settlement documents unobtainable**

**953.** Where:

(a) SEGC:

(i) allows under subsection 950 (2) a claim in respect of a purchase of eligible securities by the claimant from a dealer; or

(ii) allows under subsection 952 (3) a claim in respect of a purchase of eligible securities by a dealer on behalf of the claimant;

(b) it is not reasonably practicable for SEGC to obtain from the dealer, before the end of:

(i) if the business rules of a participating exchange of which the dealer is a member organisation, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or

(ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;

settlement documents in relation to the purchase; and

(c) because:

(i) whether by reason that dealing in those securities is suspended or for any other reason, there exists at no time during that period an orderly market in those securities; or

(ii) the total number of those securities offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when there exists an orderly market in those securities is insufficient;

it is not reasonably practicable for SEGC to obtain before the end of that period, otherwise than from the dealer, settlement documents in relation to the purchase;

the Board may decide to pay to the claimant the amount that, when the claimant became entitled to make the claim, was the amount of the actual pecuniary loss suffered by the claimant in respect of the purchase, and if the Board does so, SEGC shall pay that amount to the claimant.

**Making of claims**

**954. (1)** Neither subsection 949 (1) nor 950 (1) entitles a person to make a claim in respect of:

(a) a sale of eligible securities by the person to another person; or

(b) a purchase of eligible securities by the person from another person; as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into:

(c) the first-mentioned person was a member organisation of a participating exchange and carried on a business of dealing in securities; and

(d) the other person was a member organisation of a participating exchange.

**(2)** Neither subsection 951 (1) nor 952 (1) entitles a person to make a claim in respect of:

(a) a sale of eligible securities by another person on behalf of the first-mentioned person; or

(b) a purchase of eligible securities by another person on behalf of the first-mentioned person;

as the case may be, unless, on the day on which the agreement for the sale or purchase was entered into, the other person was a member organisation of a participating exchange and carried on a business of dealing in securities.

**(3)** In subsections (1) and (2):

“person” includes a partnership.

**(4)** A claim shall be in writing and shall be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.

**(5)** A claim that is not made within the period prescribed by subsection (4) is barred unless the Board otherwise determines.

***Division 7*—*Unauthorised transfer***

**Interpretation**

**955.** **(1)** In this Division, unless the contrary intention appears:

“claim” means a claim under this Division against SEGC;

“dealer” means a member of a participating exchange;

“securities” means marketable securities or marketable rights within the meaning of Division 3 of Part 7.13.

**(2)** A dealer shall be deemed to have executed a document of transfer in relation to securities on behalf of a person as transferor of the securities if the document states that the person is the transferor of the securities and purports to have been stamped with the dealer’s stamp as the transferor’s broker.

**Unauthorised execution of transfer of securities**

**956.** Where:

(a) a dealer executes a document of transfer of securities (in this Division called the “transferred securities”) on behalf of a person (in this Division called the “transferor”) as transferor of the securities; and

(b) apart from the effect of paragraph 1105 (3) (a), the transferor did not authorise the execution (in this Division called the “unauthorised execution”) of the document;

the following provisions of this Division apply.

**Claim by transferor**

**957.** If, as a result of the unauthorised execution, the transferor suffers loss in respect of any of the transferred securities, the transferor may make a claim in respect of the loss.

**Claim by transferee or sub-transferee**

**958.** **(1)** If, as a result of the unauthorised execution, a person (in this section called the “claimant”), being:

(a) in any case—the person stated in the document as the transferee of the transferred securities; or

(b) if the person so stated has disposed of any of the transferred securities—a successor in title of that person to any of the transferred securities;

suffers loss in respect of any of the transferred securities, the claimant may make a claim in respect of that loss.

**(2)** A person is not entitled to make a claim under this section if the person:

(a) had actual knowledge that the transferor did not in fact authorise the execution of the document; or

(b) is an excluded person in relation to the dealer.

**How and when claim may be made**

**959.** **(1)** A claim shall be in writing and shall be served on SEGC within 6 months after the day on which the claimant first became aware that the claimant had suffered loss as a result of the unauthorised execution.

**(2)** A claim that is not made within the period referred to in subsection (1) is barred unless the Board otherwise determines.

**How claim is to be satisfied**

**960.** **(1)** Where the Board is satisfied that a claimant under section 957 or 958 is entitled to make the claim, SEGC shall allow the claim.

**(2)** If SEGC allows the claim and the claimant has, as a result of the unauthorised execution, ceased to hold some or all of the transferred securities, SEGC shall:

(a) subject to paragraph (b), supply to the claimant securities of the same kind and number as those of the transferred securities that the claimant has so ceased to hold; or

(b) if the Board is satisfied that it is not practicable for SEGC to obtain such securities, or to obtain such securities within a reasonable time—pay to the claimant the amount that, as at the time when the Board decides that it is so satisfied, is the actual pecuniary loss suffered by the claimant, in respect of the transferred securities, as a result of the unauthorised execution (other than loss suffered as mentioned in subsection (3)).

**(3)** If SEGC allows the claim, it shall pay to the claimant the amount that, as at the time when the claim is allowed, or when the Board decides as mentioned in paragraph (2) (b), as the case requires, is the actual

pecuniary loss suffered by the claimant, as a result of the unauthorised execution, in respect of payments or other benefits:

(a) in any case—to which the claimant would have become entitled, as the holder of such of the transferred securities as the claimant has, as a result of the unauthorised execution, ceased to hold, if the claimant had continued to hold the securities concerned until that time; or

(b) if the claim was made under section 958—that the claimant has received as holder of any of the transferred securities.

**(4)** For the purposes of this section, where securities are purportedly transferred from a person to another person, the first-mentioned person shall be deemed to cease to hold, and the other person shall be deemed to hold, the securities even if the other person did not by virtue of the transfer get a good title to the securities.

**Discretionary further compensation to transferor**

**961.** **(1)** If SEGC allows a claim made under section 957 and the Board is satisfied that the supply of securities, or the payment of money, or both, as the case requires, to the claimant in accordance with section 960 will not adequately compensate the claimant in respect of a pecuniary or other gain that the claimant might, if the claimant had continued to hold the transferred securities, have made but did not in fact make, the Board may determine in writing that there be paid to the claimant in respect of that gain a specified amount that the Board considers to be fair and reasonable in all the circumstances.

**(2)** If a determination is made under subsection (1), SEGC shall pay to the claimant the amount specified in it.

***Division 8—Claims in respect of insolvent members***

**Interpretation**

**962.** **(1)** In this Division, unless the contrary intention appears:

“claim” means a claim against SEGC under this Division;

“dealer” means a member of a participating exchange;

“member organisation” means a member organisation of a participating exchange.

**(2)** A reference in this Part to property being entrusted to, or received by, a person or partnership includes a reference to the property being entrusted to, or received by, the person or partnership outside Australia.

**Claim in respect of property entrusted to, or received by, dealer before dealer became insolvent**

**963.** **(1)** Subject to this Division, where:

(a) a dealer has at a particular time, whether before or after the commencement of this Part, become insolvent;

(b) at an earlier time (whether before or after that commencement), property was, in the course of, or in connection with, the dealer’s business of dealing in securities, entrusted to, or received by:

(i) if the dealer was, at the earlier time, a partner in a member organisation—the member organisation, or a partner in, or an employee of, the member organisation; or

(ii) otherwise—the dealer or an employee of the dealer;

and was so entrusted or received on behalf of, or because the dealer was a trustee of the property for, a person (other than an excluded person in relation to the dealer); and

(c) as at the first-mentioned time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the person in respect of the property have not been discharged;

the person may make a claim in respect of the property.

**(2)** Where a person makes a claim in respect of property and, at a particular time, the Board is satisfied that:

(a) because of a dealer having become insolvent, this Division entitles the claimant to make the claim; and

(b) as at that time, the obligations of the dealer, or of a member organisation in which the dealer is a partner, as the case requires, to the claimant in respect of the property have not been discharged;

SEGC shall allow the claim and:

(c) if the property is, or includes, money—pay to the claimant an amount equal to the amount of that money; and

(d) if the property is, or includes, property other than money—subject to subsection (3) and section 964, supply the last-mentioned property to the claimant.

**(3)** Where:

(a) SEGC allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind; and

(b) it is not reasonably practicable for SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:

(i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes that claim—that period; or

(ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable;

SEGC shall, subject to section 964, supply to the person, instead of those securities, or those documents of title to securities, that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be.

**Cash settlement of claims where property unobtainable**

**964. (1)** Where:

(a) SEGC allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of property that is, or includes, a number of securities of a particular kind or documents of title to a number of securities of a particular kind;

(b) it is not reasonably practicable for SEGC to obtain those securities, or those documents of title to securities, as the case may be, from the dealer or, if the dealer has disposed of them, from the dealer’s successor in title, before the end of:

(i) if the business rules of a participating exchange of which the dealer is a member, being those business rules as in force when the Board allows the claim, prescribe a period, for the purposes of this section, in relation to a class of claims that includes the claim—that period; or

(ii) otherwise—such period as the Board, having regard to all the circumstances relating to the claim, considers reasonable; and

(c) because:

(i) whether by reason that dealing in securities of that kind is suspended or for any other reason, there exists at no time during that period an orderly market in such securities; or

(ii) the total number of securities of that kind offered for sale on stock markets of participating exchanges or Exchange subsidiaries at times during that period when there exists an orderly market in such securities is insufficient;

it is not reasonably practicable for SEGC to obtain that number of securities of that kind, or documents of title to that number of securities of that kind, as the case may be, before the end of that period;

the Board may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the first-mentioned securities, or the first-mentioned documents of title, as the case may be, and if the Board does so, SEGC shall pay that amount to the claimant.

**(2)** Where:

(a) the Board allows a claim that, because of a dealer having become insolvent, this Division entitles a person to make in respect of

property that is, or includes, property (in this subsection called the “relevant property”) other than money, securities or documents of title to securities; and

(b) it is not reasonably practicable for SEGC to obtain the relevant property from the dealer or, if the dealer has disposed of it, from the dealer’s successor in title, before the end of such period as the Board considers reasonable;

the Board may decide to pay to the claimant the amount that, when the decision is made, is the actual pecuniary loss suffered by the claimant in respect of the relevant property, and if the Board does so, SEGC shall pay that amount to the claimant.

**Ordering of alternative claims and prevention of double recovery**

**965. (1)** Where:

(a) a member organisation has received under the agreement for a sale or purchase of securities by the member organisation on behalf of a person, the consideration for the sale or settlement documents in relation to the purchase, as the case may be; and

(b) subsection 951 (1) or 952 (1), as the case may be, entitles the person to make a claim against SEGC under Division 6 in respect of the sale or purchase;

subsection (2) applies.

**(2)** This Division does not, because of:

(a) a dealer, being the member organisation or a partner in the member organisation, having become insolvent at a particular time; and

(b) the member organisation having received, under the agreement, the consideration or the settlement documents;

entitle the person to make a claim in respect of the consideration or the settlement documents, as the case may be, unless the member organisation’s obligations to the person in respect of the sale or purchase, as the case may be, in so far as those obligations related to the consideration or the settlement documents, were discharged before that time.

**(3)** Where:

(a) because of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim (in this subsection called the “first claim”) in respect of property; and

(b) because of a dealer having become insolvent on a later day, this Division entitles a person to make another claim in respect of the property;

SEGC shall not allow the other claim unless:

(c) the person has made the first claim and SEGC has allowed or disallowed it;

(d) the Board is satisfied that if the first claim had been made SEGC would have disallowed it; or

(e) the Board is satisfied that, when the person first became aware of the dealer referred to in paragraph (b) having become insolvent on the later day:

(i) the first claim was barred; or

(ii) it was no longer reasonably practicable for the person to make the first claim before it became barred.

**(4)** Where:

(a) at a particular time, SEGC allows a claim made by a person under this Division in respect of property; and

(b) because of:

(i) a dealer having become insolvent (whether before, at or after that time); and

(ii) the property having, before that time, been entrusted or received as mentioned in paragraph 963 (1) (b);

this Division entitles the person to make another claim in respect of the property;

SEGC shall not allow the other claim.

**No claim in respect of money lent to dealer**

**966.** Where, as at the time when a dealer becomes insolvent:

(a) a person has lent money to the dealer; and

(b) the liability of the dealer to repay the money remains undischarged;

this Division does not, because of the dealer having become insolvent at that time, entitle the person to make a claim in respect of the money.

**No claim in certain other cases**

**967.** This Division does not, because of a dealer having become insolvent on a particular day, entitle a person to make a claim in respect of property if:

(a) before that day the property had, in due course of the administration of a trust, ceased to be under the sole control of the dealer; or

(b) the Board, or the Court, is satisfied that circumstances that materially contributed to the dealer becoming insolvent on that day were due to, or caused directly or indirectly by, an act or omission of the person.

**Limits of compensation**

**968.** **(1)** The total amounts paid out of the Fund in connection with claims that:

(a) because of:

(i) a dealer having become insolvent on a particular day; or

(ii) if 2 or more partners in the same member organisation have become insolvent on a particular day—those partners having become insolvent on that day;

this Division entitles persons to make; and

(b) are allowed by SEGC;

shall not exceed an amount equal to 14% of the minimum amount of the Fund as at the end of that day.

**(2)** In determining, for the purposes of subsection (1), the total of the amounts paid out of the Fund in connection with claims in respect of property:

(a) an amount paid out of the Fund in connection with any of the claims shall, to the extent to which it is repaid to the Fund, be disregarded; and

(b) where, by virtue of the exercise of a right or remedy in relation to property that is, or is included in, the first-mentioned property, being a right or remedy of the claimant, or of any of the claimants, to which SEGC is, by virtue of section 980, subrogated, money or other property has been recovered by, or on behalf, of SEGC—so much of the amount, or of the total of the amounts, paid out of the Fund in connection with any of the claims as does not exceed:

(i) the amount of that money; or

(ii) the value of so much (if any) of that other property as has not been, and is not required to be, supplied under subsection 963 (2) in respect of any of the claims;

as the case may be, shall be disregarded.

**(3)** In order to ensure compliance with subsection (1) as it applies in relation to particular claims:

(a) the Board may, in relation to each of those claims, determine in writing an amount to be the maximum amount in relation to the claim; and

(b) where paragraph (a) empowers the Board to make determinations in relation to the respective claims of 2 or more claimants—the Board shall, in making those determinations:

(i) take into account, in relation to each of those claimants, any money or other property that the claimant has received, or is likely to receive, from sources other than the Fund as compensation for property to which the claimant’s claim relates; and

(ii) strive to ensure that the proportion of the property to which a claim relates that is represented by the money and other property received from all sources (including the Fund) as compensation for property to which the claim relates is, as nearly as practicable, the same for each of those claimants.

**(4)** Where a determination of an amount as the maximum amount in relation to a claim is in force under subsection (3), the amount, or the total of the amounts, paid out of the Fund in connection with the claim shall not exceed the first-mentioned amount.

**(5)** In this section, “claim” means a claim under this Division.

**Making of claims**

**969.** **(1)** SEGC may publish, in each State and Territory, in a daily newspaper circulating generally in that State or Territory, a notice in the prescribed form specifying a day, not being earlier than 3 months after the publication of the notice, on or before which claims against SEGC may be made, being claims that, because of a dealer specified in the notice having become insolvent, this Division entitles persons to make.

**(2)** Where, because of a dealer having become insolvent on a particular day, this Division entitles a person to make a claim, the claim shall be in writing and shall be served on SEGC:

(a) if there has been published in accordance with subsection (1) a notice specifying a day on or before which claims may be made, being claims that, because of the dealer having become insolvent on that day, this Division entitles persons to make—on or before that day; or

(b) otherwise—within 6 months after the person becomes aware of the dealer having become insolvent on that day.

**(3)** A claim that is not made in accordance with subsection (2) is barred unless the Board otherwise determines.

**(4)** SEGC, a member of the Board and any employee of, or person acting on behalf of, SEGC each have qualified privilege in respect of the publication of a notice under subsection (1).

***Division 9*—*Claims under Divisions 6, 7 and 8***

**Power of SEGC to allow and settle claim**

**970.** Subject to this Part, SEGC may, at any time after a person becomes entitled to make a claim, allow and settle the claim.

**Successful claimant entitled to costs and disbursements**

**971.** Where a claim is allowed, then, in addition to the claimant’s other rights under this Part, the claimant is entitled to be paid out of the Fund an amount equal to the total of the reasonable costs of, and the reasonable disbursements incidental to, the making and proof of the claim.

**Interest**

**972.** **(1)** In addition to an amount that is payable to a person out of the Fund in respect of a claim, interest at the rate of 5% per annum or, if another rate is prescribed, at that other rate, is payable to the person out of the Fund, on so much of that amount as is not attributable to costs and disbursements, in respect of the period beginning on the day on which the person became entitled to make the claim and ending on:

(a) if the Board has made a determination under subsection 983 (1) to pay that amount in instalments—the day on which that amount

would, if no such determination had been made and the money in the Fund were unlimited, have been paid to the person;

(b) if, because of insufficiency of the Fund, no part of that amount is paid to the person on the day on which that amount would, if the money in the Fund were unlimited, have been so paid—that day; or

(c) otherwise—the day on which that amount is paid to the person.

**(2)** Where:

(a) under subsection (1), interest is payable to a person on an amount in respect of a period; and

(b) that amount, or a part of that amount, remains unpaid throughout a period beginning immediately after the period referred to in paragraph (a);

then, in addition to that amount and that interest, interest at the prescribed rate is payable to the person out of the Fund on that amount, or on that part of that amount, as the case may be, in respect of that period first referred to in paragraph (b).

**Application of Fund in respect of certain claims**

**973. (1)** SEGC:

(a) may buy securities for the purpose of complying with subsection 950 (2) or 952 (3), paragraph 960 (2) (a) or subsection 963 (3); and

(b) may pay money out of the Fund for the purpose of so buying securities or for any other purpose connected with complying with that subsection or paragraph.

**(2)** Securities bought by SEGC as mentioned in subsection (1) form part of the Fund until they are supplied in accordance with this Part to a claimant or sold in accordance with subsection (3).

**(3)** Where:

(a) the Board:

(i) makes in relation to a claim in respect of a purchase of securities a decision under section 953;

(ii) decides that it is not practicable for SEGC to obtain, or to obtain within a reasonable time, securities for the purpose of complying with paragraph 960 (2) (a) in relation to a claim; or

(iii) makes in relation to a claim a decision under subsection 964 (1); and

(b) SEGC has, before making the decision, bought securities for the purpose of:

(i) supplying to the claimant settlement documents in relation to the purchase;

(ii) complying with paragraph 960 (2) (a) in relation to the claim; or

(iii) supplying under subsection 963 (3), in respect of the claim, securities or documents of title to securities;

as the case may be;

SEGC shall, as soon as practicable after making the decision, sell the securities so bought and pay the proceeds of sale into the Fund.

**Allowing of claim not to constitute admission**

**974.** Where SEGC allows a claim, neither the allowing of the claim, nor any act done by SEGC as a result of allowing the claim, shall be taken for any purpose to constitute an admission by any person of liability in respect of any matter, other than an admission of SEGC of its liability in respect of the claim.

**SEGC to notify claimant where claim disallowed**

**975.** SEGC shall, after wholly or partly disallowing a claim, serve on the claimant, or on the claimant’s solicitor, notice of the disallowance in the prescribed form.

**Proceedings in the Court**

**976. (1)** Where SEGC has disallowed a claim, the claimant may, within 3 months after notice of the disallowance has been served on the claimant, or on the claimant’s solicitor, in accordance with section 975, bring proceedings in the Court to establish the claim.

**(2)** Where, as at the end of a reasonable period after a claim was made, SEGC has neither allowed nor disallowed the claim, the claimant may bring proceedings in the Court to establish the claim.

**Arbitration of amount of cash settlement of certain claims**

**977. (1)** Where:

(a) section 953 or 960 or subsection 964 (1) or (2) requires SEGC to pay to a person the amount that was at a particular time the amount of the actual pecuniary loss suffered by the person in respect of a particular matter; and

(b) that amount cannot be determined by agreement between SEGC and the person;

that amount shall be determined by arbitration in accordance with this section.

**(2)** The reference to arbitration shall be made to persons appointed, in accordance with subsection (3), for the purposes of the reference and the law relating to arbitration that is in force in the State or Territory where the arbitration is to take place applies in relation to the reference.

**(3)** The participating exchange shall appoint, or the participating exchanges shall jointly appoint, as the case requires, for the purposes of the reference to arbitration, 3 persons whose appointment under this subsection has been approved in writing by the Minister and at least 2 of whom are

neither members of a participating exchange nor officers or employees of SEGC, of a participating exchange, or of a member organisation of a participating exchange.

**(4)** Where, under a corresponding law, an arbitration:

(a) was to take place but had not begun; or

(b) had begun but had not been concluded;

before the commencement of this Part, the arbitration shall take place or continue, as the case may be, as if it were an arbitration under this section.

**(5)** An approval given by the Ministerial Council before the commencement of this Part of the appointment of a person for the purposes of an arbitration under a corresponding law shall be deemed to be an approval given by the Minister of the appointment of that person for the purposes of the arbitration as it is to take place or continue under this section.

**(6)** If an arbitration under a corresponding law had concluded before the commencement of this Part but NSEGC had not made a payment of the amount determined under the arbitration, the amount shall be deemed to have been determined under this section for the purposes of the liability of SEGC to make payment.

**Form of order of Court establishing claim**

**978. (1)** Where, in a proceeding to establish a claim, the Court is satisfied that the claim should be allowed, the Court:

(a) shall, by order, make a declaration accordingly and direct SEGC to allow the claim and deal with it in accordance with this Chapter; and

(b) may, at any time after making the order, give, upon application made by the claimant or SEGC, such directions relating to the claim as the Court thinks just and reasonable.

**(2)** In a proceeding to establish a claim, or in an application under paragraph (1) (b), all questions of costs are in the discretion of the Court.

**Power of Board to require production of securities etc.**

**979. (1)** The Board may, by notice served on a person, require the person to give to SEGC specified securities, documents, or statements of evidence, necessary to support a claim or necessary for the purpose of:

(a) exercising SEGC’s rights against a member, or a member organisation, of a participating exchange or against any other person; or

(b) enabling criminal proceedings to be taken against a person.

**(2)** Where a person fails, without reasonable excuse, to comply with a requirement under subsection (1), SEGC may disallow a claim made by the person.

**Subrogation of SEGC to claimant’s rights etc.**

**980.** **(1)** Where SEGC:

(a) allows under subsection 949 (5) or 951 (3) a claim made under Division 6 in respect of a sale of securities; or

(b) allows under subsection 950 (2) or 952 (3) a claim made under Division 6 in respect of a purchase of securities;

SEGC is subrogated to all the claimant’s rights and remedies in relation to the sale or purchase, as the case may be.

**(2)** Where SEGC allows a claim made under Division 7 in respect of an unauthorised execution of a document of transfer, SEGC is subrogated to all the claimant’s rights and remedies in relation to that execution of that document.

**(3)** Where SEGC allows a claim made under Division 8 in respect of property, SEGC is subrogated to all the claimant’s rights and remedies in relation to the property.

**(4)** Where, by virtue of this section, SEGC is subrogated to a right or remedy that a person has against another person, then:

(a) if SEGC has reason to believe that an insurer may be liable to indemnify the other person in respect of the subject matter of the right or remedy—SEGC shall serve a notice on the insurer setting out particulars of the right or remedy and stating that SEGC is, by virtue of this section, subrogated to the right or remedy;

(b) an insurer that considers that it may be liable so to indemnify the other person may, whether or not SEGC has served a notice on the insurer under paragraph (a), apply to be joined as a party to a proceeding that relates to the right or remedy and to which the first-mentioned person or SEGC is a party; and

(c) the first-mentioned person or SEGC may, to the extent of the liability of an insurer so to indemnify the other person, enforce against the insurer a judgment or order obtained in such a proceeding in so far as the proceeding relates to the right or remedy.

**(5)** Except as provided in this section, nothing in this Part affects a right or remedy that a claimant under Division 6, 7 or 8 has against a person other than SEGC.

**Payment of claims only from Fund**

**981.** Property of SEGC, other than property forming part of the Fund, is not available to be applied in respect of a claim that has been allowed by SEGC, whether or not under an order of the Court.

**SEGC may enter into contracts of insurance or indemnity**

**982.** **(1)** SEGC may enter into a contract with a person carrying on fidelity insurance business under which SEGC will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims.

**(2)** A contract entered into under subsection (1) may relate to dealers generally, particular classes of dealers specified in the contract, particular dealers so specified, or dealers generally with the exclusion of particular classes of dealers, or particular dealers, so specified.

**(3)** SEGC, a participating exchange, a member of the Board and any employee of SEGC or of a participating exchange each have qualified privilege in respect of the publication of a statement that a contract entered into under subsection (1) does or does not apply with respect to a dealer.

**(4)** Where SEGC has entered into a contract of insurance or indemnity with an insurer under this section, a person who has made a claim does not have a right of action against the insurer in respect of the contract or a right or claim in respect of money paid by the insurer in accordance with the contract.

**(5)** In this section:

“dealer” means a member, or a member organisation, of a participating exchange.

**Instalment payments**

**983**. (1) Where, at a particular time, the Board is of the opinion that, if all the amounts that, as at that time, are payable out of the Fund in connection with claims were so paid, the Fund would be exhausted or substantially depleted, the Board may determine in writing that amounts so payable as at that time shall be so paid in instalments of specified amounts payable on specified days.

**(2)** In subsection (1):

“claim” means a claim under Division 6, 7 or 8 or a claim that, for the purposes of Division 10, is a transferred claim in relation to a joining exchange.

**(3)** A determination under subsection (1) applies subject to subsection 932 (3).

***Division 10*—*Transitional***

**Definitions**

**984.** In this Division, unless the contrary intention appears:

“joining day”, in relation to a joining exchange, means the day on which the joining exchange became a local Exchange subsidiary, or a participating exchange, as the case requires;

“joining exchange” means a securities exchange that:

(a) at a particular time after the commencement of this Part becomes a local Exchange subsidiary or a participating exchange; and

(b) was not, immediately before that time, a participating exchange, or a local Exchange subsidiary, as the case may be;

“liability provisions” means sections 907 to 916, inclusive;

“transferred claim”, in relation to a joining exchange, means:

(a) a claim made, before the joining day in relation to the joining exchange, for compensation from the joining exchange’s fidelity fund;

(b) a claim that, as at the time immediately before the joining day in relation to the joining exchange, the liability provisions entitled a person to make for compensation from the joining exchange’s fidelity fund, but that, as at that time, had not been made; or

(c) a claim that purports to be a claim of a kind referred to in paragraph (b).

**Assets and liabilities of joining exchange’s fidelity fund**

**985. (1)** The money that at the end of the joining day in relation to a joining exchange was in the joining exchange’s fidelity fund shall, as soon as practicable after that day, be paid out of that fidelity fund and into the Fund.

**(2)** At the beginning of the next day after the joining day in relation to a joining exchange:

(a) the investments and other property of the joining exchange’s fidelity fund that at the end of the joining day were vested in the joining exchange vest in SEGC and become part of the Fund;

(b) the rights that at the end of the joining day the joining exchange had, whether under a previous law or otherwise, in connection with the administration of the joining exchange’s fidelity fund vest in SEGC; and

(c) SEGC becomes liable to pay and discharge the debts, liabilities and obligations of the joining exchange that arose, whether under a previous law or otherwise, in connection with the administration of the joining exchange’s fidelity fund and that existed at the end of the joining day.

**(3)** A reference in subsection (2) to rights or to debts, liabilities and obligations does **not** include a reference to rights, or to debts, liabilities and obligations, as the case may be, arising under a contract of employment or under a contract for services.

**(4)** Investments that at the end of the joining day in relation to a joining exchange were held, by a person other than the joining exchange, for the purposes of the joining exchange’s fidelity fund are held after that day for the purposes of the Fund.

**(5)** After the joining day in relation to a joining exchange, an agreement (other than a contract of employment or a contract for services) that was entered into:

(a) by or on behalf of the joining exchange as a party; and

(b) in connection with the administration of the joining exchange’s fidelity fund;

and was in force at the end of that day applies, with such modifications as the circumstances require, as if:

(c) SEGC were substituted for the joining exchange as a party to the agreement; and

(d) a reference in the agreement to the joining exchange were, except in relation to a time on or before that day, a reference to SEGC.

**(6)** Without limiting the generality of another provision of this section, where, as at the end of the joining day in relation to a joining exchange, an amount advanced under subsection 905 (1) by the joining exchange to its fidelity fund has not been repaid, an amount equal to the first-mentioned amount is, after that day, payable, on demand, by SEGC to the joining exchange.

**(7)** Where, at the end of the joining day in relation to a joining exchange, proceedings:

(a) to which the joining exchange was a party; and

(b) that arose out of, or were otherwise connected with, the administration of the joining exchange’s fidelity fund;

were pending in a court or tribunal, SEGC is, at the beginning of the next day after the joining day, substituted for the joining exchange as a party to the proceedings and has the same rights in the proceedings as the party for which it was substituted.

**(8)** An amount that, as a result of the operation of this section, is or becomes payable by SEGC is payable out of the Fund.

**(9)** This section applies subject to section 987.

**Final accounts in respect of joining exchange’s fidelity fund**

**986. (1)** A joining exchange shall, as soon as practicable, and in any event within 2 months, after the joining day in relation to the joining exchange:

(a) prepare a statement of the assets and liabilities of its fidelity fund as on that day; and

(b) appoint a registered company auditor to audit the statement.

**(2)** Without limiting the generality of subsection (1), a statement prepared under that subsection shall set out full particulars, so far as known when the statement is prepared, of all liabilities (including contingent liabilities) of the joining exchange’s fidelity fund in respect of transferred claims.

**(3)** An auditor appointed to audit a statement prepared under subsection (1) in relation to a joining exchange’s fidelity fund shall, within 1 month after the statement is prepared:

(a) audit the statement; and

(b) cause a report on the statement to be given to the Board and a copy of the report to be given to the board of the joining exchange.

**(4)** The Board shall give to the Commission a copy of a report given to the Board under this section, and a copy of the statement to which the report relates, within 14 days after the report is given to the Board.

**Application of liability provisions in relation to transferred claims**

**987.** On and after the joining day in relation to a joining exchange, the liability provisions apply, for the purposes of a transferred claim in relation to the joining exchange, as if, except in relation to a time before that day:

(a) a reference in those provisions to the fidelity fund of a securities exchange were a reference to the Fund;

(b) a reference in those provisions to the board of a securities exchange were a reference to the Board; and

(c) a reference in those provisions to a securities exchange were a reference to SEGC;

and with such other modifications as the circumstances require.

**Claims under corresponding law**

**988. (1)** Any claim made before the commencement of this Part against NSEGC under a law corresponding to a provision of this Part shall:

(a) unless the claim was disallowed before that commencement, be deemed to be a claim against SEGC made under that provision of this Part; and

(b) if the claim had been allowed but had not been settled before that commencement, be treated as if it had been allowed under that provision of this Part.

**(2)** A claim that was served on NSEGC before the commencement of this Part and was not disallowed before that commencement shall be deemed to have been served on SEGC.

**(3)** Any act done by NSEGC or the previous Board before the commencement of this Part under or for the purposes of a corresponding law shall be deemed to have been done by SEGC or the Board, as the case may be, under or for the purposes of the provision of this Part to which that corresponding law corresponds.

**(4)** The generality of subsection (3) is not affected by the following provisions of this section.

**(5)** A determination by the previous Board before the commencement of this Part under a corresponding law has effect as if it were made by the Board under the provision of this Part to which that law corresponds.

**(6)** A notice published by NSEGC before the commencement of this Part under a corresponding law shall be deemed to have been published by SEGC under the provision of this Part to which that law corresponds.

**(7)** Any securities bought by NSEGC before the commencement of this Part for a purpose of a corresponding law shall be deemed to have been bought by SEGC for the corresponding purpose of this Part.

**Expenses incurred under corresponding law**

**989.** **(1)** Any legal and other expenses incurred before the commencement of this Part in investigating or defending claims made under a corresponding law or incurred in relation to the previous Fund or in the exercise by NSEGC or the previous Board of the rights, powers and authorities vested in it by the provisions of a corresponding law in relation to the previous Fund shall be deemed to be expenses to which paragraph 932 (1) (b) applies.

**(2)** Any expenses incurred before commencement of this Part in the administration of the previous Fund, including the salaries and wages of persons employed by NSEGC or the previous Board in relation to the previous Fund, shall be deemed to have been incurred in the administration of the Fund.

**Money payable under corresponding law**

**990.** **(1)** Any money that, immediately before the commencement of this Part, was payable to a participating exchange under a law corresponding to section 944 shall be deemed to be payable under that section.

**(2)** Any money that was payable immediately before the commencement of this Part, or would if this Part had not been enacted have become payable, to NSEGC under a corresponding law shall be paid to SEGC and, if any money so paid to SEGC would, if this Part had not been enacted and the money had been paid to NSEGC, have been payable by NSEGC to the previous Fund, that money shall be paid by SEGC to the Fund.

**Contracts made under corresponding law**

**991.** Any contracts of insurance or indemnity entered into before the commencement of this Part by NSEGC shall be deemed to have been entered into by SEGC under section 982 and have effect as if:

(a) SEGC were substituted for NSEGC as a party to the contract; and

(b) a reference in the contract to NSEGC were, except in relation to a time before the commencement of this Part, a reference to SEGC.

**Periods prescribed by business rules of exchange for purposes of corresponding law**

**992.** A period prescribed by the business rules of a participating exchange for the purposes of a law corresponding to paragraph (a) of the definition of “completion period”, or paragraph (a) of the definition of “prescribed period”, in section 948, or section 953, 963 or 964, shall be deemed to be also prescribed by those business rules for the purposes of that paragraph or section, as the case may be.

**Court proceedings and orders**

**993.** **(1)** Any proceeding under a corresponding law pending before the Court at the commencement of this Part shall continue as if it were a proceeding under the provision of this Part to which that law corresponds.

**(2)** An order made by a court under a corresponding law before the commencement of this Part and directed to NSEGC shall be deemed to have been made by the Court under the provision of this Part to which that law corresponds and to have been directed to SEGC.

**PART 7.11—CONDUCT IN RELATION TO SECURITIES**

***Division 1***—***Additional operation of Part***

**Holding companies**

**994.** Without prejudice to its effect apart from this section, this Part also has the effect that it would have if any reference in this Part, and in any other provision of this Act in the application of that provision in relation to or for the purposes of this Part, to a corporation were a reference to the holding company of:

(a) a foreign corporation;

(b) a trading corporation formed within the limits of the Commonwealth;

(c) a body corporate that is incorporated in a Territory or an excluded Territory;

(d) a banking corporation;

(e) an insurance corporation; or

(f) a company.

***Division 2*—*Prohibited conduct***

**Misleading or deceptive conduct**

**995.** **(1)** Subsection (2) applies:

(a) in relation to a corporation, in relation to securities; or

(b) in relation to a person, in relation to eligible securities.

**(2)** A person shall not, in or in connection with:

(a) any dealing in securities; or

(b) without limiting the generality of paragraph (a):

(i) the allotment or issue of securities;

(ii) any prospectus issued, or notice published, in relation to securities;

(iii) the making of takeover offers or a takeover announcement, or the making of an evaluation of, or of a recommendation in relation to, takeover offers or offers constituted by a takeover announcement; or

(iv) the carrying on of any negotiations, the making of any arrangements or the doing of any other act preparatory to or

in any other way related to any matter referred to in subparagraph (i), (ii) or (iii);

engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

**(3)** A person who contravenes this section is not guilty of an offence.

**(4)** Nothing in the following provisions of this Part or in the provisions of Part 7.12 shall be taken as limiting by implication the generality of subsection (1).

**False or misleading statement in, or omission from, prospectus**

**996. (1)** A person shall not authorise or cause the issue of a prospectus in relation to securities of a corporation in which there is a false or misleading statement or from which there is an omission.

**(2)** It is a defence to a prosecution for a contravention of subsection (1) if it is proved:

(a) that the statement or omission was not material;

(b) that the defendant, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the statement was true and not misleading or the omission was not material; or

(c) where there was an omission from the prospectus—that the omission was inadvertent.

**(3)** A person does not contravene this section merely because the person gave a consent required by this Chapter to the inclusion in the prospectus of a statement purporting to be made by the person as an expert.

**Stock market manipulation**

**997. (1)** A person shall not enter into or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of increasing the price of securities of the corporation on a stock market, with intention to induce other persons to buy or subscribe for securities of the corporation or of a related body corporate.

**(2)** A corporation shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of increasing the price of securities of the body corporate on a stock market, with intent to induce other persons to buy or subscribe for securities of the body corporate or of a corporation or other body corporate that is related to the first-mentioned body corporate.

**(3)** A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of increasing the price of securities of the body corporate on a stock

market, with intent to induce other persons to buy or subscribe for securities of a corporation that is related to the body corporate.

**(4)** A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of reducing the price of securities of the corporation on a stock market, with intent to induce other persons to sell securities of the corporation or of a related body corporate.

**(5)** A corporation shall not enter into, or carry out, directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of reducing the price of securities of the body corporate on a stock market, with intent to induce other persons to sell securities of the body corporate or of a corporation or other body corporate that is related to the first-mentioned body corporate.

**(6)** A person shall not enter into, or carry out, directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of reducing the price of securities of the body corporate on a stock market, with intent to induce other persons to sell securities of a corporation that is related to the body corporate.

**(7)** A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a corporation, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the corporation on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of the corporation or of a related body corporate.

**(8)** A corporation shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of the body corporate or of a corporation or other body corporate that is related to the first-mentioned body corporate.

**(9)** A person shall not enter into, or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate that is not a corporation, being transactions that have, or are likely to have, the effect of maintaining or stabilising the price of securities of the body corporate on a stock market, with intent to induce other persons to sell, buy or subscribe for securities of a corporation that is related to the body corporate.

**(10)** A reference in this section to a transaction, in relation to securities, includes:

(a) a reference to the making of an offer to sell or buy securities; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or buy securities.

**False trading and market rigging transactions**

**998. (1)** A person shall not create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any eligible securities on a stock market or a false or misleading appearance with respect to the market for, or the price of, any eligible securities.

**(2)** A corporation shall not create, or do anything that is intended or likely to create, a false or misleading appearance of active trading in any securities (not being eligible securities) on a stock market or a false or misleading appearance with respect to the market for, or the price of, any such securities.

**(3)** A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any eligible securities.

**(4)** A corporation shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities or by any fictitious transactions or devices, maintain, increase, reduce, or cause fluctuations in, the market price of any securities not being eligible securities.

**(5)** Without limiting the generality of subsections (1) and (2), a person who:

(a) enters into, or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;

(b) offers to sell any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to buy the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or

(c) offers to buy any securities at a specified price where the person has made or proposes to make, or knows that an associate of the person has made or proposes to make, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price;

shall be deemed to have created a false or misleading appearance of active trading in those securities on a stock market.

**(6)** In a prosecution of a person for a contravention of subsection (1) or (2) constituted by an act referred to in subsection (5), it is a defence if it is proved that the purpose or purposes for which the person did the act

was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

**(7)** A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or an associate of the person in relation to those securities, has an interest in the securities after the purchase or sale.

**(8)** In a prosecution for a contravention of subsection (3) or (4) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if it is proved that the purpose or purposes for which the securities were bought or sold was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

**(9)** The reference in paragraph (5) (a) to a transaction of sale or purchase of securities includes:

(a) a reference to the making of an offer to sell or buy securities; and

(b) a reference to the making of an invitation, however expressed, that expressely or impliedly invites a person to offer to sell or buy securities.

**False or misleading statements in relation to securities**

**999.** **(1)** A person shall not make a statement, or disseminate information, that is false in a material particular or materially misleading and is likely to induce the sale or purchase of eligible securities by other persons or is likely to have the effect of increasing, reducing, maintaining or stabilising the market price of eligible securities if, when the person makes the statement or disseminates the information:

(a) the person does not care whether the statement or information is true or false; or

(b) the person knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

**(2)** A corporation shall not issue a statement, or disseminate information, that is false in a material particular or materially misleading and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of increasing, reducing, maintaining or stabilising the market price of securities if, when it issues the statement or disseminates the information:

(a) it does not care whether the statement or information is true or false; or

(b) it knows or ought reasonably to have known that the statement or information is false in a material particular or materially misleading.

**Fraudulently inducing persons to deal in securities**

**1000.** **(1)** A person shall not:

(a) by making or publishing a statement, promise or forecast that the person knows to be misleading, false or deceptive;

(b) by a dishonest concealment of material facts;

(c) by the reckless making or publishing (dishonestly or otherwise) of a statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false in a material particular or materially misleading;

induce or attempt to induce another person to deal in eligible securities.

**(2)** A corporation shall not:

(a) by issuing or publishing a statement, promise or forecast that it knows to be misleading, false or deceptive;

(b) by a dishonest concealment of material facts;

(c) by the reckless issuing or publishing (dishonestly or otherwise) of a statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device information that it knows to be false in a material particular, or materially misleading;

induce or attempt to induce a person to deal in securities.

**(3)** It is a defence to a prosecution for a contravention of subsection (1) or (2) constituted by recording or storing information as mentioned in paragraph (1) (d) or (2) (d) if it is proved that, when the information was so recorded or stored, the defendant had no reasonable grounds for expecting that the information would be available to any other person.

**Dissemination of information about illegal transactions**

**1001. (1)** A person shall not circulate or disseminate any statement or information to the effect that the price of any securities of a corporation will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to securities of that corporation or of a body corporate that is related to that corporation, in contravention of section 997, 998, 999 or 1000 if:

(a) the person, or an associate of the person, has entered into any such transaction or done any such act or thing; or

(b) the person, or an associate of the person, has received, or expects to receive, directly or indirectly, any consideration or benefit in respect of the circulation or dissemination of the statement or information.

**(2)** A corporation shall not circulate or disseminate any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained because of any transaction entered into or other act or thing done in relation to securities of that body

corporate or of a body corporate that is related to that body corporate, in contravention of section 997, 998, 999 or 1000 if:

(a) the corporation, or an associate of the corporation, has entered into any such transaction or done any such act or thing; or

(b) the corporation, or an associate of the corporation, has received, or expects to receive, directly or indirectly, any consideration or benefit in respect of the circulation or dissemination of the statement or information.

**Insider trading**

**1002. (1)** A person who is, or at any time in the preceding 6 months has been, connected with a corporation shall not deal in any securities of that corporation if, because of so being, or having been, connected with that corporation, the person is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.

**(2)** A person who is, or at any time in the preceding 6 months has been, connected with a body corporate that is a corporation shall not deal in any securities of any body corporate if, because of the person so being, or having been, connected with the first-mentioned body corporate, the person is in possession of information that:

(a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and

(b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.

**(3)** Where a person is in possession of any information mentioned in subsection (1) or (2) that if generally available would be likely materially to affect the price of securities but is not precluded by either of those subsections from dealing in those securities, the person shall not deal in those securities if:

(a) the person has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then precluded by subsection (1) or (2) from dealing in those securities; and

(b) when the information was so obtained, the person was an associate of that other person or had with that other person an arrangement for the communication of information of a kind to which those subsections apply with a view to dealing in securities by either or both of them.

**(4)** A person shall not, at any time when precluded by subsection (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

**(5)** A person shall not, at any time when precluded by subsection (1), (2) or (3) from dealing in securities because of being in possession of any information, communicate that information to any other person if:

(a) trading in these securities is permitted on a stock market; and

(b) the person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.

**(6)** Without prejudice to subsection (3) but subject to subsections (7) and (8), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by subsection (1), (2) or (3) from dealing in those securities.

**(7)** A body corporate is not precluded by subsection (6) from entering into a transaction at any time merely because of information in the possession of an officer of that body corporate if:

(a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;

(b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person in possession of the information; and

(c) the information was not so communicated and such advice was not so given.

**(8)** A body corporate is not precluded by subsection (6) from dealing in securities of another body corporate at any time merely because of information in the possession of an officer of that first-mentioned body corporate, being information that was obtained by the officer in the course of the performance of duties as an officer of that first-mentioned body corporate and that relates only to proposed dealings by that first-mentioned body corporate in securities of that other body corporate.

**(9)** For the purposes of this section, a person is connected with a body corporate if, being a natural person:

(a) the person is an officer of that body corporate or of a related body corporate;

(b) the person is a substantial shareholder within the meaning of Part 6.7 in that body corporate or in a related body corporate; or

(c) the person occupies a position that may reasonably be expected to give access to information of a kind to which subsections (1) and (2) apply by virtue of:

(i) any professional or business relationship existing between the person (or the person’s employer or a body corporate of which the person is an officer) and that body corporate or a related body corporate; or

(ii) the person being an officer of a substantial shareholder within the meaning of Part 6.7 in that body corporate or in a related body corporate.

**(10)** This section does not preclude the holder of a dealers licence from dealing in securities, or rights or interests in securities, of a body corporate, being securities or rights or interests that are permitted by a securities exchange to be traded on the stock market of that securities exchange, if:

(a) the holder of the licence enters into the transaction concerned as agent for another person under a specific instruction by that other person to effect that transaction;

(b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and

(c) the other person is not an associate of the holder of the licence.

**(11)** Where a prosecution is instituted against a person for an offence because the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the court is satisfied that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

**(12)** For the purposes of subsection (9), “officer”, in relation to a body corporate, includes:

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or a receiver or manager, of property of the body corporate;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator of the body corporate; and

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

***Division 3*—*Powers of Court***

**Provisions relating to prosecutions**

**1003.** In the prosecution of a person for an offence in respect of a contravention of a provision of this Part or Part 7.12, the Court may do either or both of the following:

(a) grant an injunction under section 1324 against the person in relation to:

(i) the conduct that constitutes, or is alleged to constitute, the offence; or

(ii) other conduct of that kind;

(b) make an order under section 1004 in respect of the person.

**Order to disclose information or publish advertisements**

**1004.** Without limiting the generality of section 1324, where, on the application of the Commission, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of this Part or Part 7.12, the Court may make either or both of the following orders:

(a) an order requiring that person or a person involved in the contravention to disclose to the public, to a particular person or to persons included in a particular class of persons, in such manner as is specified in the order, such information, or information of such a kind, as is so specified, being information that is in the possession of the person to whom the order is directed or to which that last-mentioned person has access;

(b) an order requiring that person or a person involved in the contravention to publish, at the person’s own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order.

***Division 4—Civil liability***

***Subdivision A—General***

**Civil liability for contravention of this Part or Part 7.12**

**1005. (1)** Subject to the following sections of this Division, a person who suffers loss or damage by conduct of another person that was engaged in in contravention of a provision of this Part or Part 7.12 may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

**(2)** An action under subsection (1) or under paragraph 1013 (1) (d) may be begun at any time within 6 years after the day on which the cause of action arose.

**(3)** This Division does not affect any liability that a person has under any other law.

**(4)** In a proceeding under this Part in relation to a contravention of this Part or Part 7.12 committed by the publication of an advertisement, it is a defence if it is proved that the defendant is a person whose business it is to publish or arrange for the publication of advertisements and that the person received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of this Part or Part 7.12.

***Subdivision B—Liability in respect of prospectuses***

**Civil liability for false or misleading statement in, or omission from, prospectus**

**1006.** **(1)** This section applies for the purposes of an action under section 1005 in respect of conduct being the issue of a prospectus in relation to securities of a corporation in which there is a false or misleading statement or from which there is an omission.

**(2)** Subject to this section, the action may be brought against all or any of the following persons:

(a) the corporation;

(b) a person who was a director of the corporation at the time of the issue of the prospectus;

(c) a person who authorised or caused himself or herself to be named, and is named, in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time;

(d) a promoter of the corporation;

(e) if the prospectus includes a statement purporting to be made by an expert or to be based on a statement made by an expert—that expert;

(f) a person named, with the consent of the person, in the prospectus as a stockbroker, sharebroker or underwriter of the corporation or for or in relation to the issue or proposed issue of securities;

(g) a person named, with the consent of the person, in the prospectus as an auditor, banker or solicitor of the corporation or for or in relation to the issue or proposed issue of securities;

(h) a person named, with the consent of the person, in the prospectus as having performed or performing any function in a professional, advisory or other capacity not mentioned in paragraph (e), (f) or (g) for the corporation or for or in relation to the issue or proposed issue of securities;

(j) any person who authorised or caused the issue of the prospectus.

**(3)** For the purposes of paragraph (2) (j), a person who is named in the prospectus as:

(a) a trustee for holders of debentures of the corporation; or

(b) a trustee for, or representative of, holders of prescribed interests made available by the corporation;

shall not, for that reason alone, be taken to have authorised or caused the issue of the prospectus.

**No liability to person with knowledge of relevant matter**

**1007.** A person referred to in subsection 1006 (2) is not liable in an action under section 1005 to a person who suffered loss or damage as a result of a false or misleading statement in, or an omission from, the prospectus if it is proved that, when the last-mentioned person subscribed

for or bought the securities to which the prospectus relates, that person knew that the statement was false or misleading or was aware of the omitted matter.

**Directors not liable in certain circumstances**

**1008. (1)** A person referred to in paragraph 1006 (2) (b) or (c) is not liable in an action under section 1005 in the circumstances set out in the following provisions of this section.

**(2)** The person is not liable if it is proved that, having consented to become a director of the corporation, the person withdrew the consent before the issue of the prospectus, and that it was issued without the person’s authority or consent.

**(3)** The person is not liable if it is proved that the prospectus was issued without the person’s knowledge or consent and:

(a) as soon as practicable after the person became aware of the issue of the prospectus, the person gave reasonable public notice that it was issued without the person’s knowledge; or

(b) as soon as practicable after the prospectus was issued, the person gave reasonable public notice that the prospectus was issued without the person’s consent;

as the case may be.

**(4)** The person is not liable if it is proved that, after the issue of the prospectus and before any allotment, issue or sale under the prospectus, the person, on becoming aware of any false or misleading statement in the prospectus, withdrew the person’s consent to the issue of the prospectus and gave reasonable public notice of the withdrawal and of the reason for the withdrawal.

**(5)** The person is not liable if it is proved that:

(a) as regards every false or misleading statement not purporting to be made on the authority of an expert or of a public official document or statement, the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or sale of the securities believe, that the statement was true and not misleading;

(b) as regards every false or misleading statement purporting to be a statement made by an expert or to be based on a statement made by an expert or contained in what purports to be a copy of, or extract from, a report or valuation of an expert:

(i) it fairly represented the statement, or was a correct and fair copy of, or extract from, the report or valuation; and

(ii) the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the issue of the prospectus believe, that the person making the statement was competent to make it, had

given the consent required by section 1032 to the issue of the prospectus and had not withdrawn that consent before lodgment of the prospectus for registration, or, to the defendant’s knowledge, before any allotment, issue or sale under the prospectus; and

(c) as regards every false or misleading statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, it was a correct and fair representation of the statement or a correct and fair copy of, or extract from, the document.

**Liability of experts**

**1009. (1)** In this section, “expert”, in relation to a prospectus in relation to securities of a corporation, includes:

(a) a person named, with the consent of the person, in the prospectus as an auditor, banker or solicitor of the corporation or for or in relation to the issue or proposed issue of securities; and

(b) a person named, with the consent of the person, in the prospectus as having performed or performing any professional or advisory capacity (other than a capacity mentioned in paragraph (a) or the capacity of a stockbroker, sharebroker or underwriter) for the corporation or for or in relation to the issue or proposed issue of securities.

**(2)** A person referred to in paragraph 1006 (2) (e), (f), (g) or (h) is liable in an action under section 1005 only in respect of:

(a) a false or misleading statement in the prospectus purporting to be made by the person as an expert; or

(b) an omission from the prospectus of any material matter for which the person is responsible in the person’s capacity or purported capacity as an expert.

**(3)** A person referred to in paragraph 1006 (2) (e) is not liable in an action under section 1005 in respect of a false or misleading statement if it is proved:

(a) that, having given consent under section 1032 to the issue of the prospectus, the person withdrew it in writing before the prospectus was lodged;

(b) that, after the prospectus was lodged and before any allotment, issue or sale under the prospectus, the person, on becoming aware of the false or misleading statement, withdrew the person’s consent in writing and gave reasonable public notice of the withdrawal and of the reasons for the withdrawal; or

(c) that the person was competent to make the statement and, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did until the time of the allotment, issue or

sale of the securities believe, that the statement was true and not misleading.

**Liability of persons named in prospectus etc.**

**1010.** **(1)** A person referred to in paragraph 1006 (2) (f), (g) or (h) who is named in, or a person referred to in paragraph 1006 (2) (h) who has authorised or caused the issue of, part only of the prospectus is not liable in an action under section 1005 in respect of a false or misleading statement in, or an omission from, the prospectus if it is proved that:

(a) the statement was not included in, or the matter was not omitted from, that part of the prospectus; or

(b) in the case of a statement—the statement was not included in, or substantially in, the form and context that the person had agreed to.

**(2)** For the purposes of subsection (1), a person referred to in paragraph 1006 (2) (f), (g) or (h) shall not be taken to be named in part only of the prospectus unless the prospectus includes an express statement that the person was involved only in the preparation of that part.

**No liability for mistake etc. if reasonable precautions taken**

**1011.** **(1)** The corporation or a person referred to in paragraph 1006 (2) (d), (f) or (j) is not liable in an action under section 1005 if it is proved that the false or misleading statement or the omission:

(a) was due to a reasonable mistake;

(b) was due to reasonable reliance on information supplied by another person; or

(c) was due to the act or default of another person, to an accident or to some other cause beyond the defendant’s control;

and, in a case to which paragraph (c) of this subsection applies, that the defendant took reasonable precautions and exercised due diligence to ensure that all statements to be included in the prospectus were true and not misleading and that there were no material omissions from the prospectus.

**(2)** In paragraphs (1) (b) and (c):

“another person” does not include a person who was:

(a) a servant or agent of the defendant; or

(b) if the defendant was the corporation or another body corporate—a director, servant or agent of the defendant;

when the prospectus was issued.

**Indemnity**

**1012.** Where:

(a) a prospectus in relation to securities of a corporation contains the name of a person as a director of the corporation, or as having agreed to become a director, and that person has not consented to become a director, or has withdrawn the consent before the issue of

the prospectus, and has not authorised or consented to the issue of the prospectus; or

(b) the consent of a person is required under section 1032 to the issue of the prospectus and the person either has not given that consent or has withdrawn it before the issue of the prospectus;

the directors of the corporation, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised or caused the issue of the prospectus are jointly and severally liable to indemnify the person so named or whose consent was so required against all damages, costs and expenses to which the person may be made liable:

(c) because of the person’s name being so contained in the prospectus;

(d) because of the inclusion in the prospectus of a statement purporting to be made by the person as an expert; or

(e) in defending any action or other legal proceeding brought against the person because of the person’s name being so contained in the prospectus or the inclusion in the prospectus of such a statement.

***Subdivision C***—***Liability in respect of unlawful market activity***

**Liability for insider trading**

**1013. (1)** Where:

(a) a person who is in possession of any information mentioned in subsection 1002 (1) or (2) in respect of any securities deals in those securities in contravention of subsection 1002 (1), (2) or (3) or causes or procures another person to deal in those securities in contravention of subsection 1002 (4); or

(b) a person being a body corporate deals in securities in contravention of subsection 1002 (6) at a time when an officer of the body corporate was in possession of any information mentioned in subsection 1002 (1) or (2);

then:

(c) without limiting the generality of section 1005, any other party to the transaction who was not in possession of that information may, by action under that section against the first-mentioned person or against any person involved in the contravention, recover any loss suffered by that party because of any difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction when the first-mentioned transaction took place if that information had been generally available; and

(d) in addition to any action that may be brought by any person under section 1005, the body corporate that issued the securities may, by action against the first-mentioned person, recover any profit accruing to the first-mentioned person from dealing in the securities.

**(2)** For the purposes of paragraph (1) (b), “officer”, in relation to a body corporate, includes:

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or a receiver and manager, of the property or any part of the property of that body corporate;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator of the body corporate; and

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

**(3)** The Commission may, if it considers that it is in the public interest to do so, bring an action under paragraph 1013 (1) (d), in the name of, and for the benefit of, a body corporate, for the recovery of a profit that the body is entitled to recover under that paragraph.

**Liability for other unlawful market activity**

**1014.** Where a person contravenes section 997, 998, 999, 1000 or 1001, then, without limiting the generality of section 1005, any other person who entered into a transaction for the sale or purchase of securities with the first-mentioned person or with a person acting on behalf of the first-mentioned person may, by action under section 1005 against the first-mentioned person or against any person involved in the contravention, recover the amount of any loss suffered by the person bringing the action because of the difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction when the first-mentioned transaction took place if the contravention had not occurred.

**Amount recoverable**

**1015.** **(1)** The amount that a person may recover by action against another person in the circumstances mentioned in section 1013 or 1014 is:

(a) if the second-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under subsection 232 (7) or under a corresponding law because of the same act or transaction—the amount of the loss suffered by the first-mentioned person or the amount of the profit referred to in paragraph 1013 (1) (d), as the case may be, less the amount or the sum of the amounts that the second-mentioned person has been so found to be liable, or has been so ordered, to pay; or

(b) otherwise—the amount of that loss or profit.

**(2)** For the purposes of subsection (1), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

**PART 7.12—OFFERING SECURITIES FOR SUBSCRIPTION OR PURCHASE**

***Division 1*—*Additional operation of Part***

**Holding companies etc.**

**1016. (1)** Without prejudice to its effect apart from this section, this Part also has effect as provided by this section.

**(2)** This Part has the effect that it would have if any reference in this Part, and in any other provision of this Act in the application of that provision in relation to or for the purposes of this Part, to a corporation were a reference to a holding company of:

(a) a foreign corporation;

(b) a trading corporation formed within the limits of the Commonwealth;

(c) a body corporate that is incorporated in a Territory or in an excluded Territory;

(d) a banking corporation;

(e) an insurance corporation; or

(f) a company.

**(3)** In addition to the effect that this Part has as provided by subsection (2), this Part has the effect that it would have if:

(a) subsection 1018 (1) were omitted and the following subsection substituted:

“(1) A person shall not, by the use of an eligible communications service, offer for subscription or purchase, or issue invitations to subscribe for or buy, securities of a body corporate unless:

(a) a prospectus in relation to the securities has been lodged;

(b) the prospectus complies with the requirements of this Division; and

(c) if the prospectus is a registrable prospectus—it has been registered under section 1020a.”;

(b) a reference to a corporation in any other provision of section 1018 were a reference to a body corporate;

(c) sections 1019 and 1020 were omitted and the following sections substituted:

**Issue of documents in relation to proposed body corporate**

“1019. A person shall not issue, by the use of an eligible communications service, a form of application for the issue of securities of a body corporate that is proposed to be formed.

**Forms of application for securities to be attached to prospectus**

“1020. A person shall not issue, by the use of an eligible communications service, a form of application for the issue of securities of a body corporate unless:

(a) if the securities are debentures—the form is attached to, or accompanied by, a copy of a prospectus;

(b) otherwise—the form is attached to a copy of a prospectus;

(c) a copy of the form, and the prospectus, have been lodged; and

(d) if the prospectus is a registrable prospectus—the prospectus has been registered by the Commission under section 1020a.”; and

(d) any reference to a corporation in any other provision of this Act relating to prospectuses, in the application of that provision in relation to or for the purposes of the section substituted for section 1020 in accordance with paragraph (c) of this subsection, were a reference to a body corporate.

***Division 2*—*Prospectuses***

**Exceptions**

**1017.** This Division does not apply in relation to:

(a) an excluded issue of securities;

(b) an excluded offer of securities for subscription or purchase;

(c) an excluded invitation to subscribe for or buy securities; or

(d) an issue or offer of, or invitation in relation to, securities of a prescribed registrable Australian corporation, being an issue, offer or invitation that is made or issued in the State or Territory in which the corporation is incorporated.

**Registrable prospectuses**

**1017a. (1)** In this section:

“approved unlisted corporation”, in relation to securities, means an unlisted corporation that has been approved by the Commission in respect of those securities as a corporation that has established adequate arrangements to keep its employees informed about:

(a) in the case of shares or debentures—its operations; or

(b) in the case of prescribed interests—the operations of the relevant undertaking, scheme, enterprise or investment contract to which the interests relate;

“exempt recipient” means:

(a) the trustee of a superannuation fund constituted by or under a law of the Commonwealth, of a State, of a Territory or of a foreign country;

(b) a holder of a dealers licence acting as principal;

(c) a corporation registered under the *Life Insurance Act 1945* or the *Financial Corporations Act 1974;*

(d) an investment company within the meaning of Part 4.4;

(e) the trustee of a trust that is declared by the Commission to be an equity unit trust for the purposes of this section and in respect of which there is an approved deed for the purposes of Division 5; or

(f) a person declared by the Commission, by notice published in the *Gazette*,to be an institutional investor for the purposes of this section;

“listed corporation” means a corporation that is included in the official list of a stock exchange;

“unlisted corporation” means a corporation other than a listed corporation.

**(2)** A prospectus in relation to securities of a corporation is a registrable prospectus unless it is exempt from registration under section 1020aby virtue of this section.

**(3)** A prospectus in relation to shares in, or debentures of, a corporation is exempt from registration under section 1020a if:

(a) the shares or debentures, as the case may be, are in a class of shares in, or debentures of, the corporation that are listed for quotation on a stock market of a stock exchange; or

(b) the relevant allotment, issue, offer or invitation is proposed to be made or issued:

(i) in the case of shares—to existing members of the corporation;

(ii) in any case—to an exempt recipient; or

(iii) if the corporation is a listed corporation, or is an approved unlisted corporation in relation to shares in the corporation, or debentures of the corporation, as the case may be—to employees of the corporation.

**(4)** A prospectus in relation to prescribed interests made available by a corporation is exempt from registration under section 1020aif the relevant issue, offer or invitation is proposed to be made or issued:

(a) in any case—to an exempt recipient; or

(b) if the corporation is a listed corporation, or is an approved unlisted corporation in relation to prescribed interests made available by it— to employees of the corporation.

**Prospectus in relation to securities**

**1018. (1)** A person shall not offer for subscription or purchase, or issue invitations to subscribe for or buy, securities of a corporation unless:

(a) a prospectus in relation to the securities has been lodged;

(b) the prospectus complies with the requirements of this Division; and

(c) if the prospectus is a registrable prospectus—the prospectus has been registered by the Commission under section 1020**a.**

**(2)** Subsection (1) does not apply in relation to an offer for purchase of, or an invitation to buy, issued securities that are in a class of securities of a corporation, if, throughout the period beginning immediately before the commencement of this section and ending immediately after the offer is made, or the invitation is issued, as the case may be, securities in that class were listed securities.

**(3)** In subsection (2):

“issued securities” means securities issued before, at or after the commencement of this section;

“listed securities” means securities listed for quotation on a stock market of a stock exchange.

**(4)** Subsection (2) does not apply in relation to:

(a) an offer to which section 1030 relates; or

(b) an invitation that, because of subsection 1030 (7), is deemed to be such an offer.

**(5)** Subsection (1) does not apply in relation to an offer or invitation relating to securities in a class of securities of a corporation that are listed for quotation on a stock market of a securities exchange if:

(a) at some time before the making of the offer, or the issue of the invitation, as the case may be:

(i) there was lodged under this Part or a corresponding law a prospectus in respect of securities in that class that complied with the requirements of this Part, or of that corresponding law, as in force when it was so lodged; and

(ii) if this Part or that corresponding law, as the case may be, required the prospectus, or a copy of it, to be registered by the Commission or the NCSC—the prospectus or such a copy was so registered; and

(b) on the last occasion when any of the following occurred before the making of the offer, or the issue of the invitation, as the case may be:

(i) the corporation became required at a particular time, in connection with its admission to an official list of the securities exchange, to comply with such listing rules of the securities exchange as were at that time prescribed for the purposes of this subparagraph;

(ii) the corporation became required, at a particular time when it was included in an official list of the securities exchange, to comply with any of such listing rules of the securities exchange as were at that time prescribed for the purposes of this subparagraph;

the corporation complied with the listing rules concerned before the making of the offer, or the issue of the invitation, as the case may be.

**(6)** For the purposes of paragraph (5) (b), but without limiting its generality, where an obligation or condition is imposed on a corporation at a particular time, by or under a particular listing rule of a securities exchange, in connection with a particular matter:

(a) the corporation shall be taken to have become required at that time to comply with that listing rule; and

(b) the corporation shall not be taken to comply with that listing rule unless it complies with the obligation, or the condition is satisfied, as the case may be.

**Prohibition on invitations or offers in respect of securities of proposed corporation**

**1019.** A person shall not:

(a) issue a form of application for the issue of, or an invitation to subscribe for or buy, securities of a corporation that has not been formed; or

(b) offer securities of a corporation that has not been formed for subscription or purchase;

even if it is proposed to form the corporation.

**Forms of application for securities to be attached to prospectus**

**1020.** A person shall not issue a form of application for the issue of securities of a corporation unless:

(a) if the securities are debentures—the form is attached to, or accompanied by, a copy of a prospectus;

(b) otherwise—the form is attached to a copy of a prospectus;

(c) a copy of the form, and the prospectus, have been lodged; and

(d) if the prospectus is a registrable prospectus—the prospectus has been registered by the Commission under section 1020a.

**Registration of prospectuses**

**1020a. (1)** Where a registrable prospectus is lodged, the Commission shall, subject to subsection (2), register the prospectus as soon as possible and in any event within the prescribed period.

**(2)** The Commission shall refuse to register a prospectus if:

(a) it appears that the prospectus does not comply with the requirements of this Division; or

(b) the Commission is of the opinion that the prospectus contains a false or misleading statement or that there is an omission from the prospectus.

**Specific provisions applicable to all prospectuses**

**1021. (1)** This section applies in relation to any prospectus in relation to securities of a corporation.

**(2)** The prospectus shall be printed in type of a size not less than the type known as eight point Times unless the Commission, before the issuing or advertising of the prospectus, certifies in writing that the type and size of letter are legible and satisfactory.

**(3)** The prospectus shall be dated.

**(4)** The date inserted in the prospectus under subsection (3) shall, unless the contrary is proved, be taken to be the date of issue of the prospectus.

**(5)** The prospectus shall contain a statement that no securities will be allotted or issued on the basis of the prospectus later than 6 months after the date of the issue of the prospectus.

**(6)** The prospectus shall set out full particulars of:

(a) the nature and extent of the interest (if any) of every director or proposed director, and of every expert, in the promotion of, or in the property proposed to be acquired by, the corporation; or

(b) where the interest of such a director or proposed director or such an expert consists of being a partner in a firm, the nature and extent of the interest of the firm;

with a statement of all amounts paid or agreed to be paid to him or her or to the firm in cash or shares or otherwise by any persons:

(c) in the case of a director or proposed director, either to induce him or her to become, or to qualify him or her as, a director, or otherwise for services rendered by him or her or by the firm in connection with the promotion or formation of the corporation; or

(d) in the case of an expert, for services rendered by him or her or the firm in connection with the promotion or formation of the corporation.

**(7)** The regulations may require prospectuses included in a specified class of prospectuses to set out such matters, or contain such reports, or both, as are specified in the regulations.

**(8)** Without limiting the generality of subsection (7), a class of prospectuses may comprise any one or more of the following:

(a) prospectuses in relation to a specified class of securities;

(b) prospectuses in relation to a specified class of corporations;

(c) prospectuses issued to a specified class of persons.

**(9)** A condition requiring or binding an applicant for securities of a corporation to waive compliance with any requirement of this section, or purporting to affect such an applicant with notice of any contract, document or matter not specifically referred to in the prospectus, is void.

**(10)** If any requirement set out in this section is contravened, a director or other person responsible for, or involved in the preparation of, the prospectus does not incur any liability by reason of the contravention if it is proved that:

(a) as regards any matter omitted, the person had no knowledge of that matter;

(b) the contravention arose from an honest mistake on the part of the person concerning the facts; or

(c) the contravention was:

(i) in respect of matter that, in the opinion of the court dealing with the case, was immaterial; or

(ii) otherwise such as, in the opinion of that court, having regard to all the circumstances of the case, ought reasonably to be excused.

**(11)** In the event of failure to include in a prospectus a statement with respect to the matters specified in subsection (6), a director or other person does not have any liability in respect of the failure unless it is proved that the director or other person had knowledge of the matters not included.

**(12)** Nothing in this section limits or diminishes any liability that a person may incur under any rule of law or any enactment or under this Act apart from this section.

**(13)** The prospectus shall be signed by every director, and by every person who is named in the prospectus as a proposed director, of the corporation or by a person authorised in writing by the director or proposed director to sign the prospectus on his or her behalf.

**(14)** Each copy of the prospectus shall:

(a) state that the prospectus has been lodged;

(b) specify the date of lodgment; and

(c) state that the Commission takes no responsibility as to the contents of the prospectus.

**General provisions applicable to all prospectuses**

**1022. (1)** In addition to the information required by section 1021 to be included in a prospectus in relation to securities of a corporation, such a prospectus shall, subject to subsection (2), contain all such information as investors and their professional advisers would reasonably require, and reasonably expect to find in the prospectus, for the purpose of making an informed assessment of:

(a) the assets and liabilities, financial position, profits and losses, and prospects of the corporation; and

(b) the rights attaching to the securities.

**(2)** The information to be included by virtue of this section shall be such of the information mentioned in subsection (1) as is known to any

person referred to in any of paragraphs 1006 (2) (b) to (j), inclusive, or as it would be reasonable for such a person to obtain by making inquiries.

**(3)** In determining what information is required to be included in a prospectus by virtue of this section, regard shall be had to:

(a) the nature of the securities and of the corporation;

(b) the kinds of persons likely to consider subscribing for or buying the securities;

(c) the fact that certain matters may reasonably be expected to be known to professional advisers of any kind whom those persons may reasonably be expected to consult;

(d) whether the persons to whom the offers or invitations are to be made or issued are the holders of shares in the corporation and, if they are, to what extent (if any) relevant information has previously been given to them by the corporation under any law, any requirement of the business rules or listing rules of a securities exchange, or otherwise; and

(e) any information known to investors or their professional advisers by virtue of any Act, State Act or law of a Territory.

**Special provisions applicable to prospectuses in relation to debentures**

**1023.** **(1)** A prospectus in relation to:

(a) an invitation to subscribe for or buy debentures of a corporation; or

(b) an offer of debentures of a corporation for subscription or purchase;

shall contain an undertaking by the corporation that it will, within 2 months after the acceptance of any money as a deposit or loan from any person in response to the invitation or offer, issue to that person a document that acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan.

**(2)** Where, pursuant to an invitation or offer referred to in subsection (1), a corporation has accepted from any person any money as a deposit or loan, the corporation shall, within 2 months after the acceptance of the money, give to that person a document that:

(a) acknowledges, evidences or constitutes an acknowledgement of the indebtedness of the corporation in respect of that deposit or loan; and

(b) complies with the requirements of section 1045.

**Supplementary prospectuses**

**1024.** **(1)** Where:

(a) a prospectus has been lodged in relation to securities of a corporation; and

(b) at any time while securities can be allotted or issued on the basis of the prospectus:

(i) there is a significant change affecting any matter contained in the prospectus the inclusion of which was required by,this Part; or

(ii) a significant new matter arises the inclusion of information in respect of which would have been required by this Part if the matter had arisen when the prospectus was prepared;

the person who lodged the prospectus shall lodge a supplementary prospectus containing particulars of the change or new matter.

**(2)** In subsection (1):

“significant” means significant for the purpose of making an informed assessment of the matters mentioned in subsection 1022 (1).

**(3)** If the person who lodged the prospectus is not aware of the change or new matter, that person is not required to comply with subsection (1) unless that person is notified of the change or new matter by a person referred to in subsection 1006 (2).

**(4)** A person (other than the person who lodged the prospectus) who is referred to in subsection 1006 (2) and is aware of the change or new matter shall give notice of the change or new matter to the person who lodged the prospectus.

**(5)** If, after a prospectus has been lodged in respect of any securities, the Commission makes an order under section 1033 in respect of the securities, the person who lodged the prospectus may lodge a supplementary prospectus.

**(6)** After a supplementary prospectus is lodged, every copy of the prospectus that is issued shall be accompanied by a copy of the supplementary prospectus.

**(7)** In sections 96, 995, 996, 1006, 1007, 1008, 1009, 1010, 1011 and 1012, subsections 1021 (2), (3), (4), (10), (13) and (14), sections 1029, 1031, 1032 and 1033, and subsections (1) to (4), inclusive, of this section, unless the context otherwise requires, a reference to a prospectus includes a reference to a supplementary prospectus.

**Certain notices etc. not to be published**

**1025. (1)** In this section:

“notice” does not include a prospectus that has been lodged or a report, statement or notice the publication of which is permitted under section 1026.

**(2)** Nothing in this Part prohibits the publishing of a notice that:

(a) is published by the person who issued the prospectus concerned, the holder of a dealers licence, the holder of an investment advisers licence or an exempt dealer;

(b) states that a prospectus in relation to securities of a body corporate or proposed body corporate has been lodged;

(c) specifies the date of the prospectus;

(d) states where a copy of the prospectus can be obtained;

(e) states that allotments or issues of, or contracts for the subscription for or purchase of, securities to which the prospectus relates will be made only on receipt of a form of application referred to in and:

(i) if the securities are debentures—attached to, or accompanied by; or

(ii) otherwise—attached to;

a copy of the prospectus; and

(f) specifies the interest (if any) that the person publishing the notice has in the success of the offer or invitation to which the prospectus relates, being an interest that the person has as underwriter or sub-underwriter to the issue of the securities to which the prospectus relates or a relevant interest in those securities.

**(3)** Except as provided by subsection (2), a person shall not publish a notice that:

(a) offers for subscription or purchase securities of a corporation or proposed corporation;

(b) issues invitations to subscribe for or buy securities of a corporation or proposed corporation; or

(c) refers or calls attention, whether directly or indirectly, to:

(i) a prospectus in relation to securities of a corporation;

(ii) an offer or intended offer for subscription or purchase of securities of a corporation;

(iii) an invitation or intended invitation to subscribe for or buy securities of a corporation; or

(iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus in relation to securities of a corporation or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (2).

**(4)** Except as provided by subsection (2), a corporation that publishes a newspaper or periodical shall not publish in that newspaper or periodical a notice that:

(a) offers for subscription or purchase securities of a body corporate or proposed body corporate;

(b) issues invitations to subscribe for or buy securities of a body corporate or proposed body corporate; or

(c) refers or calls attention, whether directly or indirectly, to:

(i) a prospectus in relation to securities of a body corporate;

(ii) an offer or intended offer for subscription or purchase of securities of a body corporate;

(iii) an invitation or intended invitation to subscribe for or buy securities of a body corporate; or

(iv) another notice that refers or calls attention, whether directly or indirectly, to a prospectus in relation to securities of a body corporate or such an offer, intended offer, invitation or intended invitation, not being a notice referred to in subsection (2).

**Certain reports referring to prospectuses not to be published**

**1026. (1)** In this section, unless the contrary intention appears:

“report” includes a statement or notice, whether or not in writing, but does not include a notice the publication of which is permitted under section 1025.

**(2)** Nothing in this Part prohibits the publishing of:

(a) a report that relates to affairs of a body corporate that is included in the official list of a securities exchange and:

(i) is published only to that securities exchange or an officer of that securities exchange on behalf of the body or by or on behalf of one or more of its directors; or

(ii) has been so published;

(b) a report of the whole or part of the proceedings at a general meeting of a body corporate that is included in the official list of a securities exchange if the report does not contain any matter other than matters laid before that meeting;

(c) a report that relates to a body corporate and is published by or on behalf of the body or by or on behalf of one or more of its directors and:

(i) does not contain matter that materially affects affairs of the body other than matter previously made available in a prospectus that has been lodged, an annual report or a report referred to in paragraph (a) or (b);

(ii) does not contain a reference, whether directly or indirectly, to an offer of securities for subscription or purchase or to an invitation to subscribe for or buy securities, being an offer or invitation that, when the report is published, is open or is intended to be made or issued, other than a reference to the principal business of the body where the principal business of the body is the borrowing of money and the provision of finance; and

(iii) is not accompanied by a copy of a prospectus that has been lodged or a notice described in subsection 1025 (3), and is a report that the body and its directors have taken all reasonable steps to ensure is not published in a form or manner in which it might be associated with a notice described in subsection 1025 (3);

(d) a report published on behalf of a body corporate by or on behalf of its directors with the consent of the Commission;

(e) a report that is a news report (whether or not with other comment), or is genuine comment, published by a person in a newspaper or periodical or by broadcasting or televising relating to:

(i) a prospectus that has been lodged or information contained in such a prospectus; or

(ii) a report referred to in paragraph (a), (b), (c) or (d);

if none of the following:

(iii) that person;

(iv) an agent or employee of that person;

(v) where the report or comment is published in a newspaper or periodical—the publisher of the newspaper or periodical; or

(vi) where the report or comment is published by broadcasting or televising—the licensee of the broadcasting or television station by which it is published;

receives or is entitled to receive any consideration or other benefit from a person who has an interest in the success of the issue of securities to which the report or comment relates as an inducement to publish, or as the result of the publication of, the report or comment;

(f) a report where the report is not published:

(i) by or on behalf of a body corporate to which the report relates or, whether directly or indirectly, at the instigation of, or by arrangement with, the body corporate or its directors;

(ii) by or on behalf of the directors or promoters of a proposed body corporate to which the report relates; or

(iii) by or on behalf of a person who has an interest in the success of the issue of securities to which the report relates;

and the person publishing the report does not receive and is not entitled to receive any consideration or other benefit from the body corporate or any of its directors or any of the directors or promoters of the proposed body corporate, or from a person mentioned in subparagraph (iii), as an inducement to publish, or as the result of the publication of, the report; or

(g) a report containing only matter that is prescribed matter for the purposes of this subsection or relating only to a body corporate that is, or is included in a class of bodies corporate that is, prescribed for the purposes of this subsection.

**(3)** Except as provided by subsection (2), a person who is aware that a prospectus relating to an issue of securities:

(a) is in course of preparation by or on behalf of a corporation, or in respect of a corporation that is proposed to be formed; or

(b) has been issued by or on behalf of a corporation;

shall not publish a report that is reasonably likely to induce persons to apply for those securities.

**Evidentiary provisions etc.**

**1027.** **(1)** In this section:

“notice” means a notice within the meaning of section 1025;

“report” means a report within the meaning of section 1026.

**(2)** A person who publishes a notice or report relating to a body corporate or proposed body corporate after receiving a certificate that:

(a) specifies the names of 2 directors of the body or 2 proposed directors of the proposed body and is signed by those directors or proposed directors; and

(b) is to the effect that, because of subsection 1025 (2) or 1026 (2), subsection 1025 (3) or 1026 (3), as the case may be, does not apply to the notice or report;

does not contravene subsection 1025 (3) or 1026 (3), as the case may be.

**(3)** Where a notice or report to which a certificate under subsection (2) relates is published, each director or proposed director who signed that certificate shall, for the purposes of sections 1025 and 1026, be deemed to have published the notice or report.

**(4)** A person who publishes a notice or report to which a certificate under subsection (2) relates shall, if the Commission requires the person to do so, deliver the certificate to the Commission as soon as practicable.

**(5)** In proceedings for a contravention of section 1025 or 1026 a certificate relating to a notice or report that purports to be a certificate under this section is *prima facie* evidence that:

(a) when the certificate was issued, the persons named in the certificate as directors of the body corporate or proposed directors of the proposed body corporate, as the case may be, were the directors or proposed directors;

(b) the signatures in the certificate purporting to be the signatures of the directors or proposed directors, as the case may be, are those signatures; and

(c) the publication of the notice was authorised by those directors or proposed directors, as the case may be.

**(6)** Nothing in section 1025 or 1026 or this section limits or diminishes the liability that a person may incur, otherwise than under section 1025 or 1026 or this section, under any rule of law or under any other enactment.

**Retention of over-subscriptions in debenture issues**

**1028.** **(1)** A corporation shall not accept or retain subscriptions to a debenture issue in excess of the amount of the issue as disclosed in the prospectus unless the corporation has specified in the prospectus:

(a) that it expressly reserves the right to accept or retain oversubscriptions; and

(b) a limit on the amount of over-subscriptions that may be accepted or retained.

**(2)** Subject to section 1021 and any regulations made for the purposes of subsection 1021 (7), where a corporation specifies in a prospectus relating to a debenture issue that it reserves the right to accept or retain over-subcriptions:

(a) the corporation shall not cause, authorise or permit any statement or reference as to the asset-backing for the issue to be made or contained in any prospectus relating to the issue, other than a statement or reference to the total assets and the total liabilities of the corporation; and

(b) the corporation shall set out in the prospectus a statement or reference as to what the total assets and total liabilities of the corporation would be if over-subscriptions to the limit specified in the prospectus were accepted or retained.

**(3)** In this section:

“prospectus” includes a prospectus issued before the commencement of this Part.

**Documents to be kept by corporations**

**1029.** A corporation in respect of which a prospectus has been lodged shall cause:

(a) a true copy, verified by a statement in writing, of any consent required by section 1032 to the issue of the prospectus; and

(b) a true copy, verified by a statement in writing, of every material contract referred to in the prospectus or, in the case of such a contract that is not reduced to writing, a memorandum, verified by a statement in writing, giving full particulars of the contract;

to be deposited, within 7 days after lodgment of the prospectus, at the registered office of the corporation in Australia and shall keep each such copy for a period of at least 6 months after the lodgment of the prospectus for inspection by any person without charge.

**Document containing offer of securities for sale deemed to be prospectus**

**1030.** **(1)** Where a corporation allots or issues or agrees to allot or issue to a person any securities of the corporation for the purpose of all or any of them being offered for sale:

(a) any document by which the offer for sale is made shall, for all purposes, be deemed to be a prospectus issued by the corporation; and

(b) for the purposes of this or any other Act and any rule of law, persons accepting the offer in respect of any securities shall be deemed to have been subscribers for the securities.

**(2)** Nothing in subsection (1) prejudices the liability (if any) of the persons by whom the offer is made in respect of statements in, or omissions from, the document or otherwise.

**(3)** For the purposes of this Act, unless the contrary is proved, it is evidence that an allotment or issue of, or an agreement to allot or issue, securities was made for the purpose of the securities being offered for sale if it is shown:

(a) that an offer of the securities or of any of them for sale was made within 6 months after the allotment or issue or agreement to allot or issue; or

(b) that an offer of the securities or of any of them for sale was made, and that, when the offer was made, the corporation had not received the whole of the consideration to be received in respect of the securities.

**(4)** The requirements of this Division apply as though the persons making an offer to which this section relates were persons named in a prospectus as directors of a corporation.

**(5)** In addition to complying with the other requirements of this Division, the document making the offer shall state:

(a) the net amount of the consideration received or to be received by the corporation in respect of securities to which the offer relates; and

(b) the place and time at which the contract under which the securities have been or are to be allotted or issued may be inspected.

**(6)** Where an offer to which this section relates is made by a body corporate or a firm, it is sufficient for the purposes of paragraph 1029 (1) (a) if the document referred to in subsection (1) is signed on behalf of the body corporate or firm by 2 directors of the body corporate or by members of the firm who constitute not less than one-half of the number of members of the firm, as the case may be, and any such director or member may sign by an agent authorised in writing.

**(7)** For the purposes of this section, an invitation to make offers to buy securities shall be deemed to constitute an offer of the securities for sale and a person who makes an offer pursuant to such an invitation shall be deemed to be a person who accepted an offer of the securities for sale that is so deemed to be constituted by the invitation.

**Allotment or issue of securities where prospectus indicates application for quotation on stock market**

**1031. (1)** Subject to this section, where a prospectus in relation to securities of a corporation states that application has been or will be made to a securities exchange, whether in Australia or elsewhere, for permission

for the securities to be listed for quotation on the stock market of that securities exchange and:

(a) the permission is not applied for in the form for the time being required by that securities exchange on or before the third day on which that securities exchange is open after the date of issue of the prospectus; or

(b) the permission is not granted before the end of 6 weeks after the date of issue of the prospectus or such longer period, not exceeding 12 weeks, after the date of issue as is, within those 6 weeks, notified to the applicant by or on behalf of the securities exchange;

any allotment or issue, whenever made, on an application pursuant to the prospectus is void and the corporation shall repay, in accordance with the following provisions of this section, any money received by it pursuant to the prospectus.

**(2)** Where a corporation is liable under subsection (1) to repay money received pursuant to a prospectus:

(a) the money shall be repaid as soon as practicable without interest; and

(b) if the money is not repaid:

(i) where the liability to repay the money arose because of paragraph (1) (a)—within 14 days after the third day referred to in that paragraph; or

(ii) where the liability to repay the money arose because of paragraph (1) (b)—within 14 days after:

(a) the period of 6 weeks first referred to in that paragraph; or

(b) if a longer period has been notified under that paragraph—that longer period;

then, in addition to the liability of the corporation to repay the money, the directors are jointly and severally liable to repay the money with interest at the rate of 8% per annum (or, if another rate is prescribed, that other rate) calculated from the end of the 14 days referred to in subparagraph (i) or (ii), as the case requires.

**(3)** Where, in relation to any securities of a corporation:

(a) permission is not applied for as specified in paragraph (1) (a); or

(b) permission is not granted as specified in paragraph (1) (b);

the Commission may, by notice published in the *Gazette*,on the application of the corporation made before any security is purported to be allotted or issued, exempt the allotment or issue of the securities from the operation of this section.

**(4)** A director is not liable under this section if it is proved that the default in the repayment of the money was not due to any misconduct or negligence on the part of that director.

**(5)** Without limiting the application of any of the provisions of this section apart from this subsection, this section applies:

(a) in relation to any securities agreed to be taken by a person underwriting an offer of, or invitation in relation to, those securities contained in a prospectus as if the person had applied for those securities pursuant to the prospectus; and

(b) in relation to a prospectus offering shares or prescribed interests for sale or inviting offers to buy shares or prescribed interests, as if:

(i) a reference to sale or purchase, as the case may be, were substituted for a reference to allotment; and

(ii) the persons by whom the offer is made or the invitation is issued, and not the corporation, were liable under this section to repay money received from applicants, and references to the corporation’s liability under this section were construed accordingly.

**(6)** A corporation that receives money pursuant to a prospectus as mentioned in the preceding provisions of this section shall keep the money in a separate bank account so long as the corporation is liable to repay it under this section.

**(7)** Where a securities exchange has, within the period applicable under paragraph (1) (b), granted permission subject to compliance with any requirements specified by the securities exchange, permission shall be deemed to have been granted by the securities exchange if the directors have given to the securities exchange an undertaking in writing to comply with the requirements of the securities exchange.

**(8)** A director of a corporation shall not contravene an undertaking given by the directors of the corporation as mentioned in subsection (7).

**(9)** A person shall not issue a prospectus inviting persons to subscribe for, or offering to accept subscriptions for, securities of a corporation if the prospectus includes:

(a) a false or misleading statement that permission has been granted for those securities to be dealt in or quoted or listed for quotation on a stock market of a securities exchange; or

(b) a statement in any way referring to any such permission or to any application or intended application for any such permission, or to dealing in or quoting or listing the securities on, or on a stock market of, a securities exchange, or to any requirements of a securities exchange unless that statement is, or is to the effect that, permission has been granted or that application has been or will be made to the securities exchange within 3 days after the issue of the prospectus.

**(10)** A condition requiring or binding, or purporting to require or bind, an applicant for securities to waive compliance with a requirement of this section is void.

**(11)** In this section:

“prospectus” includes a prospectus issued before the commencement of this Part.

**Expert’s consent to issue of prospectus containing statement by the expert**

**1032.** A person shall not issue a prospectus in relation to securities of a corporation that includes a statement purporting to be made by an expert or to be based on a statement made by an expert unless:

(a) the expert has given, and has not, before lodgment of the prospectus, withdrawn, the expert’s written consent to the issue of the prospectus with the statement included in the form and context in which it is included; and

(b) there appears in the prospectus a statement that the expert has given, and has not withdrawn, the expert’s consent.

**Order to stop issue of securities**

**1033.** **(1)** Where it appears to the Commission that any of the circumstances referred to in subsection (2) exist in respect of a prospectus lodged in relation to securities of a corporation, the Commission may, by order in writing served on the person by whom the prospectus was lodged, direct that no further securities to which the prospectus relates be issued.

**(2)** The circumstances are:

(a) the prospectus contravenes in a substantial respect any of the requirements of this Division;

(b) the prospectus contains a statement, promise, estimate or forecast that is false, misleading or deceptive; and

(c) the prospectus contains a material misrepresentation.

**(3)** Subject to this section, the Commission shall not make an order under subsection (1) unless the Commission has held a hearing and given a reasonable opportunity to any interested persons to make oral or written submissions to the Commission on the question whether such an order should be made.

**(4)** If the Commission considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, the Commission may make an interim order or interim orders under that subsection without holding a hearing.

**(5)** Subject to subsection (6), an interim order, unless sooner revoked, has effect until the end of 21 days after the day on which it is made.

**(6)** At any time during the hearing, the Commission may make an interim order under subsection (1) that is expressed to have effect until the Commission makes a final order after the conclusion of the hearing or until the interim order is revoked, whichever first happens.

**(7)** While an order is in force under this section:

(a) this Division applies as if the prospectus had not been lodged; and

(b) a person is not entitled to lodge a further prospectus in relation to the securities other than a supplementary prospectus under section 1024.

**(8)** If, while an order is in force under this section, the Commission becomes satisfied that, whether because of the lodgment of a supplementary prospectus or otherwise, the circumstances that resulted in the making of the order no longer exist, the Commission may, by further order in writing, revoke the first-mentioned order.

**Transitional**

**1034.** Where a copy of a prospectus in relation to securities of a corporation was registered by the NCSC within 6 months before the commencement of this Part for the purposes of a corresponding law, the copy shall be deemed to be a prospectus in relation to those securities lodged with the Commission on the commencement of this Part for the purposes of this Part.

***Division 3*—*Restrictions on allotment and variation of contracts***

***Subdivision A—Provisions relating to companies***

**Prohibition of allotment unless minimum subscription received**

**1035.** **(1)** A company shall not make an allotment of shares in the company if the shares have been offered for subscription, or an invitation to subscribe for the shares has been issued, whether the offer or invitation was made or issued before or after the commencement of this Part, unless:

(a) the minimum subscription has been subscribed; and

(b) the amount payable on application for the shares so subscribed has been received by the company.

**(2)** For the purposes of subsection (1), where a company has, whether before or after the commencement of this Part, received a cheque or order for the payment of money for the amount payable on application for an allotment of shares in the company, the amount shall be deemed not to have been received by the company until the cheque or order is paid by the banker or other person on which it is drawn.

**(3)** In ascertaining for the purposes of subsection (1) whether the minimum subscription has been subscribed in relation to an allotment of shares, there shall, in respect of each share for the allotment of which an application has been made, be deemed to have been subscribed an amount equal to the sum of:

(a) the nominal value of that share; and

(b) if the share is, or is to be, issued at a premium—the amount of the premium payable on the share;

less any amount payable otherwise than in cash.

**(4)** Except in the case of a no liability company, the amount payable on application for each share that has been offered or in respect of which

an invitation to subscribe has been issued shall be not less than *5%* of the nominal amount of the share.

**Repayment of subscriptions**

**1036.** **(1)** If the requirements referred to in paragraphs 1035 (1) (a) and (b) have not been satisfied within 4 months after the issue of the prospectus in relation to the shares, the company shall repay, within 7 days after the end of those 4 months, all money received from applicants for shares.

**(2)** If any such money is not so repaid, the directors are, whether or not they or any of them have been convicted of an offence or offences in respect of the failure to repay the money, jointly and severally liable to repay the money with interest at the rate of 8% per annum (or if another rate is prescribed, that other rate) calculated from the end of the period of 7 days.

**(3)** A director is not guilty of an offence in respect of a contravention of subsection (1), and is not liable under subsection (2) in respect of such a contravention, if it is proved that the failure to repay the money was not due to any misconduct or negligence by that director.

**(4)** In this section:

“prospectus” includes a prospectus issued before the commencement of this Part.

**Allotment voidable at applicant’s option**

**1037.** **(1)** Except as provided by section 1041, an allotment of shares made by a company to an applicant in contravention of this Division is voidable at the option of the applicant and is so voidable notwithstanding that the company is in the course of being wound up.

**(2)** An option referred to in subsection (1) is exercisable by written notice served on the company:

(a) if the company is not required to hold a statutory meeting—within one month after the date of the allotment; or

(b) otherwise:

(i) if the company holds the statutory meeting within the period specified in subsection 244 (1)—within one month after the date of the allotment or the holding of the statutory meeting, whichever is the later; or

(ii) if the company fails to hold the statutory meeting within that period—within one month after the end of that period or the date of the allotment, whichever is the later.

**Restriction on varying contracts referred to in prospectus**

**1038.** A company shall not, before the statutory meeting, vary the terms of a contract referred to in a prospectus relating to securities of the company unless the variation is made subject to the approval of the statutory meeting.

***Subdivision B—Provisions relating to corporations***

**Certain conditions void**

**1039.** A condition requiring or binding, or purporting to require or bind, an applicant for securities of a corporation to waive compliance with any requirement of this Division is void.

**Securities not to be allotted or issued after 6 months**

**1040.** A corporation shall not allot or issue, and an officer or promoter of a proposed corporation shall not authorise or permit to be allotted or issued, securities on the basis of a prospectus (including a prospectus issued before the commencement of this Part) after the end of 6 months after the issue of the prospectus.

**Validity of allotment or issue of securities**

**1041.** An allotment or issue of securities of a corporation is not void or voidable merely because it took place more than 6 months after the issue of the relevant prospectus (including a prospectus issued before the commencement of this Part).

**Liability of directors for loss or damage**

**1042.** **(1)** A director of a corporation who knowingly contravenes a provision of this Division is, whether or not the director has been convicted of an offence in respect of the contravention, liable to compensate the corporation and any person to whom an allotment has been made in contravention of this Division for any loss, damage or costs that the corporation or the person has suffered or incurred because of the allotment.

**(2)** A person is not entitled to begin proceedings for the recovery of any such compensation after the end of 2 years after the date of the allotment.

**Application money to be held in trust**

**1043.** **(1)** Where, whether before or after the commencement of this Part, securities of a corporation have been offered for subscription or purchase or invitations have been issued to subscribe for or buy securities of a corporation, all application money and other money paid, whether before or after that commencement, by an applicant on account of the securities before they are allotted or issued shall, until they are allotted or issued, be held by the corporation in trust for the applicant in a bank account established and kept by the corporation solely for the purpose of depositing application money and other money paid by applicants for those securities.

**(2)** A bank with which any such money has been deposited does not have any duty to inquire into or see to the proper application of the money so long as the bank acts in good faith.

***Division 4***—***Debentures***

**Application to close corporations**

**1044.** The provisions of this Act relating to debentures shall, in their application in relation to debentures issued by close corporations, have effect

with such modifications as are necessary or as are prescribed by the regulations.

**How debentures may be described**

**1045. (1)** Where a document acknowledges, evidences, or constitutes an acknowledgement of, the indebtedness of a corporation in respect of money accepted by the corporation as a deposit or loan from any person in response to an invitation or offer referred to in subsection 1023 (1), the document shall, in the prospectus in relation to the invitation or offer, in any other document constituting or relating to the invitation or offer, and in the document itself, be described or referred to in accordance with this section as:

(a) an unsecured note or an unsecured deposit note;

(b) a mortgage debenture or certificate of mortgage debenture stock; or

(c) a debenture or certificate of debenture stock.

**(2)** The document shall be described or referred to as an unsecured note or an unsecured deposit note unless, pursuant to the provisions of either subsection (3) or (4), it is, and may be, otherwise described.

**(3)** The document may be described or referred to as a mortgage debenture or certificate of mortgage debenture stock if, and only if, there is included in the prospectus a statement to the effect that:

(a) the payment of all money that has been or may be deposited with or lent to the corporation in response to the invitation or offer is secured by a first mortgage given to the trustee for the holders of the debentures to be issued in relation to the deposit or loan over land vested in the corporation or in any of its guarantor bodies;

(b) the mortgage has been duly registered, or is a registrable mortgage that has been lodged for registration, in accordance with the law relating to the registration of mortgages of land in the place where the land is situated; and

(c) the total amount of that money and of all other liabilities (if any) secured by the mortgage of that land ranking *pari passu* with the liability to repay that money does not exceed 60% of the value of the corporation’s interest in that land as shown in the valuation included in the prospectus.

**(4)** The document may be described or referred to as a debenture or certificate of debenture stock if, and only if:

(a) pursuant to subsection (3) it may be, but is not, described or referred to in the prospectus or document as a mortgage debenture of certificate of mortgage debenture stock; or

(b) the prospectus contains a statement in accordance with subsection (5).

**(5)** A statement referred to in paragraph (4) (b) shall be to the effect that:

(a) the repayment of all money that has been or may be deposited with or lent to the corporation in response to the invitation or offer has been secured by a charge in favour of the trustee for the holders of the debentures over the whole or any part of the tangible property of the corporation and of its guarantor bodies or any of them; and

(b) the tangible property that constitutes the security for the charge is sufficient and is reasonably likely to be sufficient to meet the liability for the repayment of all such money and all other liabilities ranking in priority to, or *pari passu* with, that liability that have been or may be incurred.

**(6)** This section applies in relation to every document referred to in subsection (1) that is issued after the commencement of this Part, notwithstanding anything in any debenture or trust deed issued or executed before that commencement and in force for the time being.

**(7)** For the purposes of this section, a document issued by a borrowing corporation certifying that a person specified in the document is, in respect of any deposit with or loan to the corporation, the registered holder of a specified number or value:

(a) of unsecured notes or unsecured deposit notes;

(b) of mortgage debentures or certificates of mortgage debenture stock; or

(c) of debentures or certificates of debenture stock;

issued by the corporation upon or subject to the terms and conditions contained in a trust deed referred to or identified in the certificate shall be deemed to be a document evidencing the indebtedness of that corporation in respect of that deposit or loan.

**Application**

**1046.** The following provisions of this Division apply in relation to debentures whether issued before or after the commencement of this Part.

**Register of debenture holders and copies of trust deed**

**1047. (1)** A corporation, other than a foreign corporation, that issues debentures shall keep a register of holders of debentures.

**(2)** A foreign corporation that issues debentures:

(a) pursuant to an application in which an address in Australia or an excluded Territory was specified as the address of the applicant for debentures; or

(b) pursuant to an application made on a form of application attached to, or accompanied by, a prospectus a copy of which has been lodged;

shall keep a register of the holders of those debentures.

**(3)** A register kept under this section shall:

(a) contain particulars of the names and addresses of the holders of debentures and the respective amounts of debentures held by them; and

(b) except when duly closed, be open for inspection at the place where it is kept in accordance with section 1302:

(i) by the registered holder of any debentures of, or by any holder of shares in, the corporation—without charge; and

(ii) by any other person—on payment for each inspection of such amount, not exceeding the prescribed amount, as the corporation requires or, where the corporation does not require the payment of an amount, without charge.

**(4)** For the purposes of this section, a register shall be deemed to be duly closed if closed in accordance with provisions contained in the articles, in the debentures or debenture stock certificates, or in the trust deed or other document relating to or securing the debentures, during such periods (not exceeding in total 30 days in any calendar year) as are specified in those provisions.

**(5)** A registered holder of debentures of, or a holder of shares in, a corporation may request the corporation to give to the holder a copy of its register of the holders of debentures kept under this section or any part of that register.

**(6)** A registered holder of debentures of a corporation may request the corporation to give to the holder a copy of any trust deed relating to or securing the issue of those debentures.

**(7)** Where a corporation receives a request under subsection (5) or (6), the corporation shall comply with the request:

(a) if the corporation requires payment of an amount not exceeding the prescribed amount—within 21 days after payment of the amount is received by the corporation or within such longer period as the Commission approves; or

(b) otherwise—within 21 days after the request is made or within such longer period as the Commission approves.

**(8)** The Commission may at any time by written notice require a corporation to lodge a copy of any trust deed relating to or securing the issue of debentures of the corporation and, where a corporation receives a notice under this subsection, the corporation shall comply with the notice within 21 days after the day on which it receives the notice.

**(9)** In this section:

“debenture”, in relation to a corporation, means a document issued by the corporation that evidences or acknowledges indebtedness of the corporation in respect of money that is or may be deposited with or

lent to the corporation, whether constituting a charge on property of the corporation or not, other than:

(a) a cheque, order for the payment of money or bill of exchange; or

(b) a promissory note having a face value of not less than $50,000;

and includes a unit of a debenture.

**Branch registers of debenture holders**

**1048. (1)** A corporation may keep in any place inside or outside Australia a branch register of holders of debentures.

**(2)** A branch register kept by a corporation shall be deemed to be part of the register of holders of debentures kept by that corporation.

**(3)** A branch register shall be kept in the same manner as that in which the principal register is required to be kept.

**(4)** A corporation shall send to the place at which its principal register is kept a copy of every entry in a branch register within 28 days after the entry is made, and shall keep at that place, duly entered up from time to time, a duplicate of its branch register, and the duplicate branch register shall, for the purposes of this Act, be deemed to be part of the principal register.

**(5)** Subject to the provisions of this section with respect to the duplicate branch register, the debentures registered in a branch register shall be distinguished from the debentures registered in the principal register, and no transaction with respect to any debentures registered in a branch register shall, during the continuance of that registration, be registered in any other register.

**(6)** A corporation may discontinue a branch register and thereupon the corporation shall transfer all entries in that register to some other branch register kept by the corporation in the same State or Territory or, if there is no other branch register kept by the corporation in that State or Territory, to the principal register.

**(7)** A branch register is *prima facie* evidence of any matters that are by this section authorised to be inserted in that register.

**(8)** In this section:

“branch register”, in relation to a corporation, means a branch register of holders of debentures issued by the corporation that is kept under this section;

“debenture” has the same meaning as in section 1047;

“principal register”, in relation to a corporation, means the register of holders of debentures issued by the corporation that is kept under section 1047.

**Specific performance of contracts**

**1049.** A contract with a corporation to take up and pay for any debentures of the corporation may be enforced by an order for specific performance.

**Perpetual debentures**

**1050.** Notwithstanding any rule of law or equity to the contrary, a condition contained in any debenture of a corporation or in any deed for securing any debentures of a corporation, whether the debenture or deed is issued or made before or after the commencement of this Part, is not invalid merely because the debentures are, by the condition, made irredeemable or redeemable only on the happening of a contingency however remote or at the end of a period however long.

**Re-issue of redeemed debentures**

**1051.** **(1)** Where a corporation has redeemed any debentures, whether before or after the commencement of this Part:

(a) unless any provision to the contrary, whether express or implied, is contained in the articles or in a contract entered into by the corporation; or

(b) unless the corporation has, by passing a resolution to that effect or by some other act, shown its intention to cancel the debentures;

the corporation has, and shall be deemed always to have had, power to reissue the debentures, either by re-issuing the same debentures or by issuing other debentures in their place.

**(2)** The re-issue of a debenture or the issue of one debenture in place of another under this section, whether the re-issue or issue was made before or after the commencement of this Part, shall not be regarded as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures that may be issued by the corporation.

**(3)** After the re-issue of any debentures the debentures have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

**(4)** Where a corporation has, whether before or after the commencement of this Part, deposited any of its debentures to secure advances on current account or otherwise, the debentures shall not be taken to have been redeemed merely because of the account of the corporation having ceased to be in debit while the debentures remain so deposited.

**Qualifications of trustee for debenture holders**

**1052.** **(1)** Subject to this section:

(a) a corporation that issues invitations to subscribe for or buy debentures or offers debentures for subscription or purchase; or

(b) a body corporate that offers debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate;

shall make provision in a trust deed relating to those debentures for the appointment, as a trustee for the holders of those debentures, of a body corporate (in this section called a “trustee”) being:

(c) a person constituted as the Public Trustee in any State or Territory;

(d) 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 of letters of administration of the estate, of a dead person;

(e) a body corporate registered under the *Life Insurance Act 1945*;

(f) an Australian bank;

(g) a body corporate (in this paragraph called the “subsidiary”) the whole of the issued shares of which are held beneficially by a body corporate or bodies corporate of a kind referred to in paragraph (d), (e) or (f) (in this paragraph called the “holding company”) if:

(i) the holding company is liable for all liabilities incurred or to be incurred by the subsidiary as trustee for the holders of the debentures; or

(ii) the holding company has subscribed for and beneficially holds shares in the subsidiary, being shares in respect of which there is a liability of not less than $500,000 that has not been called up and which, because of a special resolution of the members of the subsidiary, is not capable of being called up except in the event, and for the purposes, of the winding up of the subsidiary; or

(h) a body corporate approved by the Commission for the purposes of this subsection.

**(2)** The approval of a body corporate by the Commission under paragraph (1) (h) shall be given by notice published in the *Gazette* and:

(a) may be given generally or in relation to a particular borrowing corporation, a particular class of borrowing corporations or a particular trust deed;

(b) may be given subject to such terms and conditions (if any) as the Commission thinks fit and are specified in the notice; and

(c) may be varied or revoked by the Commission by notice published in the *Gazette.*

**(3)** Where the approval of a body corporate has been revoked under subsection (2), the borrowing corporation shall appoint a trustee qualified under this section in place of the trustee that, because of the revocation, has ceased to be qualified.

**(4)** Where a borrowing corporation is required by subsection (1) to make provision in a trust deed for the appointment of a trustee for the holders of debentures, the borrowing corporation shall not issue any of those debentures until the person proposed to be appointed has consented to act as trustee and the appointment has been made.

**(5)** Except by leave of the Court, a body corporate shall not be appointed, hold office or act as trustee for the holders of debentures of a borrowing corporation if that body:

(a) is a shareholder that beneficially holds shares in the borrowing corporation;

(b) is beneficially entitled to moneys owed by the borrowing corporation to it;

(c) is indebted (otherwise than as a trustee) in an amount exceeding $5,000 to the borrowing corporation;

(d) has entered into a guarantee in respect of the principal debt secured by those debentures or in respect of interest on that debt; or

(e) is related to:

(i) a body corporate of a kind referred to in any of the preceding paragraphs; or

(ii) the borrowing corporation.

**(6)** Subsection (5) does not prevent a body corporate from being appointed, holding office or acting as trustee for the holders of debentures of a borrowing corporation merely because:

(a) the borrowing corporation owes to the body corporate or to a body corporate that is related to the body corporate:

(i) money the amount of which (excluding any money referred to in subparagraphs (ii) and (iii)), does not:

(a) at the time of the appointment or at any time within 3 months after the debentures are first offered—exceed 10% of the amount of the debentures in respect of which invitations or offers are proposed to be issued or made within those 3 months; and

(b) at any time after the end of those 3 months—exceed 10% of the amount owed by the borrowing corporation to the holders of the debentures;

(ii) money that is secured by, and only by:

(a) a first mortgage over land of the borrowing corporation;

(b) debentures issued by the borrowing corporation; or

(c) debentures to which neither the body corporate, nor any body corporate that is related to the body corporate, is beneficially entitled; or

(iii) money to which the body corporate, or a body corporate that is related to the body corporate, is entitled as trustee for holders of any debentures of the borrowing corporation in accordance with the terms of the debentures or of the relevant trust deed; or

(b) the body corporate, or a body corporate that is related to the body corporate, is a shareholder of the borrowing corporation in respect of shares that it beneficially holds, if the voting shares in the

borrowing corporation beneficially held by the body corporate, and by all other bodies corporate that are related to it, do not exceed 10% of the voting shares in the borrowing corporation.

**(7)** Nothing in subsection (5):

(a) affects the operation of any debentures or trust deed issued or executed before 1 September 1966; or

(b) applies in relation to the trustee for the holders of any such debentures;

unless, under any such debentures or trust deed, a further offer of debentures was or is made on or after that date.

**Retirement of trustees**

**1053. (1)** Notwithstanding anything in any other law or in the relevant debentures or trust deed, a trustee for the holders of debentures of a corporation does not cease to be the trustee until a body corporate qualified under section 1052 for appointment as trustee for the holders of the debentures has been appointed to be the trustee for the holders of the debentures and has taken office as such.

**(2)** Where provision has been made in the relevant trust deed for the appointment of a successor to a trustee for the holders of the debentures upon retirement or otherwise, the successor may, subject to section 1052, be appointed in accordance with that provision.

**(3)** Where provision has not been made in the relevant trust deed for the appointment of a successor to a retiring trustee, the borrowing corporation may appoint a successor that is qualified for appointment under section 1052.

**(4)** Notwithstanding anything in this Act, or in any debentures or trust deed, a borrowing corporation may, with the consent of an existing trustee for the holders of the debentures, appoint as successor to the existing trustee any body corporate that is qualified for appointment under section 1052 and is related to the existing trustee.

**(5)** Where:

(a) the trustee for the holders of debentures has ceased to exist or to be qualified under section 1052;

(b) a trustee for the holders of debentures has not been appointed under subsection 1052 (3); or

(c) the trustee for the holders of debentures fails or refuses to act or is disqualified under section 1052;

the Court may, on the application of the borrowing corporation, the trustee (if any) for the holders of the debentures, the holder of any of the debentures or the Commission, appoint a body corporate qualified under section 1052 to be the trustee for the holders of the debentures and, where appropriate, to be that trustee in place of the trustee that so ceased to exist or to be qualified, so failed or refused to act as trustee or is so disqualified.

**(6)** Where a successor is appointed to be a trustee in place of a trustee, the successor shall, within one month after the appointment, lodge notice in the prescribed form of the appointment.

**Contents of trust deed**

**1054. (1)** A corporation shall not invite subscriptions for or the purchase of debentures or offer debentures for subscription or purchase unless the relevant trust deed:

(a) contains a limitation on the amount that the borrowing corporation may borrow under that deed or those debentures;

(b) contains covenants by the borrowing corporation as mentioned in subsection (3); and

(c) contains covenants by each body corporate that is a guarantor body in relation to the borrowing corporation as mentioned in subsection (4).

**(2)** A body corporate shall not offer debentures as consideration for the acquisition, under a takeover scheme, of shares in a body corporate unless the relevant trust deed:

(a) contains a limitation on the amount that the borrowing corporation may borrow under that deed or those debentures;

(b) contains covenants by the borrowing corporation as mentioned in subsection (3); and

(c) contains covenants by each body corporate that is a guarantor body in relation to the borrowing corporation as mentioned in subsection (4).

**(3)** The covenants referred to in paragraphs (1) (b) and (2) (b) are:

(a) a covenant that the borrowing corporation will strive to carry on and conduct its business in a proper and efficient manner;

(b) a covenant that the borrowing corporation will:

(i) make available for inspection by the trustee for the holders of debentures or any registered company auditor appointed by that trustee the whole of the accounting or other records of the borrowing corporation; and

(ii) give to that trustee such information as that trustee requires with respect to all matters relating to the accounting or other records of the borrowing corporation; and

(c) a covenant that the borrowing corporation will, on the delivery to its registered office of an application by persons holding not less than 10% in nominal value of the issued debentures to which the covenant relates, by giving notice to each of the holders of the debentures to which the covenant relates (other than debentures payable to bearer) at the holder’s address as specified in the register

of the holders of debentures, convene a meeting of the holders of those debentures:

(i) to consider the accounts and balance-sheet that were laid before the last preceding annual general meeting of the borrowing corporation; and

(ii) to give to the trustee directions in relation to the exercise of the trustee’s powers;

being a meeting to be held at a time and place specified in the notice and to be presided over by a person nominated by the trustee or, if the trustee does not nominate a person to preside at the meeting, by a person appointed for that purpose by the holders of those debentures present at the meeting.

**(4)** The covenants referred to in paragraphs (1) (c) and (2) (c) are:

(a) a covenant that the guarantor body will strive to carry on and conduct its business in a proper and efficient manner; and

(b) a covenant that the guarantor body will:

(i) make available for inspection by the trustee for the holders of the debentures or any registered company auditor appointed by that trustee, the whole of the accounting or other records of the guarantor body; and

(ii) give to that trustee such information as that trustee requires with respect to all matters relating to the accounting or other records of the guarantor body.

**(5)** For the purposes of subsection (4), each guarantor body shall be deemed to be a party to the trust deed.

**(6)** If a trust deed referred to in subsection (1) or (2) does not expressly contain any of the covenants mentioned in subsection (3) or (4), it shall be deemed to contain them.

**Power of Court in relation to certain irredeemable debentures**

**1055. (1)** Notwithstanding anything in any debenture or trust deed, where, on the application of the trustee for the holders of debentures of a corporation that are irredeemable or redeemable only on the happening of a contingency or, if there is no trustee, on the application of the holder of any such debentures, the Court is satisfied that:

(a) at the time of the issue of the debentures the property of the body corporate that constituted or was intended to constitute the security for the debentures was sufficient or likely to become sufficient to discharge the principal debt and any interest on that debt;

(b) the security, if realised under the circumstances existing at the time of the application, would be likely to bring not more than 60% of the principal sum of money outstanding (regard being had to all prior charges and charges ranking *pari passu,* if any);

(c) the property covered by the security, on a fair valuation on the basis of a going concern after allowing a reasonable amount for depreciation, is worth less than the principal sum; and

(d) the borrowing corporation is not making sufficient profit to pay the interest due on the principal sum or (where no definite rate of interest is payable) interest on that sum at such rate as the Court considers would be a fair rate to expect from a similar investment;

the Court may order that the security for the debentures be enforceable immediately or at such time as the Court directs.

**(2)** Subsection (1) does not affect any power to vary rights or accept any compromise or arrangement created by the terms of the debentures or the relevant trust deed or under a compromise or arrangement between the borrowing corporation and creditors.

**Duties of trustees**

**1056. (1)** A trustee for the holders of debentures of a corporation:

(a) shall exercise reasonable diligence to ascertain whether or not the property of the borrowing corporation and of each of its guarantor bodies that is or may be available, whether by way of security or otherwise, is sufficient, or is likely to be or become sufficient, to discharge the principal debt as and when it becomes due;

(b) shall satisfy itself that each prospectus relating to the debentures does not contain any matter that is inconsistent with the terms of the debentures or with the relevant trust deed;

(c) shall ensure that the borrowing corporation and each of its guarantor bodies comply with the provisions of Part 3.5 so far as they relate to the debentures and are applicable;

(d) shall exercise reasonable diligence to ascertain whether or not the borrowing corporation and each of its guarantor bodies have committed any breach of the covenants, terms and provisions of the debentures or the trust deed;

(e) except where it is satisfied that the breach will not materially prejudice the security (if any) for the debentures or the interests of the holders of the debentures—shall take all steps and do all such things as it is empowered to do to cause the borrowing corporation and any of its guarantor bodies to remedy any breach of those covenants, terms and provisions;

(f) where the borrowing corporation or any of its guarantor bodies fails, when so required by the trustee, to remedy a breach of the covenants, terms and provisions of the debentures or the trust deed—may place the matter of the failure to remedy the breach before a meeting of holders of the debentures, submit such proposals for the protection of their investment as the trustee considers necessary or appropriate and obtain the directions of the holders in relation to the matter; and

(g) where the borrowing corporation submits to those holders a compromise or arrangement—shall give to them a statement explaining the effect of the compromise or arrangement and, if it thinks fit, recommend to them an appropriate course of action to be taken by them in relation to the compromise or arrangement.

**(2)** Where, after due inquiry, the trustee for the holders of the debentures is at any time of the opinion that the property of the borrowing corporation and of any of its guarantor bodies that is or should be available, whether by way of security or otherwise, is insufficient, or likely to become insufficient, to discharge the principal debt as and when it becomes due, the trustee may apply to the Commission for an order under subsection (3).

**(3)** Where such an application is made, the Commission, after giving to the borrowing corporation an opportunity of making representations in relation to the application:

(a) may, by written order served on the borrowing corporation at its registered office in Australia, impose such restrictions on the activities of the corporation, including restrictions on advertising for deposits or loans and on borrowing, as the Commission considers necessary for the protection of the interests of the holders of the debentures; or

(b) may, and, if the borrowing corporation so requires, shall, direct the trustee to apply to the Court for an order under subsection (6).

**(4)** The trustee shall, when directed under paragraph (3) (b), apply to the Court for an order under subsection (6).

**(5)** Where:

(a) after due inquiry, the trustee is at any time of the opinion that the property of the borrowing corporation and of any of its guarantor bodies that is or should be available, whether by way of security or otherwise, is insufficient or likely to become insufficient, to discharge the principal debt as and when it becomes due; or

(b) the borrowing corporation has contravened an order made by the Commission under subsection (3);

the trustee may, and where the borrowing corporation has requested the trustee to do so, the trustee shall, apply to the Court for an order under subsection (6).

**(6)** Where an application is made to the Court under subsection (4) or (5), the Court may, after giving the borrowing corporation an opportunity of being heard, by order, do all or any of the following:

(a) direct the trustee to convene a meeting of the holders of the debentures for the purpose of placing before them such information relating to their interests and such proposals for the protection of their interests as the trustee considers necessary or appropriate and of obtaining their directions in relation to the protection of their

interests and give such directions in relation to the conduct of the meeting as the Court thinks fit;

(b) stay all or any actions or other civil proceedings before any court by or against the borrowing corporation;

(c) restrain the payment of any money by the borrowing corporation to the holders of debentures of that corporation or to any class of such holders;

(d) appoint a receiver of such of the property as constitutes the security (if any) for the debentures;

(e) give such further directions from time to time as may be necessary to protect the interests of the holders of the debentures, the members of the borrowing corporation or any of its guarantor bodies or the public;

but in making any such order the Court shall have regard to the rights of all creditors of the borrowing corporation.

**(7)** The Court may vary or rescind any order made under subsection (6) as the Court thinks fit.

**(8)** In making an application to the Commission or to the Court, a trustee shall have regard to the nature and kind of the security given when the debentures were offered and, if no security was given, shall have regard to the position of the holders of the debentures as unsecured creditors of the borrowing corporation.

**Power of trustee to apply to Court for directions**

**1057. (1)** The trustee for the holders of debentures of a corporation may apply to the Court:

(a) for directions in relation to any matter arising in connection with the performance of the functions of the trustee; or

(b) to determine any question in relation to the interests of the holders of debentures;

and the Court may:

(c) give such directions to the trustee as the Court thinks just and reasonable; and

(d) if satisfied that the determination of the question will be just and beneficial—accede wholly or partially to the application on such terms and conditions as the Court thinks just and reasonable or make such other order on the application as the Court thinks just.

**(2)** The Court may, on an application under this section, order a meeting of all or any of the holders of debentures to be convened to consider any matters in which they are concerned and to advise the trustee on those matters and may give such ancillary or consequential directions as the Court thinks fit.

**(3)** The meeting shall be held and conducted in such manner as the Court directs, and be presided over by a person nominated by the trustee

or, if the trustee does not nominate a person to preside at the meeting, by a person appointed for that purpose by the holders of debentures present at the meeting.

**Obligations of borrowing corporation**

**1058. (1)** Where there is a trustee for the holders of any debentures of a borrowing corporation, the trustee shall, by written notice to the borrowing corporation, specify for the purposes of this section a day, being not later than 6 months after the date of the relevant prospectus, and the directors of the borrowing corporation shall:

(a) at the end of a period not exceeding 3 months ending on the day so specified; and

(b) at the end of each following period, being a period of 3 months or such shorter period as the trustee, in any special circumstances, allows;

prepare a report that relates to that period and complies with the requirements of subsection (2) and, within one month after the end of each such period, lodge the report relating to that period with the trustee and a copy of the report with the Commission.

**(2)** The report referred to in subsection (1) shall be signed by not fewer than 2 of the directors on behalf of all of them and shall set out in detail any matters adversely affecting the security or the interests of the holders of the debentures and, without affecting the generality of the foregoing, shall state:

(a) whether or not the limitations on the amount that the borrowing corporation may borrow have been exceeded and, if they have been exceeded, particulars of borrowings exceeding those limitations;

(b) whether or not the borrowing corporation and each of its guarantor bodies have complied with all the covenants and provisions binding upon them respectively by or under the debentures or any trust deed;

(c) whether or not any event has happened that has caused or could cause the debentures or any provision of the relevant trust deed to become enforceable and, if so, particulars of that event;

(d) whether or not any circumstances affecting the borrowing corporation, its subsidiaries or its guarantor bodies or any of them have occurred that materially affect any security or charge included in or created by the debentures or any trust deed and, if so, particulars of those circumstances;

(e) whether or not there has been any substantial change in the nature of the business of the borrowing corporation or any of its subsidiaries or any of its guarantor bodies since the debentures were first issued that has not previously been reported upon as required by this section and, if so, particulars of that change; and

(f) where the borrowing corporation has deposited money with, lent money to, or assumed any liability of, a body corporate that is

related to the borrowing corporation, particulars, with respect to each body corporate that is so related, of:

(i) the total of the amounts so deposited or lent and the extent of any liability so assumed during the period covered by the report; and

(ii) the total of the amounts owing to the borrowing corporation in respect of money so deposited or lent and the extent of any liability so assumed as at the end of the period covered by the report;

distinguishing between deposits, loans and assumptions of liability that are secured and those that are unsecured, but excluding any deposit with, loan to, or liability assumed on behalf of, a body corporate if that body corporate has guaranteed the repayment of the debentures of the borrowing corporation and has secured the guarantee by a charge over its property in favour of the trustee for the holders of the debentures of the borrowing corporation.

**(3)** Where, during the period to which a report referred to in subsection (1) relates:

(a) a body corporate has become a guarantor body;

(b) a guarantor body has ceased to be liable for the payment of the whole or part of the money for which it was liable under the guarantee; or

(c) a guarantor body has changed its name;

the report shall so state and shall give particulars of the matters so stated.

**(4)** Where there is a trustee for the holders of any debentures issued by a borrowing corporation and the borrowing corporation or any of its guarantor bodies that has guaranteed the repayment of the money raised by the issue of those debentures creates any charge, the borrowing corporation or the guarantor body, as the case requires, shall, whether or not any demand for the particulars has been made:

(a) give to the trustee, within 21 days after the creation of the charge, written particulars of the charge; and

(b) if the total amount to be advanced on the security of the charge is indeterminate:

(i) give to the trustee, within 7 days after an advance is made, written particulars of the amount of the advance; or

(ii) where the advances are merged in a current account with bankers or trade creditors—give to the trustee, at the end of every 3 months, written particulars of the net amount outstanding in respect of the advances.

**(5)** The directors of a borrowing corporation that has issued debentures (other than debentures of a kind that could be lawfully described under section 1045 as mortgage debentures or certificates of mortgage debenture

stock) and of every relevant guarantor body that has guaranteed the repayment of the money raised by the issue of those debentures shall:

(a) at a date not later than 6 months, or, in the case of a particular body corporate, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that body (if any), after the end of each financial year of the body, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for that financial year and a balance-sheet as at the end of that financial year; and

(b) at a date not later than 10 months, or, in the case of a particular body corporate, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that body (if any), after the end of each financial year of the body, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures a profit and loss account for the period from the end of that financial year until the end of 6 months after the end of that financial year and a balance-sheet as at the end of the period to which the profit and loss account relates.

**(6)** The directors of a borrowing corporation that is a holding corporation shall:

(a) at a date not later than 6 months, or, in the case of a particular borrowing corporation, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation, after the end of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor body that is a subsidiary of the borrowing corporation for that financial year; and

(b) at a date not later than 10 months, or, in the case of a particular borrowing corporation, not later than the end of such other period as is for the time being fixed by the Commission with the consent of the trustee for the debenture holders of that corporation, after the end of each financial year of the corporation, cause to be made out and lodged with the Commission and with the trustee for the holders of the debentures (if any) a set of consolidated accounts for the borrowing corporation and each guarantor body that is a subsidiary of that borrowing corporation for the period from the end of that financial year until the end of 6 months after the end of that financial year.

**(7)** A trustee for debenture holders of a borrowing corporation may give to the directors of a guarantor body that is a subsidiary of that borrowing

corporation a notice requiring them to comply with subsection (5) and, where a notice is so given:

(a) the directors of the guarantor body shall comply with the requirements of subsection (5) in relation to the next financial year of that body that ends after the notice is so given and in relation to each subsequent financial year of that body; and

(b) where the notice is given within the 6 months after the end of a financial year of that guarantor body—the directors of the body shall comply with the requirements of paragraph (5) (b) in relation to the period beginning at the end of that financial year and ending at the end of those 6 months.

(8) A trustee for debenture holders shall, within 7 days after the trustee gives a notice under subsection (7), lodge a copy of that notice with the Commission.

(9) Nothing in subsection (5), (6) or (7) applies to the directors of a body corporate that:

(a) is a pastoral company in respect of which an exemption granted under section 11 of the *Banking Act 1959* is in force; and

(b) is declared by the Commission by notice published in the *Gazette* to be a body corporate to which those subsections do not apply.

**(10)** The Commission may, by notice published in the *Gazette*:

(a) specify terms and conditions subject to which subsection (9) has effect in relation to a body corporate; or

(b) vary or revoke any declaration made under subsection (9) or any terms or conditions specified under paragraph (a) of this subsection.

**(11)** Subsections (1), (4), (5), (6) and (7) do not apply in respect of a borrowing corporation or a guarantor body if:

(a) the borrowing corporation or the guarantor body, as the case may be, is being wound up; or

(b) a receiver, or a receiver and manager, of property of the borrowing corporation or of the guarantor body, as the case may be, has been appointed and has not ceased to act under that appointment.

**(12)** The provisions of Divisions 4, 5 and 6 of Part 3.6 (other than sections 307, 308, 309 and 310), section 313, section 332 (other than subsection (8)) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (5) of this section by the directors of a borrowing corporation as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions.

**(13)** Notwithstanding anything in the preceding provisions of this section, the directors of a borrowing corporation are not required to comply, in relation to profit and loss accounts and balance-sheets required to be made out and lodged under subsection (5), with section 295 or 305 or with section

332 (as it relates to group accounts) if the trustee for debenture holders consents in writing to the directors being exempt from those requirements.

**(14)** The provisions of Divisions 4, 5 and 6 of Part 3.6 (other than sections 307, 308, 309 and 310), section 313, section 332 (other than subsection (8)) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (6) of this section by directors of the borrowing corporation as if:

(a) that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions; and

(b) references in those provisions to group accounts were references to the consolidated accounts referred to in subsection (6) of this section.

**(15)** The provisions of Divisions 4, 5 and 6 of Part 3.6 (other than sections 295, 305, 307, 308, 309 and 310), section 332 (except so far as relating to group accounts) and section 409 apply, with such adaptations as are necessary, to every profit and loss account and balance-sheet made out and lodged under subsection (5) of this section by the directors of a relevant guarantor body as if that profit and loss account and balance-sheet were a profit and loss account and balance-sheet referred to in those provisions.

**(16)** Notwithstanding the provisions of subsection (15), where a guarantor body, being a body corporate that is incorporated in the United Kingdom or in a State or Territory of the United States of America, has lodged with the Department of Trade or other appropriate Government Department in the United Kingdom or the Securities and Exchange Commission of the United States of America a profit and loss account and balance-sheet for a period in respect of which the body corporate is required to lodge a profit and loss account and balance-sheet under subsection (5) of this section, it is sufficient compliance with the requirements of that subsection if certified copies of the profit and loss account and balance-sheet so lodged with the Department of Trade or that other Department or the Securities and Exchange Commission are, with the consent of the trustee for the debenture holders, lodged with the Commission and the trustee for the debenture holders within the time prescribed by that subsection.

**(17)** Where:

(a) the directors of a borrowing corporation do not lodge with the trustee for the holders of debentures a report as required by subsection (1); or

(b) the directors of a borrowing corporation or the directors of a guarantor body do not lodge with the trustee the balance-sheets, profit and loss accounts and reports as required by subsections (5) to (15), inclusive;

within the period, or at the date, specified in the subsection concerned, the trustee shall as soon as practicable lodge notice of that fact with the Commission.

**(18)** Notwithstanding anything contained in subsections (12) to (15), inclusive, the audit of a profit and loss account and balance-sheet of a borrowing corporation or its guarantor body relating to a period of 6 months immediately following a financial year of the borrowing corporation or guarantor body, as the case may be, required to be made out and lodged in accordance with subsection (5) or (6) may be dispensed with or may be of a limited nature or extent if the trustee for the holders of the debentures of the borrowing corporation has consented in writing to the audit being dispensed with or being of such a limited nature or extent, as the case may be.

**(19)** Where the trustee has so consented to the audit of a profit and loss account and balance-sheet of a borrowing corporation or guarantor body being dispensed with or being of a limited nature or extent, the directors of the borrowing corporation or guarantor body, as the case may be, shall lodge with the Commission a copy of the consent when the profit and loss account and balance-sheet are so lodged.

**(20)** Where the trustee for debenture holders for a borrowing corporation has consented to the directors of the borrowing corporation being exempt from complying with the requirements relating to profit and loss accounts and balance-sheet, referred to in subsection (13), the directors shall lodge with the Commission a copy of the consent when the profit and loss account and balance-sheet are so lodged.

**(21)** Notwithstanding anything in this section, a profit and loss account and balance-sheet of a borrowing corporation or its guarantor body relating to a period of 6 months immediately following a financial year of the corporation or body required to be made out and lodged in accordance with subsection (5) may, unless the trustee for the holders of the debentures of the borrowing corporation otherwise requires in writing, be based upon the value of the trading stock of the borrowing corporation or the guarantor body, as the case may be, as:

(a) reasonably estimated by the directors of that corporation or body on the basis of the value of that trading stock as adopted for the purpose of the profit and loss account and balance-sheet of that corporation or body laid before the corporation or body at its last preceding annual general meeting; and

(b) certified in writing as such by those directors.

**(22)** In this section:

“relevant guarantor body”, in relation to a borrowing corporation, means:

(a) a guarantor body that is not a subsidiary of that borrowing corporation; and

(b) a guarantor body that is a subsidiary of that borrowing corporation and the directors of which have been given notice under subsection (7) by the trustee for debenture holders of that borrowing corporation.

**(23)** For the purposes of the application, by virtue of subsection (12) or (14), of a provision of this Act, section 74 has effect as if paragraph 74 (b) were omitted.

**Obligation of guarantor body to provide information**

**1059.** For the purpose of the preparation of a report that is required by this Act to be signed by or on behalf of the directors of a borrowing corporation or any of them, that corporation may, by written notice, require any of its guarantor bodies to provide it with any information relating to that guarantor body that is required by this Act to be contained in that report, and that guarantor body shall provide the borrowing corporation with that information before such date, being a date not earlier than 14 days after the notice is given, as is specified for that purpose in the notice.

**Loans and deposits to be immediately repayable on certain events**

**1060.** **(1)** Where, in a prospectus issued in connection with an invitation to subscribe for or to buy debentures of a corporation, or in connection with an offer of debentures of a corporation for subscription or purchase, there is a statement as to any particular purpose or project for which the money received by the corporation in response to the invitation or offer is to be applied, the corporation shall from time to time make reports to the trustee for the holders of those debentures as to the progress that has been made towards achieving that purpose or completing that project.

**(2)** Each such report shall be included in the report required to be furnished to the trustee for the holders of the debentures under subsection 1058 (1).

**(3)** Where it appears to the trustee for the holders of the debentures that the purpose or project has not been achieved or completed within the time stated in the prospectus within which the purpose or project is to be achieved or completed or, where no such time was stated, within a reasonable time, the trustee may, and, if in the trustee’s opinion it is necessary for the protection of the interests of the holders of the debentures, shall, give written notice to the corporation requiring it to repay the money so received by it and the trustee shall, within one month after such a notice is given, lodge with the Commission a copy of the notice.

**(4)** The trustee shall not give a notice under subsection (3) if the trustee is satisfied:

(a) that the purpose or project has been substantially achieved or completed;

(b) that the interests of the holders of debentures have not been materially prejudiced by the failure to achieve or complete the purpose or project within the time stated in the prospectus or within a reasonable time; or

(c) that the failure to achieve or complete the purpose or project was due to circumstances beyond the control of the corporation that

could not reasonably have been foreseen by the corporation when the prospectus was issued.

**(5)** Upon receipt by the corporation of a notice referred to in subsection (3), the corporation is liable to repay any money owing to a person (in this subsection called the “lender”) as the result of a loan or deposit made in response to the invitation or offer, and, on demand in writing by the lender, shall immediately repay the money to the lender unless:

(a) before the money received by the corporation in response to the invitation or offer was accepted by the corporation, the corporation, by written notice served on the persons from whom money was received:

(i) had specified the purpose or project for which the money would in fact be applied by the corporation; and

(ii) had offered to repay the money to those persons;

and the lender had not, within 14 days after receiving the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to the lender; or

(b) the corporation, by written notice served on the holders of the debentures:

(i) had specified the purpose or project for which the money would in fact be applied by the corporation; and

(ii) had offered to repay the money to the holders of the debentures;

and the lender had not, within 14 days after receiving the notice or such longer time as was specified in the notice, demanded in writing from the corporation repayment of the money owing to the lender.

**(6)** Where the corporation has given a written notice as provided by subsection (5) specifying the purpose or project for which the money received by the corporation in response to the invitation or offer will in fact be applied by the corporation, this section applies as if the purpose or project so specified in the notice was the particular purpose or project specified in the prospectus as the purpose or project for which the money was to be applied.

**Invitations or offers by excluded corporations**

**1061.** Notwithstanding any other provision of this Act, an invitation by an excluded corporation to lend money to, or to deposit money with, that corporation or an offer by an excluded corporation to accept money that is lent to, or deposited with, that corporation shall, for the purposes of this Division, be deemed not to be an invitation to subscribe for or buy debentures of the corporation or an offer of debentures of the corporation for subscription or purchase.

**Liability of trustees for debenture holders**

**1062.** **(1)** Subject to this section, any provision contained in a trust deed relating to or securing an issue of debentures of a corporation, or in any contract with the holders of debentures of a corporation secured by a trust deed, is void in so far as it would have the effect of exempting a trustee from, or indemnifying it against, liability for breach of trust where it fails to show the degree of care and diligence required of it as trustee having regard to its powers, authorities or discretions under the trust deed or contract.

**(2)** Subsection (1) does not invalidate:

(a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee before the giving of the release; or

(b) a provision enabling such a release to be given:

(i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of the holders of the debentures present and voting in person or, where proxies are permitted, by proxy at a meeting convened for the purpose; and

(ii) either with respect to specific acts or omissions or on the dissolution of the trustee or on its ceasing to act.

**(3)** Subsection (1) does not:

(a) invalidate a provision in force immediately before the commencement of this Part so long as any trustee then entitled to the benefit of that provision remains a trustee of the deed concerned; or

(b) deprive a trustee of an exemption or right to be indemnified in respect of anything done or omitted to be done by the trustee while any such provision was in force.

***Division 5*—*Prescribed interests***

**Exceptions and modifications**

**1063.** **(1)** This Division does not apply in relation to an excluded issue of prescribed interests, an excluded offer of prescribed interests for subscription or an excluded invitation to subscribe for prescribed interests.

**(2)** The provisions of this Act relating to securities shall, in their application in relation to securities being prescribed interests, have effect with such modifications (if any) as are necessary or as are prescribed by the regulations.

**Issue of prescribed interests restricted**

**1064.** **(1)** A corporation, other than a public corporation, shall not make available, offer for subscription or purchase, or issue an invitation to subscribe for or buy, any prescribed interest.

**(2)** A corporation shall not deal in a prescribed interest made available by a person other than a public corporation.

**(3)** A person shall not subscribe for or buy from, or dispose of to, a corporation a prescribed interest made available by a person other than a public corporation.

**(4)** A person shall not, by the use of an eligible communications service, deal in a prescribed interest made available by a person other than a public corporation.

**(5)** A person shall not, in eligible circumstances, deal in a prescribed interest made available by a person other than a public corporation.

**(6)** A person is not entitled to sue on a cheque or other bill of exchange, or on a promissory note, drawn, made, accepted, indorsed, negotiated or transferred in connection with a transaction in relation to a prescribed interest made available by a person other than a public corporation.

**(7)** Nothing in this section prohibits an agent of a public corporation authorised for the purpose under the common or official seal of the corporation from making available, offering for subscription or purchase, or issuing invitations to subscribe for or buy, a prescribed interest on behalf of the corporation and a prescribed interest made available by such an agent shall be deemed for the purposes of this section to have been made available by the corporation.

**No issue without approved deed**

**1065.** **(1)** A person shall not issue, offer for subscription or purchase, or issue invitations to subscribe for or buy, any prescribed interest made available by a corporation unless, at the time of the issue, offer or invitation, there is in force, in relation to the interest, a deed that is an approved deed.

**(2)** Where a deed would, but for this subsection, have ceased to be an approved deed for the purposes of this Division because there is no trustee or representative for the purposes of the deed or the approval of the trustee or representative has been revoked or because of any other circumstance relating to the trustee or representative, the Commission may, despite section 1066, direct that the deed is to continue to be an approved deed for such period and for such purposes as the Commission directs and, upon the giving of such a direction, the deed continues to be an approved deed accordingly.

**(3)** A person shall not, in any deed, prospectus, statement, advertisement or other document relating to a prescribed interest made available by a corporation, make any reference to an approval of a deed, or an approval of a trustee or representative, granted under this Division or a corresponding law.

**Approved deeds**

**1066.** **(1)** For the purposes of this Division, a deed is an approved deed if:

(a) an approval has been granted to the deed under this Division or a corresponding law;

(b) an approval has been granted under this Division or a corresponding law to the trustee or representative appointed for the purposes of the deed acting as trustee or representative and that approval has not been revoked and the trustee or representative has not ceased to hold office; and

(c) the deed, or a copy of the deed verified by a written statement, has been lodged with the Commission, or was lodged before the commencement of this Part with the NCSC.

**(2)** Where a deed ceases after the commencement of this Division to be an approved deed, the management company may nevertheless comply with the terms of a buy-back covenant contained or deemed to be contained in the deed.

**Approvals**

**1067. (1)** The Commission shall grant its approval to a deed unless the Commission is of the opinion that the deed does not comply with the requirements of this Division and of the regulations.

**(2)** The Commission may, subject to such terms and conditions as it thinks fit, grant its approval to a person acting as trustee or representative for the purposes of a deed.

**(3)** The Commission may at any time, by reason of a breach of a term or condition subject to which the approval was granted or for any other reason, revoke an approval granted under this section or under any corresponding law.

**Lodgment of consolidated copies of deed**

**1068. (1)** Where an instrument or instruments amending a deed have been made, the management company shall, on being required by the Commission to do so, lodge a printed copy (in this subsection called a “consolidated copy”) of the deed as amended by the instrument or instruments, being a copy that:

(a) is verified by a written statement;

(b) bears a notation sufficient to distinguish it from:

(i) the deed as lodged, or the copy of the deed lodged, as the case may be, as mentioned in paragraph 1066 (1) (c);

(ii) the instrument, or each of the instruments, as the case may be; and

(iii) each copy (if any) of the deed previously lodged under this subsection or a corresponding law; and

(c) if an amendment or amendments made by the instrument or instruments have not, as at the date on which the consolidated copy is lodged under this subsection, come into operation—has marked on it, in relation to the provision, or in relation to each provision, as the case may be, altered, omitted or inserted by the amendment or amendments, a note that identifies the instrument that altered,

omitted or inserted the provision and contains a statement to the effect that:

(i) in the case of a provision that has been altered or omitted— the alteration or omission; or

(ii) in the case of a provision that has been inserted—the provision inserted;

has not yet come into operation;

and a consolidated copy so lodged shall for all purposes, unless the contrary is proved, be regarded as a true copy of the deed as so amended.

**(2)** Where a provision of an instrument affects the operation of a deed otherwise than by way of textual amendment, the management company shall not lodge a copy of the deed under subsection (1) unless a copy of the instrument is annexed to the copy of the deed.

**Covenants to be included in deeds**

**1069. (1)** Subject to subsection (3), a deed shall contain covenants to the following effect:

(a) a covenant binding the management company that it will strive to carry on and conduct its business in a proper and efficient manner and to ensure that any relevant undertaking, scheme or enterprise is carried on and conducted in a proper and efficient manner;

(b) covenants binding the management company:

(i) to pay to the trustee or representative, within 30 days after receiving it, money that, under the deed, is payable by the management company to the trustee or representative;

(ii) not to sell or issue, or permit to be sold or issued, a relevant prescribed interest except at a price calculated in accordance with the provisions of the deed; and

(iii) not to publish, without the approval of the trustee or representative, a notice or other document containing a statement with respect to the sale price of relevant prescribed interests or the yield from those interests or containing any invitation to buy prescribed interests;

(c) a buy-back covenant;

(d) a covenant binding the management company to make, and to maintain at all times, adequate buy-back arrangements;

(e) covenants binding the trustee or representative:

(i) to exercise all due diligence and vigilance in carrying out his, her or its functions and duties and in protecting the rights and interests of the holders of the relevant prescribed interests;

(ii) to supervise the making and maintaining of adequate buy-back arrangements and to monitor the maintaining of such arrangements and the extent of compliance with the buy-back covenant;

(iii) to keep proper books of account in relation to those prescribed interests; and

(iv) to cause a registered company auditor to audit those accounts at the end of each financial year;

(f) a covenant binding the trustee or representative to send, within 2 months after the end of each financial year, to each of the holders of those prescribed interests:

(i) a statement of the accounts for that financial year in relation to those prescribed interests;

(ii) a statement that describes the buy-back arrangements in effect when it is sent and states whether or not, in the opinion of the trustee or representative, those arrangements are adequate; and

(iii) a copy of the auditor’s report on those accounts;

(g) a covenant binding the management company and the trustee or representative, respectively, that no money available for investment in respect of the relevant undertaking, scheme or enterprise will be invested in or lent to the management company, the trustee or representative, or any person (other than an Australian bank or an eligible money market dealer) who is an associate of the management company or of the trustee or representative;

(h) a covenant binding the management company that the management company will:

(i) make available to the trustee or representative, or to any registered company auditor appointed by the trustee or representative, for inspection all the books of the management company whether kept at the registered office or elsewhere; and

(ii) give to the trustee or representative or to any such auditor such oral or written information as the trustee or representative or the auditor requires with respect to all matters relating to the undertaking, scheme or enterprise of the management company or any property (whether acquired before or after the date of the deed) of the management company or otherwise relating to the affairs of the management company;

(j) a covenant binding the management company that the management company will make available, or ensure that there is made available, to the trustee or representative such details as the trustee or representative requires with respect to all matters relating to the relevant undertaking, scheme or enterprise;

(k) covenants binding the management company and the trustee or representative, respectively, that the management company or the trustee or representative, as the case may be, will not exercise the right to vote in respect of any shares relating to the relevant prescribed interests held by the management company or by the

trustee or representative at any election for directors of a body corporate shares in which are so held, without the consent of the majority of the holders of those interests present in person and voting given at a meeting of those holders convened in the manner provided for in paragraph (m) for the purpose of authorising the exercise of the right at the next election;

(m) a covenant binding the management company that the management company will, within 21 days after an application is delivered to the management company at its registered office, being an application by not fewer than 50, or one-tenth in number, whichever is the less, of the holders of the relevant prescribed interests, by sending notice by post of the proposed meeting at least 7 days before the proposed meeting to each of the holders of those interests at the holder’s last known address or, in the case of joint holders, to the joint holder whose name appears first in the management company’s records, convene a meeting of the holders for the purpose of:

(i) laying before the meeting the accounts and balance-sheet that were laid before the last preceding annual general meeting of the management company or the last audited statement of accounts of the trustee or representative; and

(ii) giving to the trustee or representative such directions as the meeting thinks proper; and

(n) such other covenants as are prescribed by the regulations.

**(2)** Nothing in subsection (1) limits the generality of anything else in it.

**(3)** The Commission may, by writing, declare that, subject to such terms and conditions as are specified in the declaration, a specified deed that makes provision for the appointment of a specified person as trustee for or representative of the holders of the prescribed interests to which the deed relates is not required to contain covenants to the effect of such of the matters referred to in subsection (1) as are specified in the declaration and the Commission may, by writing, revoke the declaration or vary it in such manner as it thinks fit.

**(4)** The Commission shall cause a copy of a declaration under subsection (3) to be published in the *Gazette.*

**(5)** Where, as at the commencement of this Division, approval had been granted to a deed under a law corresponding to this Division, the deed shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under subsection (1), except the covenants required under subparagraphs (1) (b) (i) and (ii), paragraphs (1) (c) and (d) and subparagraphs (1) (e) (ii) and (f) (ii), and subsections (11), (12), (13) and (14) apply in relation to the deed accordingly.

**(6)** Where, as at the commencement of this Division:

(a) approval had been granted to a deed under a law corresponding to this Division; and

(b) the deed contains a covenant to the effect of the covenant required to be contained in a deed under paragraph (1) (c);

the deed shall, if it does not contain the covenants concerned, be deemed to contain covenants to the effect of the covenants required to be contained in a deed under paragraph (1) (d) and subparagraphs (1) (e) (ii) and (f) (ii).

**(7)** If a deed (other than a deed to which subsection (5) or (6) applies) does not expressly contain a covenant that is required by this section to be contained in that deed, a covenant to the same effect shall, so far as is practicable, be deemed to be contained in that deed.

**(8)** If:

(a) a prescribed interest has, whether before or after the commencement of this Division, been made available by a corporation;

(b) there was no deed in force in relation to that interest at the time when it was made available; and

(c) because there was no deed so in force the making available of the interest contravened section 1065 or a corresponding law;

the covenants that would, had such a deed been in force at that time, have been required by this section or a corresponding law to have been contained in the deed shall, so far as is practicable, be deemed to be given by a deed in force in relation to that interest.

**(9)** If a regulation is made prescribing a covenant for the purposes of paragraph (1) (n), that covenant shall except in so far as the regulations provide otherwise:

(a) be deemed to be contained in every deed that is in force when the regulation comes into force; and

(b) in relation to a prescribed interest to which subsection (8) applies— be deemed to be given by a deed in force in relation to that interest.

**(10)** If:

(a) a covenant that is contained in a deed refers to a price calculated in accordance with the deed but no provision is made for the calculation of the price; or

(b) a covenant that is deemed to be contained in a deed or to be given refers to such a price;

the price shall be calculated as prescribed or as the Commission determines.

**(11)** A meeting convened for the purposes of a covenant referred to in paragraph (1) (k) or (m) shall be held at the time and place specified in the notice, being a time not later than 2 months after the day on which the notice was given, to be presided over by:

(a) a person appointed for that purpose by the holders of the relevant prescribed interests who are present at the meeting; or

(b) where no such appointment is made, a nominee of the trustee or representative approved by the Commission;

and shall be conducted in accordance with the provisions of the deed or, in so far as the deed makes no provision or if there is no deed, as directed by the person presiding at the meeting.

**(12)** Notwithstanding anything to the contrary contained in an approved deed, the undertaking, scheme, enterprise, contract or arrangement may be continued in operation or existence if it appears to be in the interests of the holders of the relevant prescribed interests during such period or periods as are agreed upon by the trustee or representative and the management company.

**(13)** Where a direction is given to the trustee or representative at a meeting convened pursuant to a covenant referred to in paragraph (1) (m), the trustee or representative:

(a) shall comply with the direction unless it is inconsistent with the deed or this Act; and

(b) is not liable for anything done or omitted to be done pursuant to that direction.

**(14)** Where the trustee or representative is of the opinion that a direction so given is inconsistent with the deed or this Act or is otherwise objectionable, the trustee or representative may apply to the Court for an order confirming, setting aside or varying the direction and the Court may make such order as it thinks fit.

**Register of holders of prescribed interests**

**1070. (1)** The management company shall, in respect of each deed with which the management company is concerned, keep at the registered office or principal place of business in Australia of the management company, or at such other place in Australia as the Commission approves, a register of the holders of prescribed interests under the deed and enter in the register:

(a) the names and addresses of the holders;

(b) the extent of the holding of each holder and, if the holder’s prescribed interest consists of a specified interest in any property, a description of the property sufficient to identify it;

(c) the date at which the name of each person was entered in the register as a holder; and

(d) the date at which any person ceased to be a holder.

(2) The provisions of Division 5 of Part 2.4 (except section 214) shall, with such modifications as are necessary, apply in relation to the registers kept under subsection (1).

**(3)** A management company that:

(a) keeps a register of holders of prescribed interests under subsection (1) at a place within 25 kilometres of an office of the Commission; and

(b) provides reasonable accommodation and facilities for persons to inspect and take copies of its list of holders of interests;

need not comply with the provisions of paragraph 1071 (1) (c) in relation to the deed under which those interests are held unless the Commission, by order published in the *Gazette*, otherwise directs.

**Returns and information relating to prescribed interests**

**1071. (1)** Where a deed is or has at any time been an approved deed, the management company shall lodge:

(a) so long as the deed, or any deed in substitution in whole or in part for the deed, remains in force—within 2 months after the end of each financial year applicable to the deed or substituted deed; or

(b) if the deed ceases to be in force and no deed has been substituted in whole or in part for the deed, or any such substituted deed ceases to be in force—within 2 months after the deed or substituted deed, as the case may be, ceases to be in force;

a return in the prescribed form containing:

(c) a list of all persons who, at the end of the relevant financial year, were holders of the prescribed interests to which the deed or substituted deed relates; and

(d) such other particulars as are prescribed; and accompanied by the prescribed documents.

**(2)** A document required to be lodged by the management company under subsection (1) shall be signed by at least one director of the management company.

**(3)** A management company to which subsection (1) applies shall, if so requested by any holder of a prescribed interest to which the deed relates within one month after the end of the relevant financial year, send to the holder, within 2 months after the end of the relevant financial year, a copy of each of the documents that the management company is required to lodge by virtue of that subsection (other than the list referred to in paragraph (1) (c)).

**(4)** In this section:

“relevant financial year” means:

(a) in a case to which paragraph (1) (a) applies—the financial year referred to in that paragraph in respect of which the return is lodged; or

(b) in a case to which paragraph (1) (b) applies:

(i) if the deed ceases to be in force at the end of the last day of a financial year applicable to the deed—that financial year; or

(ii) in any other case—the period that began at the end of the last preceding financial year applicable to the deed and ended on the day on which the deed ceased to be in force.

**Buy-back covenant and buy-back arrangements**

**1072.** **(1)** As soon as practicable after the trustee or representative in relation to a deed that is or has at any time been an approved deed becomes of the opinion that the buy-back arrangements are inadequate, he, she or it shall notify the management company in writing that he, she or it is of that opinion.

**(2)** Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (1), the trustee or representative is still of that opinion, he, she or it shall, as soon as practicable after the end of that period, notify the Commission in writing that he, she or it is of that opinion.

**(3)** Where, at the end of the period of 21 days starting on the day on which a notice is given under subsection (1), the buy-back arrangements are inadequate, the management company contravenes this subsection.

**(4)** Where:

(a) the management company in relation to a deed that is or has at any time been an approved deed contravenes a buy-back covenant contained in the deed; and

(b) as at the end of 14 days after the contravention, neither the management company nor the trustee or representative has notified the Commission in writing of the contravention;

the management company and the trustee or representative each contravene this subsection.

**Consequences of contravention**

**1073.** **(1)** A person is not relieved from any liability to a holder of a prescribed interest made available by a corporation merely because the person has been convicted of an offence in respect of a contravention of a provision of this Part that resulted in that liability.

**(2)** Where:

(a) an offer of a prescribed interest for subscription has been made; or

(b) an invitation to subscribe for a prescribed interest has been issued;

in contravention of a provision of this Act, a contract entered into by any person (other than the management company) to subscribe for the prescribed interest as a result of the acceptance by the person of the offer, or the acceptance of an offer made by the person pursuant to the invitation, is voidable at the option of that person.

**Winding up of schemes**

**1074.** **(1)** Where:

(a) the management company under a deed is in the course of being wound up; or

(b) in the opinion of the trustee or representative, the management company has ceased to carry on business or has, to the prejudice of

holders of prescribed interests to which the deed relates, failed to comply with a provision of the deed;

the trustee or representative shall convene a meeting of those holders in the manner set out in subsection (2).

**(2)** A meeting under subsection (1) shall be convened by sending notice of the proposed meeting at least 21 days before the proposed meeting to each holder at the holder’s last known address, or, in the case of joint holders, to the joint holder whose name appears first in the management company’s records.

**(3)** The provisions of subsection 1069 (11) apply to such a meeting as if the meeting were a meeting referred to in that subsection.

**(4)** If at any such meeting a resolution is passed by a majority of not less than three-quarters in value of the holders of the prescribed interests present in person and voting at the meeting that the undertaking, scheme, enterprise, contract or arrangement to which the deed relates be wound up, the trustee or representative shall, within 28 days after the day on which the meeting is held, apply to the Court for an order confirming the resolution.

**(5)** On an application by the trustee or representative, the Court may, if it is satisfied that it is in the interest of the holders of the prescribed interests, confirm the resolution and may make such orders as it thinks just and reasonable for the effective winding up of the undertaking, scheme, enterprise, contract or arrangement.

**Non-application of Division in certain circumstances**

**1075.** This Division does not apply in the case of the sale of any prescribed interest by a personal representative, liquidator, receiver or trustee in bankruptcy in the normal course of realisation of property.

**Liability of trustees**

**1076.** (1) A provision contained in a deed that is or has been at any time an approved deed, or in any contract with the holders of prescribed interests to which such a deed relates, is void in so far as it would have the effect of exempting a trustee or representative under the deed from, or indemnifying a trustee or representative against, liability for breach of trust where the trustee or representative fails to show the degree of care and diligence required of a trustee or representative having regard to the powers, authorities or discretions conferred on the trustee or representative by the deed.

**(2)** Subsection (1) does not invalidate:

(a) a release otherwise validly given in respect of anything done or omitted to be done by a trustee or representative before the giving of the release; or

(b) any provisions enabling such a release to be given:

(i) on the agreement to the giving of the release of a majority of not less than three-quarters in nominal value of holders of prescribed interests present in person and voting at a meeting convened for the purpose; and

(ii) either with respect to specific acts or omissions or on the trustee or representative ceasing to act.

***Division 6—Hawking of securities***

**Interpretation**

**1077.** In this Division:

(a) a reference to a person going from place to place includes a reference to a person communicating with other persons at different places by the use of an eligible communications service; and

(b) a reference to the buying or purchase of securities includes a reference to acquiring securities by barter or exchange.

**Restriction on hawking securities**

**1078.** **(1)** A person shall not, whether by appointment or otherwise, go from place to place:

(a) issuing invitations to subscribe for or buy securities of a corporation; or

(b) offering securities of a corporation for subscription or purchase.

**(2)** Subsection (1) does not apply in relation to securities of a corporation where the Commission has, on the application of the corporation, by writing published in the *Gazette,* exempted the corporation from the operation of that subsection.

**(3)** Subsection (1) does not apply in respect of an invitation or offer in relation to securities where:

(a) the securities are included in a class of securities that are listed for quotation on a stock market of a securities exchange and the invitation or offer so states, specifying the securities exchange; and

(b) the invitation or offer was issued or made by the holder of a dealers licence and was communicated by the use of an eligible communications service.

**Restriction on written invitations or offers in respect of securities**

**1079.** **(1)** A person shall not:

(a) issue a written invitation to a person to buy securities of a corporation; or

(b) make a written offer to a person of securities of a corporation for purchase;

not being an invitation or offer to a person whose ordinary business is the buying or selling of securities, whether as principal or agent, unless the invitation or offer is accompanied by:

(c) a statement in writing in relation to the securities that:

(i) is signed by the person;

(ii) is dated; and

(iii) complies with the requirements of this section and the requirements (if any) prescribed by the regulations; or

(d) a prospectus in relation to the securities that complies with the requirements of Division 2.

**(2)** Subject to subsection (3), subsection (1) applies in relation to an invitation or offer that is broadcast, televised or included in a cinematograph film in the same way as it applies in relation to a written invitation or offer.

**(3)** Where an invitation or offer is issued or made as mentioned in subsection (2), a statement or prospectus shall be deemed to accompany the invitation or offer if:

(a) the statement or prospectus is prepared by the person on whose behalf the invitation is issued or the offer is made;

(b) notice is given at the same time and by the same means as that by which the invitation is issued or the offer is made that a copy of the statement or prospectus will be supplied on request being made at a specified address; and

(c) where a request for a copy of a statement or prospectus is made at that address within one month after the invitation was issued or the offer was made—the person making the request is supplied with a copy within 7 days after the request was made.

**(4)** Subsection (1) does not apply in respect of an invitation or offer in relation to securities where:

(a) the securities are included in a class of securities that are listed for quotation on the stock market of a securities exchange and the invitation or offer so states, specifying the securities exchange;

(b) the securities are securities that a corporation has allotted or issued or agreed to allot or issue for the purpose of their being offered for sale and the invitation or offer is made by a document that complies with the requirements of this Part, and any applicable rules of law, relating to prospectuses;

(c) the provisions of Division 2 and, where applicable, Division 4 or 5, apply in relation to the invitation or offer and have been complied with; or

(d) the invitation or offer relates to debentures of an excluded corporation.

**(5)** A statement referred to in subsection (1) shall not contain any matter other than the particulars required by section 1080 to be included in the statement, and shall not be in characters smaller or less legible than any

characters used in the invitation or offer or in any document sent with the invitation or offer.

**Particulars to be included in statement**

**1080.** A statement referred to in subsection 1079 (1) in relation to securities of a corporation shall contain particulars as to:

(a) whether the person issuing the invitation or making the offer is acting as principal or agent and, if as agent:

(i) the name of the person’s principal;

(ii) an address in Australia where that principal can be served with process; and

(iii) particulars as to the remuneration payable by the principal to the agent;

(b) the date on which and the place at which the corporation was incorporated and the address of its registered or principal office:

(i) in its place of incorporation; and

(ii) if that place is outside Australia—in Australia;

(c) the authorised share capital of the corporation, its issued share capital, its paid-up share capital, the classes into which its share capital is divided and the rights of each class of shareholders in respect of capital, dividends and voting;

(d) the dividends (if any) paid by the corporation in respect of each class of shares during each of the 5 financial years immediately before the invitation or offer was issued or made and, if no dividend has been paid in respect of shares of a particular class during any one or more of those years, a statement to that effect;

(e) the total amount of any debentures issued by the corporation and outstanding at the date of the statement, together with the rate of interest payable on those debentures;

(f) the names and addresses of the directors;

(g) if the securities are shares—whether or not those shares are fully paid up and, if not, to what extent they are paid up;

(h) whether or not the securities are listed for quotation on the stock market of, or permission to deal in the securities on a stock market has been granted by, any securities exchange and, if so, the name of each such securities exchange;

(j) where the securities are units of shares or units of debentures—the names and addresses of the persons in whom the shares or debentures are vested, the date of, and the parties to, any document defining the terms on which those shares or debentures are held, and an address in Australia where that document or a copy of that document can be inspected; and

(k) the last audited balance-sheet of the corporation.

**Prohibition on hawking securities of proposed corporation**

**1081.** A person shall not, whether by appointment or otherwise, go from place to place:

(a) inviting invitations to subscribe for or buy securities of a corporation that is proposed to be formed; or

(b) offering securities of a corporation that is proposed to be formed for subscription or purchase.

**Power of courts to make orders**

**1082.** **(1)** Where a person is convicted of an offence in respect of an invitation or offer issued or made in contravention of this Division, the Court or, if the person was convicted by another court, that other court, may order that any contract made as a result of the acceptance of an offer made pursuant to the invitation, or the acceptance of the offer, is void and may give such consequential directions as it thinks proper for the repayment of any money or the re-transfer of any securities.

**(2)** A person aggrieved by an order made or directions given under subsection (1) by a court other than the Court may appeal to the Court against the order or direction, and the Court may confirm, reverse or modify the order or direction and make such further order or give such further directions as it thinks just.

***Division 7*—*Exemptions and modifications***

**Australian banks**

**1083.** **(1)** Subject to subsection (3):

(a) nothing in a prescribed provision applies in relation to anything done or to be done by an Australian bank in the ordinary course of its banking business;

(b) an Australian bank is not required to comply with a prescribed provision in respect of anything done or to be done by the bank in the ordinary course of its banking business; and

(c) an Australian bank shall not be taken, because of anything done or to be done by the bank in the ordinary course of its banking business, to be a borrowing corporation for the purposes of a prescribed provision.

**(2)** In subsection (1);

“prescribed provision” means a provision of Division 2, 4 or 6.

**(3)** Where:

(a) a borrowing corporation is required by subsection 1052 (1) to make provision in a trust deed for the appointment of a body corporate as a trustee for the holders of debentures; and

(b) an Australian bank is appointed as a trustee for the holders of those debentures;

subsection (1) does not affect the application of a provision of Division 4 in relation to the bank in its capacity as trustee for the holders of those debentures.

**Powers of Commission**

**1084. (1)** This section applies to Divisions 2, 3, 4, 5 and 6.

**(2)** The Commission may, by writing, exempt a particular person or persons or a particular class of persons, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from compliance with all or any of the provisions of:

(a) the Divisions to which this section applies; and

(b) regulations made for the purposes of the provisions of those Divisions or any of them.

**(3)** Without limiting the generality of subsection (2), an exemption under that subsection may relate to particular securities or to a particular class of securities.

**(4)** A person shall not contravene a condition to which an exemption under subsection (2) is subject.

**(5)** Where a person has contravened a condition to which an exemption under subsection (2) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

**(6)** The Commission may, by writing, declare that a Division to which this section applies and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application in relation to a particular person or persons, or a particular class of persons, either generally or otherwise as provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Division and those regulations have effect accordingly.

**(7)** Without limiting the generality of subsection (6), a declaration under that subsection may relate to particular securities or a particular class of securities.

**(8)** The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette.*

**(9)** An exemption or declaration that was granted or made under, or continued in force by, a corresponding law, being an exemption or declaration that related to, or to a regulation made for the purposes of, a provision of the corresponding law that corresponds with a provision to which this section applies and was in force immediately before the commencement of this Part, has effect after that commencement as if:

(a) it had been made under this section; and

(b) a reference in the exemption or declaration to, or to a regulation made for the purposes of, a provision of the corresponding law that corresponds to a provision to which this section applies were a reference to that last-mentioned provision.

**PART 7.13—TITLE TO, AND TRANSFER OF, SECURITIES**

***Division 1*—*Title to securities***

**Nature of shares and other interests**

**1085.** **(1)** A share or other interest of a member in a company:

(a) is personal property;

(b) is transferable or transmissible as provided by the articles; and

(c) subject to the articles, is capable of devolution by will or by operation of law.

**(2)** Subject to subsection (1):

(a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a company as they apply to other property; and

(b) equitable interests in respect of a share or other interest of a member in a company may be created, dealt with and enforced as in the case of other personal property.

**(3)** For the purposes of any law, a share or other interest of a member in a company shall be taken to be situated:

(a) in a case to which paragraph (b) does not apply—in the State or Territory in which the register of members of the company is kept; or

(b) if the name of the member is, in respect of the share or interest concerned, entered in a branch register—in the State, Territory or country other than Australia in which that branch register is kept.

**Numbering of shares**

**1086.** **(1)** Each share in a company shall be distinguished by an appropriate number.

**(2)** Despite subsection (1):

(a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class, are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; or

(b) if all the issued shares in a company are evidenced by certificates in accordance with the provisions of section 1087, each certificate is distinguished by an appropriate number and that number is recorded

in the register of members, none of those shares is required to have a distinguishing number.

**Certificate to be evidence of title**

**1087.** **(1)** A certificate issued in accordance with subsection (2) specifying any shares held by a member of a company is *prima facie* evidence of the title of the member to the shares.

**(2)** Such a certificate shall be under the common seal of the company or, in the case of a share certificate relating to shares on a branch register, the common or official seal of the company and shall state:

(a) the name of the company and the short title of this Act;

(b) the class of the shares; and

(c) the nominal value of the shares and the extent to which the shares are paid up.

**(3)** Failure to comply with this section does not affect the rights of a holder of shares.

**Company may have duplicate common seal**

**1088.** A company may, if authorised by its articles, have a duplicate common seal, which shall be a facsimile of the common seal of the company with the addition on its face of the words “Share Seal” or “Certificate Seal” and a certificate referring to or relating to securities of the company sealed with such a duplicate seal shall, for the purposes of this Act, be deemed to be sealed with the common seal of the company.

**Loss or destruction of certificates**

**1089.** **(1)** Subject to subsection (2), where a certificate or other document of title to shares, debentures or prescribed interests is lost or destroyed, the company shall, on application by the owner of the shares, debentures or prescribed interests, issue a duplicate certificate or document to the owner:

(a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as the Commission approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as the Commission approves.

**(2)** The application shall be accompanied by:

(a) a statement in writing that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and

(b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.

**(3)** The directors of a company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant:

(a) to cause an advertisement to be inserted in a daily newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate; or

(b) to furnish a bond for an amount equal to at least the current market value of the shares, debentures or prescribed interests indemnifying the company against loss following the production of the original certificate or document;

or to do both those things.

***Division 2*—*Transfer of securities***

**Definition**

**1090.** In this Division:

“interest” includes a prescribed interest.

**Instrument of transfer**

**1091.** **(1)** Notwithstanding anything in its articles or in a deed relating to debentures or interests, a company shall not register a transfer of shares, debentures or interests unless a proper instrument of transfer has been delivered to the company.

**(2)** Subsection (1) does not prejudice the power of the company to register as a shareholder, debenture holder or interest holder a person to whom the right to any shares in, debentures of, or interests made available by, the company has devolved by will or by operation of law.

**(3)** A transfer of shares, debentures or interests of a dead holder made by his or her personal representative is, although the personal representative is not himself, herself or itself registered as the holder of those shares, debentures or interests, as valid as if he, she or it had been so registered at the time of the execution of the instrument of transfer.

**(4)** Where the personal representative of a dead holder duly constituted as such under the law in force in a State or Territory other than the State or Territory in which the holder was registered:

(a) executes an instrument of transfer of a share, debenture or interest of the dead holder to himself, herself or itself or to another person; and

(b) delivers the instrument to the company, together with a statement in writing made by the personal representative to the effect that, to the best of the personal representative’s knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the last-mentioned State or Territory and no application for such a grant will be made, being a

statement made within the period of 3 months immediately before the date of delivery of the statement to the company;

the company shall register the transfer and pay to the personal representative any dividends or other money accrued in respect of the share, debenture or interest up to the time of the execution of the instrument, but this subsection does not operate so as to require the company to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the dead holder duly constituted under the law of the last-mentioned State or Territory.

**(5)** A transfer or payment made under subsection (4) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the dead holder duly constituted under the law of the State or Territory in which the holder was registered.

**(6)** For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a share, debenture or interest in place of the dead person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.

**(7)** The production to a company of a document that is, under the law of any State or Territory, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person shall be accepted by the company, notwithstanding anything in its articles, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

**Registration of transfer at request of transferor**

**1092. (1)** On the written request of the transferor of a share in, debenture of, or interest made available by, a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

**(2)** On the request in writing of the transferor of a share in, debenture of, or interest made available by, a company, the company shall, by written notice, require the person having the possession, custody or control of the share certificate or debenture or any document evidencing title to the interest (as the case may be) and the instrument of transfer of the share, debenture or interest, or either of them, to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate, debenture or document cancelled or rectified and the transfer registered or otherwise dealt with.

**(3)** If a person refuses or fails to comply with a notice given under subsection (2), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show cause why

the documents mentioned in the notice should not be delivered up or produced as required by the notice.

**(4)** Upon appearance of a person so summoned, the Court may examine the person upon oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person’s absence, and, in either case, the Court may order the person to deliver up such documents to the company upon such terms or conditions as the Court considers just and reasonable, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.

**(5)** Lists of share certificates, debentures and other documents required to be brought in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

**Notice of refusal to register transfer**

**1093.** If a company refuses to register a transfer of any shares in, debentures of, or interests made available by, the company, it shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

**Remedy for refusal to register transfer or transmission**

**1094.** (1) Where a relevant authority in relation to a company refuses or fails to register, or refuses or fails to give its consent or approval to the registration of, a transfer or transmission of shares in, debentures of, or an interest made available by, the company, the transferee or transmittee may apply to the Court for an order under this section.

**(2)** Where, on an application made under subsection (1), the Court is satisfied that the refusal or failure was without just cause, the Court may:

(a) order that the transfer or transmission be registered; or

(b) make such other order as it thinks just and reasonable, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the company or by the company and, in the case of a purchase by the company, providing for the reduction accordingly of the capital of the company.

**(3)** In this section:

“relevant authority”, in relation to a company, means:

(a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of shares in, debentures of, or interests made available by, the company; or

(b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of shares in, debentures of, or interests made available by, the company is registered.

**Certification of transfers**

**1095. (1)** The certification by a company of an instrument of transfer of shares in, debentures of, or interests made available by, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show *prima facie* title to the shares, debentures or interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or interests.

**(2)** Where a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

**(3)** Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or interests comprised in the certification after the end of the period so limited or any extension of that period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.

**(4)** For the purposes of this section:

(a) an instrument of transfer shall be deemed to be certified if it bears the words “certificate lodged” or words to the like effect;

(b) the certification of an instrument of transfer shall be deemed to be made by a company if:

(i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company’s behalf; and

(ii) the certification is signed by a person authorised to certify transfers on the company’s behalf or by an officer of the company or of a body corporate so authorised; and

(c) a certification that purports to be authenticated by a person’s signature or initials (whether handwritten or not) shall be deemed to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorised to use the signature or initials for the purpose of certifying transfers on the company’s behalf.

**Duties of company with respect to issue of certificates**

**1096. (1)** Within 2 months after the allotment of any shares in, the issue of debentures of, or the making available of interests by, a company, the company shall:

(a) complete and have ready for delivery to the allottee, debenture holder or interest holder, as the case may be, (in this subsection called the “relevant person”), all the appropriate certificates,

debentures or other documents in connection with the allotment of the shares, the issue of the debentures or the making available of the interests unless, in the case of shares, the conditions of the allotment otherwise provide; and

(b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to a nominated person, to that person.

**(2)** Within one month after the date on which a transfer of any shares, debentures or interests is lodged with a company (other than a transfer that the company is for any reason entitled to refuse to register and does not register) the company shall:

(a) complete and have ready for delivery to the transferee all the appropriate certificates, debentures or other documents in connection with the transfer; and

(b) unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to a nominated person, to that person.

**(3)** A company need not comply:

(a) with subsection (1) in relation to the allotment of any shares in, the issue of debentures of, or the making available of interests by, the company; or

(b) with subsection (2) in relation to a transfer of shares, debentures or interests;

if the allottee, debenture holder or interest holder, or the transferee, as the case may be, is a person who has applied to the Commission for the making of a declaration under this subsection and has been declared by the Commission, by writing published in the *Gazette*,to be a person in relation to whom this section does not apply.

**(4)** If a company on which a notice has been served requiring the company to remedy any contravention of a provision of this section fails to remedy the contravention within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, her or it, make an order directing the company and any officer of the company to remedy the contravention within such period as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company who was involved in the contravention in such proportions as the Court thinks just and reasonable.

***Division 3***—***Transfer of marketable securities and marketable rights***

**Interpretation**

**1097. (1)** In this Division, unless the contrary intention appears:

“associate”, in relation to a broker, means:

(a) if the broker is a member of a firm of brokers and is not a broker’s agent—any other member of the firm; or

(b) if the broker is another broker’s agent or employee—the other broker or, if the other broker is a member of a firm of brokers, any member of that firm;

“beneficial owner”, in relation to a marketable security or a marketable right, means a person for whom an authorised trustee corporation holds (whether alone or together with any other person or persons) the security or right in trust in the ordinary course of its business;

“broker” means a member of a securities exchange;

“broker’s agent” means a broker’s agent or employee;

“duly completed”, in relation to a document, has a meaning affected by section 1098;

“duly completed Part 1” means a document that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7;

“eligible body” means:

(a) a company;

(b) a corporation (other than a company) that is incorporated in Australia or in an excluded Territory and is prescribed for the purposes of this paragraph; or

(c) an unincorporated society, association or other body, that:

(i) is formed or established in the Capital Territory or an excluded Territory;

(ii) is included in the official list of a securities exchange; and

(iii) is prescribed for the purposes of this paragraph;

“execution time”, in relation to a document, means the time:

(a) in the case of a sufficient transfer under section 1101—when the document was stamped with a stamp purporting to be that of the transferee’s broker; or

(b) in the case of a sufficient transfer under section 1102—when the document was executed by the transferor;

“in accordance with” includes to the effect of;

“issuing body”, in relation to a marketable security or a marketable right, means the eligible body that issued, or proposes to issue, the security or right;

“legal representative” means the executor, original or by representation, of a will, or the administrator of the estate, of a dead person;

“marketable right” means a right, whether existing or future, and whether contingent or not, of a person to have a marketable security issued to the person, whether or not on payment of any money or for any other consideration;

“marketable security” means:

(a) a share in, or a debenture of, an eligible body; or

(b) a prescribed security;

“prescribed security” means a prescribed interest that is prescribed for

the purposes of this definition;

“securities exchange” means a prescribed body corporate;

“stamp” has the meaning given by section 1099;

“transfer”, in relation to a marketable right, means the renunciation and transfer of that right.

**(2)** A reference in this Division to a form by number is a reference to the form so numbered in Schedule 2 or to a form to the like effect.

**(3)** A reference in a form in Schedule 2 to the full name of the transferor of marketable securities or marketable rights includes a reference to the name of the person shown in the records of the issuing body in relation to those securities or rights as the holder of those securities or rights.

**Document duly completed in accordance with a particular form**

**1098. (1)** For the purposes of this Division, a document is not duly completed in accordance with one of Forms 1, 2, 3, 4, 5, 6, 7 and 8, or a part of one of those forms, unless it:

(a) where the form or part refers to the name and address of the transferee—purports to state that name and address;

(b) where the form or part refers to the transferor’s broker’s stamp— bears a stamp that purports to be such a stamp;

(c) where the form or part refers to the transferee’s broker’s stamp— bears a stamp that purports to be such a stamp; and

(d) where the form or part refers to a securities exchange stamp—bears a stamp that purports to be a stamp of a securities exchange.

**(2)** Where a document (in this section called the “first document”) relates to particular marketable securities or marketable rights, subsections (3), (4) and (5) apply for the purposes of determining whether the first document and another document (in this section called the “second document”) are, or together with another document or documents are, a sufficient transfer of the securities or rights.

**(3)** The first document is not duly completed in accordance with Part 3 of Form 1, 2, 3, 5, 6 or 7 unless, where that part refers to the transferee’s broker’s stamp, the first document bears a stamp that purports to be such a stamp and includes a string of characters that purports to be the transfer consolidation number of the first document.

**(4)** The second document is not duly completed in accordance with Part 1 of Form 4 or 8 unless, where that part refers to a transfer consolidation number or transfer consolidation numbers, the second document sets out the string of characters referred to in subsection (3).

**(5)** The second document shall not be taken not to be duly completed in accordance with Part 1 of Form 4 or 8 merely because of either or both of the following:

(a) the second document sets out, where that part refers to a transfer consolidation number or transfer consolidation numbers, a string or strings of characters other than the string referred to in subsection (3);

(b) the second document fails to set out correctly the number of marketable securities or marketable rights to which it relates.

**Stamping of documents**

**1099.** **(1)** In this Division (other than section 1112):

(a) a reference to the stamping of a document is a reference to stamping in ink; and

(b) a reference to a stamp on a document, or to a stamp borne by a document, is a reference to a stamp stamped on the document in ink.

**(2)** A reference in section 1112 to the stamping of a document is a reference to stamping the document:

(a) in ink;

(b) by affixing a stamp;

(c) by impressing a stamp; or

(d) in any other manner.

**Sufficient transfers**

**1100.** **(1)** A document that is under this Division a sufficient transfer of marketable securities may be used:

(a) as a proper instrument of transfer for the purposes of section 1091; and

(b) as an instrument of transfer for the purposes of any other law or instrument governing or relating to those securities.

**(2)** A document that is under this Division a sufficient transfer of marketable rights may be used as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights or the marketable securities to which those rights relate.

**What is a sufficient transfer of marketable securities or marketable rights: generally**

**1101.** **(1)** A document is a sufficient transfer of marketable securities if it relates to those securities and is duly completed in accordance with:

(a) Parts 1 and 2 of Form 1;

(b) Part 1 of Form 1 and Parts 1 and 2 of Form 2 or 3;

(c) Parts 1 and 3 of Form 1 and both parts of Form 4; or

(d) Part 1 of Form 1, Parts 1 and 3 of Form 2 or 3 and both parts of Form 4.

**(2)** A document is a sufficient transfer of marketable rights if it relates to those rights and is duly completed in accordance with:

(a) Parts 1 and 2 of Form 5;

(b) Part 1 of Form 5 and Parts 1 and 2 of Form 6 or 7;

(c) Parts 1 and 3 of Form 5 and both parts of Form 8; or

(d) Part 1 of Form 5, Parts 1 and 3 of Form 6 or 7 and both parts of Form 8.

**What is a sufficient transfer by an authorised trustee corporation**

**1102.** **(1)** In respect of the transfer of marketable securities, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) to the beneficial owner of the securities, a document is a sufficient transfer if it relates to those securities and is duly completed in accordance with Form 9.

**(2)** In respect of the transfer of marketable rights, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) in favour of the beneficial owner of those rights, a document is a sufficient instrument of transfer if it relates to those rights and is duly completed in accordance with Form 10.

**Transferee’s execution of transfer of marketable securities**

**1103.** **(1)** This section applies where marketable securities are transferred by means of a sufficient transfer under this Division.

**(2)** The transferee shall be deemed to have agreed at the execution time to accept the securities subject to the terms and conditions on which the transferor held them at that time, being the terms and conditions applicable as between the issuing body in relation to, and the holder for the time being of, the securities.

**(3)** If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body’s constitution.

**Transferee’s execution of transfer of marketable rights**

**1104.** **(1)** This section has effect where marketable rights relating to marketable securities are transferred by means of a sufficient transfer under this Division.

**(2)** The transferee shall be deemed:

(a) to have applied at the execution time to the issuing body in relation to the securities for the allotment to him, her or it of the securities; and

(b) to have agreed at the execution time to accept the securities subject to the terms and conditions on which the issuing body offers them for subscription.

**(3)** If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body’s constitution.

**Effect where document purports to bear transferor’s broker’s stamp**

**1105. (1)** This section applies where a document relating to marketable securities or marketable rights:

(a) is a duly completed Part 1; and

(b) bears a stamp that purports to be that of the transferor’s broker.

**(2)** Each associate (if any) of the broker (in this section called the “designated broker”) of whom the stamp referred to in paragraph (1) (b) purports to be the stamp and, unless the designated broker is a broker’s agent, the designated broker shall be deemed to have warranted:

(a) that the statements in the document that purport to be certified by the transferor’s broker are accurate; and

(b) that the transferor is:

(i) the registered holder of, or entitled to be registered as the holder of, the securities; or

(ii) is entitled to the rights;

as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

**(3)** If the document has been duly completed in accordance with Part 1 of Form 1 or 5, then:

(a) if, when the document was stamped with the stamp referred to in paragraph (1) (b), the designated broker had authority to sell the securities or rights, on the transferor’s behalf, to:

(i) the transferee;

(ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or

(iii) any person at all;

the designated broker shall be deemed to have been authorised to execute, and to have executed, the document on the transferor’s behalf; and

(b) each associate (if any) of the designated broker and, unless the designated broker is a broker’s agent, the designated broker is or are, as the case requires, liable to indemnify:

(i) the issuing body in relation to the securities or rights;

(ii) the transferor;

(iii) the transferee; and

(iv) the transferee’s broker;

against any loss or damage arising if:

(v) the stamp referred to in paragraph (1) (b) is not in fact the designated broker’s stamp; or

(vi) apart from the effect of paragraph (a) of this subsection, the designated broker was not authorised to execute the document on the transferor’s behalf.

**Warranties by securities exchange where document purports to bear its stamp**

**1106.** **(1)** This section applies where a document:

(a) has been duly completed in accordance with Part 1 of Form 3 or 7; and

(b) bears a stamp that purports to be that of a securities exchange.

**(2)** The securities exchange shall be deemed to have warranted that:

(a) the statements in the document that purport to be certified by a securities exchange are accurate; and

(b) the transferor is:

(i) the registered holder of, or entitled to be registered as the holder of, the securities; or

(ii) entitled to the rights;

as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

**Indemnities by securities exchange and broker where documents purport to bear their stamps**

**1107.** **(1)** This section applies where:

**(a)** a document (in this section called the “first document”) relating to marketable securities or marketable rights:

(i) has been duly completed in accordance with Part 1 of Form 1 or 5; and

(ii) bears a stamp that purports to be that of the transferor’s broker; and

**(b)** another document:

(i) relates to any or all of the securities or rights;

(ii) has been duly completed in accordance with Part 1 of Form 3 or 7; and

(iii) bears a stamp that purports to be that of a particular securities exchange.

**(2)** The securities exchange is liable to indemnify:

(a) the issuing body in relation to the securities or rights;

(b) the transferor in relation to the other document;

(c) the transferee in relation to the other document; and

(d) the broker of the transferee in relation to the other document;

against any loss or damage arising if:

(e) the stamp referred to in subparagraph (1) (a) (ii) is not in fact the stamp of the broker (in this section called the “designated broker”) of whom it purports to be the stamp; or

(f) apart from the effect of paragraph 1105 (3) (a), the designated broker was not authorised to execute the first document on behalf of the transferor in relation to the first document.

**(3)** Each associate (if any) of the designated broker and, unless the designated broker is a broker’s agent, the designated broker is or are, as the case requires, liable to indemnify the securities exchange against any loss or damage arising as mentioned in subsection (2).

**(4)** Nothing in this section limits the operation of anything in section 1105 or 1106 or of anything else in this section.

**Joint and several warranties and liabilities**

**1108.** **(1)** If 2 or more persons are deemed to have warranted as mentioned in paragraph 1105 (2) (a) or (b), they shall be deemed to have so warranted jointly and severally.

**(2)** If 2 or more persons are liable as mentioned in paragraph 1105 (3) (b) or subsection 1107 (3), they are so liable jointly and severally.

**Registration of certain instruments**

**1109.** An eligible body with which a sufficient transfer under this Division is lodged for the purpose of registering a transfer, or obtaining the allotment or issue, of marketable securities is, and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:

(a) in the case of a sufficient transfer under section 1101:

(i) a stamp on the document that purports to be the transferor’s broker’s stamp is the stamp of that broker;

(ii) a stamp on the document that purports to be the transferee’s broker’s stamp is the stamp of that broker; and

(iii) a stamp on the document that purports to be the stamp of a securities exchange is the stamp of that securities exchange; or

(b) in the case of a sufficient transfer under section 1102:

(i) at the execution time, the authorised trustee corporation named in the instrument held (whether alone or together

with any other person or persons) in the ordinary course of its business, in trust for or on behalf of the transferee, the marketable securities or marketable rights to which the sufficient transfer relates; and

(ii) the transfer was not made by way of a sale, gift or exchange of the securities or rights.

**Operation of Division**

**1110.** **(1)** This Division applies in relation to a transfer of marketable securities or marketable rights despite anything to the contrary in this Act (other than this Division) or in another law or instrument relating to the transfer of the securities or rights.

**(2)** Except as provided in this Division, this Division does not affect the terms and conditions on which marketable securities or marketable rights are sold.

**(3)** Nothing in this Division affects any right of an eligible body to refuse:

(a) to acknowledge or register a person as the holder of marketable securities; or

(b) to allot or issue marketable securities to a person;

on a ground other than an objection to the form of instrument that is lodged with the eligible body and purports to transfer to the person the securities, or marketable rights relating to the securities.

**(4)** The registration of a transfer, or the allotment or issue, of a marketable security by means of a sufficient transfer under this Division does not breach any law, memorandum, articles, trust deed or other instrument relating to marketable securities.

**(5)** This Division does not prevent or affect the use of:

(a) any other form of transfer of marketable securities or marketable rights; or

(b) any other mode of executing an instrument of transfer of marketable securities or marketable rights;

that is otherwise permitted by law.

**(6)** A transfer of marketable securities or marketable rights by or to a trustee or legal representative may be effected by means of a sufficient transfer under this Division despite any law or the provisions of the instrument (if any) creating, or having effect in relation to, the trust or will under which the trustee or legal representative is appointed.

**Occupation need not appear in instrument, register etc.**

**1111.** **(1)** An instrument of transfer of marketable securities or marketable rights need not state the occupation of the transferor or transferee, and the signature of the transferor or transferee need not be witnessed.

**(2)** Subsection (1) applies despite anything in:

(a) the constitution of an eligible body; or

(b) the terms and conditions on which marketable securities or marketable rights are created or issued.

**(3)** The omission from a register, certificate or other document relating to marketable securities of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the securities does not breach any law, memorandum, articles, trust deed or other document relating to the securities.

**Offences**

**1112. (1)** A broker shall not stamp with a broker’s stamp a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under this Division unless the document relates to a sale or purchase of the securities or rights, in the ordinary course of the broker’s business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase.

**(2)** A person shall not stamp with a stamp that purports to be that of the transferor’s broker a document that may be used as a sufficient transfer under this Division unless:

(a) the stamp is in fact that of the transferor’s broker;

(b) apart from the effect of paragraph 1105 (3) (a), the transferor’s broker is authorised to execute the document on the transferor’s behalf; and

(c) the person is the transferor’s broker or is authorised so to stamp the document on the transferor’s broker’s behalf.

**(3)** A securities exchange shall not stamp with a stamp of the securities exchange a document that may be used as a sufficient transfer under this Division of marketable securities or marketable rights, unless:

(a) there has been lodged; or

(b) the securities exchange holds a duly completed Part 1 bearing a certificate that purports to be that of the transferor’s broker and states that there has been or will be lodged;

with the issuing body in relation to the securities or rights a duly completed Part 1 relating to the securities or rights.

**(4)** A person shall not execute a document that may be used as a sufficient transfer under section 1102 and relates to a transfer of marketable securities or of marketable rights:

(a) made by way of a sale, gift or exchange of the securities or rights; or

(b) to or in favour of a person who is not the beneficial owner of the securities or rights.

**(5)** A person other than an authorised trustee corporation shall not knowingly cause, authorise or permit to be executed a document that may

be used as a sufficient transfer under section 1102 but is not in fact a sufficient transfer under that section.

**(6)** A person shall not knowingly lodge or cause to be lodged with an eligible body a document that has been stamped in contravention of subsection (1), (2) or (3), or that has been executed in contravention of subsection (4), for the purpose of securing the registration of the transfer of, or the allotment or issue of, marketable securities to the transferee named in the document.

***Division 4*—*Exemptions and modifications***

**Powers of Commission**

**1113. (1)** This section applies to Divisions 1, 2 and 3.

**(2)** The power of the Commission to grant an exemption or make a declaration under this section may be exercised in relation to securities or a class of securities only where the Commission is satisfied that:

(a) if the exemption were granted or the declaration were made, the interests of the holders of those securities or of securities in that class would continue to have adequate protection; and

(b) the granting of the exemption or the making of the declaration would make transfer of those securities, or of securities in that class, more efficient.

**(3)** The Commission may, by writing, exempt particular securities, or a particular class of securities, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of:

(a) the Divisions of this Part to which this section applies; and

(b) regulations made for the purposes of the provisions of those Divisions or any of them.

**(4)** A person shall not contravene a condition to which an exemption under subsection (3) is subject.

**(5)** Where a person has contravened a condition to which an exemption under subsection (3) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

**(6)** The Commission may, by writing, declare that a Division to which this section applies, and regulations made for the purposes of the provisions of that Division or any of them, shall have effect in their application in relation to particular securities, or a particular class of securities, either generally or otherwise as provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Division and those regulations have effect accordingly.

**(7)** The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette.*

**PART 7.14—MISCELLANEOUS**

**Power of Court to make certain orders**

**1114. (1)** Where:

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

(i) has contravened this Chapter, or any other law relating to trading or dealing in eligible securities;

(ii) has contravened the conditions or restrictions of a licence or the business rules or listing rules of a securities exchange; or

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

(b) on the application of a securities exchange, it appears to the Court that a person has contravened the business rules or listing rules of the securities exchange;

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

(c) in the case of persistent or continuing contraventions of this Chapter, or of any other law relating to trading or dealing in eligible securities, of the conditions or restrictions of a licence, or of the business rules or listing rules of a securities exchange—an order restraining a person from carrying on a business, or doing an act or classes of acts, in relation to eligible securities;

(d) an order restraining a person from acquiring, disposing of or otherwise dealing with any eligible securities that are specified in the order;

(e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer on behalf of another person, whether in trust or otherwise;

(f) an order declaring a contract relating to eligible securities to be void or voidable;

(g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(h) any ancillary order considered to be just and reasonable in consequence of the making of an order under any of the preceding provisions of this subsection.

**(2)** Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, make an interim order, being

an order of the kind applied for that is expressed to apply pending the determination of the application.

**(3)** Where the Commission applies to the Court for an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of making an interim order under subsection (2), to give any undertakings as to damages.

**(4)** The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice any person.

**(5)** Before making an order under subsection (1), the Court may direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

**(6)** A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer:

(a) may require the dealer to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which the person has been appointed receiver;

(c) may deal with any property that the person has acquired or of which the person has taken possession in any way in which the dealer might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the Court specifies in the order.

**(7)** In paragraph (1) (e) and subsection (6):

“property”, in relation to a dealer, includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a securities business carried on by the dealer.

**(8)** A person shall not, without reasonable excuse, contravene:

(a) an order under this section; or

(b) a requirement of a receiver appointed by order of the Court under subsection (1).

**(9)** The Court may rescind or vary an order made by it under this section or suspend the operation of such an order.

**Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange”**

**1115. (1)** A corporation that is not a member of a stock exchange shall not take or use, or by inference adopt, the name or title of stockbroker or sharebroker or take or use or have attached to or exhibited at any place a

name, title or description implying or tending to create the belief that the corporation is a stockbroker or a sharebroker.

**(2)** A person (other than a corporation) who is not a member of a stock exchange shall not engage in conduct implying or tending to create the belief that the person deals in eligible securities as a stockbroker or sharebroker.

**(3)** A corporation that is not a stock exchange shall not take or use, or by inference adopt, the name or title of stock exchange or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the corporation is a stock exchange.

**(4)** A body corporate (other than a corporation) that is not a stock exchange shall not engage in any conduct that would imply or tend to create the belief that the body conducts a stock market on which:

(a) eligible securities are traded; or

(b) information is provided about the prices at which, or the consideration for which, persons propose, or may reasonably be expected, to sell, purchase or exchange eligible securities.

**Preservation and disposal of records etc.**

**1116. (1)** A person who is required by a provision of this Chapter to maintain, make or keep a register or any accounting or other record in relation to a business carried on by the person shall preserve that register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.

**(2)** The prescribed period for the purposes of subsection (1) is:

(a) in relation to a register or a record other than an accounting record, the 5 years next after the day on which the last entry was made in the register or record; or

(b) in relation to an accounting record, the 7 years next after the last day of the accounting period to which the record relates.

**(3)** Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a dealer who is a member of a securities exchange if the matters referred to in subsection 842 (3) in relation to the contract note are recorded:

(a) by the securities exchange; or

(b) subject to such conditions (if any) as the Commission imposes, by the dealer;

in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.

**(4)** A matter that a securities exchange records under subsection (3) shall be deemed to have been so recorded with the member’s authority.

**(5)** The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is lodged under or for the purposes of this Chapter and has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

**Concealing etc. of books relating to securities**

**1117.** **(1)** A person shall not:

(a) conceal, destroy, mutilate or alter a book relating to the business carried on by a dealer or required under this Chapter to be kept by the holder of a licence, by a person who holds a proper authority from the holder of a licence or by a financial journalist within the meaning of Part 7.7; or

(b) where such a book is within Australia—send the book out of Australia.

**(2)** In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person did not act with intent to defraud, to defeat the purposes of this Chapter or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power, under this Chapter.

**Falsification of records**

**1118.** **(1)** Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Chapter or a register or any accounting or other record referred to in section 1116 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person shall not:

(a) record or store by means of that device matter that the person knows to be false in a material particular or materially misleading;

(b) destroy, remove or falsify matter that is recorded or stored by means of that advice, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or

(c) fail to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter.

**(2)** In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

**Precautions against falsification of records**

**1119.** A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

**CHAPTER 8—THE FUTURES INDUSTRY**

**PART 8.1—INTERPRETATION**

**Business rules: futures association**

**1120.** For the purposes of this Chapter, the business rules of a body corporate that is, or proposes to be, a futures association are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern the activities and conduct of the body and its members in relation to the body’s operation as a futures association.

**Business rules: clearing house**

**1121.** For the purposes of this Chapter, the business rules of a body corporate that provides, or proposes to provide, clearing house facilities for a futures market are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern:

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

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

**Business rules: futures exchange**

**1122.** For the purposes of this Chapter, the business rules of a body corporate that conducts, or proposes to establish or conduct, a futures market are such of the rules, regulations and by-laws made by the body corporate or contained in its constitution as govern:

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

(b) the activities and conduct of each clearing house for the body; and

(c) the activities and conduct of other persons in relation to each futures market run by the body.

**PART 8.2—FUTURES EXCHANGES, CLEARING HOUSES AND FUTURES ASSOCIATIONS**

***Division 1*—*Futures exchanges and exempt futures markets***

**Conducting unauthorised futures markets**

**1123.** **(1)** A corporation shall not establish or conduct, assist in establishing or conducting, or hold itself out as conducting, an unauthorised futures market.

**(2)** Where a corporation deals in a futures contract on an unauthorised futures market conducted by a person, the person contravenes this subsection.

**Using eligible communications services in connection with unauthorised futures markets**

**1123a**. A person shall not use an eligible communications service in the course of, for the purposes of, or otherwise in connection with:

(a) the person establishing, conducting, or assisting in establishing or conducting, an unauthorised futures market; or

(b) holding out that the person conducts an unauthorised futures market.

**Corporation not to deal on unauthorised futures market**

**1124.** A corporation shall not:

(a) deal in a futures contract on an unauthorised futures market; or

(b) deal in a futures contract that was acquired by a person on an unauthorised futures market.

**No dealing on corporation’s behalf on unauthorised futures market**

**1125.** A person shall not, on a corporation’s behalf:

(a) deal in a futures contract on an unauthorised futures market; or

(b) deal in a futures contract that was acquired by a person on an unauthorised futures market.

**Approval of futures exchange**

**1126.** **(1)** A body corporate that proposes to establish or conduct a futures market may apply to the Commission in writing for approval by the Minister as a futures exchange.

**(2)** Where a body applies under subsection (1), the Minister may by writing approve the body as a futures exchange if, and only if, he or she is satisfied that:

(a) the body is an eligible corporation;

(b) the body’s constitution provides that a person who:

(i) is not an eligible corporation; and

(ii) deals in futures contracts on behalf of other persons (other than eligible corporations);

may not become or remain a member of the body unless the person so deals only where, by so dealing, the person does an act as a representative of an eligible corporation;

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

(i) for the admission as members of corporations licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such corporations;

(ii) for the qualifications for membership, including the necessary standards of training and experience for:

(a) responsible officers of bodies corporate that; and

(b) natural persons who;

are, or propose to be, members;

(iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficiency, honesty and fair practice in relation to such dealing;

(iv) for the exclusion of a person from membership where:

(a) if the person is a body corporate—a responsible officer, or an employee, of the body corporate; or

(b) otherwise—the person or an employee of the person; is not of good character and high business integrity;

(v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules or of this Chapter;

(vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135 (1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;

(vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person’s membership of the body may appeal against the decision to discipline the person;

(viii) for the inspection and audit of the accounting records that this Chapter requires members to keep;

(ix) with respect to the classes of futures contracts that may be dealt in by members;

(x) prohibiting a member who is not an eligible corporation from dealing in futures contracts on behalf of another person (other than an eligible corporation) except where, by so dealing, the member does an act as a representative of an eligible corporation;

(xi) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;

(xii) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;

(xiii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;

(xiv) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;

(xv) with respect to the conditions under which members may deal in futures contracts;

(xvi) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members;

(xvii) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings; and

(xviii) generally for carrying on the business of the proposed futures exchange with due regard for the interests and protection of the public;

(d) there will be enough money in the body’s fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; and

(e) the interests of the public will be served by granting the application.

**(3)** Where, immediately before the commencement of this section, a body corporate was a futures exchange within the meaning of a law corresponding to this Part, the Minister shall be deemed to have approved the body at that commencement as a futures exchange under subsection (2).

**Exempt futures market**

**1127. (1)** The Minister may by writing declare a specified futures market to be, subject to any specified conditions, an exempt futures market.

**(2)** Without limiting the matters to which the Minister may have regard in considering whether to vary or revoke a declaration in force under this section, he or she may, in so considering, have regard to a breach of a condition specified in the declaration.

**(3)** A declaration by the Ministerial Council, under a law corresponding to subsection (1), of a futures market as an exempt futures market, being a declaration that was in force immediately before the commencement of this Part, has effect as if it were a declaration by the Minister under that subsection.

***Division 2*—*Clearing houses***

**When corporation may provide clearing house facilities**

**1128.** A corporation shall not provide, or hold itself out as providing, clearing house facilities for a futures market (other than an exempt futures market) unless:

(a) the futures market is conducted by a futures exchange;

(b) the corporation is an eligible corporation; and

(c) an approval of the corporation under section 1131 as a clearing house for that futures exchange is in force.

**Providing clearing house facilities for a corporation**

**1129.** **(1)** A person shall not provide, or hold himself, herself or itself out as providing, clearing house facilities for a futures market (other than an exempt futures market) conducted by a corporation, unless:

(a) the corporation is a futures exchange;

(b) the person is an eligible corporation; and

(c) an approval of the person under section 1131 as a clearing house for that futures exchange is in force.

**(2)** A corporation that conducts a futures market (other than an exempt futures market) shall not authorise or permit a person to provide clearing house facilities for that futures market unless:

(a) the corporation is a futures exchange;

(b) the person is an eligible corporation; and

(c) an approval of the person as a clearing house for that futures exchange is in force under section 1131.

**Providing facilities for registering futures contracts made by corporations**

**1130.** A clearing house for a futures market (other than an exempt futures market) shall not:

(a) register;

(b) provide facilities for the registration of; or

(c) be in any other way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the registration of;

a futures contract acquired or disposed of by a corporation on that futures market, unless:

(d) the futures market is conducted by a futures exchange;

(e) the clearing house is an eligible corporation; and

(f) an approval of the clearing house under section 1131 as a clearing house for that futures exchange is in force.

**Approval of clearing house**

**1131.** **(1)** A body corporate that proposes to provide clearing house facilities for a futures market of a futures exchange may apply to the Commission in writing for approval by the Minister as a clearing house for that futures exchange.

**(2)** Where a body applies under subsection (1), the Minister may by writing approve the body as a clearing house for the futures exchange if, and only if, he or she is satisfied that:

(a) the body is an eligible corporation;

(b) the body’s business rules are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures market of the futures exchange;

(c) the body’s business rules make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules or for a contravention of this Chapter; and

(d) the interests of the public will be served by granting the application.

**(3)** Without limiting the matters to which the Minister may have regard in considering an application under subsection (1), he or she may, in considering the application, have regard to any business rules of the applicant that relate to the guaranteeing, to members of the applicant, of the performance of futures contracts made on a futures market of the futures exchange.

**(4)** Where, immediately before the commencement of this section, an approval of a body corporate as a clearing house for a futures exchange within the meaning of a law corresponding to subsection (2) was, or was deemed to be, in force under that law, the Minister shall be deemed to have approved the body at that commencement, as a clearing house for that futures exchange, under that subsection.

***Division 3*—*Futures associations***

**Approval of futures association**

**1132.** **(1)** A body corporate that proposes to be a futures association may apply to the Commission in writing for approval by the Minister as a futures association.

**(2)** Where a body applies under subsection (1), the Minister may by writing approve the body as a futures association if, and only if, he or she is satisfied that:

(a) the body is an eligible corporation;

(b) the body’s constitution provides that a person who:

(i) is not an eligible corporation; and

(ii) deals in futures contracts on behalf of other persons (other than eligible corporations);

may not become or remain a member of the body unless the person so deals only where, by so dealing, the person does an act as a representative of an eligible corporation;

(c) that the body’s nature is such that the body may properly exercise its functions as a futures association, being the functions of:

(i) regulating the association’s affairs in the interests of the public; and

(ii) administering and enforcing the association’s business rules;

(d) that the body’s business rules make satisfactory provision:

(i) for the admission as members of corporations licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such corporations;

(ii) for the qualifications for membership, including the necessary standards of training and experience for:

(a) responsible officers of bodies corporate that; and

(B) natural persons who;

sare, or propose to be, members;

(iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficient, honest and fair practices in relation to such dealing;

(iv) for the exclusion of a person from membership where:

(a) if the person is a body corporate—a responsible officer, or an employee, of the body corporate; or

(b) otherwise—the person or an employee of the person; is not of good character and high business integrity;

(v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules or of this Chapter;

(vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135 (1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;

(vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person’s membership of the body may appeal against the decision to discipline the person;

(viii) for the inspection and audit of the accounting records that this Chapter requires members to keep;

(ix) prohibiting a member who is not an eligible corporation from dealing in futures contracts on behalf of another person

(other than an eligible corporation) except where, by so dealing, the member does an act as a representative of an eligible corporation;

(x) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;

(xi) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;

(xii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;

(xiii) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;

(xiv) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members; and

(xv) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings;

(e) if the body is expected to be a futures organisation within the meaning of Part 8.6:

(i) there will be enough money in the body’s fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; or

(ii) the body will enter into a contract, in a form approved by the Minister, with an insurer approved by the Minister, under which the insurer undertakes to supplement the fund, if a claim is made on the fund, so that the total amount available to satisfy the claim will be not less than an amount so approved; and

(f) that the interests of the public will be served by granting the application.

**(3)** An approval by the Ministerial Council, under a law corresponding to subsection (2), of a body corporate as a futures association, being an approval that was in force immediately before the commencement of this

section, has effect as if it were an approval by the Minister under that subsection.

**Suspension or cancellation of approval**

**1133.** **(1)** The Minister may cause to be served on a body corporate a written notice requiring the body to show cause, at a hearing before a specified person, why the body’s approval as a futures association should not be suspended or cancelled on specified grounds.

**(2)** A notice under subsection (1) shall specify, and give reasonable notice of, the time and place at which the hearing is to occur, but the specified person may, with the body’s consent, fix a different time, a different place, or both, for the hearing.

**(3)** Where a notice is served under subsection (1), the specified person shall, after giving the body an opportunity to be heard at the hearing, submit to the Minister a report about the hearing and a recommendation about the matters to which the notice related.

**(4)** After considering a report and recommendation under subsection (3), the Minister may:

(a) decide to take no further action in relation to the matter; or

(b) by writing, suspend for a specified period, or cancel, the body’s approval as a futures association.

**(5)** A body corporate shall be deemed not to be a futures association at any time during a period for which the body’s approval as a futures association is suspended.

**(6)** A body corporate’s approval as a futures association shall not be suspended or cancelled except under this section.

***Division 4*—*General***

**Publication of certain instruments**

**1134.** The Commission shall cause a copy of an instrument executed under subsection 1126 (2), 1127 (1), 1131 (2), 1132 (2) or 1133 (4) to be published in the *Gazette.*

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

**1135.** **(1)** Where a body corporate, being a futures exchange or futures association:

(a) decides, at a time when a person is a member of no futures organisation, to refuse an application by the person for membership of the body corporate; or

(b) decides, at a time when a person is a member of no other futures organisation, to suspend or cancel the person’s membership of the body corporate;

the body corporate shall, within 14 days after so deciding, give to the person, and to the Commission, a notice in writing setting out the decision and the reasons for the decision, and the person may, within the period of 21 days beginning when the notice is so given or within that period as extended by the Court, appeal to the Court against the decision by filing a written notice of appeal.

**(2)** A person whose membership of a futures organisation is suspended for a period:

(a) shall be deemed, for the purposes of paragraph (1) (a), to be a member of that futures organisation throughout that period; and

(b) shall be deemed, for the purposes of paragraph (1) (b), not to be a member of that futures organisation at any time during that period.

**(3)** A person shall, on the day on which the person files a notice of appeal with the Court under subsection (1), lodge a copy of the notice.

**(4)** Where a body corporate decides as mentioned in paragraph (1) (b), then:

(a) subject to paragraph (c) of this subsection and to subsection (6), the decision takes effect at the end of the day on which a notice relating to the decision is given by the body corporate in accordance with subsection (1);

(b) if the person to whom the decision relates appeals to the Court under subsection (1) against the decision—the Court may, at any time before it determines the appeal, make such order as it thinks fit concerning the effect, pending determination of the appeal, of the decision, including, without limiting the generality of the foregoing, an order that is subject to conditions specified in the order; and

(c) an order made by the Court under paragraph (b) has effect accordingly.

**(5)** The Court may, after hearing an appeal under subsection (1), dismiss the appeal or:

(a) in the case of an appeal against a decision to refuse an application for membership—decide that the application should be granted, or should be granted subject to specified conditions;

(b) in the case of an appeal against a decision to suspend for a period a person’s membership—decide that the person’s membership:

(i) should not be suspended; or

(ii) should be suspended for a specified lesser period; or

(c) in the case of an appeal against a decision to cancel a person’s membership—decide that the person’s membership:

(i) should not be cancelled; or

(ii) should not be cancelled, but should be suspended for a specified period.

**(6)** Where, on an appeal against a decision of a body corporate, the Court decides as mentioned in paragraph (5) (a), (b) or (c), then, as from the day on which the appeal is decided:

(a) the first-mentioned decision ceases to have effect; and

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

**Commission to be notified of amendments of business rules**

**1136. (1)** Where an amendment is made by way of rescission or alteration of, or addition to, the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, the futures exchange, clearing house or futures association, as the case may be, shall, forthwith after the making of the amendment, give written notice of the amendment to the Commission.

**(2)** A notice under subsection (1) shall:

(a) set out the text of the amendment to which it relates;

(b) specify the date on which the amendment was made; and

(c) contain an explanation of the purpose of the amendment.

**(3)** If a notice required by subsection (1) to be given in relation to an amendment is not given within 21 days after the making of the amendment, the amendment ceases to have effect.

**(4)** Where the Commission receives a notice under this section, the Commission shall forthwith send a copy of the notice to the Minister.

**(5)** The Minister may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.

**(6)** Where the Minister disallows under this section the whole or a part of an amendment of the business rules of a body corporate, the Commission shall forthwith give notice of the disallowance to the body corporate and, upon receipt by the body corporate of the notice of disallowance, the amendment ceases, to the extent of the disallowance, to have effect.

**(7)** If:

(a) a notice was duly given by a futures exchange to the NCSC before the commencement of this Part under a law corresponding to this section;

(b) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and

(c) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2) (b)) applies as if the amendment had been made or adopted, as the case may be, on the day of commencement of this Part.

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

**1137.** **(1)** A futures exchange, and a clearing house for a futures exchange, shall, to the extent that it is reasonably practicable to do so, take all steps, and do all things, necessary to ensure an orderly and fair market for dealings in futures contracts on a futures market of the futures exchange.

**(2)** A futures exchange may, for the purpose of performing its functions under subsection (1), give to a person who is not a member of the futures exchange but in whose name a futures contract entered into on a futures market of the futures exchange is registered a direction:

(a) to do a particular act or thing; or

(b) to refrain from doing a particular act or thing.

**(3)** A person shall comply with a direction given to the person in accordance with subsection (2), but a person who contravenes this subsection is not guilty of an offence.

**Orderly markets in futures contracts—powers of Commission**

**1138.** **(1)** Subject to subsections (2) and (6), the Commission may, in relation to a futures market of a futures exchange, give a direction in writing to the futures exchange:

(a) to close the futures market;

(b) to suspend dealing on the futures market in a specified class of futures contracts;

(c) to limit transactions on the futures market to the closing out of futures contracts;

(d) to defer for a specified period the completion date for all futures contracts, or for a specified class of futures contracts, made on the futures market;

(e) to cause a specified futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be:

(i) closed out forthwith as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or

(ii) invoiced back to a specified date at a price or value determined by the futures exchange;

(f) to require a futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be discharged by:

(i) the tendering of a merchantable lot of a commodity determined by the futures exchange, being a commodity of a quality or standard that is:

(a) different from the quality or standard of the commodity specified in the futures contract; and

(b) determined by the futures exchange; and

(ii) the tendering of a price adjusted by an amount that is:

(a) appropriate having regard to the quality or standard of the commodity referred to in subparagraph (i); and

(b) determined by the futures exchange; or

(g) to require a member of the futures exchange to act in a specified manner in relation to dealings in futures contracts on the futures market, or in relation to a specified class of such dealings.

**(2)** The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange unless:

(a) it has determined that a direction should be so given because it is of the opinion that:

(i) subsection 1137 (1) has not been complied with in relation to that futures market;

(ii) it is necessary to protect the interests of persons on behalf of whom futures contracts are or may be dealt with on that futures market; or

(iii) it would be in the public interest for a direction to be so given;

(b) it has given to the futures exchange a notice in writing stating that it has formed that opinion and specifying:

(i) its reasons for forming that opinion;

(ii) the direction that it considers should be so given; and

(iii) a time, or a date and time, before which it will not so give the direction;

(c) it has given a copy of the notice to each clearing house for that futures market; and

(d) the direction is so given after the time, or date and time, as the case may be, specified pursuant to subparagraph (b) (iii).

**(3)** The Commission shall, before determining in relation to a futures market of a futures exchange as mentioned in paragraph (2) (a), consult the futures exchange and each clearing house for that futures market.

**(4)** A failure by the Commission to comply with subsection (3) does not affect the validity of:

(a) a determination under paragraph (2) (a); or

(b) a direction given under subsection (1) pursuant to such a determination.

**(5)** The Commission shall, as soon as practicable after giving a notice under paragraph (2) (b) in relation to a futures market of a futures exchange:

(a) give to the Minister a copy of the notice and a written report setting out the reasons for the giving of the notice;

(b) give a copy of the report to the futures exchange; and

(c) give a copy of the report to each clearing house for that futures market.

**(6)** The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange if:

(a) the Minister has directed the Commission not to give the direction; or

(b) the futures exchange has acted as if the direction had been given.

**(7)** The Commission shall, as soon as practicable after giving a direction under subsection (1) in relation to a futures market of a futures exchange:

(a) give to the Minister a copy of the direction; and

(b) give to each clearing house for that futures market:

(i) a copy of the direction; and

(ii) a direction in writing prohibiting the clearing house from acting in a manner inconsistent with, and requiring the clearing house to do all that it is reasonably capable of doing to give effect to, the direction under subsection (1) while the last-mentioned direction remains in force.

**(8)** The Minister may determine in writing the period throughout which a particular direction under subsection (1) is to remain in force.

**(9)** A direction given under subsection (1) remains in force:

(a) in a case where a determination under subsection (8) is in force— throughout the period specified in the determination; or

(b) in any other case—unless sooner revoked, until the end of the period of 21 days, or such shorter period (if any) as is specified in the direction, commencing when the direction is given.

**(10)** A futures exchange shall not, while a direction given under subsection (1) in relation to a futures market of the futures exchange remains in force, fail to comply with the direction.

**(11)** A clearing house for a futures exchange shall not fail to comply with a direction given to the clearing house under subparagraph (7) (b) (ii).

**(12)** A document may be given to a person under this section by sending to the person, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.

**(13)** Where, immediately before the commencement of this section:

(a) a direction was in force under a law corresponding to subsection (1); or

(b) a determination was in force under a law corresponding to subsection (8);

the direction or determination has effect after that commencement:

(c) as if it had been given or made under that subsection; and

(d) with such modifications as the circumstances require.

**Futures exchanges and others to assist Commission**

**1139.** **(1)** A futures exchange, a clearing house for a futures exchange, and a futures association, shall each provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions under this Chapter.

**(2)** Where:

(a) a body corporate, being a futures exchange, a clearing house for a futures exchange, or a futures association, decides to reprimand, fine, suspend, expel or otherwise take disciplinary action against, a member of the body corporate; and

(b) subsection 1135 (1) does not require the body corporate to give to the Commission a notice relating to the decision;

the body corporate shall, within 14 days after so deciding, give to the Commission a notice in writing setting out particulars of the name of the member, the decision, the reasons for the decision and, in the case of a decision to fine a member, the amount of the fine.

**(3)** Where a clearing house for a futures exchange:

(a) refuses to register a dealing in a futures contract; or

(b) closes out a futures contract because of a failure to meet a call for deposit or margin;

it shall forthwith furnish the Commission with particulars of its action.

**(4)** A person authorised by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Act to the trading floor of a futures market of a futures exchange.

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

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

**1140.** Where a person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, fails to comply with, observe, enforce or give effect to those rules, the Court may, on the application of the futures exchange, clearing house or futures association, as the case may be, of the Commission, or of a person aggrieved

by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with, observance or enforcement of, or giving effect to, those rules.

**Effect of certain laws on certain agreements**

**1141.** Nothing in an Australian law about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, a futures contract if it is made:

(a) on a futures market of a futures exchange or of a recognised futures exchange;

(b) on an exempt futures market conducted by a corporation;

(c) in eligible circumstances, or by a corporation, on an exempt futures market; or

(d) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange.

**Qualified privilege in respect of disciplinary proceedings**

**1141A. (1)** In this section:

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

(a) a proceeding under the business rules of the futures organisation that may result in the disciplining of a member of the futures organisation; or

(b) an appeal under the business rules of the futures organisation from a proceeding of a kind referred to in paragraph (a);

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

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

**(2)** A futures organisation, or a member, officer or employee of a futures organisation, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the futures organisation.

**(3)** A person has qualified privilege in respect of the publication of:

(a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or

(b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;

a disciplinary proceeding of a futures organisation.

**PART 8.3—PARTICIPANTS IN THE FUTURES INDUSTRY**

***Division 1*—*Futures brokers and futures advisers***

**Futures brokers**

**1142.** **(1)** A corporation shall not:

(a) deal in a futures contract on another person’s behalf; or

(b) hold itself out as carrying on a futures broking business;

unless the corporation:

(c) is an eligible corporation and holds a futures brokers licence; or

(d) is an exempt broker.

**(2)** A person shall not:

(a) deal in a futures contract on a corporation’s behalf; or

(b) deal in a futures contract, on a person’s behalf, in eligible circumstances;

unless the person:

(c) is an eligible corporation and holds a futures brokers licence; or

(d) is an exempt broker.

**(3)** A person shall not hold himself, herself or itself out as carrying on:

(a) a business of dealing in futures contracts on behalf of corporations, or persons including corporations; or

(b) a business of dealing in futures contracts, on behalf of other persons:

(i) in eligible circumstances; or

(ii) in circumstances including eligible circumstances;

unless the person:

(c) is an eligible corporation and holds a futures brokers licence; or

(d) is an exempt broker.

**(4)** A person shall not:

(a) in the course of a futures broking business carried on by the person; or

(b) in connection with holding himself, herself or itself out as carrying on a futures broking business;

use an eligible communications service unless the person:

(c) is an eligible corporation and holds a futures brokers licence; or

(d) is an exempt broker.

**Futures advisers**

**1143.** **(1)** A corporation shall not:

(a) carry on a futures advice business; or

(b) hold itself out to be a futures adviser; unless the corporation:

(c) is an eligible corporation and holds a futures licence; or

(d) is an exempt futures adviser.

**(2)** A person shall not, in the course of a futures advice business carried on by the person:

(a) advise a corporation about futures contracts;

(b) give a corporation a futures report;

(c) do in eligible circumstances any of the following:

(i) advise a person about futures contracts;

(ii) give a person a futures report; or

(d) advise a person, or give a person an analysis or report, about dealing in futures contracts in eligible circumstances;

unless the person:

(e) is an eligible corporation and holds a futures licence; or

(f) is an exempt futures adviser.

**(3)** A person shall not hold himself, herself or itself out to be a futures adviser who or that:

(a) advises corporations, or persons including corporations, about futures contracts;

(b) gives futures reports to corporations, or to persons including corporations; or

(c) does in eligible circumstances, or circumstances including eligible circumstances, any of the following:

(i) advises persons about futures contracts;

(ii) gives futures reports to persons;

unless the person:

(d) is an eligible corporation and holds a futures licence; or

(e) is an exempt futures adviser.

**(4)** A person shall not:

(a) in the course of a futures advice business carried on by the person; or

(b) in connection with holding himself, herself or itself out to be a futures adviser;

use an eligible communications service unless the person:

(c) is an eligible corporation and holds a futures licence; or

(d) is an exempt futures adviser.

**Application for a licence**

**1144. (1)** A body corporate may apply to the Commission, in the prescribed form and manner, for a futures brokers licence or a futures advisers licence.

**(2)** The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.

**(3)** An application duly made to the NCSC before the commencement of this Part under a law corresponding to subsection (1) that had not been dealt with by the NCSC before that commencement shall be deemed to be an application duly made to the Commission under that subsection.

**Grant of licence**

**1145. (1)** Where a body corporate applies for a futures brokers licence or a futures advisers licence, this section applies, subject to sections 1200 and 1202 and the regulations.

**(2)** The Commission shall grant the licence if:

(a) the application was made in accordance with section 1144;

(b) the Commission is satisfied that the applicant is an eligible corporation;

(c) the applicant is not an externally-administered body corporate;

(d) if the application is for a futures brokers licence—the applicant is a member of a futures organisation;

(e) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and

(f) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

**(3)** Otherwise, the Commission shall refuse the application.

**(4)** In determining whether or not it has reason to believe as mentioned in paragraph (2) (f), the Commission shall have regard, in relation to each responsible officer of the applicant, to:

(a) whether or not the officer is an insolvent under administration;

(b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;

(c) any reason the Commission has to believe that the officer is not of good fame and character; and

(d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

**(5)** Nothing in subsection (4) limits the matters to which the Commission may have regard:

(a) in deciding on an application for a licence; or

(b) in connection with performing or exercising any other function or power under this Part.

**Licences under corresponding laws**

**1146.** Where, as at the commencement of this Division, a person held a futures brokers licence or futures advisers licence in force under a law corresponding to this Division, this Act applies in relation to the person:

(a) if the person was at that commencement an eligible corporation— as if that licence were a futures brokers licence or futures advisers licence, as the case may be, granted under this Part; and

(b) in any case—with such modifications (if any) of this Chapter as are prescribed.

**Conditions of licence: general**

**1147.** A licence is subject to:

(a) such conditions and restrictions as are prescribed; and

(b) subject to section 1200, such conditions and restrictions as the Commission imposes when granting the licence or while it is in force.

**Conditions of futures brokers licence: membership of futures organisation**

**1148.** **(1)** A futures brokers licence is subject to:

(a) a condition that the licensee be, throughout the currency of the licence, a member of a futures organisation; and

(b) a condition that the licence is suspended throughout a period throughout which the licensee:

(i) is a member of no futures organisation; and

(ii) would, but for the suspension of the licensee’s membership of a futures organisation, be a member of the last-mentioned futures organisation.

**(2)** A person whose membership of a futures organisation is suspended for a period:

(a) is, for the purposes of paragraph (1) (a), a member of that futures organisation throughout that period; and

(b) is, for the purposes of paragraph (1) (b), a member of that futures organisation at no time during that period.

**Conditions of futures brokers licence: assets and liabilities**

**1149.** **(1)** Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a futures brokers licence:

(a) a condition or restriction about limiting the liability that the licensee may incur in connection with a business of dealing in futures contracts;

(b) a condition or restriction about incurring, or a condition about disclosing, liabilities of the licensee that arise otherwise than in connection with such a business;

(c) a condition or restriction about the licensee’s financial position, whether or not in relation to such a business;

(d) without limiting the generality of paragraph (c), a condition that the licensee’s assets include, or not include, specified assets;

(e) without limiting the generality of paragraph (c), a condition that the sum of the values of specified assets included in the licensee’s assets be not less than, or not greater than, an amount ascertained in accordance with the condition.

**(2)** A condition imposed by virtue of paragraph (1) (e) may provide for the values of assets to be ascertained, for the purposes of applying the condition, in a manner specified in, or determined in accordance with, the condition.

**(3)** Without limiting the generality of paragraph (1) (e), a condition imposed by virtue of that paragraph may provide for the amount referred to in that paragraph to be a specified percentage of the sum of:

(a) the values of all the licensee’s assets;

(b) the values of specified assets included in the licensee’s assets;

(c) the amounts of all the licensee’s liabilities; or

(d) the amounts of specified liabilities included in the licensee’s liabilities.

**Conditions of licence: supervision of representatives**

**1150.** Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a licence:

(a) a condition about what the licensee is to do to, by way of supervision or otherwise, in order to prevent the licensee’s representatives from contravening:

(i) a futures law; or

(ii) other conditions of the licence;

(b) a condition about what the licensee is to do to ensure that each representative of the licensee has adequate qualifications and experience having regard to what the representative will do on the licensee’s behalf in connection with a futures broking business or futures advice business carried on by the licensee.

**Revocation and variation of licence conditions**

**1151.** Subject to section 1200, the Commission may at any time revoke or vary a condition of a licence unless it was imposed by the regulations.

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

**1152.** **(1)** As soon as practicable after imposing a condition on, or revoking or varying a condition of, a futures brokers licence, the Commission shall inform in writing:

(a) each futures organisation of which the licensee is a member; and

(b) each corporation that is a clearing house for a futures exchange of which the licensee is a member.

**(2)** A contravention of subsection (1) does not affect the validity of an act done by the Commission.

**Licensee to notify breach of licence condition**

**1153.** **(1)** Within one business day after the happening of an event constituting a contravention of a condition of a licence held by a corporation, the licensee shall give to:

(a) the Commission; and

(b) each futures organisation of which the licensee is a member; a written notice setting out particulars of the event.

**(2)** It is a defence to a prosecution for failing to give a particular notice to a person as required by this section if it is proved that:

(a) when the requirement arose, the defendant was unaware of the event that gave rise to the requirement; and

(b) the defendant:

(i) did not become aware of the event before the date of the information; or

(ii) did become so aware before that date but gave the notice to that person as soon as reasonably practicable after becoming so aware.

**Commission may require licensed futures broker to give information**

**1154.** **(1)** The Commission may, by writing given to a corporation that is the holder of a futures brokers licence, direct the holder to give the Commission specified information about, or a specified statement relating to, a business of dealing in futures contracts that the holder carries on or has carried on.

**(2)** A direction under subsection (1) to give a specified statement may also direct the holder to cause the statement to be audited by a registered company auditor before it is given to the Commission.

**(3)** A person shall comply with a direction under this section:

(a) if the direction specifies a reasonable period for compliance—within that period; or

(b) in any other case—within a reasonable period;

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

**Register of Futures Licensees**

**1155.** **(1)** The Commission shall keep a Register of Futures Licensees for the purposes of this Part.

**(2)** The Commission shall include in the Register, in relation to each licence, a copy of:

(a) the licence; and

(b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.

**(3)** The Commission shall enter in the Register, in relation to each licence:

(a) the name of the licensee;

(b) the name of each director, and of each secretary, of the licensee;

(c) the day on which the licence was granted;

(d) in relation to each business to which the licence relates:

(i) the address of the principal place of business at which the business is carried on;

(ii) the addresses of the other places (if any) at which the business is carried on; and

(iii) if the business is carried on under a name or style other than the name of the licensee—that name or style;

(e) in the case of a futures brokers licence—the name, and the address of the principal place of business, of each futures organisation of which the licensee is a member;

(f) particulars of any suspension of the licence; and

(g) such other matters (if any) as are prescribed.

**(4)** Where a person ceases to hold a particular licence, the Commission shall remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.

**(5)** A person may inspect, and may make copies of, or take extracts from, the Register.

**Notifying change in particulars**

**1156.** Within 21 days after:

(a) a corporation that is the holder of a futures brokers licence ceases to carry on the business to which the licence relates;

(b) a corporation that is the holder of a futures advisers licence ceases to act as, or to hold itself out to be, a futures adviser; or

(c) there is a change in a matter particulars of which are required by virtue of any of paragraphs 1155 (3) (a) to (e), inclusive, to be entered, in relation to a licence held by a corporation, in the Register of Futures Licensees;

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

**Annual statement of licensee**

**1157.** **(1)** A corporation that is or has been a licensee shall lodge, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form that complies with this section.

**(2)** The statement shall set out the number of persons:

(a) who, when the statement is lodged, hold; or

(b) who, when the corporation last ceased to be a licensee, held;

as the case may be, proper authorities from the corporation.

**(3)** The statement shall also contain such information as is prescribed.

**Time for lodging annual statement**

**1158.** **(1)** A person required by section 1157 to lodge a statement shall lodge the statement:

(a) if the licence is a futures brokers licence—within the period within which the person must lodge with the Commission a profit and loss account and balance sheet referred to in section 1218; or

(b) if the licence is a futures advisers licence—within the period of 1 month immediately before the anniversary of the day on which the licence was granted;

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

**(2)** Where an extension was granted by the NCSC before the commencement of this Part under a law corresponding to this section and the period as extended ends after the commencement of this Part, the extension shall be deemed to have been granted by the Commission under this section.

***Division 2*—*Agreements with unlicensed persons***

***Subdivision A—Agreements affected***

**Excluded clients**

**1159.** In this Division:

“excluded client” means a person who is:

(a) a futures broker;

(b) a futures adviser; or

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

**Agreement about a dealing in breach of section 1142**

**1160.** Where a person (in this section and Subdivision B called the “non-licensee”) and another person (in this section and Subdivision B called the “client”), not being an excluded client, enter into an agreement relating to a dealing or proposed dealing in a futures contract by the non-licensee on the client’s behalf, being a dealing or proposed dealing involving a contravention by the non-licensee of subsection 1142 (1) or (2), Subdivision B applies, whether or not anyone else is a party to the agreement.

**Agreement with corporation acting in breach of section 1143**

**1161.** Where, during a period when a corporation (in this section and Subdivision B called the “non-licensee”), in contravention of section 1143, carries on a futures advice business or holds itself out to be a futures adviser, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to advising the client about futures contracts or to giving the client futures reports, Subdivision B applies, whether or not anyone else is a party to the agreement.

**Agreement about advice, or reports, given in breach of subsection 1143 (2)**

**1162.** Where:

(a) a person (in this section and Subdivision B called the “non-licensee”) who carries on a futures advice business enters into an agreement with a client (other than an excluded client) of the non-licensee; and

(b) the agreement relates to advising the client about futures contracts, or giving the client futures reports, in circumstances involving a contravention by the non-licensee of subsection 1143 (2);

Subdivision B applies, whether or not anyone else is a party to the agreement.

**Agreement with person acting in breach of subsection 1143 (3)**

**1163.** Where, during a period when a person (in this section and Subdivision B called the “non-licensee”), in contravention of subsection 1143 (3), holds himself, herself or itself out to be a futures adviser of a particular kind, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to:

(a) if the client is a corporation:

(i) advising the client about futures contracts; or

(ii) giving a futures report to the client; or

(b) otherwise—doing in eligible circumstances any of the following:

(i) advising the client about futures contracts;

(ii) giving a futures report to the client;

Subdivision B applies, whether or not anyone else is a party to the agreement.

***Subdivision B*—*Effect on agreements***

**Client may give notice of rescission**

**1164.** **(1)** Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.

**(2)** The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.

**(3)** The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.

**(4)** The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:

(a) the non-licensee did not hold a futures brokers licence; or

(b) the non-licensee did not hold a futures brokers licence and did not hold a futures advisers licence;

as the case requires.

**(5)** If, at a time when a futures brokers licence or futures advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a futures brokers licence or futures advisers licence, as the case may be.

**(6)** None of subsections (2), (3) and (4) limits the generality of either of the others.

**(7)** Subject to this section, the client may give a notice under this section whether or not:

(a) the notice will result under section 1165 in rescission of the agreement; or

(b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 1166.

**Effect of notice under section 1164**

**1165.** A notice given under section 1164 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

**Client may apply to Court for partial rescission**

**1165a. (1)** If the client gives a notice under section 1164 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 1165, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.

**(2)** The Court may extend the period for making an application under subsection (1).

**(3)** If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application

as it would have power to make if the notice had rescinded the agreement under section 1165 and the application were for orders under section 1166.

**(4)** On an application under subsection (1), the Court may make an order:

(a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and

(b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.

**(5)** If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 1166 to have been rescinded under section 1165.

**(6)** An order under subsection (4) does not affect the application of section 1168 or 1170 in relation to the agreement as originally made or as varied by the order.

**Court may make consequential orders**

**1166.** **(1)** Subject to subsection (2), on rescission of the agreement under section 1165, the Court may, on the application of the client or the non-licensee, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.

**(2)** The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

**Agreement unenforceable against client**

**1167.** **(1)** This section:

(a) applies while both of the following are the case:

(i) the client is entitled to give a notice under section 1164;

(ii) a notice so given will result under section 1165 in rescission of the agreement; and

(b) applies after the agreement is rescinded under section 1165; but does not otherwise apply.

**(2)** The non-licensee is not entitled, as against the client:

(a) to enforce the agreement, whether directly or indirectly; or

(b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

**Non-licensee not entitled to recover commission**

**1168.** **(1)** Without limiting the generality of section 1167, this section:

(a) applies while the client is entitled to give a notice under section 1164; and

(b) applies after the client so gives a notice, even if the notice does not result under section 1165 in rescission of the agreement;

but does not otherwise apply.

**(2)** The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*)any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

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

**1169.** For the purposes of determining, in a proceeding in an Australian court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 1167 (2) or 1168 (2), it shall be presumed, unless the contrary is proved, that section 1167 or 1168, as the case may be, applies, or applied at that time, as the case may be.

**Client may recover commission paid to non-licensee**

**1170.** **(1)** Without limiting the generality of section 1166, if the client gives a notice under section 1164, the client may, even if the notice does not result under section 1165 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.

**(2)** The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

**Remedies under this Division additional to other remedies**

**1171.** The client’s rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

***Division 3*—*Futures representatives***

**Representatives of futures brokers**

**1172.** A natural person shall not do an act as a representative of a futures broker (other than an exempt broker) unless:

(a) the broker is a corporation and holds a futures brokers licence; and

(b) the person holds a proper authority from the broker.

**Representatives of futures advisers**

**1173.** A natural person shall not do an act as a representative of a futures adviser (other than an exempt futures adviser) unless the futures adviser:

(a) is a corporation, is also a futures broker and holds a futures brokers licence; or

(b) is a corporation and holds a futures advisers licence;

and the person holds a proper authority from the futures adviser.

**Defence**

**1174.** It is a defence to a prosecution for a contravention of section 1172 or 1173 constituted by an act done by a person as a representative of another person if it is proved that:

(a) but for the revocation or suspension of a licence held by the other person, the act would not have, been such a contravention;

(b) when he or she did the act, the first-mentioned person:

(i) believed in good faith that the other person held the licence; and

(ii) was unaware of the revocation or suspension; and

(c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or suspension.

**Body corporate not to act as representative**

**1175.** A body corporate shall not do an act as a representative of a person.

**Licensee to keep register of holders of proper authorities**

**1176.** **(1)** A licensee that is a corporation shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.

**(2)** The register shall be in writing or in such other form as the Commission approves.

**(3)** The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:

(a) a copy of the proper authority;

(b) the person’s name;

(c) the person’s current residential address;

(d) unless the person’s current business address is the same as the licensee’s—the person’s current business address; and

(e) such other information (if any) as is prescribed.

**(4)** A copy of a proper authority of a person from the licensee that subsection (3) requires the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.

**(5)** Information that subsection (3) requires the register to contain in relation to a person shall be entered in the register within 2 business days after:

(a) the person begins to hold a proper authority from the licensee; or

(b) the licensee receives the information;

whichever happens later.

**(6)** Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:

(a) in any case:

(i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and

(ii) remove from the last-mentioned part;

the copy of the proper authority that was included in the last-mentioned part; and

(b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:

(i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and

(ii) remove from the last-mentioned part;

the information that has been entered in the last-mentioned part in relation to the person.

**(7)** Information that has been entered under paragraph (6) (b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.

**Licensee to notify Commission of location and contents of register**

**1177. (1)** This section has effect where a licensee is a corporation and keeps a register under section 1176.

**(2)** Within 14 days after establishing the register, the licensee shall lodge written notice of where the register is kept.

**(3)** As soon as practicable after changing the place where the register is kept, the licensee shall lodge written notice of the new place where the register is kept.

**(4)** Within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:

(a) a copy of the first-mentioned proper authority; and

(b) a written notice stating that the person began to hold that proper authority on that day.

**(5)** Within the period within which subsection 1176 (5) requires the licensee to enter in the register information that the register is required by virtue of paragraph 1176 (3) (b), (c), (d) or (e) to contain, the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.

**(6)** Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

**Inspection and copying of register**

**1178. (1)** A licensee that is a corporation shall ensure that a register kept by it under section 1176 is open for inspection without charge.

**(2)** A person may by writing request a licensee that is a corporation to give the person a copy of the whole, or of a specified part, of a register kept by the licensee under section 1176.

**(3)** A licensee shall comply with a request under subsection (2) within 2 business days after:

(a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or

(b) otherwise—receiving the request.

[*The next section is 1180*]

**Commission may require production of authority**

**1180.** **(1)** Where the Commission has reason to believe that a person:

(a) holds a proper authority from a licensee; or

(b) has done an act as a representative of another person;

then, whether or not the Commission knows who the licensee or other person is, it may require the first-mentioned person to produce:

(c) any proper authority from a licensee; or

(d) any invalid futures authority from a person; that the first-mentioned person holds.

**(2)** A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

**Commission may give licensee information about representative**

**1181.** **(1)** Where the Commission believes on reasonable grounds that:

(a) a person (in this section called the “holder”) holds, or will hold, a proper authority from a licensee that is a corporation;

(b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and

(c) the information is true;

the Commission may give the information to the licensee.

**(2)** Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:

(a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or

(b) the licensee taking action pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.

**(3)** A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.

**(4)** Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).

**(5)** A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).

**(6)** A person to whom information is given in accordance with this section shall not:

(a) give any of the information to a court; or

(b) produce in a court a document that sets out some or all of the information;

except:

(c) for a purpose connected with:

(i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;

(ii) the licensee taking action pursuant to such a decision; or

(iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;

or for 2 or more such purposes, and for no other purpose;

(d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;

(e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or

(f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.

**(7)** A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:

(a) taking action by way of making, terminating, or varying the terms and conditions of; or

(b) otherwise taking action in relation to;

a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with:

(c) if one of those persons is a corporation—a futures broking business or futures advice business; or

(d) otherwise—an eligible futures broking business or eligible futures advice business;

carried on by the first-mentioned person.

**(8)** In this section:

“court” means an Australian court, or a court of an excluded Territory or of a country outside Australia and the external Territories.

**Holder of authority may be required to return it**

**1182.** **(1)** Where a person holds a proper authority from a licensee that is a corporation but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.

**(2)** Where a person holds an invalid futures authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid futures authority to the other person within a specified period of not less than 2 business days.

**(3)** A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

***Division 4*—*Liability of principals for representatives’ conduct***

**Conduct engaged in as a representative**

**1183.** Where a person engages in conduct as a representative of another person (in this section called the “principal”), then, as between the principal and a third person (other than the Commission), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

**Liability where identity of principal unknown**

**1184.** **(1)** This section applies for the purposes of a proceeding in an Australian court where:

(a) a person (in this section called the “representative”) engages in particular eligible futures conduct while the person is a representative of 2 or more persons (in this section called the “indemnifying principals”); and

(b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the “unknown principal”) but it is not proved for those purposes who the unknown principal is.

**(2)** If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.

**(3)** If 2 or more of the indemnifying principals are parties to the proceeding, each of those parties is liable in respect of that conduct as if he, she or it were the unknown principal.

**Liability of principals where act done in reliance on representative’s conduct**

**1185. (1)** This section applies where:

(a) at a time when a person (in this section called the “representative”) is a representative of only one person (in this section called the “indemnifying principal”) or of 2 or more persons (in this section called the “indemnifying principals”), the representative:

(i) engages in particular eligible futures conduct; or

(ii) proposes, or represents that the representative proposes, to engage in particular eligible futures conduct;

(b) another person (in this section called the “client”) does, or omits to do, a particular act because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:

(i) on behalf of some person (in this section called the “assumed principal”) whether or not identified, or identifiable, at that time by the client; and

(ii) in connection with a futures broking business or futures advice business carried on by the assumed principal; and

(c) it is reasonable to expect that a person in the client’s circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;

whether or not that conduct is or would be within the scope of the representative’s employment by, or authority from, any person.

**(2)** If:

(a) subparagraph (1) (a) (i) applies; or

(b) subparagraph (1) (a) (ii) applies and the representative engages in that conduct;

then:

(c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or

(d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

**(3)** Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1) (b).

**(4)** If:

(a) there are 2 or more indemnifying principals;

(b) 2 or more of them are parties (in this subsection called the “indemnifying parties”) to a proceeding in an Australian court;

(c) it is proved for the purposes of the proceeding:

(i) that the representative engaged in that conduct as a representative of some person; and

(ii) who that person is; and

(d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

**Presumptions about certain matters**

**1186.** **(1)** Where it is proved, for the purposes of a proceeding in an Australian court, that a person (in this subsection called the “representative”) engaged in particular conduct while the person was a representative of:

(a) only one person (in this subsection called the “indemnifying principal”); or

(b) 2 or more persons (in this subsection called the “indemnifying principals”);

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

(c) the indemnifying principal; or

(d) as a representative of some person among the indemnifying principals; as the case may be.

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

**No contracting out of liability for representative’s conduct**

**1187.** **(1)** For the purposes of this section, a liability of a person:

(a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or

(b) arising under section 1185 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;

is a liability of the first-mentioned person in respect of the other person.

**(2)** Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.

**(3)** Subsection (2) does not apply in relation to an agreement in so far as it:

(a) is a contract of insurance;

(b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or

(c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.

**(4)** A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

**Effect of Division**

**1188.** **(1)** Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.

**(2)** Nothing in section 1183, 1184 or 1185:

(a) affects a liability arising otherwise than by virtue of this Division;

(b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or

(c) makes a person guilty of an offence.

**Additional operation of Division**

**1189.** **(1)** This Division has, by force of this subsection, the effect it would have if:

(a) the reference in paragraph 1184 (1) (a) to 2 or more persons were a reference to 2 or more corporations;

(b) a reference (other than the first) in paragraph 1185 (1) (a) to a person or persons were a reference to a corporation or corporations, as the case may be; and

(c) a reference in section 1184 or 1185 to eligible futures conduct were a reference to any conduct.

**(2)** This Division has, by force of this subsection, the effect it would have if:

(a) the reference in section 1183 to a third person were a reference to a third person, being a corporation;

(b) the reference in paragraph 1185 (1) (b) to another person were a reference to another person, being a corporation;

(c) a reference in section 1184 or 1185 to eligible futures conduct were a reference to any conduct; and

(d) section 73 (except as it has effect for the purposes of paragraphs 1184 (1) (b) and 1185 (4) (c)) were amended by omitting from subsection 73 (1) and paragraph 73 (3) (a) all the words after “in connection” and substituting “with a futures broking business or futures advice business carried on by the other person”.

**(3)** The effect that this Division has by force of subsection (1) or (2) is additional to, and does not prejudice, the effect that this Division has otherwise than by force of that subsection.

***Division 5*—*Excluding persons from the futures industry***

**Power to revoke licence without a hearing**

**1190.** The Commission may, by written order, revoke a licence if:

(a) the licensee ceases to be an eligible corporation;

(b) the licensee ceases to carry on business;

(c) the licensee becomes an externally-administered body corporate;

(d) the licensee asks the Commission to revoke the licence; or

(e) a director, secretary or executive officer of the licensee contravenes section 1142 or 1143.

**Power to revoke licence after a hearing**

**1191.** **(1)** Subject to section 1200, the Commission may, by written order, revoke a licence if:

(a) the application for the licence contained matter that was false in a material particular or materially misleading;

(b) there was an omission of material matter from the application for the licence;

(c) the licensee contravenes a futures law;

(d) the licensee contravenes a condition of the licence;

(e) the Commission is satisfied that the educational qualifications or experience of a person who:

(i) is an officer of the licensee; and

(ii) was not an officer of the licensee when the licence was granted;

are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;

(f) the Commission is satisfied that:

(i) an officer of the licensee performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the “different duties”) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer’s educational qualifications and experience were adequate; and

(ii) the officer’s educational qualifications or experience are or is inadequate having regard to the different duties;

(g) an order is made under section 1194 against such a director, secretary or executive officer;

(h) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a futures brokers licence or a futures advisers licence, as the case requires; or

(j) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.

**(2)** In determining whether or not it has reason to believe as mentioned in paragraph (1) (j) in relation to a licensee, the Commission is not precluded from having regard to a matter that arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

**Power to suspend licence instead of revoking it**

**1192. (1)** Subject to section 1200, where:

(a) section 1190 empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or

(b) the Commission is empowered by virtue of paragraph 1191 (1) (c), (d), (e), (f), (g), (h) or (j) to revoke a licence;

the Commission may, if it considers it desirable to do so, instead:

(c) by written order, suspend the licence for a specified period; or

(d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 1142 or 1143 would prohibit the licensee from doing if it did not hold the licence.

**(2)** The Commission may at any time, by written order, vary or revoke an order in force under this section.

**(3)** For the purposes of sections 1142, 1143, 1172 and 1173 a licensee shall be deemed not to hold the licence at any time during a period for which the licence is suspended.

**(4)** Where an order in force under this section prohibits the licensee as mentioned in paragraph (1) (d):

(a) the licensee shall not contravene the order; and

(b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 1172 and 1173

apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

**Power to make banning order**

**1193.** Subject to section 1200, the Commission may make a banning order against a natural person if:

(a) he or she becomes an insolvent under administration;

(b) he or she is convicted of serious fraud;

(c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;

(d) he or she contravenes a futures law;

(e) the Commission has reason to believe that he or she is not of good fame and character;

(f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:

(i) a representative of a futures broker; or

(ii) a representative of a futures adviser; or

(g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:

(i) a representative of a futures broker; or

(ii) a representative of a futures adviser.

**Nature of banning order**

**1194.** **(1)** Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:

(a) in any case—permanently; or

(b) except where the Commission is empowered by virtue of paragraph 1193 (e) to make the order—for a specified period;

from doing an act as:

(c) a representative of a futures broker;

(d) a representative of a futures adviser; or

(e) a representative of a futures broker or a futures adviser;

whichever the order specifies.

**(2)** The Commission shall not vary or revoke a banning order except under section 1195, 1196 or 1197.

**Exceptions to banning order**

**1195.** **(1)** An order made against a person under subsection 1194 (1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.

**(2)** Subject to section 1200, the Commission may, at any time, by written order, vary a banning order against a person:

(a) by adding a provision that permits the person as mentioned in subsection (1);

(b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;

(c) by omitting such a provision and substituting another such provision; or

(d) by omitting such a provision.

**Variation or revocation of banning order on application**

**1196.** **(1)** Subject to sections 1197 and 1200, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.

**(2)** If:

(a) the person is not an insolvent under administration;

(b) the Commission has no reason to believe that the person is not of good fame and character; and

(c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:

(i) a representative of a futures broker; or

(ii) a representative of a futures adviser;

the Commission shall, by written order:

(d) if only one of subparagraphs (c) (i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a futures broker or of a futures adviser, as the case may be; or

(e) in any other case—revoke the banning order.

**(3)** Otherwise, the Commission shall refuse the application.

**(4)** In determining whether or not it has reason to believe as mentioned in paragraph (2) (b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

**(5)** Nothing in subsection (4) limits the matters to which the Commission may have regard:

(a) in deciding on the application; or

(b) in connection with performing or exercising any other function or power under this Part.

**Revocation of banning order in certain cases**

**1197.** Where:

(a) section 1196 requires the Commission to vary a banning order so that it no longer has a particular operation; and

(b) the order has no other operation;

the Commission shall, by written order, instead revoke the banning order.

**Effect and publication of orders under this Division**

**1198.** **(1)** An order by the Commission under this Division takes effect when served on the person to whom the order relates.

**(2)** As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:

(a) if the order is made under section 1190, 1191, 1192 or 1194 or revokes a banning order—the first-mentioned order; or

(b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;

and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.

**(3)** Where:

(a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;

(b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 1195 (1); and

(c) in the Commission’s opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;

the notice may, instead of setting out a copy of that provision, set out a summary of the provision’s effect.

**Contravention of banning order**

**1199.** A person shall not contravene a banning order relating to the person.

**Opportunity for hearing**

**1200.** **(1)** The Commission shall not:

(a) refuse an application for a licence on the ground, or grounds including the ground, that paragraph 1145 (2) (e) or (f) does not apply in relation to the applicant;

(b) impose conditions on a licence;

(c) vary the conditions of a licence;

(d) revoke or suspend a licence otherwise than by virtue of section 1190 or paragraph 1192 (1) (a);

(e) make, otherwise than by virtue of paragraph 1193 (a), (b) or (c), an order under section 1194 against a person;

(f) make under subsection 1195 (2) an order varying a banning order against a person; or

(g) refuse an application by a person under section 1196; unless the Commission complies with subsection (2) of this section.

**(2)** The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:

(a) to appear at a hearing before the Commission that takes place in private; and

(b) to make submissions and give evidence to the Commission in relation to the matter.

**Disqualification by the Court**

**1201.** **(1)** Where the Commission:

(a) revokes under section 1190 or 1191 a licence held by a person; or

(b) makes under section 1194 against a person an order that is to operate otherwise than only for a specified period;

the Commission may apply to the Court for an order or orders under this section in relation to the person.

**(2)** On an application under subsection (1), the Court may make one or more of the following:

(a) an order disqualifying the person, permanently or for a specified period, from holding:

(i) a futures brokers licence;

(ii) a futures advisers licence; or

(iii) a futures brokers licence or a futures advisers licence; whichever the order specifies;

(b) an order prohibiting the person, permanently or for a specified period, from doing an act as:

(i) a representative of a futures broker;

(ii) a representative of a futures adviser; or

(iii) a representative of a futures broker or of a futures adviser; whichever the order specifies;

(c) such other order as it thinks fit; or may refuse the application.

**(3)** The Court may revoke or vary an order in force under subsection (2).

**Effect of orders under section 1201**

**1202.** **(1)** The Commission shall not grant a futures brokers licence or a futures advisers licence to a person whom an order in force under section 1201 disqualifies from holding a futures brokers licence or a futures advisers licence, as the case may be.

**(2)** A person shall not contravene an order that:

(a) is of a kind referred to in paragraph 1201 (2) (b);

(b) is in force under section 1201; and

(c) relates to the person.

**Effect of previous orders under laws corresponding to section 1201**

**1203.** **(1)** This section applies where, immediately before the commencement of section 1201, a person was, for the purposes of subsection 78 (5) of the *Futures Industry Act 1986* or a law corresponding to that subsection, disqualified, or deemed to be disqualified, either permanently or for a period, because of an order of an Australian court, from holding:

(a) a futures broker’s licence;

(b) a futures adviser’s licence;

(c) a futures broker’s representatives licence; or

(d) a futures adviser’s representatives licence; under that Act or a corresponding law.

**(2)** As from that commencement, the order has effect for the purposes of this Act as if it were an order:

(a) disqualifying the person, permanently or for that period, as the case may be, from holding:

(i) if paragraph (1) (a) applies—a futures brokers licence under this Act; or

(ii) if paragraph (1) (b) applies—a futures advisers licence under this Act; or

(b) prohibiting the person, permanently or for that period, as the case may be, from doing an act as:

(i) if paragraph (1) (c) applies—a representative of a futures broker; or

(ii) if paragraph (1) (d) applies—a representative of a futures adviser;

as the case requires, being an order in force under subsection 1201 (2).

**(3)** The effect that the order has by force of subsection (2) is in addition to, and does not prejudice, its effect otherwise than by force of that subsection.

**PART 8.4—CONDUCT OF FUTURES BUSINESS**

**Certain representations prohibited**

**1204.** **(1)** A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.

**(2)** A statement that a person is the holder of a licence is not a contravention of this section.

**Undesirable advertising**

**1205.** **(1)** In this section:

“publish”, in relation to a statement, means:

(a) insert the statement in a newspaper or periodical or cause it to be so inserted;

(b) publicly exhibit the statement or cause it to be publicly exhibited; or

(c) include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent or delivered to a person, or thrown or left upon premises in the occupation of a person;

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

**(2)** Where the Commission considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person:

(a) if the person is a corporation—from publishing statements about:

(i) futures contracts;

(ii) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of other persons; or

(iii) futures advice businesses or proposed futures advice businesses;

(b) otherwise—from publishing statements about:

(i) eligible futures contracts;

(ii) futures contracts dealt in, or proposed to be dealt in, by or on behalf of corporations or in eligible circumstances;

(iii) businesses carried on, or proposed to be carried on, by corporations and involving dealings in futures contracts on behalf of other persons;

(iv) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of corporations;

(v) businesses carried on, or proposed to be carried on, by persons and involving dealing in eligible futures contracts on behalf of other persons;

(vi) futures advice businesses, or proposed futures advice businesses, of corporations; or

(vii) eligible futures advice businesses or proposed eligible futures advice businesses of persons; or

(c) in any case—from broadcasting statements about:

(i) futures contracts;

(ii) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of other persons; or

(iii) futures advice businesses or proposed futures advice businesses;

unless the form and content of the statements have first been approved by the Commission.

**(3)** An order under subsection (2) shall not be made unless the Commission has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before the Commission (being a hearing that takes place in private) and make submissions and give evidence to the Commission in relation to the matter.

**(4)** A person the subject of an order under subsection (2) shall comply with the order.

**(5)** For the purposes of this section, where a statement is published or broadcast and there is also published or broadcast in relation to the statement:

(a) the name or address of a person;

(b) the telephone or telex number of a person; or

(c) the post office or other delivery box number of a person;

it shall be presumed, unless the contrary is proved, that the statement was published or broadcast by that person.

**Issue of contract notes**

**1206. (1)** A futures broker shall, in respect of a transaction, being the acquisition or disposal of a futures contract, that is entered into by the broker on behalf of another person, give as soon as practicable:

(a) in a case where the transaction is not an operation by the broker on a discretionary account—to that other person; or

(b) in a case where the transaction is an operation by the broker on a discretionary account—to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account, other than a person who agrees in the prescribed manner to waive the operation of this paragraph;

a contract note that complies with subsection (3), (4) or (5), as the case requires.

**(2)** Subsection (1) does not require a futures broker to give a contract note to a person in respect of a transaction if the person was at the time of the transaction the holder of a futures brokers licence.

**(3)** A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures contract (other than a futures option or an eligible exchange-traded option), shall include:

(a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

(b) the name of the person to whom the broker gives the contract note;

(c) the day on which the transaction took place;

(d) a description of the futures contract sufficient to identify the nature of the transaction, including:

(i) in a case where the futures contract is a commodity agreement—a description of the commodity and a statement of the contract price;

(ii) in a case where the futures contract is an adjustment agreement:

(a) a description of the class of adjustment agreements in which the futures contract is included;

(b) a statement of the contract price; and

(c) if the transaction is the completion of the futures contract—the value or worth (as determined in accordance with the futures contract) of the futures contract at the time of that completion; and

(iii) in a case where the transaction is a liquidating trade—details of the liquidating trade and of the futures contract that is intended to be closed out following the entering into of the liquidating trade;

(e) the deposit paid or payable in respect of the transaction;

(f) the month and year for the performance or settlement of the contract;

(g) in a case where the transaction took place on a futures market of a futures exchange or of a recognised futures exchange, or on an exempt futures market—a name or abbreviation by which the futures exchange, recognised futures exchange or exempt futures market, as the case may be, is generally known;

(h) a statement of the amount of commission charged or the rate (if any) at which the commission was charged; and

(j) a statement of the amounts (if any) of all stamp duties and other duties and taxes payable in connection with the transaction.

**(4)** A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures option, shall include:

(a) the matters specified in paragraphs (3) (a), (b), (c), (g), (h) and (j);

(b) a description of the class of futures contracts in which is included the futures contract to which the futures option relates;

(c) the month and year for performance or settlement of the futures contract to which the futures option relates;

(d) the date by which the purchaser of the futures option, in order to exercise the futures option, must declare an intention to exercise the futures option;

(e) a statement of the amount of the premium; and

(f) details of the price at which the purchaser of the futures option has, by virtue of the futures option, an option or Chapter 8 right to assume a bought position, or sold position, as the case requires, in relation to the futures contract to which the futures option relates.

**(5)** A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of an eligible exchange-traded option (in this subsection called the “option”), shall include:

(a) the matters specified in paragraphs (3) (a), (b), (c), (g), (h) and (j);

(b) a description of the commodity or index to which the option relates;

(c) the date by which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option;

(d) a statement of the amount of the premium; and

(e) details of:

(i) in a case where the option relates to a commodity—the price at which the purchaser of the option has, by virtue of the option, an option or right to purchase, or sell, as the case requires, that commodity; or

(ii) in a case where the purchaser of the option has, by virtue of the option, an option or right to be paid an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index—the specified number and the manner in which that amount of money is to be determined.

**(6)** A futures broker shall not include in a contract note given under subsection (1), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.

**(7)** For the purposes of this section, a futures contract is included in the same class of futures contracts as another futures contract if, and only if, the first-mentioned futures contract is of the same kind as the other futures contract.

**Futures broker to furnish monthly statement to client**

**1207. (1)** Where:

(a) a futures broker has, at any time during a particular month, held money or property on account of a client; or

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

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

(c) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

(d) the opening cash balance for that month in the client’s account;

(e) all deposits, credits, withdrawals and debits affecting the account during that month;

(f) the cash balance in the account at the end of that month;

(g) in relation to each futures contract that the broker has, before or during that month, acquired on behalf of the client and that, as at the end of that month, has not been disposed of, particulars of the futures contract, including the particulars required by virtue of paragraph 1206 (3) (d), or paragraphs 1206 (4) (b), (e) and (f) or (5) (b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and

(h) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client.

**(2)** Where a futures broker has, during a particular month, authority to operate on a discretionary account, the broker shall, within 7 days after the end of that month, send to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account a written statement setting out:

(a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

(b) the opening cash balance for that month in the account (in this subsection called the “account”) maintained by the broker in respect of the discretionary account;

(c) all deposits, credits, withdrawals and debits affecting the account during that month;

(d) the cash balance in the account at the end of that month;

(e) in relation to each futures contract:

(i) that the broker has acquired before or during that month;

(ii) the acquisition of which was an operation by the broker on the discretionary account; and

(iii) that, as at the end of that month, has not been disposed of;

particulars of the futures contract, including the particulars required by virtue of paragraph 1206 (3) (d), or paragraphs 1206 (4) (b), (e) and (f) or (5) (b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and

(f) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.

**Dealings by futures broker on own account**

**1208.** **(1)** A futures broker shall maintain separately from other records such records as correctly record and explain dealings in futures contracts by the broker on the broker’s own account including, but not limited to, records specifying:

(a) a description of each of those dealings together with the date on which and the time at which:

(i) the instructions (if any) for each of those dealings were received by the futures broker;

(ii) the instructions (if any) for each of those dealings were transmitted to the futures market on which the dealing was effected; and

(iii) the dealing was effected; and

(b) the source of the funds used for effecting those dealings.

**(2)** A futures broker shall be deemed not to have maintained records in compliance with subsection (1) unless the entries in the records are made in writing in the English language or are made in such a manner as will enable them to be readily accessible and to be readily converted into writing in the English language.

**(3)** A futures broker shall not knowingly take the other side of an order of a client of the broker in relation to a futures contract unless:

(a) the client has consented to the broker taking the other side of the order in relation to that futures contract; or

(b) in dealing in that futures contract on behalf of the client, the broker is to be taken, for the purposes of this Act, to be dealing in that futures contract on the broker’s own account.

**(4)** For the purposes of subsection (3), a futures broker takes the other side of an order of a client of the broker in relation to a futures contract where the broker:

(a) when dealing on the broker’s own account, assumes a bought position or sold position in relation to the contract; and

(b) when dealing on the instructions of the client, assumes the opposite sold position or bought position in relation to the contract.

**Segregation of client money and property**

**1209.** **(1)** In this section:

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

(a) the broker;

(b) a director, or an officer, of the broker;

(c) an employee of the broker;

(d) a body corporate that is related to the broker;

(e) a person who is associated with, or who is a partner of, the broker; or

(f) a body corporate in which the broker has, or the broker and partners of the broker together have, a controlling interest;

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

“property” includes credit facilities and securities;

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

(a) the amounts deposited by the broker in respect of the client in a clients’ segregated account, or clients’ segregated accounts, of the broker, less so much of those amounts as has been withdrawn from the account or accounts; and

(b) the values of the items of property that:

(i) have, in respect of the client, been deposited by the broker in safe custody pursuant to subsection (3);

(ii) have not been withdrawn from safe custody; and

(iii) under the terms and conditions on which they were deposited with, or received by, the broker, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client;

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

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

**(2)** For the purposes of the definition of “relevant credit balance” in subsection (1), the value of an item of property at a particular time is:

(a) in the case of a credit facility—the amount of money that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain by virtue of that right; or

(b) in any other case—the market value of the property as at the end of the last business day before that time.

**(3)** Where, in connection with:

(a) dealings in futures contracts effected, or proposed to be effected, by a futures broker on behalf of a client of the broker; or

(b) instructions by a client of a futures broker to deal in futures contracts;

money or property (other than property to which section 1214 applies) is deposited with the broker by the client, or is received by the broker for, or on behalf of, the client, the broker shall:

(c) in the case of money—deposit the money in a clients’ segregated account of the broker maintained in Australia or in the place where the money was deposited with, or received by, the broker; or

(d) in the case of property—deposit the property in safe custody, in Australia or in the place where the property was deposited with, or received by, the broker, in such a manner that the property is segregated from property other than property deposited by the broker in safe custody pursuant to this subsection;

on or before the next day after the money or property is deposited with, or received by, the broker that is a day on which the money or property can be deposited as first mentioned in paragraph (c) or (d).

**(4)** Without limiting the generality of subsection (3), where, in connection with dealings in futures contracts effected by a futures broker, the broker receives from a person an amount of money some or all of which is attributable to dealings in futures contracts so effected on behalf of clients of the broker, the broker shall, on the next day on which the amount can be so deposited, deposit the amount in a clients’ segregated account of the broker maintained in Australia or in the place where the broker receives the amount.

**(5)** Where, pursuant to this section, a futures broker deposits money in respect of a client in a clients’ segregated account of the broker, the broker shall not withdraw any of the money except for the purpose of:

(a) making a payment to, or in accordance with the written direction of, a person entitled to the money;

(b) making a payment for, or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealings in futures contracts effected by the broker on behalf of the client;

(c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected by the broker on behalf of the client;

(d) investing it:

(i) in any manner in which trustees are for the time being authorised by law to invest trust funds;

(ii) on deposit with an eligible money market dealer;

(iii) on deposit at interest with a banking corporation;

(iv) on deposit with a clearing house for a futures exchange; or

(v) in the purchase of cash management trust interests;

(e) paying to the broker the amount of a fee that the broker may charge, or an amount to which the broker is entitled, under an agreement with the client made under subsection (7); or

(f) making a payment that is otherwise authorised by law;

or as permitted by subsection (11).

**(6)** A futures broker shall not deal with property deposited by the broker in safe custody under subsection (3) otherwise than in accordance with the terms and conditions on which the property was deposited with, or received by, the broker.

**(7)** A futures broker who invests as mentioned in paragraph (5) (d) money that was, in respect of a client of the broker, deposited by the broker under subsection (3):

(a) may charge such fee (if any) for so investing the money; and

(b) is entitled to so much (if any) of the return on the money so invested;

as the broker and the client agree in writing.

**(8)** A futures broker shall not invest an amount pursuant to paragraph (5) (d) by depositing it with a person for that person to invest, unless the broker:

(a) has informed the person that the amount has been withdrawn from a clients’ segregated account of the broker and is money to which clients of the broker are entitled; and

(b) has obtained from the person a written statement that is signed by the person, sets out the amount and acknowledges that the broker has informed the person as mentioned in paragraph (a).

**(9)** Where, at a particular time, the total amount of the relevant liabilities of a client of a futures broker exceeds the relevant credit balance of the client, the broker may, in respect of the client, deposit in a clients’ segregated account of the broker an amount of money not greater than the amount of the excess, and, if the broker does so, the amount so deposited shall, subject to subsection (10), be deemed to be money to which the client is entitled.

**(10)** Where:

(a) a futures broker has, in respect of a client of the broker, deposited an amount pursuant to subsection (9) in a clients’ segregated account of the broker; and

(b) the relevant credit balance of the client exceeds by a particular amount the total amount of the relevant liabilities of the client;

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

**(11)** A futures broker shall keep in relation to the clients’ segregated account, or clients’ segregated accounts, of the broker accounting records that:

(a) are separate from any other accounting records of the broker;

(b) record separately in respect of each client of the broker particulars of the amounts deposited in, and the amounts withdrawn from, the account or accounts in respect of the client; and

(c) record, separately from the particulars referred to in paragraph (b):

(i) particulars (including particulars of withdrawals) of so much of the amounts deposited as required by subsection (4) in the account or accounts as was not attributable to dealings in futures contracts effected by the broker on behalf of clients of the broker;

(ii) particulars of all amounts deposited in the account or accounts pursuant to subsection (9); and

(iii) particulars of all amounts withdrawn from the account or accounts pursuant to subsection (10).

**(12)** A futures broker shall keep records that:

(a) relate to deposits of property in safe custody by the broker pursuant to subsection (3); and

(b) record separately in respect of each client of the broker particulars of the property deposited in respect of the client.

**(13)** Section 1213 applies, so far as it is capable of application, in relation to accounting records, and other records, that are required by subsections (11) and (12), respectively, of this section to be kept by a futures broker, and so applies as if those accounting records and other records were accounting records required by that section to be kept by the broker.

**(14)** Subject to subsections (15) and (16), none of the following:

(a) money deposited by a futures broker pursuant to this section in a clients’ segregated account of the broker;

(b) property in which money deposited by a futures broker as mentioned in paragraph (a) of this subsection has been invested pursuant to paragraph (5) (d);

(c) property deposited by a futures broker in safe custody pursuant to subsection (3);

is available for the payment of a debt or liability of the broker or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

**(15)** Nothing in subsection (14) affects the right of a client of a futures broker to recover money or property to which the client is entitled.

**(16)** Where a futures broker is entitled to withdraw money from a clients’ segregated account of the broker for the purpose of making a payment to the broker, subsection (14) does not apply in relation to that money.

**(17)** Where a futures broker invests money pursuant to paragraph (5) (d) by depositing it with a person for the person to invest, neither that money,

nor any property in which the person invests any of that money, is available for the payment of a debt or liability of the person or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.

**(18)** Nothing in this section affects a claim or lien that a futures broker has against or on:

(a) money deposited by the broker pursuant to this section in a clients’ segregated account of the broker;

(b) property in which such money has been invested pursuant to paragraph (5) (d); or

(c) property deposited by the broker in safe custody pursuant to subsection (3).

**Futures broker to give certain information to prospective clients**

**1210.** A futures broker shall, before accepting a person as a client of the broker, give to the person:

(a) a document that:

(i) explains the nature of futures contracts;

(ii) explains the nature of the obligations assumed by a person who instructs a futures broker to enter into a futures contract;

(iii) sets out a risk disclosure statement in the prescribed form; and

(iv) sets out the specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients; and

(b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to dealings in futures contracts, to require the person to enter.

**PART 8.5—ACCOUNTS AND AUDIT**

**Interpretation**

**1211.** In this Part, unless the contrary intention appears, a reference to a book, futures contract or business of or in relation to a futures broker who carries on business in partnership is a reference to such a book, futures contract or business of or in relation to the partnership.

**Application of Part**

**1212.** This Part does not affect the operation of Parts 3.6 and 3.7 in relation to a company that is the holder of a futures brokers licence or in relation to a business of dealing in futures contracts carried on by such a company.

**Accounts to be kept by futures brokers**

**1213. (1)** Afutures broker shall:

(a) keep such accounting records as correctly record and explain the transactions and financial position of the business of dealing in futures contracts carried on by the broker;

(b) keep accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and

(c) keep accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in futures contracts carried on by the broker to be conveniently and properly audited.

**(2)** Without limiting the generality of subsection (1), a futures broker shall be deemed not to have complied with that subsection in relation to records if those records:

(a) are not kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;

(b) are not kept in sufficient detail to show particulars of:

(i) all money received or paid by the broker, including money paid to, or disbursed from, an account of the kind referred to in paragraph 1209 (3) (c);

(ii) all dealings in futures contracts made by the broker, the charges and credits arising from them, and the name of the person on whose behalf each dealing was effected;

(iii) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the broker;

(iv) all the assets and liabilities (including contingent liabilities) of the broker;

(v) all futures contracts to which the broker has become a party as a result of trading on the broker’s own account;

(vi) all futures contracts dealt with by the broker pursuant to instructions given by another person, showing who gave the instructions;

(vii) all property that is property of the broker and in respect of which the business rules of a futures exchange authorise the making of a futures contract in the futures market of the futures exchange, showing by whom the property is held and, if held by some other person, whether or not the property is so held as security against loans or advances; and

(viii) all such property that is not property of the broker and for which the broker or any nominee controlled by the broker is accountable, showing by whom, and for whom, the property is held and the extent to which the property is either held

for safe custody or deposited with a third party as security for loans or advances made to the broker;

(c) are not kept in sufficient detail to show separately particulars of every transaction by the broker;

(d) do not specify the day on which or the period during which each transaction by the broker took place; or

(e) do not contain copies of acknowledgments of the receipts of property received by the broker from clients.

**(3)** Without affecting the operation of subsections (1) and (2), a futures broker shall be deemed not to have complied with subsection (1) in relation to records if, in respect of a discretionary account on which the broker operates, those records are not kept in sufficient detail to show the particulars that the broker is required to furnish to clients in order to comply with subsection 1207 (2).

**(4)** Without affecting the operation of subsection (2) or (3), a futures broker shall keep records in sufficient detail to show separately particulars. of all transactions by the broker:

(a) with, on behalf of, or on the account of, clients of the broker, excluding, in a case where the broker carries on business in partnership, the partners in the firm;

(b) in a case where the broker carries on business in partnership—on the broker’s own account or with, on behalf of, or on the account of, the partners in the firm;

(c) in a case where the broker does not carry on business in partnership—on the broker’s own account;

(d) with, on behalf of, or on the account of, other futures brokers;

(e) with, on behalf of, or on the account of, representatives of the broker; and

(f) with, on behalf of, or on the account of, employees of the broker.

**(5)** An entry in the accounting and other records of a futures broker required to be kept in accordance with this section, and any matter recorded by a futures exchange in relation to a member pursuant to subsection 1270 (3) shall be deemed to have been made by, or with the authority of, the broker or member.

**(6)** Where a record required by this section to be kept is not kept in writing in the English language, the futures broker shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

**(7)** Notwithstanding any other provision of this section, a futures broker shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in futures contracts that is carried on by the broker.

**(8)** If accounting or other records are kept by a futures broker at a place outside Australia, the broker shall cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance-sheets to be prepared.

**(9)** If any accounting records of a futures broker are kept at a place outside Australia, the broker shall, if required by the Commission to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.

**Property in custody of futures broker**

**1214. (1)** Where a futures broker receives for safe custody property:

(a) that is the property of another person (in this section called the “client”);

(b) that is, or is to be, delivered in accordance with a futures contract; and

(c) for which the broker or a nominee of the broker is accountable; the broker shall forthwith:

(d) if the client requests that the property be deposited in safe custody with the broker’s bankers—cause it to be so deposited or notify the client of any failure to comply with the request, whether or not caused by a refusal by the bankers to comply with the request; or

(e) if the client does not make, or the bankers refuse to comply with, such a request and the business rules of the futures exchange that maintained or provided the futures market on which the contract was made enable the property to be deposited in safe custody— cause the property to be so deposited in accordance with those rules.

**(2)** A futures broker shall not deposit as security for a loan or advance made to the broker property of a kind referred to in subsection (1) unless an amount is owed to the broker by the client in connection with a transaction entered into on the instructions of the client and the broker:

(a) gives a written notice to the client identifying the property and stating that the broker intends to deposit the property as security for a loan or advance to the broker; and

(b) deposits the property as security for a loan or advance to the broker, being a loan or advance of an amount that does not exceed the amount owed to the broker by the client on the day of the receipt by the broker of the property.

**(3)** Where:

(a) a futures broker has given a notice to a person as mentioned in subsection (2) and has deposited the property referred to in the notice as security for a loan or advance; and

(b) the person:

(i) a representative of a dealer;

(i) has paid to the broker the amount owed by the person to the broker at the time the property was so deposited; and

(ii) requests the broker to withdraw the property from deposit;

the broker shall, as soon as practicable after the request, withdraw the property from deposit, but nothing in this subsection prevents the broker from redepositing the property, as permitted by subsection (2), as a security for a loan or advance.

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

**Appointment of auditor by futures broker**

**1215. (1)** Within 1 month after becoming the holder of a futures brokers licence, a futures broker (other than an Australian bank) shall appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors to audit the broker’s accounts.

**(2)** Subject to this section, a person shall not:

(a) consent to be appointed as auditor of a futures broker;

(b) act as auditor of a futures broker; or

(c) prepare a report required by this Act to be prepared by an auditor of a futures broker;

if:

(d) the person is not a registered company auditor;

(e) the person, or a body corporate in which the person is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount exceeding $5,000 to the futures broker or to a body corporate related to the futures broker; or

(f) the person is:

(i) a partner or employee of the futures broker;

(ii) an officer of the futures broker;

(iii) a partner, employer or employee of an officer of the futures broker; or

(iv) a partner or employee of an employee of an officer of the futures broker.

**(3)** Subject to this section, a firm shall not:

(a) consent to be appointed as an auditor of a futures broker;

(b) act as auditor of a futures broker; or

(c) prepare a report required by this Act to be prepared by an auditor of a futures broker;

unless:

(d) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia;

(e) where the business name under which the firm is carrying on business is not registered under a law of a State or Territory relating to the registration of business names—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member’s full name and address as at the time when the firm so consents, acts or prepares a report;

(f) no member of the firm, and no body corporate in which any member of the firm is a substantial shareholder for the purposes of Part 6.7, is indebted in an amount not exceeding $5,000 to the futures broker or to a body corporate that is related to the futures broker;

(g) no member of the firm is:

(i) a partner or employee of the futures broker;

(ii) an officer of the futures broker;

(iii) a partner, employer or employee of an officer of the body corporate; or

(iv) a partner or employee of an employee of an officer of the futures broker; and

(h) no officer of the futures broker receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.

**(4)** A reference in subsection (2) or (3) to indebtedness does not, in relation to indebtedness of a natural person, include a reference to indebtedness of that person to a body corporate that is a prescribed corporation for the purposes of Part 4.5 where:

(a) the indebtedness arose as a result of a loan made to that person by the body corporate in the ordinary course of its ordinary business; and

(b) the amount of that loan was used by that person to pay the whole or part of the purchase price of premises that are used by that person as the person’s principal place of residence.

**(5)** For the purposes of subsections (2) and (3), a person shall be deemed to be an officer of a body corporate if:

(a) the person is an officer of a related body corporate; or

(b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months, been an officer or promoter of the body corporate or of a related body corporate.

**(6)** For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.

**(7)** For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of having been appointed as an auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.

**(8)** The appointment of a firm as auditor of a futures broker shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.

**(9)** Where a firm that has been appointed as auditor of a futures broker is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:

(a) a person who was deemed under subsection (8) to be an auditor of the broker and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of the person’s retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 1216 does not apply to that resignation;

(b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the broker as from the day of admission; and

(c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the broker;

but nothing in this subsection affects the operation of subsection (3).

**(10)** Except as provided by subsection (9), the appointment of the members of a firm as auditors of a futures broker that is deemed by subsection (8) to have been made by reason of the appointment of the firm as auditor of the broker is not affected by the dissolution of the firm.

**(11)** A report or notice that purports to be made or given by a firm appointed as auditor of a futures broker shall not be taken to be duly made or given unless it is signed, in the firm name and in the name of the member concerned, by a member of the firm who is a registered company auditor.

**(12)** Where a person or firm is appointed as an auditor under subsection (1) (not being an appointment that is deemed to be made by virtue of subsection (9)) or under subsection (16), the futures broker shall, within 14 days after the appointment, lodge with the Commission a notice in writing

stating that the broker has made the appointment and specifying the name of the person or firm.

**(13)** Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, an auditor of a futures broker or prepares a report required by this Act to be prepared by an auditor of a futures broker, each member of the firm is guilty of an offence.

**(14)** A person shall not:

(a) if the person has been appointed auditor of a futures broker— knowingly disqualify himself or herself while the appointment continues from acting as auditor of the broker; or

(b) if the person is a member of a firm that has been appointed auditor of a futures broker—knowingly disqualify the firm while the appointment continues from acting as auditor of the broker.

**(15)** An auditor of a futures broker holds office until death, until removal or resignation from office in accordance with section 1216 or until becoming prohibited from acting as auditor by reason of subsection (2) or (3).

**(16)** Within 14 days after a vacancy occurs in the office of an auditor of a futures broker, if there is no surviving or continuing auditor of the broker, the broker shall appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy.

**(17)** While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

**(18)** A futures broker shall not appoint a person or firm as auditor of the broker unless that person or firm has, before the appointment, consented by notice in writing given to the broker to act as auditor and has not withdrawn the consent by notice in writing given to the broker.

**(19)** This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 327 applies.

**Removal and resignation of auditors**

**1216. (1)** A futures broker may, with the consent of the Commission, remove an auditor of the broker from office.

**(2)** An auditor of a futures broker may, by notice in writing given to the broker, resign as auditor of the broker if:

(a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and, at or about the same time as the notice was given to the Commission, notified the broker in writing of the application to the Commission; and

(b) the auditor has received the consent of the Commission.

**(3)** The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the futures broker whether it consents to the resignation of the auditor.

**(4)** A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application:

(a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 1308; and

(b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 1308), action or suit against the auditor;

and a certificate by the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

**(5)** Subject to subsection (6), the resignation of an auditor takes effect:

(a) on the date (if any) specified for the purpose in the notice of resignation;

(b) on the date on which the Commission gives its consent to the resignation; or

(c) on the date (if any) fixed by the Commission for the purpose; whichever last occurs.

**(6)** Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of paragraph 1215 (3) (d), of acting as auditor of a futures broker, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the broker, be deemed to be the auditor of the broker until the member obtains the consent of the Commission to the retirement or withdrawal.

**(7)** This section does not apply in relation to a body corporate (other than an exempt proprietary company) in relation to which section 329 applies.

**Fees and expenses of auditors**

**1217.** The reasonable fees and expenses of an auditor of a futures broker are payable by the broker.

**Futures brokers’ accounts**

**1218.** **(1)** In this section:

“prescribed day”, in relation to a financial year of a futures broker, means the day that is 3 months after the end of that financial year or, where, an extension of time is approved pursuant to subsection (3), the day on which the extended time ends.

**(2)** A futures broker (other than an Australian bank) shall, in respect of each financial year, other than a financial year that ended before the

date of commencement of this Act or ended on or after that date but before the date on which the broker commenced to carry on business as a futures broker, prepare a true and fair profit and loss account and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed for the purposes of this subsection and lodge them with the Commission before the prescribed day for that financial year, together with an auditor’s report containing such information and matters as are prescribed for the purposes of this subsection and such other information and matters as the auditor thinks fit to include in the report.

**(3)** The Commission may, on application made by a futures broker and the auditor of the broker before the end of the period of 3 months referred to in the definition of “prescribed day” in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as the Commission imposes.

**(4)** Where an approval under subsection (3) in relation to a futures broker is given subject to conditions, the broker shall comply with those conditions.

**Auditor’s right of access to records, information etc.**

**1219.** **(1)** An auditor of a futures broker has a right of access at all reasonable times to the accounting records and other records, including any register, of the broker, and is entitled to require from the broker or from any executive officer of the broker, such information and explanations as the auditor desires for the purposes of audit.

**(2)** A futures broker, or an executive officer of a futures broker, shall not, without lawful excuse:

(a) refuse or fail to allow an auditor of the broker access, in accordance with subsection (1), to accounting records or other records, including any register, of the broker;

(b) refuse or fail to give information, or an explanation, as and when required under subsection (1); or

(c) otherwise hinder, obstruct or delay an auditor of the broker in the performance or exercise of the auditor’s duties or powers.

**Auditor to report to Commission in certain cases**

**1220.** **(1)** Where an auditor, in the performance of the duties of auditor of a futures broker, becomes aware of a prescribed matter, the auditor shall, within 7 days after becoming aware of that matter, lodge a written report on the matter and send a copy of the report to:

(a) the broker;

(b) each futures exchange of which the broker is a member and to each clearing house (if any) for that futures exchange; and

(c) each futures association of which the broker is a member, unless the futures association is also a futures exchange of which the broker is a member.

**(2)** In this section, “prescribed matter” means a matter that, in the opinion of the auditor:

(a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the futures broker to meet the broker’s obligations as a broker;

(b) constitutes or may constitute a contravention of section 1209, 1213 or 1214; or

(c) constitutes or may constitute a contravention of a condition of a licence held by the futures broker.

**Certain matters to be reported to Commission**

**1221.** **(1)** Where, in relation to a futures broker who is a member of a futures exchange, the futures exchange becomes aware of a prescribed matter, the futures exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the broker.

**(2)** Subsection (1) applies:

(a) in relation to a clearing house for a futures exchange and a member of the clearing house; and

(b) in relation to a futures association and a member of the futures association (unless the futures association is also a futures exchange);

in the same manner as it applies in relation to a futures exchange and a member of the futures exchange.

**(3)** In this section, “prescribed matter”, in relation to a futures broker, means a matter that, in the opinion of the futures exchange, clearing house or futures association concerned:

(a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the broker to meet the broker’s obligations as a broker;

(b) constitutes or may constitute a contravention of section 1209, 1213 or 1214;

(c) constitutes or may constitute a contravention of a condition of a licence held by the broker; or

(d) constitutes a failure to make, in accordance with Part 8.6, contributions to a fidelity fund.

**Defamation**

**1222.** **(1)** An auditor of a futures broker has qualified privilege in respect of:

(a) any statement made, orally or in writing, in the course of performing the duties of an auditor; or

(b) the lodging of a report, or the sending of a report under section 1220 to the futures broker, a futures exchange, a clearing house for a futures exchange, or a futures association.

**(2)** A futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, has qualified privilege in respect of:

(a) any statement made, orally or in writing, in the course of performing the duties imposed by section 1221; or

(b) the lodging of any report with the Commission, or the sending of any report to a futures broker, under section 1221.

**(3)** A person has qualified privilege in respect of the publishing of:

(a) a statement made by an auditor of a futures broker as mentioned’ in paragraph (1) (a), or by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer, as mentioned in paragraph (2) (a);

(b) a document prepared by an auditor of a futures broker in the course of performing the duties of an auditor;

(c) a document prepared by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, in the course of performing the duties imposed by section 1221; or

(d) a document required by or under this Chapter to be lodged, whether or not the document has been lodged.

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

**1223.** Nothing in this Part prevents a futures exchange or futures association imposing on members of that futures exchange or futures association any obligations or requirements (not being obligations or requirements inconsistent with this Act) that the futures exchange or futures association thinks fit with respect to:

(a) the audit of accounts (including the audit of accounts by an auditor appointed by the futures exchange or futures association);

(b) the information to be furnished in reports from auditors; or

(c) the keeping of books.

**Power of Court to restrain dealings with futures broker’s bank accounts**

**1224.** **(1)** Where the Court is satisfied that:

(a) there are reasonable grounds for believing that:

(i) there is a deficiency in an account that is, or has at any time been, a clients’ segregated account of a person; and

(ii) the person was, when the deficiency occurred, a futures broker or a member of a futures organisation;

(b) there has been, at a time when a person was a futures broker or a member of a futures organisation, undue delay, or unreasonable refusal, on the person’s part in paying, applying or accounting for money as required by this Chapter or a corresponding law;

(c) a person has, at a time when the person was a futures broker or a member of a futures organisation, failed to pay money into a clients’ segregated account of the person as required by this Act or a corresponding law; or

(d) a person who is, or has at any time been, a futures broker or a member of a futures organisation, is carrying on, or last carried on, as the case requires, a futures broking business otherwise than in partnership and:

(i) the last futures brokers licence held by the person was revoked or suspended at a time when the person was a corporation; or

(ii) the person no longer carries on such a business and was a corporation when the person last ceased to carry on such a business;

the Court may by order restrain dealings in respect of specified bank accounts of the person, subject to such terms and conditions as the Court imposes.

**(2)** An order under subsection (1) may only be made on an application by the Commission or by the futures organisation (if any) concerned.

**(3)** In addition, and without prejudice, to its effect apart from this subsection, subsection (1) has the effect it would have if a reference in it to a futures broker were a reference to a person who is, or has at any time been, a futures broker as defined by paragraph (a) of the definition of “futures broker” in section 9.

**(4)** Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

**(5)** Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission, as a condition of granting an interim order under subsection (4), to give any undertaking as to damages.

**Duty of banker or body corporate to make full disclosure**

**1225.** Where an order made under section 1224 is directed to a banker or a body corporate, the banker or body corporate shall:

(a) disclose to the applicant for the order every account kept by the bank or body corporate in the name of the person to whom the

order relates, and any account that the banker or body corporate reasonably suspects is held or kept by the bank or body corporate for the benefit of that person; and

(b) permit the applicant for the order to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker’s books relating to that person or the like books in the possession of the body corporate.

**Power of Court to make further orders and give directions**

**1226.** Where an order is made under section 1224, the Court may, on the application of the Commission, a futures organisation or a person affected by the order, make further orders:

(a) dealing with such ancillary matters as the Court considers necessary or desirable;

(b) directing that all or any of the money in an account affected by an order so made be paid by the bank or body corporate to the Commission or a person nominated by the Commission, on such terms and conditions as the Court thinks fit; and

(c) discharging or varying the order.

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

**1227.** **(1)** An order made under section 1226 may include directions to the person to whom the money is paid directing that that person:

(a) shall cause the money to be paid into a trust account;

(b) is authorised to prepare a scheme for distributing the money to persons who claim, during a period of 6 months after the Commission or that other person receives the money, to be entitled to the money and satisfy the Commission or that other person that they are so entitled; or

(c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.

**(2)** Where a person prepares a scheme for distribution of money pursuant to subsection (1), the person shall apply to the Court for approval of the scheme and for directions with respect to it.

**(3)** The Court may give such directions as to the money held in a trust account pursuant to subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money shall be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

**PART 8.6—FIDELITY FUNDS**

**Establishment of fidelity funds**

**1228.** **(1)** A futures organisation shall keep a fidelity fund, and the board of the futures organisation shall administer the fidelity fund.

**(2)** The assets of a fidelity fund of a futures organisation are the property of the futures organisation, but shall be kept separately from all other property of the futures organisation and shall be held in trust for the purposes set out in this Part.

**(3)** A futures organisation that, immediately before the commencement of this section, kept a fidelity fund under a law corresponding to this Part shall, after that commencement, keep that fidelity fund in accordance with, and for the purposes of, this Part.

**Money constituting fidelity fund**

**1229.** **(1)** The fidelity fund of a futures organisation shall consist of:

(a) in the case of a fidelity fund established before the commencement of this Part—the money, and other property, of which the fund consisted immediately before that commencement;

(b) in the case of a fidelity fund established after the commencement of this Part—any amount that is paid to the credit of the fund by the futures organisation on the establishment of the fund;

(c) money paid to the futures organisation, in accordance with this Part or the business rules of the futures organisation, by contributing members of the futures organisation;

(d) the interests and profits from time to time accruing from the investment of the fidelity fund;

(e) money paid into the fidelity fund by the futures organisation;

(f) money recovered by or on behalf of the futures organisation in the exercise of a right of action conferred by this Part;

(g) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the futures organisation under section 1249; and

(h) all other money lawfully paid into the fund.

**(2)** Where a futures organisation has, under paragraph (1) (b) or a corresponding law, paid an amount to the credit of its fidelity fund:

(a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval, the repayment of the whole, or a specified part, of the amount from the fidelity fund to the general funds of the futures organisation; and

(b) if the Minister does so, the whole, or the specified part, as the case may be, of the amount may, in accordance with the conditions (if any) so specified, be so repaid.

**Fund to be kept in separate bank account**

**1230.** The money in a fidelity fund shall, until invested or applied in accordance with this Part, be kept in a separate account with an Australian bank.

**Payments out of fund**

**1231.** Subject to this Part, there shall be paid out of the fidelity fund of a futures organisation in such order as the board of the futures organisation deems proper:

(a) the amount of all claims, including costs, allowed by the board or established against the futures organisation under this Part;

(b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the futures organisation or the board of the rights, powers and authorities vested in it by this Part in relation to the fund;

(c) all premiums payable in respect of contracts of insurance or indemnity entered into by the futures organisation under section 1249;

(d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the futures organisation or the board in relation to the fund; and

(e) all other money payable out of the fund in accordance with the provisions of this Chapter.

**Accounts of fund**

**1232.** **(1)** A futures organisation shall establish and keep proper accounts of its fidelity fund and shall, within the period of 3 months that next succeeds the end of its financial year, cause a balance-sheet in respect of those accounts to be made out as at the end of that financial year.

**(2)** A futures organisation shall appoint a registered company auditor to audit the accounts of the fidelity fund.

**(3)** The auditor appointed by a futures organisation shall audit the accounts of the fidelity fund and shall audit each balance-sheet and cause a report on the accounts and balance-sheet to be laid before the board of the futures organisation not later than 1 month after the balance-sheet is made out.

**(4)** A futures organisation shall give to the Commission a copy of each report laid before the board of the futures organisation under this section and of the balance-sheet to which the report relates within 14 days after the report was so laid before the board.

**Management sub-committee**

**1233.** **(1)** The board of a futures organisation may, by resolution, appoint a management sub-committee of not fewer than 3 and not more than 5 persons, at least one of whom is also a member of the board.

**(2)** The board of a futures organisation may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section).

**(3)** A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.

**(4)** A delegation by the board of a futures organisation under this section may at any time, by resolution of the board, be varied or revoked.

**(5)** The board of a futures organisation may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the subcommittee.

**(6)** A delegation by the board of a futures organisation under this section does not prevent the exercise of a power, authority or discretion by that board.

**(7)** A management sub-committee appointed by a futures organisation before the commencement of this Part under a corresponding law and in existence immediately before that commencement shall be deemed to have been appointed by the futures organisation on that commencement under this section.

**(8)** If the board of a futures organisation referred to in subsection (7) had before the commencement of this Part delegated to a management subcommittee referred to in that subsection any powers, authorities or discretions under the corresponding law so referred to and had not revoked the delegation before that commencement, the board shall be deemed to have, on that commencement, delegated to the management sub-committee its corresponding powers, authorities and discretions under this Part.

**Contribution to fund**

**1234. (1)** A person shall not be admitted to membership of a futures organisation unless:

(a) in any case—the person has paid a futures organisation (application for membership) fidelity fund contribution; or

(b) if the futures organisation is not a futures exchange—the person is already a member of a futures exchange.

**(2)** A contributing member of a futures organisation is not entitled to continue to be a member, or a member organisation, as the case may be, of the futures organisation unless the contributing member, on or before 31 March in each year, pays a futures organisation (membership) fidelity fund contribution.

**(3)** A contribution under subsection (1) or (2) is payable to the Secretary to the Department.

**(4)** Where a contribution payable under subsection (1) or (2) is paid into the Consolidated Revenue Fund, an amount equal to the contribution so paid is payable to the relevant futures organisation out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(5)** An amount paid to a futures organisation under subsection (4) shall be paid by the futures organisation into its fidelity fund.

**(6)** This section has effect subject to section 1236.

**Levy in addition to annual contributions**

**1235.** **(1)** If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 1231, the futures organisation concerned may determine that a futures organisation fidelity fund levy be paid by specified contributing members of the futures organisation and, where such a determination is made, a futures organisation fidelity fund levy is payable accordingly by each of the specified contributing members.

**(2)** A person or partnership is not required to pay by way of futures organisation fidelity fund levy under this section more than $5,000 in total or more than $1,000 in any period of 12 months.

**(3)** A futures organisation fidelity fund levy is payable to the Secretary to the Department within the prescribed period and in the prescribed manner.

**(4)** Where a futures organisation fidelity fund levy payable under subsection (1) is paid into the Consolidated Revenue Fund, an amount equal to the levy so paid is payable to the relevant futures organisation out of the Consolidated Revenue Fund, which is appropriated accordingly.

**(5)** An amount paid to a futures organisation under subsection (4) shall be paid by the futures organisation into its fidelity fund.

**(6)** This section has effect subject to section 1236.

**Contributions and levies not payable in certain cases**

**1236.** **(1)** A person is not liable to pay a contribution under subsection 1234 (1) unless the contribution is imposed by an Act other than this Act.

**(2)** A contributing member of a futures organisation is not liable to pay a contribution under subsection 1234 (2), or a levy under subsection 1235 (1), unless the contribution or levy is imposed by an Act other than this Act.

**(3)** A futures organisation may determine in writing that subsection 1234 (1) does not apply in relation to the futures organisation in relation to specified persons.

**(4)** A futures organisation may determine in writing that subsection 1234 (2) does not apply in relation to the futures organisation in relation to specified contributing members of the futures organisation.

**(5)** A determination in force under subsection (3) or (4) has effect accordingly.

**Power of futures organisation to make advances to fund**

**1237.** **(1)** A futures organisation may, from its general funds, give or advance, on such terms as the board of the futures organisation thinks fit, any sums of money to its fidelity fund.

**(2)** Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the futures organisation.

**Investment of fund**

**1238.** Money in a fidelity fund of a futures organisation that is not immediately required for the purposes of the fund may be invested by the futures organisation in any manner in which trustees are for the time being authorised by a law in force in a State or Territory to invest trust funds or on deposit with an eligible money market dealer.

**Application of fund**

**1239.** **(1)** Subject to this Part, where:

(a) a person (in this subsection called the “futures person”) suffers pecuniary loss at a particular time because of a defalcation, or because of fraudulent misuse of money or other property, by:

(i) a person who is at that time a contributing member of a futures organisation;

(ii) a director, partner, officer or employee of a person who is at that time a contributing member of a futures organisation; or

(iii) a partner in, or employee of, a partnership that is at that time a contributing member of a futures organisation; and

(b) the loss is suffered in respect of money or other property that was, in connection with the contributing member’s dealings in futures contracts (whether or not any of those dealings was effected on a futures market), entrusted to or received by the contributing member, or a director, partner, officer or employee of the contributing member (whether before or after the commencement of this section):

(i) for or on behalf of the futures person or another person; or

(ii) because the contributing member was trustee of the money or other property;

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

**(2)** The reference in paragraph (1) (b) to a partner of a contributing member of a futures organisation is, in a case where the contributing member is a partnership, a reference to a partner in the partnership.

**(3)** Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the

board of the futures organisation thinks fit, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than the amount that the official receiver or trustee, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt who is a contributing member of the futures organisation are insufficient to satisfy the debts arising from dealings in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt.

**(4)** Subsection (3) applies in the case of a contributing member of a futures organisation who has made a composition with the member’s creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in like manner as that subsection applies in the case of a contributing member of a futures organisation who has become bankrupt and, for the purposes of that subsection as so applying by virtue of this subsection:

(a) the reference in that subsection to a trustee shall be deemed to be a reference to a controlling trustee within the meaning of that Part;

(b) the reference to debts proved in the bankruptcy shall be deemed to be a reference to provable debts in relation to the composition or deed within the meaning of that Part; and

(c) a reference to the bankrupt shall be deemed to be a reference to the person who made the composition or executed the deed.

**(5)** Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to the liquidator of a body corporate that is a contributing member of the futures organisation and that has commenced to be wound up, an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts of the body corporate arising from dealings in futures contracts that have been proved in the winding up by creditors of the body corporate.

**(6)** Money paid pursuant to subsection (3) or (5) is so paid only on condition that it is applied by the official receiver, trustee or liquidator towards satisfaction of debts arising from dealings in futures contracts and for no other purpose.

**(7)** Subject to subsection (9), the amount, or the sum of the amounts, paid under this Part out of a fidelity fund of a futures organisation:

(a) for the purpose of compensating pecuniary loss as mentioned in subsection (1); or

(b) for the purpose of making payments under subsection (3) or (5);

shall not exceed, in respect of a particular contributing member of the futures organisation:

(c) unless paragraph (d) applies—$500,000; or

(d) if some other amount is prescribed, for the purposes of this subsection, in relation to the futures organisation, a class of futures organisations that includes the futures organisation, or futures organisations generally—that amount.

**(8)** For the purposes of calculating the sum referred to in subsection (7), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.

**(9)** If a futures organisation considers, having regard to the ascertained or contingent liabilities of its fidelity fund, that the assets of the fund so permit, the futures organisation may apply out of the fund such sums in excess of the amount limited by or under this section as the futures organisation, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as mentioned in subsection (1) or making a payment under subsection (3) or (5).

**(10)** Where:

(a) money or other property has been entrusted to, or received by:

(i) a person or partnership;

(ii) a director, partner, officer or employee of a person; or

(iii) a partner in or employee of, a partnership;

being a person who, or a partnership that, has at any time been but is no longer a contributing member of a futures organisation;

(b) immediately before that person or partnership last ceased to be a member or member organisation of the futures organisation, he, she or it was a contributing member of the futures organisation;

(c) because of a defalcation, or the fraudulent misuse of money or other property by:

(i) that person or a director, partner, officer or employee of that person; or

(ii) a partner in, or employee of, that partnership;

as the case may be, the person by or from whom the money or other property was so entrusted or received suffered pecuniary loss; and

(d) at the time when the money or other property was so entrusted or received, the person suffering the pecuniary loss believed, on reasonable grounds, that that person or partnership was at that time a member or member organisation of the futures organisation;

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

**(11)** Where:

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

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

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

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

**Claims against fund**

**1240. (1)** Subject to this Part, a person who suffers pecuniary loss as mentioned in subsection 1239 (1) is entitled to claim compensation from the fidelity fund of a futures organisation whose fidelity fund is, pursuant to that subsection, required to be applied to compensate the person, and to take proceedings in the Court as provided in this Part against the futures organisation to establish that claim.

**(2)** A person does not have a claim against a fidelity fund of a futures organisation in respect of:

(a) pecuniary loss suffered before 1 July 1986; or

(b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member organisation of the futures organisation.

**(3)** Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a futures organisation is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.

**(4)** In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

**(5)** A claim duly made before the commencement of this Part against the fidelity fund of a futures organisation under a law corresponding to this section shall be deemed to have been duly made against that fidelity fund under this section.

**Rights of innocent partner in relation to fund**

**1241.** **(1)** Where all persons who have submitted claims pursuant to section 1240 have been fully compensated in accordance with the provisions of this Part for pecuniary loss in relation to a contributing member of a futures organisation, being pecuniary loss as mentioned in subsection 1239 (1) suffered in relation to money or other property, any partner of the contributing member who has made payment to a person in compensation for loss suffered by the person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund of the futures organisation if the board of the futures organisation, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

**(2)** If a partner of a contributing member of a futures organisation feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receipt of notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.

**(3)** The appellant shall, on the day on which the appellant lodges notice of appeal with the Court, lodge a copy of the notice with the futures organisation concerned.

**(4)** The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same manner and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction and if the Court is of the opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of money or other property from which the pecuniary loss arose and that the appellant acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the futures organisation concerned, of the person to whom the appellant made such a payment.

**Notice calling for claims against fund**

**1242.** **(1)** A futures organisation may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

**(2)** A claim for compensation from a fidelity fund of a futures organisation in respect of a pecuniary loss shall be made in writing to the futures organisation:

(a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

(b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss;

and a claim that is not so made is barred unless the futures organisation otherwise determines.

**(3)** A futures organisation, a member of a board of a futures organisation, or a member or employee of a futures organisation, has qualified privilege in respect of the publication of a notice under subsection (1).

**(4)** A notice duly published by a futures organisation, before the commencement of this Part, under a law corresponding to subsection (1) shall be deemed to have been duly published under that subsection.

**Power of board to settle claims**

**1243. (1)** Subject to this Part, the board of a futures organisation may allow and settle a proper claim for compensation from a fidelity fund of the futures organisation at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

**(2)** Subject to subsection (3), a person shall not commence proceedings under this Part against a futures organisation without leave of the board unless:

(a) the board has disallowed the person’s claim; and

(b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the futures organisation in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant, other than any right or remedy that the claimant may have, under section 1240 or a corresponding law, against a person other than the futures organisation.

**(3)** A person who has been refused leave by the board of a futures organisation under subsection (2) may apply to the Court for leave to commence proceedings against the futures organisation and the Court may make such order in the matter as it thinks fit.

**(4)** The board of a futures organisation, after disallowing, whether wholly or partly, a claim for compensation from the fidelity fund of the futures organisation, shall serve notice of the disallowance in the prescribed form on the claimant or on the claimant’s solicitor.

**(5)** Proceedings against a futures organisation in respect of a claim that has been disallowed by the board of the futures organisation shall not be commenced after the end of 3 months after the service of the notice of disallowance referred to in subsection (4).

**(6)** In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is

alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the futures organisation.

**(7)** The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the board or the Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

**Form of order of Court establishing claim**

**1244.** **(1)** Where, in proceedings brought to establish a claim, the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order:

(a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and

(b) direct the board to allow the claim as so declared and deal with it in accordance with the provisions of this Part.

**(2)** In any such proceedings all questions of costs are in the discretion of the Court.

**Power of Board to require production of documents etc.**

**1245.** The board of a futures organisation may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a contributing member of the futures organisation or a partner or the partners in a partnership that is a contributing member of the futures organisation or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person, the board may disallow any claim by the first-mentioned person under this Part.

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

**1246.** On payment out of a fidelity fund of a futures organisation of any money in respect of a claim under this Part, the futures organisation is subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.

**Payment of claims only from fund**

**1247.** Money or other property belonging to a futures organisation, other than its fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the board of the futures organisation or is made the subject of an order of the Court.

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

**1248.** **(1)** Where the amount in a fidelity fund of a futures organisation is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made, the amount in the fund shall, subject to subsection (2), be apportioned among the claimants in such manner as the board of the futures organisation thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fund and paid out of the fund when money is available in the fund.

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

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

**1249.** **(1)** A futures organisation may enter into a contract with a person carrying on fidelity insurance business whereby the futures organisation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Part.

**(2)** Such a contract may be entered into in relation to contributing members of the futures organisation generally, or in relation to particular contributing members named in the contract, or in relation to contributing members generally with the exclusion of particular contributing members named in the contract.

**(3)** A futures organisation, a member or employee of a futures organisation or of the board of a futures organisation, or a member of the management sub-committee of the board of a futures organisation, has qualified privilege in respect of the publication of a statement that a contract entered into under this section does, or does not, as the case may be, apply in relation to that member.

**Application of insurance money**

**1250.** A claimant against a fidelity fund of a futures organisation does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any money paid by the insurer in accordance with such a contract.

**PART 8.7—OFFENCES**

***Division 1*—*Insider dealing***

**Futures contract concerning a body corporate**

**1251.** For the purposes of this Division, a futures contract concerns a body corporate if, and only if:

(a) the futures contract is a commodity agreement and a commodity to which it relates is securities of the body; or

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

**Person connected with a body corporate**

**1252.** **(1)** For the purposes of this Division, a person is connected with a body corporate (in this subsection called the “relevant body corporate”) if the person is a natural person and:

(a) is an officer of the relevant body corporate or of a related body corporate;

(b) is, for the purposes of Part 6.7, a substantial shareholder in the relevant body corporate or in a related body corporate; or

(c) occupies a position that may reasonably be expected to give the person access to information of a kind referred to in subsection 1253 (1) or (2) by virtue of:

(i) any professional or business relationship existing between the person (or the person’s employer or a body corporate of which the person is an officer) and the relevant body corporate or a related body corporate; or

(ii) the person being an officer of a body corporate that is, for the purposes of Part 6.7, a substantial shareholder in the relevant body corporate or in a related body corporate.

**(2)** For the purposes of subsection (1), “officer”, in relation to a body corporate, includes:

(a) a director, secretary, executive officer or employee of the body corporate;

(b) a receiver, or a receiver and manager, of property of the body corporate;

(c) an official manager or a deputy official manager of the body corporate;

(d) a liquidator of the body corporate; and

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

**Persons precluded from dealing**

**1253.** **(1)** For the purposes of this Part, a person is precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with the body, the person has inside information in relation to that futures contract.

**(2)** For the purposes of this Part, a person is also precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with another body corporate, the person has information that:

(a) is inside information in relation to that futures contract; and

(b) relates to any transaction (actual or expected) involving both those bodies, or involving one of them and securities of the other.

**(3)** For the purposes of this Part, a person is also precluded from dealing in a futures contract if the person:

(a) has inside information in relation to the futures contract;

(b) obtained the information, directly or indirectly, from another person;

(c) is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in the futures contract; and

(d) when the information was so obtained:

(i) was an associate of the other person; or

(ii) had with the other person an arrangement for the communication of information of a kind referred to in subsection (1) or (2) with a view to a dealing, by the first-mentioned person, by the other person, or by both of them together, in that futures contract or a futures contract of the same kind as that futures contract.

**Body corporate precluded from dealing when officer precluded**

**1254.** **(1)** Without prejudice to subsection 1253 (3), but subject to this section, while an officer of a body corporate is precluded from dealing in a futures contract, the body is, for the purposes of this Part, also precluded from dealing in the futures contract.

**(2)** A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing at a particular time in a futures contract if:

(a) the decision to deal in the futures contract at that time was taken on the body’s behalf by a person other than the officer;

(b) the body had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person who had the information; and

(c) the information was not so communicated and no such advice was so given.

**(3)** A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing in a futures contract concerning another body corporate if the information:

(a) was obtained by the officer in the course of performing duties as an officer of the first-mentioned body; and

(b) relates only to a proposed dealing by the first-mentioned body in securities of, or a futures contract concerning, the other body.

**Exceptions: licensed futures brokers**

**1255.** For the purposes of this Part, an eligible corporation that holds a futures brokers licence is not precluded from dealing in a futures contract concerning a body corporate if:

(a) the corporation enters into the dealing as agent for another person pursuant to a specific instruction by that other person to enter into that dealing;

(b) the corporation has not given any advice to the other person in relation to dealing in a futures contract concerning the body corporate; and

(c) the other person is not, in relation to the dealing, an associate of the corporation.

**Prohibitions on dealing when precluded**

**1256.** **(1)** A corporation shall not, while precluded from dealing in a futures contract, deal in the futures contract.

**(2)** A person shall not, while precluded from dealing in a futures contract concerning a corporation, deal in the futures contract.

**(3)** A person who, because of being or having been connected with a corporation, is precluded by subsection 1253 (2) from dealing in a futures contract shall not, while so precluded, deal in the futures contract.

**(4)** A person shall not, while precluded from dealing in a futures contract:

(a) deal in the futures contract:

(i) on behalf of, or with, a corporation;

(ii) in eligible circumstances;

(iii) on an eligible futures market; or

(iv) outside Australia; or

(b) use an eligible communications service in the course of, for the purposes of, or in connection with, a dealing in the futures contract.

**(5)** A person who, because of having particular information, is prohibited by this section from doing a particular act, shall not, while so prohibited, communicate the information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of doing that act.

**(6)** A reference in subsection (5) to doing an act is a reference to:

(a) dealing in a futures contract;

(b) dealing in a futures contract as mentioned in paragraph (4) (a); or

(c) using an eligible communications service as mentioned in paragraph (4) (b).

**(7)** Except as provided in this section, a person who is precluded from dealing in a futures contract is not prohibited from dealing in the futures contract.

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

**1257.** Where a prosecution is begun against a person for an offence because the person had particular information and dealt in a futures contract in contravention of section 1256, it is a defence if it is proved that the other party to the dealing knew, or ought reasonably to have known, the information before entering into the dealing.

***Division 2*—*General***

**Dealings by futures broker on behalf of others**

**1258.** An eligible futures broker shall not deal in a futures contract on behalf of another person unless the dealing is effected:

(a) on a futures market of a futures exchange or recognised futures exchange;

(b) on an exempt futures market; or

(c) as permitted by the business rules of a futures organisation of which the broker is a member.

**Futures market manipulation**

**1259.** **(1)** Where a person takes part in, is concerned in, or carries out, whether directly or indirectly:

(a) a transaction (whether a dealing in a futures contract or not) that is, is intended to have, or is likely to have; or

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

the effect of:

(c) creating an artificial price for dealings in futures contracts on a futures market within Australia; or

(d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market within Australia;

each of the succeeding subsections has effect without prejudice to the effect of any of the others.

**(2)** If the person is a corporation, the person contravenes this section.

**(3)** If the transaction, or any of the transactions, as the case may be, is entered into in eligible circumstances or outside Australia, the person contravenes this section.

**(4)** If the futures market is an eligible futures market, the person contravenes this section.

**(5)** If the dealings referred to in paragraph (1) (c) or (d) are dealings by corporations, the person contravenes this section.

**(6)** If the dealings referred to in paragraph (1) (c) or (d) are dealings in eligible circumstances, the person contravenes this section.

**False trading and market rigging**

**1260. (1)** Where a person:

(a) creates, or causes to be created, or does anything that is calculated to create, a false or misleading appearance:

(i) of active dealing in futures contracts on a futures market in Australia; or

(ii) with respect to the market for, or the price for dealings in, futures contracts on a futures market in Australia; or

(b) by any fictitious or artificial transactions or devices, maintains, inflates, depresses or causes fluctuations in, the price for dealings in futures contracts on a futures market in Australia;

each of subsections (2), (3), (4) and (5) has effect without prejudice to any of the others.

**(2)** If the person is a corporation, the person contravenes this section.

**(3)** If the futures market is an eligible futures market, the person contravenes this section.

**(4)** If the dealings referred to in subparagraph (1) (a) (ii) or paragraph (1) (b) are or include dealings by or on behalf of corporations, the person contravenes this section.

**(5)** If the dealings referred to in subparagraph (1) (a) (ii) or paragraph (1) (b) are or include dealings in eligible circumstances, the person contravenes this section.

**(6)** For the purpose of determining whether a transaction is fictitious or artificial within the meaning of paragraph (1) (b), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms shall not be conclusive.

**False or misleading statements etc.**

**1261.** **(1)** Where:

(a) a person makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:

(i) to induce other persons to enter into dealings in futures contracts on a futures market in Australia; or

(ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in Australia; and

(b) at the time when the person makes the statement, or disseminates the information:

(i) the person is recklessly indifferent as to whether or not the statement or information is true or false; or

(ii) the person knows, or ought reasonably to know, that the statement is false or misleading in a material particular;

each of the succeeding subsections has effect without prejudice to the effect of any of the others.

**(2)** If the person is a corporation, the person contravenes this section.

**(3)** If the other persons are or include corporations, the person contravenes this section.

**(4)** If the futures market referred to in subparagraph (1) (a) (i) or (ii) is an eligible futures market, the person contravenes this section.

**(5)** If the dealings referred to in subparagraph (1) (a) (i) or (ii) are or include dealings by, or on behalf of, corporations, the person contravenes this section.

**(6)** If the dealings referred to in subparagraph (1) (a) (i) or (ii) are or include dealings in eligible circumstances, the person contravenes this section.

**Fraudulently inducing person to deal in futures contracts**

**1262.** **(1)** Where a person (in this section called “person A”):

(a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;

(b) by any dishonest concealment of material facts;

(c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive; or

(d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular;

induces or attempts to induce another person (in this section called “person B”) to deal in a futures contract or a class of futures contracts, each of

subsections (2), (3), (4), (5) and (6) has effect without prejudice to the effect of any of the others.

**(2)** If person A is a corporation, that person contravenes this section.

**(3)** If person B is a corporation, person A contravenes this section.

**(4)** If the dealing is, or is to be, on behalf of a corporation, person A contravenes this section.

**(5)** If the dealing is, or is to be, on an eligible futures market, person A contravenes this section.

**(6)** If the dealing is, or is to be, entered into in eligible circumstances, person A contravenes this section.

**(7)** It is a defence to a prosecution for an offence under this section constituted by recording or storing information as mentioned in paragraph (1) (d) if it is proved that, when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person.

**Dissemination of information about illegal transactions**

**1263.** Where:

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

(b) the person, or an associate of the person:

(i) has entered into such a transaction or done such an act or thing; or

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

the first-mentioned person contravenes this section.

**Fraud in connection with dealings in futures contracts**

**1264.** **(1)** Where, in connection with a dealing or proposed dealing in a futures contract by a futures broker on behalf of a client of the broker, a person who:

(a) is the broker or an employee or agent of the broker; or

(b) has an interest, or is otherwise concerned in, the dealing or proposed dealing;

does any of the following:

(c) defrauds the client;

(d) does an act, or omits to do an act, knowing that the client will be deceived or misled, or with reckless indifference as to whether or not the client will be deceived or misled, as a result of the act or omission;

(e) (without limiting the generality of paragraph (d)) makes a statement, promise or forecast to the client, or makes an entry in a record relating to the client or persons including the client:

(i) knowing that the statement, promise, forecast or entry is false, misleading or deceptive in a material particular; or

(ii) with reckless indifference as to whether or not the statement, promise, forecast or entry is false, misleading or deceptive in a material particular;

each of the succeeding subsections has effect without prejudice to the effect of any of the others.

**(2)** If the person is a corporation, the person contravenes this section.

**(3)** If the futures broker is a corporation, the person contravenes this section.

**(4)** If the dealing is, or the proposed dealing is to be, a dealing:

(a) on a corporation’s behalf;

(b) in eligible circumstances;

(c) on an eligible futures market; or

(d) outside Australia;

the person contravenes this section.

**Compensation for loss etc.**

**1265. (1)** Where:

(a) a person who, because of having particular information, is precluded by section 1253 from dealing in a futures contract deals, in contravention of section 1256, in that futures contract; or

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

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

**(2)** A person who contravenes any of sections 1259 to 1264 (inclusive) (whether or not the person has been convicted of an offence in respect of

the contravention) is liable to pay compensation to any other person who, in dealing in futures contracts, suffers loss because of the difference between the price at which the dealing takes place and the price at which it would be likely to have taken place if the contravention had not occurred.

**(3)** The amount of compensation for which a person is liable under subsection (1) or (2) is:

(a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or

(b) if the first-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under subsection 232 (7) or a corresponding law because of the same act or transaction—the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable, or has been so ordered, to pay.

**(4)** For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

**(5)** An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of the dealing in which the loss occurred.

**(6)** The Commission may, if it considers it to be in the public interest to do so, bring an action in the name of, and for the benefit of, a person for recovery of compensation for a loss referred to in subsection (1) and suffered by that person.

**(7)** Nothing in subsection (1) affects any liability that a person may incur under any other law.

**Sequence of transmission and execution of orders**

**1266. (1)** In this section, a reference to the transmission by an eligible futures broker of instructions to deal in a class of futures contracts is a reference:

(a) where the broker has direct access to the futures market on which the instructions are to be executed—to the transmission of the instructions to that futures market; or

(b) where the broker has access to the futures market on which the instructions are to be executed only through another futures broker— to the transmission of the instructions to that other futures broker.

**(2)** Subject to subsection (3), an eligible futures broker shall transmit in the sequence in which they are received by the broker all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.

**(3)** Where an eligible futures broker proposes to deal in a class of futures contracts on the broker’s own account and the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the broker to deal in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time (being instructions that have not been transmitted), that person shall not transmit, and shall not give instructions to any other person to transmit, the instructions to give effect to the proposal of the broker to deal in that class of futures contracts before the instructions of the client are transmitted.

**(4)** An eligible futures broker, or a director, partner, officer or employee of an eligible futures broker, shall not, except:

(a) to the extent necessary to execute the instructions concerned;

(b) as required by this Act or any other law; or

(c) as required by the business rules of a futures organisation of which the broker is a member;

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

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

**(6)** Where:

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

(b) dealings in that class of futures contracts are effected pursuant to those instructions;

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

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

(d) in the sequence in which the broker transmitted those instructions.

**(7)** An eligible futures broker shall maintain, in accordance with the regulations, records that set out the prescribed particulars of:

(a) instructions by a client to deal in futures contracts;

(b) the date and time of receipt, transmission and execution of those instructions;

(c) the person by whom those instructions are received, the person by whom they are transmitted and the person by whom they are executed;

(d) the date and time of receipt, transmission and execution of instructions to deal in futures contracts on the broker’s own account; and

(e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are transmitted and the person by whom they are executed;

and shall retain those records for the prescribed period.

**(8)** Where:

(a) an eligible futures broker transmits for execution on a futures market outside Australia and the external Territories instructions to deal in futures contracts; and

(b) it is not reasonably practicable for the broker to set out in the records maintained by the broker pursuant to subsection (7) the prescribed particulars of the date and time of execution of those instructions;

the broker shall so set out those particulars as precisely as is reasonably practicable.

**Dealings by employees of eligible futures brokers and eligible futures advisers**

**1267. (1)** A person who is an eligible futures broker or an eligible futures adviser and an employee of that person shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

**(2)** An eligible futures broker who is a partner in a partnership that carries on a business of dealing in futures contracts and an employee of the partnership shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

**(3)** An eligible futures adviser who is a partner in a partnership that carries on a futures advice business and an employee of the partnership shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

**(4)** A person who is an eligible futures broker or an eligible futures adviser shall not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:

(a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or

(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.

**(5)** An eligible futures broker who is a partner in a partnership that carries on a business of dealing in futures contracts shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:

(a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or

(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.

**(6)** An eligible futures adviser who is a partner in a partnership that carries on a futures advice business shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:

(a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or

(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.

**(7)** A person who is an employee of a member organisation of a futures exchange in connection with a business of dealing in futures contracts carried on by the member organisation shall not, as principal, deal, or agree to deal, in futures contracts unless the member organisation acts as the agent of the person in respect of the transaction.

**(8)** A reference in subsection (1) or (4) to an employee of a person who is an eligible futures broker or an eligible futures adviser includes, in the case of a body corporate that is an eligible futures broker or an eligible futures adviser, a reference to an officer of the body corporate.

**(9)** The reference in subsection (7) to an employee of a member organisation of a futures exchange includes:

(a) in the case of a member organisation that is a body corporate; and

(b) in the case of a member organisation that is a partnership in which a partner is a body corporate;

a reference to an officer of the body corporate.

**(10)** A reference in this section to an employee of an eligible futures broker, an eligible futures adviser, a partnership or a member organisation of a futures exchange includes a reference to a person who, pursuant to a subsisting agreement, performs services for the eligible futures broker, eligible futures adviser, partnership or member organisation in connection with dealings in futures contracts by the eligible futures broker, eligible futures adviser, partnership or member organisation.

**PART 8.8—MISCELLANEOUS**

**Power of Court to make certain orders**

**1268. (1)** Where:

(a) on the application of the Commission, it appears to the Court that a person has contravened this Act, or any other law in force in a

Territory relating to dealing in futures contracts, or has contravened the conditions of a licence, the business rules of a futures exchange, a clearing house or a futures association or is about to do an act with respect to dealing in futures contracts that, if done, would be such a contravention; or

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

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

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

(d) an order restraining a person from acquiring, disposing of or otherwise dealing in any class of futures contracts that is specified in the order;

(e) an order appointing a receiver of property of a futures broker or of property that is held by a futures broker for or on behalf of another person, whether as trustee or otherwise;

(f) an order declaring a futures contract to be void or voidable;

(g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;

(h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding paragraphs.

**(2)** Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

**(3)** Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (2), to give any undertaking as to damages.

**(4)** The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice a person.

**(5)** The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.

**(6)** A person appointed by order of the Court under subsection (1) as a receiver of property of a futures broker:

(a) may require the broker to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;

(b) may acquire and take possession of any property of which the person has been appointed receiver;

(c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the broker might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the Court specifies in the order.

**(7)** In paragraph (1) (e) and subsection (6), “property”, in relation to a futures broker, includes money or other property entrusted to or received on behalf of any other person by the broker or another person in the course of or in connection with a business of dealing in futures contracts carried on by the futures broker.

**(8)** A person shall not, without reasonable excuse, contravene:

(a) an order under this section that is applicable to the person; or

(b) a requirement of a receiver appointed by order of the Court under subsection (1).

**(9)** The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

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

**1269. (1)** A corporation that is not the holder of a futures brokers licence shall not take or use, or by inference adopt, the name or title of futures broker, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the corporation is a futures broker.

**(2)** A person who is not the holder of a futures brokers licence shall not:

(a) take or use, or by inference adopt; or

(b) have attached to, or exhibited at, any place;

a name, title or description implying, or tending to create the belief, that the person is the holder of a futures brokers licence.

**(3)** A corporation that is not:

(a) a futures exchange; or

(b) a recognised futures exchange;

shall not take or use, or by inference adopt, the name or title of futures exchange, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the corporation is:

(c) a futures exchange; or

(d) a recognised futures exchange.

**(4)** A corporation that is not a futures association shall not take or use, or by inference adopt, the name or title of futures association, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the corporation is a futures association.

**Preservation and disposal of records etc.**

**1270.** **(1)** A person who is required by a provision of this Act to maintain, make or keep a register or any accounting or other record in relation to a business carried on by the person shall preserve that register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.

**(2)** The prescribed period for the purposes of subsection (1) is:

(a) in relation to a register or a record other than an accounting record, the period of 5 years next after the day on which the last entry was made in the register or record; or

(b) in relation to an accounting record, the period of 7 years next after the last day of the accounting period to which the record relates.

**(3)** Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a futures broker who is a member of a futures exchange if the matters required by subsection 1206 (4), (5) or (6), as the case requires, to be included in the contract note are recorded:

(a) by the futures exchange; or

(b) subject to such conditions (if any) as the Commission imposes, by the broker;

in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.

**(4)** The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with the Commission under or for the purposes of this Act and that has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

**Concealing etc. books relating to futures contracts**

**1271.** **(1)** A person who:

(a) in any case—conceals, destroys, mutilates or alters a book relating to the business carried on by an eligible futures broker or required under this Act to be kept by the holder of a licence; or

(b) where such a book is in Australia—sends or takes, or causes the sending or taking of, the book out of Australia;

contravenes this subsection.

**(2)** In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person did not act with intent to defraud, to defeat the purposes of this Act or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under this Act.

**Falsification of records**

**1272.** **(1)** Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Act or a register or any accounting or other record referred to in section 1270 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:

(a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or

(c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter;

contravenes this subsection.

**(2)** In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

**Precautions against falsification of records**

**1273.** A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

**CHAPTER 9—MISCELLANEOUS**

**PART 9.1—REGISTERS AND REGISTRATION OF DOCUMENTS**

**Registers**

**1274.** **(1)** The Commission shall, subject to this Act, keep such registers as it considers necessary in such form as it thinks fit.

**(2)** A person may:

(a) inspect any document lodged with the Commission, not being:

(i) an application under section 1279;

(ii) a document lodged under section 1287 or 1288;

(iii) a document lodged under paragraph 1296 (2) (b);

(iv) a report made or lodged under section 422, 452 or 533; or

(v) a document that has been destroyed or otherwise disposed of;

(b) require a certificate of the registration of a company or any other certificate authorised by this Act to be given by the Commission; or

(c) require a copy of or extract from any document that the person is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given, or given and certified, by the Commission.

**(3)** If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph (2) (a) to require the production of the original of that document or certificate.

**(4)** The reference in paragraph (2) (c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

**(5)** A copy of or extract from any document lodged with the Commission, and certified by the Commission, is, in a proceeding in an Australian court, admissible in evidence as of equal validity with the original document.

**(6)** The reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.

**(7)** In a proceeding in an Australian court:

(a) a certificate by the Commission that, at a date or during a period specified in the certificate, no company was registered under this Act by a name specified in the certificate shall be received as *prima facie* evidence that at that date or during that period, as the case may be, no company was registered by that name under this Act; and

(b) a certificate by the Commission that a requirement of this Act specified in the certificate:

(i) had or had not been complied with at a date or within a period specified in the certificate; or

(ii) had been complied with at a date specified in the certificate but not before that date;

shall be received as *prima facie* evidence of matters specified in the certificate.

**(8)** If the Commission is of opinion that a document submitted for lodgment:

(a) contains matter contrary to an Australian law;

(b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;

(c) because of an omission or misdescription has not been duly completed;

(d) contravenes this Act; or

(e) contains an error, alteration or erasure;

the Commission may refuse to register or receive the document and may request:

(f) that the document be appropriately amended or completed and resubmitted;

(g) that a fresh document be submitted in its place; or

(h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

**(9)** The Commission may require a person who submits a document for lodgment to produce to the Commission such other document, or to furnish to the Commission such information, as the Commission thinks necessary in order to form an opinion whether it may refuse to receive or register the first-mentioned document.

**(10)** The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of:

(a) in relation to a body corporate:

(i) any return of allotment of shares for cash that has been lodged for not less than 2 years;

(ii) any annual return or balance-sheet that has been lodged for not less than 7 years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than 7 years; or

(iii) any other document (other than the constitution or any other document affecting it) that has been lodged or registered for not less than 15 years;

(b) in relation to a body corporate that has been dissolved or has ceased to be registered for not less than 15 years—any document lodged or registered; or

(c) any document a transparency of which has been incorporated with a register kept by the Commission.

**(11)** If a body corporate or other person, having made default in complying with:

(a) any provision of this Act or of any other law that requires the lodging in any manner of any return, account or other document or the giving of notice to the Commission of any matter; or

(b) any request of the Commission to amend or complete and resubmit any document or to submit a fresh document;

fails to make good the default within 14 days after the service on the body or person of a notice requiring it to be done, the Court or any court of summary jurisdiction may, on an application by any member or creditor of the body or by the Commission, make an order directing the body or any officer of the body or the person to make good the default within such time as is specified in the order.

**(12)** Any such order may provide that all costs of and incidental to the application shall be borne by the body or by any officers of the body responsible for the default or by the person.

**(13)** A person shall not contravene an order made under subsection (11).

**(14)** Nothing in this section prejudices the operation of an Australian law imposing penalties on a body corporate or its officers or on another person in respect of a default mentioned in subsection (11).

**Relodging of lost registered documents**

**1275. (1)** Where a document forming part of the constitution of, or any other document relating to, a body corporate has, since being lodged, been lost or destroyed, a person may apply to the Commission for leave to lodge a copy of the document as originally lodged.

**(2)** Where such an application is made, the Commission may direct that notice of the application be given to such persons and in such manner as it thinks fit.

**(3)** Whether or not an application has been made to the Commission under subsection (1), the Commission, upon being satisfied:

(a) that an original document has been lost or destroyed;

(b) of the date of the lodging of that document; and

(c) that a copy of that document produced to the Commission is a correct copy;

may certify upon the copy that it is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.

**(4)** Upon the lodgment the copy has, and shall be deemed to have had from such date as is mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.

**(5)** A decision of the Tribunal varying or setting aside a decision of the Commission to certify and grant leave under subsection (3) may be lodged with the Commission and shall be registered by it, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the Tribunal’s decision and upon the faith of and in reliance upon the certificate shall be invalidated or affected by the Tribunal’s decision.

**(6)** Where a transparency of a document referred to in subsection (1) has been incorporated with a register kept by the Commission and is lost or destroyed as referred to in that subsection, this section applies as if the document of which it is a transparency had been so lost or destroyed.

**PART 9.2—REGISTRATION OF AUDITORS AND LIQUIDATORS**

***Division 1*—*Interpretation***

**Interpretation**

**1276.** In this Part, unless the contrary intention appears: “body corporate” includes a Part 5**.7** body;

“decision”, in relation to the Board, means, in Division 3, a decision of the Board under that Division and includes a refusal to exercise a power under section 1292;

“registered” means registered under Division 2.

**Effect on certain State and Territory laws**

**1277.** This Part is not intended to exclude or limit the operation of a law of a State or Territory that can operate concurrently with it.

***Division 2*—*Registration***

**Auditor or liquidator registered under corresponding law**

**1278.** **(1)** For the purposes of this Act, a person who was, immediately before the commencement of this section, registered as an auditor, as a liquidator, as a liquidator of a specified body corporate, or as an official liquidator, under a law corresponding to this Division shall, subject to this Part, be deemed to be registered under this Division as an auditor, as a liquidator, as a liquidator of that body, or as an official liquidator, as the case may be, for the period of 6 months beginning on the day of that commencement.

**(2)** Where:

(a) a person who is deemed because of subsection (1) to be registered under this Division as an auditor, as a liquidator, or as a liquidator of a specified body corporate, for the period of 6 months commencing on the day of commencement of this Act has applied within that period to be registered under this Division as an auditor, as a liquidator, or as a liquidator of that body, as the case may be; and

(b) at the end of that period, the person has not been notified of the results of the application;

the person shall, subject to this Part, be deemed to be registered as an auditor, as a liquidator, or as a liquidator of that body, as the case may be, for a further period beginning at the end of the first-mentioned period and ending:

(c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused; or

(d) in the case of an application for registration as a liquidator, or as a liquidator of that body, on the day on which the person is notified of the results of the application.

**(3)** Where the registration, as a liquidator, or as a liquidator of a specified body corporate, of a person to whom subsection (2) applies comes into force under this Division, the person shall be deemed to have been registered as a liquidator, or as a liquidator of that body, as the case may be, under this Division for the period beginning at the end of the day referred to in paragraph (2) (d) and ending at the end of the day before the day on which that registration comes into force.

**(4)** Where, at the time immediately before the commencement of this section, a person’s registration, under a law corresponding to this Division, as an auditor, as a liquidator, or as a liquidator of a specified body corporate, was suspended, subsections (1), (2) and (3) apply as if the registration had not been suspended at that time.

**Application for registration as auditor or liquidator**

**1279.** **(1)** A natural person may make an application to the Commission:

(a) for registration as an auditor;

(b) for registration as a liquidator; or

(c) for registration as a liquidator of a specified body corporate, being a body corporate that is to be wound up under this Act.

**(2)** An application under this section shall be made in writing as prescribed and shall contain such information as is prescribed.

**Registration of auditors**

**1280.** **(1)** Subject to this section, where an application for registration as an auditor is made under section 1279 and before the end of 6 months after the day of commencement of this section by a person who was, immediately before that date, registered as a company auditor under a law corresponding to this Division or under a prescribed Australian law:

(a) the Commission shall grant the application and register the applicant as an auditor unless the Commission is satisfied that the person is not a fit and proper person to be registered as an auditor; and

(b) if the Commission is satisfied that the person is not a fit and proper person to be registered as an auditor, the Commission shall refuse the application.

**(2)** Subject to this section, where an application for registration as an auditor (not being an application to which subsection (1) applies) is made under section 1279, the Commission shall grant the application and register the applicant as an auditor if:

(a) the applicant:

(i) is a member of the The Institute of Chartered Accountants in Australia, the Australian Society of Accountants or any other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy (including auditing) of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or

(iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);

(b) the Commission is satisfied that the applicant has had such practical experience in auditing as is prescribed; and

(c) the Commission is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor;

but otherwise the Commission shall refuse the application.

**(3)** The Commission shall not register as an auditor a person who is subject to a section 229 prohibition, a section 230 order, a section 599 order or a section 600 notice.

**(4)** Subject to subsection (8), the Commission may refuse to register as an auditor a person who is not resident in Australia.

**(5)** Where the Commission grants an application by a person for registration as an auditor, the Commission shall cause to be issued to the person a certificate by the Commission stating that the person has been registered as an auditor and specifying the day on which the application was granted.

**(6)** Where:

(a) in a certificate issued to a person under subsection (5) (including a certificate issued under this subsection) a day is specified for the purposes of subsection 1288 (2); and

(b) the person requests the Commission to alter the day so specified and surrenders the certificate to the Commission;

the Commission may cancel the certificate and issue to the person under subsection (5), in place of the cancelled certificate, a new certificate that specifies a different day for the purposes of subsection 1288 (2).

**(7)** A registration under this section shall be deemed to have taken effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:

(a) the registration is cancelled by the Commission or the Board; or

(b) the person who is registered dies.

**(8)** The Commission shall not refuse to register a person as an auditor unless the Commission has given the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.

**(9)** Where the Commission refuses an application by a person for registration as an auditor, the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it.

**Auditor-General deemed to be registered as auditor**

**1281.** A person who holds office as, or is for the time being exercising the powers and performing the duties of:

(a) the Auditor-General; or

(b) the Auditor-General of a State or Territory;

shall be deemed, despite any other provision of this Part, to be registered as an auditor.

**Registration of liquidators**

**1282.** **(1)** Subject to this section, where an application for registration as a liquidator, or as a liquidator of a specified body corporate, is made under section 1279 and before the end of 6 months after the day of commencement of this section by a person who was, immediately before that day, registered as a liquidator, or as a liquidator of that body, as the case may be, under a law corresponding to this Division or under a prescribed Australian law:

(a) the Commission shall grant the application and register the applicant as a liquidator, or as a liquidator of that body, as the case may be, unless the Commission is satisfied that the person is not a fit and proper person to be registered as a liquidator, or as a liquidator of that body, as the case may be; or

(b) if the Commission is satisfied that the person is not a fit and proper person to be registered as a liquidator, or as a liquidator of that body, as the case may be—the Commission shall refuse the application.

**(2)** Subject to this section, where an application for registration as a liquidator (not being an application to which subsection (1) applies) is made under section 1279, the Commission shall grant the application if:

(a) the applicant:

(i) is a member of The Institute of Chartered Accountants in Australia, the Australian Society of Accountants or any other prescribed body;

(ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever

name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or

(iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);

(b) the Commission is satisfied as to the experience of the applicant in connection with the winding up of bodies corporate; and

(c) the Commission is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator;

but otherwise the Commission shall refuse the application.

**(3)** Where an application for registration as a liquidator of a specified body corporate is made under section 1279, the Commission shall grant the application and register the applicant as a liquidator of that body if the Commission is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the body, having regard to the nature of the property or business of the body and the interests of its creditors and contributories, but otherwise the Commission shall refuse the application.

**(4)** The Commission shall not register as a liquidator, or as a liquidator of a specified body corporate, a person who is subject to a section 229 prohibition, a section 230 order, a section 599 order or a section 600 notice.

**(5)** Subject to subsection (10), the Commission may refuse to register as a liquidator or as a liquidator of a specified body corporate a person who is not resident in Australia.

**(6)** Where:

(a) the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate; and

(b) the person has complied with the requirements of section 1284;

the Commission shall cause to be issued to the person a certificate by the Commission:

(c) stating that the person has been registered as a liquidator or as a liquidator of a specified body corporate;

(d) specifying a day as the day of the beginning of the registration, being:

(i) the day on which the Commission granted the application; or

(ii) the day on which the person complied with the requirements of section 1284;

whichever was the later; and

(e) in the case of a person who is registered under subsection (3) as a liquidator of a specified body corporate—setting out the name of that body.

**(7)** Where:

(a) in a certificate issued to a person under subsection (6) (including a certificate issued under this subsection) a day is specified for the purposes of subsection 1288 (2); and

(b) the person requests the Commission to alter the day so specified and surrenders the certificate to the Commission;

the Commission may cancel the certificate and issue to the person under subsection (6), in place of the cancelled certificate, a new certificate that specifies a different day for the purposes of subsection 1288 (2).

**(8)** The registration of a person as a liquidator under subsection (1) or (2) comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until:

(a) the registration is cancelled by the Commission or by the Board; or

(b) the person dies.

**(9)** The registration of a person as a liquidator of a specified body corporate under subsection (3) comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until:

(a) the registration is cancelled by the Commission or by the Board;

(b) the person dies; or

(c) the dissolution of the body corporate takes effect.

**(10)** The Commission shall not refuse to register a person as a liquidator, or as a liquidator of a specified body corporate, unless the Commission has given the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.

**(11)** Where the Commission refuses an application by a person for registration as a liquidator, or as a liquidator of a specified body corporate, the Commission shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision and the reasons for it.

**Registration of official liquidators**

**1283. (1)** The Commission may register as an official liquidator a natural person who is a registered liquidator.

**(2)** A person who is registered as an official liquidator is entitled, upon request, to be issued with a certificate of his or her registration.

**(3)** The Commission may register under subsection (1) as official liquidators as many registered liquidators as it thinks fit.

**Security to be given by liquidators**

**1284.** **(1)** Where the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate, the person shall lodge and maintain with the Commission a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by the Commission in relation to that liquidator and with such surety or sureties (if any) as the Commission, from time to time, requires.

**(2)** Where a security is lodged in accordance with subsection (1), the security may be applied by the Commission in such circumstances, for such purposes and in such manner as is prescribed.

**(3)** The regulations may make provision in relation to:

(a) the discharge in whole or part by the Commission of securities lodged under this section; and

(b) the release by the Commission of sureties referred to in subsection (1) from all or any of their obligations as such sureties.

**Register of Auditors**

**1285.** **(1)** The Commission shall cause a Register of Auditors to be kept for the purposes of this Act and shall cause to be entered in the Register in relation to a person who is registered as an auditor:

(a) the name of the person;

(b) the day on which the application by that person for registration as an auditor was granted;

(c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he or she so practises;

(d) if the person practises as an auditor as a member of a firm or under a name or style other than his or her own name—the name of that firm or the name or style under which he or she so practises; and

(e) particulars of any suspension of the person’s registration, under Division 2 or a corresponding law, as an auditor and of any action taken in respect of the person under, or under a law corresponding to, paragraph 1292 (9) (a), (b) or (c);

and may cause to be entered in the Register in relation to a person who is registered as an auditor such other particulars as the Commission considers appropriate.

**(2)** Where a person ceases to be registered as an auditor, the Commission shall cause to be removed from the Register of Auditors the name of the person and any other particulars entered in the Register in relation to that person.

**(3)** A person may inspect and make copies of, or take extracts from, the Register of Auditors.

**Registers of Liquidators and Official Liquidators**

**1286. (1)** The Commission shall cause a Register of Liquidators to be kept for the purposes of this Act and shall cause to be entered in the Register:

(a) in relation to a person who is registered as a liquidator:

(i) the name of the person;

(ii) the day of the beginning of the registration of that person as a liquidator;

(iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he or she so practises;

(iv) if the person practises as a liquidator as a member of a firm or under a name or style other than his or her own name— the name of that firm or the name or style under which he or she so practises; and

(v) particulars of any suspension of the registration of the person as a liquidator, of any suspension of a registration of the person, under a law corresponding to Division 2, as a liquidator or as a liquidator of a specified body corporate, and of any action taken in respect of the person under paragraph 1292 (9) (a), (b) or (c) or under a corresponding law; and

(b) in relation to a person who is registered as a liquidator of a specified body corporate:

(i) the name of the person;

(ii) the name of the body corporate;

(iii) the day of commencement of the registration of the person as a liquidator of the body corporate;

(iv) the address of the principal place where the person proposes to perform his or her functions as the liquidator of the body corporate;

(v) if the person practises a profession as a member of a firm or under a name or style other than his or her own name, being a profession by virtue of which he or she is qualified to be appointed as a liquidator of the body corporate—the name and address of that firm or the name or style under which he or she so practises; and

(vi) particulars of any suspension or deemed suspension of the registration of the person as a liquidator of that body corporate, of any suspension of a registration of the person, under a law corresponding to Division 2, as a liquidator or as a liquidator of a specified body corporate, and of any action taken in respect of the person under paragraph 1292 (9) (a), (b) or (c) or under a corresponding law;

and may cause to be entered in the Register in relation to a person who is registered as a liquidator, or as a liquidator of a specified body corporate, such other particulars as the Commission considers appropriate.

**(2)** The Commission shall cause a Register of Official Liquidators to be kept for the purposes of this Act and shall cause to be entered in the Register the name, and such other particulars as the Commission considers appropriate, of any person registered as an official liquidator.

**(3)** Where a person ceases to be registered as a liquidator, as a liquidator of a specified body corporate or as an official liquidator, the Commission shall cause to be removed from the Register of Liquidators or from the Register of Official Liquidators, as the case may be, the name of the person and any other particulars entered in that Register in relation to that person.

**(4)** A person may inspect and make copies of, or take extracts from, the Register of Liquidators or the Register of Official Liquidators.

**Notification of certain matters**

**1287. (1)** Where:

(a) a person who is a registered company auditor ceases to practise as an auditor; or

(b) a change occurs in any matter particulars of which are required by paragraph 1285 (1) (a), (c) or (d) to be entered in the Register of Auditors in relation to a person who is a registered company auditor;

the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.

**(2)** Where:

(a) a person who is a registered liquidator ceases to practise as a liquidator; or

(b) a change occurs in any matter particulars of which are required by subparagraph 1286 (1) (a) (i), (iii) or (iv) to be entered in the Register of Liquidators in relation to a person who is a registered liquidator;

the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.

**(3)** Where:

(a) a person who is registered as a liquidator of a specified body corporate ceases to act as a liquidator in the winding up of that body; or

(b) a change occurs in any matter particulars of which are required by subparagraph 1286 (1) (b) (i), (ii), (iv) or (v) to be entered in the Register of Liquidators in relation to a person who is registered as a liquidator of a specified body corporate;

the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.

**(4)** A person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporate body shall, not later than 3 days after he or she becomes subject to a section 229 prohibition, a section 230 order, a section 599 order or a section 600 notice, lodge, in the prescribed form, particulars in writing of the circumstances because of which he or she became subject to the section 229 prohibition, or of the section 230 order, section 599 order or section 600 notice, as the case may be.

**Triennial statements by registered auditors and liquidators**

**1288. (1)** Where a person applies to the Commission for registration as an auditor or as a liquidator and the person’s application is granted under section 1280 or subsection 1282 (1) or (2) within 1 year after the commencement of this Act, the Commission may, in the certificate issued under subsection 1280 (5) or 1282 (6) (in this section called the “relevant certificate”), specify a day for the purposes of subsection (2) of this section, being a day that is not more than 3 years after the day (in this section called the “commencement day”) that is, in the relevant certificate, specified under subsection 1280 (5) or 1282 (6), as the case may be.

**(2)** Where, in a certificate issued to a registered company auditor or a registered liquidator under subsection 1280 (5) or 1282 (6), as the case may be, a day is specified for the purposes of this subsection, the registered company auditor or registered liquidator shall lodge, within one month after that day, a statement setting out, in respect of the period beginning on the commencement day and ending on the first-mentioned date, such information as is prescribed.

**(3)** A person who is a registered company auditor or a registered liquidator shall, within one month after the end of the period of 3 years beginning:

(a) in the case of a person to whom subsection (2) applies—on the day specified in the relevant certificate for the purposes of subsection (2); or

(b) in the case of a person to whom subsection (2) does not apply—on the commencement day;

and of each subsequent period of 3 years, lodge a statement in respect of that period of 3 years setting out such information as is prescribed.

**(4)** The Commission may, on the application of a registered company auditor or a registered liquidator made before the end of the period for lodging a statement under subsection (2) or (3), extend, or further extend, that period.

**(5)** The Commission may, by notice in writing served on the person, require a person who is registered as a liquidator of a specified body corporate to lodge, within a period specified in the notice, a statement in respect of a period specified in the notice setting out such information as is prescribed.

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

**1289.** **(1)** An auditor has qualified privilege in respect of:

(a) any statement that he or she makes, orally or in writing, in the course of his or her duties as auditor;

(b) any statement that he or she makes, orally or in writing, on a report of the directors under section 304 or on any statement, report or other document that is deemed, for any purpose, to be part of the first-mentioned report; or

(c) the giving of any notice, or the sending of any copy of accounts, group accounts or a report, to the Commission under subsection 332 (9) or (10).

**(2)** A person has qualified privilege in respect of:

(a) the publishing of any document prepared by an auditor in the course of his or her duties and required by or under this Act to be lodged, whether or not the document has been lodged; or

(b) the publishing of any statement made by an auditor as mentioned in subsection (1).

***Division 3***—***Cancellation or Suspension of Registration***

**Cancellation at request of registered person**

**1290.** **(1)** Where a person who is registered as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator requests the Commission to cancel his or her registration, the Commission may cancel the registration of that person as an auditor, as a liquidator, as a liquidator of that body corporate or as an official liquidator, as the case may be.

**(2)** A decision of the Commission under subsection (1) to cancel the registration of a person as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator comes into effect as soon as practicable upon the making of the decision.

**Official liquidators**

**1291.** **(1)** The Commission may, at any time, cancel, or suspend for a specified period, the registration as an official liquidator of a person who is so registered.

**(2)** The Commission may, at any time, require a person registered as an official liquidator to give an undertaking to refrain from engaging in specified conduct except on specified conditions.

**(3)** Where the Commission decides to exercise a power under subsection (1) or (2), the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons

for it, but the validity of the decision is not affected by failure of the Commission to do so.

**(4)** A decision of the Commission under subsection (1) to cancel or suspend the registration of a person as an official liquidator comes into effect at the end of the day on which there is given to the person a notice of the decision, being a notice of the kind referred to in subsection (3).

**Powers of Board in relation to auditors and liquidators**

**1292. (1)** The Board may, if it is satisfied on an application by the Commission for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:

(a) the person has:

(i) contravened section 1288 or a corresponding law; or

(ii) ceased to be resident in Australia;

(b) a registration of the person under a law corresponding to Division 2 has been cancelled or suspended;

(c) the person has been dealt with under a law corresponding to subsection (9) of this section; or

(d) that the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:

(i) the duties of an auditor; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;

or is otherwise not a fit and proper person to remain registered as an auditor;

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

**(2)** The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:

(a) the person has:

(i) contravened section 1288 or a corresponding law; or

(ii) ceased to be resident in Australia;

(b) a registration of the person under a law corresponding to Division 2 has been cancelled or suspended;

(c) the person has been dealt with under a law corresponding to subsection (9) of this section; or

(d) that the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:

(i) the duties of a liquidator; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator;

or is otherwise not a fit and proper person to remain registered as a liquidator;

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

**(3)** The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator of a specified body corporate to be dealt with under this section that, before, at or after the commencement of this section:

(a) the person has:

(i) contravened subsection 1288 (5) or a corresponding law; or

(ii) ceased to be resident in Australia;

(b) a registration of the person under a law corresponding to Division 2 has been cancelled or suspended;

(c) the person has been dealt with under a law corresponding to subsection (9) of this section; or

(d) that the person has failed, whether within or outside Australia, to carry out adequately and properly the duties of a liquidator in respect of the winding up of that body corporate or is otherwise not a fit and proper person to remain registered as a liquidator of that body corporate;

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

**(4)** Where:

(a) the Commission applies to the Board for a person who is registered as an auditor to be dealt with under this section; and

(b) the person is also registered as a liquidator or as a liquidator of a specified body corporate;

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

**(5)** Where:

(a) the Commission applies to the Board for a person who is registered as a liquidator to be dealt with under this section; and

(b) the person is also registered as an auditor or as a liquidator of a specified body corporate;

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

**(6)** Where:

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

(b) the person is also registered as an auditor or as a liquidator;

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

**(7)** The Board shall, if it is satisfied on an application by the Commission for a prescribed person to be dealt with under this section:

(a) that the person is subject to a section 229 prohibition, a section 300 order, a section 599 order or a section 600 notice; or

(b) that the person is incapable, because of mental infirmity, of managing his or her affairs;

by order, cancel each prescribed registration of the person.

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

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

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

**(9)** Where, on an application by the Commission for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform adequately and properly any of the duties or functions mentioned in paragraph (1) (d), (2) (d) or (3) (d), as the case may be, or is otherwise not a fit and proper person to remain registered as an auditor, liquidator or liquidator of that body, as the case may be, the Board may deal with the person in one or more of the following ways:

(a) by admonishing or reprimanding the person;

(b) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;

(c) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (b) or (c), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor,

as a liquidator or as a liquidator of a specified body corporate, as the case may be.

**(10)** Where, on an application by the Commission for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the Board is empowered to deal with the person as mentioned in subsection (9), the Board may so deal with the person:

(a) if the Board is required to make an order under subsection (6) on the application—in addition to making such an order; or

(b) otherwise—in addition to, or instead of, cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of that body, as the case may be.

**(11)** The Board may exercise any of its powers under this Division in relation to a person as a result of conduct engaged in by the person whether or not that conduct constituted or might have constituted an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.

**(12)** This section has effect subject to section 1294.

**Effect in certain cases of cancellation or suspension of registration under corresponding law**

**1293. (1)** This section applies where a registration (in this section called the “corresponding registration”) of a person under a law corresponding to Division 2:

(a) is cancelled after the commencement of this section; or

(b) was suspended before, or is suspended at or after, that commencement;

on an application made before that commencement.

**(2)** If the corresponding registration is as an auditor:

(a) the person’s registration (if any) under Division 2 as an auditor shall be deemed to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be; and

(b) subsection 1280 (1) does not apply in relation to the person, or does not so apply while the corresponding registration is suspended, as the case may be.

**(3)** If the corresponding registration is as a liquidator, or as a liquidator of a specified body corporate:

(a) the person’s registration (if any) under Division 2 as a liquidator; and

(b) each registration (if any) of the person under Division 2 as a liquidator of a specified body corporate;

shall be deemed to be cancelled, or to besuspended while the corresponding registration is suspended, as the case may be, and subsection 1282 (1) does

not apply in relation to the person, or does not so apply while the corresponding registration is suspended, as the case may be.

**(4)** If the corresponding registration is as an official liquidator, the person’s registration (if any) under Division 2 as an official liquidator shall be deemed to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be.

**Board to give opportunity for hearing etc.**

**1294.** **(1)** The Board shall not:

(a) cancel of suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate; or

(b) deal with a person in any of the ways mentioned in subsection 1292 (9);

unless the Board has given the person an opportunity to appear at a hearing held by the Board and to make submissions to, and adduce evidence before, the Board in relation to the matter.

**(2)** Where subsection (1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Board shall give the Commission an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

**Board may remove suspension**

**1295.** **(1)** Where a registration of a person is suspended, the Board may, on an application by the person or of its own motion, by order, terminate the suspension.

**(2)** An order under subsection (1) has effect accordingly.

**Notice of Board’s decision**

**1296.** **(1)** Where the Board decides to exercise any of its powers under section 1292 in relation to a person, or decides that it is required to make an order under subsection 1292 (7) in relation to a person, the Board shall, within 14 days after the decision:

(a) give to the person a notice in writing setting out the decision and the reasons for it;

(b) lodge a copy of the notice referred to in paragraph (a); and

(c) cause to be published in the *Gazette* a notice in writing setting out the decision.

**(2)** Where the Board decides to refuse to exercise its powers under section 1292 in relation to a person, or decides that it is not required to make an order under subsection 1292 (7) in relation to a person, the Board shall, within 14 days after the decision:

(a) give to the person a notice in writing setting out the decision and the reasons for it; and

(b) lodge a copy of the notice referred to in paragraph (a).

**(3)** The validity of a decision of the Board is not affected by failure of the Board to comply with subsection (1) or (2), as the case requires, in relation to the decision.

**Time when Board’s decision comes into effect**

**1297.** **(1)** Subject to subsection (2) and to sections 41 and 44**a** of the *Administrative Appeals Tribunal Act 1975*,an order made by the Board cancelling or suspending the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate comes into effect at the end of the day on which there is given to the person a notice of the decision pursuant to which the order is made, being a notice of the kind referred to in paragraph 1296 (1) (a).

**(2)** Where the Board makes an order of a kind referred to in subsection (1), it may, in order to enable an application to be made to the Tribunal for review of the decision to make the order, determine that the order is not to come into effect until a specified time or until the happening of a specified event.

**(3)** The Board may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.

**(4)** A determination in force under subsection (2) has effect accordingly.

**Effect of suspension**

**1298.** A person whose registration as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator is suspended shall, except for the purposes of subsections 1285 (2) and 1286 (3), section 1287 (other than paragraphs 1287 (1) (a), (2) (a) and (3) (a)), section 1288 and this Division, be deemed not to be registered as an auditor, liquidator, liquidator of that body corporate or official liquidator, as the case may be, so long as the registration is suspended.

[*The next section is 1300*]

**PART 9.3—BOOKS**

**Inspection of books**

**1300. (1)** A book that is by this Act required to be available for inspection shall, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept and at all times when the registered office in Australia of the body corporate concerned is required to be open.

**(2)** If any register kept by a company or a foreign company for the purposes of this Act is kept at a place other than the registered office of the company or foreign company, that place shall be open to permit the register to be inspected during the same hours as those during which the registered office of the company or foreign company is required to be open.

**(3)** A person permitted by this Act to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.

**Location of books kept on computers etc.**

**1301.** **(1)** This section has effect where a corporation records otherwise than in written form the matters required to be contained in a book and means are provided by which those matters are made available for inspection in written form at a place (in this section referred to as the “place of inspection”) other than the place (in this section referred to as the “place of storage”) where the material constituting the record is kept.

**(2)** If the place of inspection in respect of a book is at a place where, apart from this section, the book would be required to be kept, the corporation shall be deemed to have complied with the requirements of this Act as to the location of the book.

**(3)** Subsection (2) applies only if the corporation:

(a) has lodged a notice stating that it desires to avail itself of this section in respect of a specified book and specifying the situation of the place of inspection and the place of storage in respect of that book; and

(b) where such a situation is changed, has within 14 days after the change lodged notice of the change.

**Location of registers**

**1302.** **(1)** A register that is required by section 209, 215, 235, 242, 271, 715, 724 or 1047 to be kept by a company shall be kept at the registered office or at an office at the principal place of business in Australia of the company but:

(a) if the work of making up the register is done at another office of the company within Australia, it may be kept at that other office;

(b) if the company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is within Australia, it may be kept at that office; or

(c) if the Commission approves, it may be kept at another office in Australia, being an office of the company or of another person.

**(2)** A branch register that is, pursuant to section 214 or 1048, kept in a particular State or Territory by a company shall be kept at the principal office, or at an office at the principal place of business, in that State or Territory of the company but:

(a) if the work of making up the branch register is done at another office of the company within that State or Territory, it may be kept at that other office;

(b) if the company arranges with some other person to make up the branch register on its behalf and the office of that other person at which the work is done is within that State or Territory, it may be kept at that office; or

(c) if the Commission approves, it may be kept at another office in Australia, being an office of the company or of another person.

**(3)** If default is made in complying with subsection (1) or (2) in its application to any register or branch register of a company, the company, any officer of the company who is in default, and any person who has arranged with the company to make up the register or branch register on its behalf and is in default, are each guilty of an offence.

**(4)** A company shall, within 7 days after any register or branch register of the company to which subsection (1) or (2) applies is first kept at an office other than the registered office or the principal office, as the case may be, lodge notice of the address of the office where the register or branch register is kept and shall, within 7 days after any change in the place at which the register or branch register is kept, lodge notice of the change.

**(5)** If default is made in complying with subsection (4) in its application to any register or branch register of a company, the company and any officer of the company who is in default are each guilty of an offence.

**(6)** For the purposes of this section, a reference in subsection (1) to a register required to be kept by a company under section 209 includes, if an index is required to be kept under subsection (5) of that section, a reference to the register and index.

**(7)** In this section, unless the contrary intention appears, “company” includes a registered body.

**Court may compel compliance**

**1303.** If any person in contravention of this Act refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

**Translations of instruments**

**1304.** **(1)** Where under this Act a person is required to lodge an instrument or a certified copy of an instrument and the instrument is not written in English, the person shall lodge at the same time a certified translation of the instrument into English.

**(2)** Where under this Act a body corporate is required to make an instrument available for inspection and the instrument is not written in English, the body corporate shall keep at its registered office or, if it does not have a registered office, at its principal office in Australia, a certified translation of the instrument into English.

**(3)** In this section, “instrument” includes any certificate, contract or other document.

**Admissibility of books in evidence**

**1305.** **(1)** A book:

(a) kept by a body corporate under a requirement of this Act; or

(b) kept by a corporation under a requirement of a law corresponding to a provision of this Act;

is admissible in evidence in any proceeding and is *prima facie* evidence of any matter stated or recorded in the book.

**(2)** A document purporting to be a book kept by a body corporate shall, unless the contrary is proved, be deemed to be a book kept as mentioned in subsection (1).

**Form and evidentiary value of books**

**1306.** **(1)** A book that is required by this Act to be kept or prepared may be kept or prepared:

(a) by making entries in a bound or looseleaf book;

(b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or

(c) in any other manner approved by the Commission.

**(2)** Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:

(a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or

(b) a reproduction of those matters is kept in a written form approved by the Commission.

**(3)** A corporation shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the corporation.

**(4)** Where a corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or a part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

**(5)** Where:

(a) by virtue of this Act a book that is required by this Act to be kept or prepared is *prima facie* evidence of any matters; and

(b) the book is kept or prepared by recording or storing the matters concerned by means of a mechanical, electronic or other device;

any writing that reproduces matters so recorded or stored is *prima facie* evidence of those matters.

**(6)** A writing that purports to reproduce matters recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of those matters.

**Falsification of books**

**1307. (1)** An officer, former officer, member or former member of a company who conceals, destroys, mutilates or falsifies any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.

**(2)** Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:

(a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;

(b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or

(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:

(i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

(ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;

contravenes this subsection.

**(3)** It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

**(4)** In this section, “officer”, in relation to a company, includes a receiver of property of the company who is not also a manager.

**PART 9.4—OFFENCES**

***Division 1*—*Specific offences***

**False or misleading statements**

**1308. (1)** A corporation that advertises, issues or publishes any statement of the amount of its capital that is misleading or in which the amount of nominal or authorised capital is stated without the words “nominal” or

“authorised”, or in which the amount of capital or authorised or subscribed capital is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated, and any officer of the corporation who knowingly authorises, directs or consents to the advertising, issue or publication, are each guilty of an offence.

**(2)** A person who, in a document required by or for the purposes of this Act or lodged with or submitted to the Commission, makes or authorises the making of a statement that to the person’s knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person’s knowledge misleading in a material respect, is guilty of an offence.

**(3)** A person who makes or authorises the making of a statement that is based on information that to the person’s knowledge:

(a) is false or misleading in a material particular; or

(b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

shall, for the purposes of subsection (2), be deemed to have made or authorised the making of a statement that to the person’s knowledge was false or misleading in a material particular.

**(4)** A person who, in a document required by or for the purposes of this Act or lodged:

(a) makes or authorises the making of a statement that is false or misleading in a material particular; or

(b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;

without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.

**(5)** A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based:

(a) was not false or misleading in a material particular; and

(b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect;

shall, for the purposes of subsection (4), be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.

**(6)** For the purposes of subsections (2) and (4), where:

(a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Act or required to be lodged; and

(b) the document contains a statement that, to the person’s knowledge, is false or misleading in a material particular, or omits any matter

or thing without which the document is, to the person’s knowledge, misleading in a material respect;

the person shall be deemed to have authorised the making of the statement or the omission of the matter or thing.

**(7)** For the purposes of this section, a statement, report or other document that:

(a) relates to affairs of a company or of a subsidiary of a company;

(b) is not itself required by this Act to be laid before the company in general meeting; and

(c) is attached to or included with a report of the directors sent under section 315 to members of the company or laid before the company at an annual general meeting of the company;

shall be deemed to be part of the report referred to in paragraph (c).

**(8)** A person shall not, in connection with an application for a securities licence or futures licence:

(a) make a statement that is false or misleading in a material particular knowing it to be false or misleading; or

(b) omit to state any matter or thing knowing that because of that omission the application is misleading in a material respect.

**False information etc.**

**1309. (1)** An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary—an auditor of the holding company; or

(c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer:

(d) is false or misleading in a material particular; or

(e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

is guilty of an offence.

**(2)** An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary—an auditor of the holding company; or

(c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;

being information, whether in documentary or any other form, relating to the affairs of the corporation that:

(d) is false or misleading in a material particular; or

(e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

without having taken reasonable steps to ensure that the information:

(f) was not false or misleading in a material particular; and

(g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;

is guilty of an offence.

**(3)** The references in subsections (1) and (2) to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of a corporation include references to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the corporation.

**(4)** Where information is made available or furnished to a person referred to in paragraph (1) (a), (b) or (c) or (2) (a), (b) or (c) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.

**(5)** A person shall not, for the purposes of this Act, lodge with a futures exchange, a clearing house for a futures exchange, or a futures association, a document that contains a statement that, to the person’s knowledge, is false or misleading.

**Obstructing or hindering Commission etc.**

**1310.** A person shall not, without lawful excuse, obstruct or hinder the Commission, or any other person, in the performance or exercise of a function or power under this Act.

***Division 2*—*Offences generally***

**General penalty provisions**

**1311.** **(1)** A person who:

(a) does an act or thing that the person is forbidden to do by or under a provision of this Act;

(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or

(c) otherwise contravenes a provision of this Act;

is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person:

(d) is guilty of an offence; or

(e) is not guilty of an offence.

**(2)** Subject to section 1312, a person who is guilty of an offence against this Act, whether by virtue of subsection (1) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.

**(3)** Where:

(a) subsection (1) operates in relation to a provision of this Act so as to make a person guilty of an offence; or

(b) a provision of this Act (other than this section) provides that a person is, in circumstances referred to in the provision, guilty of an offence;

and a penalty, pecuniary or otherwise, is set out in Schedule 3 immediately under a heading referring to that provision, or to a provision or provisions in which that provision is included, the penalty applicable to the offence is the penalty so set out.

**(4)** Where a provision of this Act (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Act is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.

**(5)** Except as provided in subsection (3) or (4) or in a provision of this Act (other than this section), the penalty applicable to the offence is a fine of $500.

**Penalties for bodies corporate**

**1312.** Where a body corporate is convicted of an offence against this Act, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

**Penalty notices**

**1313.** **(1)** Where the Commission has reason to believe that a person has, committed a prescribed offence, the Commission may, subject to subsection (2), give the person a notice in the prescribed form:

(a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;

(b) setting out the prescribed penalty in respect of the prescribed offence; and

(c) stating:

(i) in the case of a prescribed offence constituted by a failure to do a particular act or thing:

(a) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty;

(b) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and

(c) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or

(ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:

(a) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and

(b) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

**(2)** Subsection (1) does not empower the Commission:

(a) to give a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or

(b) to give a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 1316.

**(3)** A notice under subsection (1) may be given to a natural person either personally or by post.

**(4)** Where a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;

(b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 1314 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the

person had been convicted of an offence constituted by a failure to do that act or thing;

(c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but had done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or

(d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.

**(5)** Where a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:

(a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or

(b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.

**(6)** The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

**(7)** Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Act, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

**(8)** In this section, “authority” includes a person.

**Continuing offences**

**1314. (1)** Where:

(a) by or under a provision, an act is required to be done within a particular period or before a particular time;

(b) failure to do the act within that period or before that time constitutes an offence; and

(c) the act is not done within that period or before that time; then:

(d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is convicted

of a primary substantive offence in relation to failure to do the act, until the act is done; and

(e) subsections (3) and (4) apply.

**(2)** Where:

(a) by or under a provision, an act is required to be done but neither a period within which, nor a time before which, the act is to be done is specified;

(b) failure to do the act constitutes an offence; and

(c) a person is convicted of a primary substantive offence in relation to failure to do the act;

then:

(d) the obligation to do the act continues, despite the conviction, until the act is done; and

(e) subsections (3) and (4) apply.

**(3)** Where:

(a) at a particular time, a person is first convicted of a substantive offence, or is convicted of a second or subsequent substantive offence, in relation to failure to do the act; and

(b) the failure to do the act continues after that time; then:

(c) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continues or elapses after that time and before the relevant day in relation to the further offence; and

(d) for the purposes of this Act and of the *Crimes Act 1914,* the further offence shall be deemed to be constituted by failure to do the act during so much of that period as so elapses.

**(4)** Where:

(a) the provision referred to in paragraph (1) (a) or (2) (a), as the case may be, provides that:

(i) an officer of a body corporate; or

(ii) a person;

who is in default, or is involved in a contravention constituted by the failure to do the act, is guilty of an offence or contravenes a provision of this Act; and

(b) throughout a particular period (in this subsection called the “relevant period”):

(i) the failure to do the act continues;

(ii) a person (in this subsection called the “derivative offender”) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and

(iii) in a case where subparagraph (a) (i) applies—the derivative offender is an officer of the body;

then:

(c) in a case where either or both of the following events occurs or occur:

(i) a person is convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;

(ii) the derivative offender is convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;

the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph called the “relevant offence”) in respect of so much (if any) of the relevant period as elapses:

(iii) after the conviction referred to in subparagraph (i) or (ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and

(iv) before the relevant day in relation to the relevant offence; and

(d) in a case where, at a particular time during the relevant period, the derivative offender is first convicted of a secondary derivative offence, or is convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapses after that time and before the relevant day in relation to the further offence.

**(5)** Where a person is guilty, by virtue of subsection (3) or (4), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying $50 by the number of days in that period, or in that part of that period, as the case may be.

**(6)** In this section:

“act” includes thing;

“primary derivative offence”, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is guilty by virtue of being an officer of a corporation, or a person, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act;

“primary substantive offence”, in relation to a failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time;

“provision” means a section, or a subsection or a section, of this Act;

“relevant day”, in relation to an offence of which a person is guilty by virtue of this section, means:

(a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or

(b) in any other case—the day on which the information relating to the offence is laid;

“required” includes directed;

“secondary derivative offence”, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4) (c) or (d);

“substantive offence”, in relation to failure to do an act, means:

(a) a primary substantive offence in relation to failure to do the act; or

(b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of subsection (3).

**(7)** For the purposes of subsection (4), a provision of this Act shall, whether or not it expressly provides as mentioned in paragraph (4) (a), be taken to provide that a person who is involved in a contravention constituted by a failure to do an act required by the provision contravenes that provision.

**Proceedings: how taken**

**1315.** **(1)** Subject to this Act, in any proceedings for an offence against this Act, any information, charge, complaint or application may be laid or made by:

(a) the Commission;

(b) a Commission delegate; or

(c) another person authorised in writing by the Minister to institute the proceedings.

**(2)** A delegation for the purposes of paragraph (1) (b), or an authorisation for the purposes of paragraph (1) (c), may relate to all offences, or to specified offences, against this Act.

**(3)** Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983.*

**Time for instituting criminal proceedings**

**1316.** Despite anything in any other law, proceedings for an offence against this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister’s consent, at any later time.

**Certain persons to assist in prosecutions**

**1317. (1)** Where a prosecution in respect of an offence against this Act has been instituted, or the Commission is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted, against a person (in this section referred to as the “defendant”), the Commission may:

(a) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or

(b) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;

to assist in the prosecution, and the person who is so required shall give all assistance in connection with the prosecution that that person is reasonably able to give.

**(2)** The Commission shall not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Commission, is or is likely to be a defendant in the proceedings or is or has been such a person’s lawyer.

**(3)** If a person to whom paragraph (1) (a) or (b) relates fails to give assistance as required by subsection (1), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of the Commission, order the person to comply with the requirement within such time, and in such manner, as the Court orders.

**(4)** In this section, “agent”, in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

**PART 9.4A—REVIEW BY ADMINISTRATIVE APPEALS TRIBUNAL OF CERTAIN DECISIONS**

**Interpretation**

**1317a**. In this Part:

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

**Applications for review**

**1317b. (1)** Subject to this Part, applications may be made to the Tribunal for review of a decision made under this Act by:

(a) the Minister;

(b) the Commission; or

(c) the Companies Auditors and Liquidators Disciplinary Board.

**(2)** For the purposes of this Act and the *Administrative Appeals Tribunal Act 1975*,the Commission shall be taken to be a person whose

interests are affected by a decision made under this Act by the Companies Auditors and Liquidators Disciplinary Board.

**Excluded decisions**

**1317c.** Section 1317**b** does not apply in relation to:

(a) a decision in respect of which any provision in the nature of an appeal or review is expressly provided by this Act;

(b) a decision that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing;

(c) a decision by the Minister to make, or to refuse to make, a declaration under subsection 112 (3);

(d) a decision made by the Commission in the performance of a function, or in the exercise of a power, under section 342 or 350 or Division 8 of Part 5.6; or

(e) a decision by the Commission to refuse to exercise a power under section 342 or 350 or Division 8 of Part 5.6.

**PART 9.5—POWERS OF COURTS**

**Power to grant relief**

**1318. (1)** If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances of the case, including those connected with the person’s appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

**(2)** Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person, the person may apply to the Court for relief, and the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

**(3)** Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

**(4)** This section applies to a person who is:

(a) an officer of a corporation;

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

(c) an expert in relation to a matter:

(i) relating to a corporation; and

(ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or

(d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a corporation.

**(5)** For the purposes of this section, “officer” in relation to a corporation, means:

(a) a director, secretary, executive officer or employee of the corporation;

(b) a receiver, or receiver and manager, of property of the corporation;

(c) an official manager or deputy official manager of the corporation;

(d) a liquidator of the corporation; and

(e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

**Power of Court to give directions with respect to meetings ordered by the Court**

**1319.** Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

[*The next section is 1321*]

**Appeals from decisions of receivers, liquidators etc.**

**1321.** A person aggrieved by any act, omission or decision of:

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

(b) a receiver, or a receiver and manager, of property of a corporation;

(c) an official manager or a deputy official manager; or

(d) a liquidator or provisional liquidator of a company;

may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

**Irregularities**

**1322.** **(1)** In this section, unless the contrary intention appears:

(a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and

(b) a reference to a procedural irregularity includes a reference to:

(i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation or at a joint meeting of creditors and members of a corporation; and

(ii) a defect, irregularity or deficiency of notice or time.

**(2)** A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

**(3)** A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Commission, declares proceedings at the meeting to be void.

**(4)** Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of a provision of this Act or a provision of the constitution of a corporation;

(b) an order directing the rectification of any register kept by the Commission under this Act;

(c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);

(d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding;

and may make such consequential or ancillary orders as the Court thinks fit.

**(5)** An order may be made under paragraph (4) (a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

**(6)** The Court shall not make an order under this section unless it is satisfied:

(a) in the case of an order referred to in paragraph (4) (a):

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is in the public interest that the order be made;

(b) in the case of an order referred to in paragraph (4) (c)—that the person subject to the civil liability concerned acted honestly; and

(c) in every case—that no substantial injustice has been or is likely to be caused to any person.

**Power of Court to prohibit payment or transfer of money, securities, futures contracts or property**

**1323. (1)** Where:

(a) an investigation is being carried out under the Commission Act or this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act;

(b) a prosecution has been begun against a person for a contravention of this Act; or

(c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an “aggrieved person”) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called the “relevant person”), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities, futures contracts or other property, the Court may, on application by the Commission or by an aggrieved person, make one or more of the following orders:

(d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting a person holding money, securities, futures contracts or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities, futures contracts or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, futures contracts or other property, is or are held;

(f) an order prohibiting the taking or sending out of Australia by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting the taking, sending or transfer by a person of securities, futures contracts or other property of the relevant person,

or of an associate of the relevant person, from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);

(h) an order appointing:

(i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;

(j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;

(k) if the relevant person is a natural person—an order prohibiting that person from leaving Australia without the consent of the Court.

**(2)** An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

**(3)** Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

**(4)** On an application under subsection (1), the Court shall not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

**(5)** Where the Court has made an order under this section on a person’s application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

**(6)** An order made under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

**(7)** Nothing in this section affects the powers that the Court has apart from this section.

**(8)** This section has effect subject to the *Bankruptcy Act 1966.*

**(9)** A person shall not contravene an order by the Court under this section that is applicable to the person.

**Injunctions**

**1324. (1)** Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute: (a) a contravention of this Act;

(b) attempting to contravene this Act;

(c) aiding, abetting, counselling or procuring a person to contravene this Act;

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act;

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or

(f) conspiring with others to contravene this Act;

the Court may, on the application of the Commission, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

**(2)** Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:

(a) the Commission; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;

grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.

**(3)** Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

**(4)** Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

**(5)** The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

**(6)** The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

**(7)** The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;

(b) whether or not the person has previously refused or failed to do that act or thing; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

**(8)** Where the Commission applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

**(9)** In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.

**(10)** Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

**Other orders**

**1325. (1)** Where, in a proceeding instituted under, or for a contravention of, Part 7.11 or 7.12, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of Part 7.11 or 7.12, the Court may, whether or not it grants an injunction, or makes an order, under any other provision of this Act, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

**(2)** The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of Part 7.11 or 7.12, or on the application of the Commission in accordance with subsection (3) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

**(3)** Where, in a proceeding instituted for a contravention of Part 7.11 or 7.12 or instituted by the Commission under section 1324, a person is found to have engaged in conduct in contravention of Part 7.11 or 7.12, the Commission may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commission shall not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.

**(4)** An application under subsection (2) may be made within 3 years after the day on which the cause of action arose.

**(5)** The orders referred to in subsections (1) and (2) are:

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after a specified day before the order is made;

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after a specified day before the order is made;

(c) an order refusing to enforce any or all of the provisions of such a contract;

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage; and

(f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person’s own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

**(6)** Where an application is made for an order under this section against a person, the Court may make an order under section 1323 in respect of the person.

**Effect of sections 1323, 1324 and 1325**

**1326.** Nothing in any of sections 1323, 1324 and 1325 limits the generality of anything else in any of those sections.

**Power of Court to punish for contempt of Court**

**1327.** Nothing in a provision of this Act that provides:

(a) that a person shall not contravene an order of the Court; or

(b) that a person who contravenes an order of the Court contravenes a provision of this Act or is guilty of an offence;

affects the powers of the Court in relation to the punishment of contempts of the Court.

**Court may resolve transitional difficulties**

**1328.** **(1)** Where any difficulty:

(a) arises in applying a provision of this Act in relation to a particular case in relation to which, if this Act had not been enacted, a law corresponding to that provision would have applied; or

(b) arises, because of a provision of this Act, in applying, in relation to a particular case, another such provision or a law corresponding to another such provision;

the Court may, on the application of an interested person, make such order as it thinks proper to remove the difficulty.

**(2)** An order under this section has effect despite anything in a provision of this Act or in a law corresponding to such a provision.

**(3)** This section has effect subject to the Constitution.

[*The next section is 1330*]

**PART 9.6—PROCEEDINGS**

**Power of Commission to intervene in proceedings**

**1330. (1)** The Commission may intervene in any proceeding relating to a matter arising under this Act.

**(2)** Where the Commission intervenes in a proceeding referred to in subsection (1), the Commission shall be deemed to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.

**(3)** Without limiting the generality of subsection (2), the Commission may appear and be represented in any proceeding in which it wishes to intervene pursuant to subsection (1):

(a) by a staff member of the Commission;

(b) by a natural person to whom, or by an officer or employee of a person or body to whom or to which, the Commission has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or

(c) by solicitor or counsel.

**Civil proceedings not to be stayed**

**1331.** No civil proceedings under this Act shall be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

**Standard of proof**

**1332.** Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:

(a) a person has contravened a provision of this Act;

(b) default has been made in complying with a provision of this Act;

(c) an act or omission was unlawful by virtue of a provision of this Act; or

(d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of this Act;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

**Evidence of contravention**

**1333.** For the purposes of this Act, a certificate that:

(a) purports to be signed by the Registrar or other proper officer of an Australian court; and

(b) states:

(i) that a person was convicted by that court on a specified day of a specified offence; or

(ii) that a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

(c) if subparagraph (b) (i) applies—that the person was convicted of the offence on that day; and

(d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

**Evidence of laws of States and Territories**

**1334.** Where a provision of a law of a State or of a Territory, being a law because of which provisions of an Act or regulations in force for the time being under an Act apply as laws of that State or Territory, provides that a document published in accordance with that provision is *prima facie* evidence of the provisions of that Act or those regulations as so applying on a particular date, a document that is, or purports to be, a copy of a

document so published is *prima facie* evidence of the provisions of that Act or those regulations as so applying to that date.

**Costs**

**1335.** **(1)** Where a body corporate is plaintiff in any action or other legal proceeding under this Act, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the body corporate will be unable to pay the costs of the defendant if successful in his, her or its defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

**(2)** The costs of any proceeding before a court under this Act shall be borne by such party to the proceeding as the court, in its discretion, directs.

**Vesting of property**

**1336.** **(1)** Where an order is made by a court under this Act vesting property in a person:

(a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and

(b) the person who applied for the order shall, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.

**(2)** Where:

(a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(b) that law enables the registration of such an order;

the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

**(3)** Where:

(a) property vests in a person by force of this Act;

(b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(c) that law enables the person to be registered as the owner of that property;

that property, notwithstanding that it vests in equity in that person by force of this Act, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

**PART 9.7—UNCLAIMED PROPERTY**

**Interpretation**

**1337.** In this Part:

“Account” means the Companies Unclaimed Money Account established by section 1338;

“transferred” includes paid;

“unclaimed property” means:

(a) property transferred to the Minister under a provision of this Act that provides for property to be transferred, or for the Court to direct that property be transferred, to the Minister to be dealt with under this Part;

(b) an accretion to, or substitution for, property that is, by virtue of any other application or applications of this definition, unclaimed property.

**Companies Unclaimed Money Account**

**1338.** **(1)** There shall be a Trust Account to be known as the Companies Unclaimed Money Account.

**(2)** Money standing to the credit of the Companies Liquidation Account established by section 428 of the *Companies Act 1981*,immediately before the commencement of this Part, shall be paid into the Account.

**(3)** Money standing to the credit of the Account may be expended for the purpose of making payments in accordance with this Part.

**(4)** The Account is a Trust Account for the purposes of section 62A of the *Audit Act 1901.*

**How Minister to deal with unclaimed property**

**1339.** Where property becomes unclaimed property, the Minister shall:

(a) in the case of money—pay it into the Account; or

(b) otherwise—sell or dispose of the property as he or she thinks fit and pay the proceeds into the Account.

**Minister not liable to pay calls on shares etc.**

**1340.** Where unclaimed property is or includes shares in a body corporate, the Minister is not subject to any obligation:

(a) to pay any calls;

(b) to make any contribution to the debts and liabilities of the body corporate;

(c) to discharge any other liability; or

(d) to do any other act or thing;

in respect of the shares, whether the obligation arises before or after the shares become unclaimed property, but this section does not affect the right of a body corporate to forfeit a share.

**Disposition of money in Account**

**1341.** **(1)** Where, at the end of a period of 6 years after the day on which money was paid to the credit of the Account, that money has not been paid out of the Account in accordance with this section, that money shall be paid to the Consolidated Revenue Fund.

**(2)** Where a person claims to be entitled to any money paid to the credit of the Account, the Minister shall, if he or she is satisfied that the person is entitled to that money, direct payment of that money to be made to the person out of the Account or, if the money has been paid to the Consolidated Revenue Fund in accordance with this section, direct payment to the person of an equivalent amount, which shall be paid out of money appropriated by the Parliament for the purpose.

**(3)** A person who is dissatisfied with the decision of the Minister in respect of a claim made by the person in accordance with subsection (2) may appeal to the Court and the Court may confirm, disallow or vary the decision of the Minister.

**(4)** Where a person claims to be entitled to money that has been paid to another person in accordance with this section, the Minister is not under any liability to that first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that money from the other person.

**(5)** Where a person claims to be entitled to money, being money an amount equivalent to which has been paid to another person in accordance with subsection (2) out of money appropriated by the Parliament for the purpose, the Minister is not under any liability to that first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that equivalent amount from the other person.

**(6)** The reference in subsection (1) to money paid to the credit of the Account includes a reference to money paid to the credit of the Companies Liquidation Account established by section 428 of the *Companies Act 1981*,being money that was paid into the Account under section 1338 of this Act.

**Commonwealth or Minister not liable for loss or damage**

**1342.** Neither the Commonwealth nor the Minister is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on the Minister under this Part or which the Minister has in relation to unclaimed property.

**Disposal of securities if whereabouts of holder unknown**

**1343.** Where a person has been shown in an appropriate register of a company as the holder of securities of the company for a period of at least 6 years and the company has, for a period of at least 6 years:

(a) had reasonable grounds for believing that the person was not residing at the address shown in the register as the person’s address; and

(b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with the person, being unable after the exercise of reasonable diligence to do so;

the company may, by executing a transfer for and on behalf of the person, transfer to the Minister:

(c) the securities; and

(d) any rights in respect of the securities; to be dealt with under this Part.

**PART 9.8—RULES AND REGULATIONS**

**Rules**

**1344.** 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 this Act:

(a) with respect to proceedings, and the practice and procedure, of the Court under this Act;

(b) with respect to any matter or thing that is required or permitted by this Act to be prescribed by rules or is necessary or convenient to be prescribed by rules for carrying out or giving effect to this Act; and

(c) without limiting the generality of the foregoing, with respect to costs and with respect to rules as to meetings ordered by the Court.

**Regulations**

**1345. (1)** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed by regulations, or necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act, and, in particular, may make regulations:

(a) 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 with the Commission are to comply;

(b) prescribing forms for the purposes of this Act and the method of verifying any information required by or in those forms;

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

(d) 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;

(e) 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;

(f) 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;

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

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

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

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

(j) prescribing times for the lodging of any documents with the Commission;

(k) 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;

(m) 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;

(n) for or in relation to the form of balance-sheets and profit and loss accounts required by this Act to be prepared by dealers or futures brokers;

(p) 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 limiting the generality of the foregoing, regulating the manner of, or requiring, the making of margin calls in respect of dealings in futures contracts effected by a futures broker;

(q) 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;

(r) for or in relation to the times within which information required to be furnished to the Commission under this Act shall be so furnished;

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

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

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

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

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

**(3)** The regulations may:

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

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

**(4)** A person shall not, in respect of a document, be proceeded against for an offence in consequence of a regulation made pursuant to subsection (3) as well as for an offence against subsection 1308 (2).

**(5)** The regulations may provide, in such cases as are prescribed by the regulations, that, if a document that is required by or under this Act to be lodged is signed or so lodged on behalf of a person by an agent duly authorised in writing, there shall be:

(a) lodged with;

(b) endorsed on; or

(c) annexed to;

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

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

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

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

(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 such a prescribed term or condition is an offence against the regulations.

**(7)** The regulations:

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

(b) shall, in relation to each offence that is prescribed pursuant to this subsection:

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 1313 in relation to the offence; and

(ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on a person under section 1313 in relation to the offence.

**(8)** In subsection (7), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 1311.

**(9)** The particulars of an offence required to be prescribed by subparagraph (7) (b) (i) may be prescribed by being set out in the form prescribed for the purposes of section 1313 in relation to the offence.

**(10)** The regulations may provide that specified provisions of this Act apply, with prescribed modifications, in relation to a close corporation.

**(11)** Where regulations made for the purposes of subsection (10) are in force, the specified provisions do not apply in relation to a close corporation except in accordance with those regulations, but the application in relation to a close corporation of any other provisions of this Act is not affected.

**(12)** Subsections (10) and (11) have effect subject to the *Close Corporations Act 1989.*

**PART 9.9—MISCELLANEOUS**

**Non-application of rule against perpetuities to certain schemes**

**1346. (1)** The rules of law relating to perpetuities do not apply, and shall be deemed never to have applied, to the trusts of any fund or scheme

for the benefit of any employee of a corporation, whether the fund or scheme was established before, or is established after, the commencement of this section.

**(2)** In this section:

(a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, or otherwise duly constituted, whether before, at or after the commencement of this section, by or under a law of the Commonwealth, of a Territory, of an excluded Territory or of a country outside Australia and the external Territories;

(b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision; and

(c) a reference to an employee of a corporation includes a reference to:

(i) a director of the corporation; and

(ii) a spouse, child, grandchild, parent or any dependant of an employee or of a director of the corporation.

**Act not to apply to trade unions**

**1347.** This Act does not apply to any trade union and the registration of any trade union under this Act is void.

**Operation of Life Insurance Act**

**1348.** Nothing in this Act shall be taken to affect any of the provisions of the *Life Insurance Act 1945.*

**General transitional provisions**

**1349.** **(1)** For the purposes of this Act:

(a) an act or thing done by the NCSC before the commencement of a provision of this Act under or for the purposes of a law corresponding to that provision has effect as if it had been done by the Commission under or for the purposes of that provision;

(b) a reference in a prospectus or any other document to the NCSC, except in relation to a time before the commencement of Chapter 7, is a reference to the Commission; and

(c) an act or thing done by the Ministerial Council before the commencement of a provision of this Act under or for the purposes of a law corresponding to that provision has effect as if it had been done by the Minister under or for the purposes of that provision.

**(2)** A reference in subsection (1) to an act or thing done includes, but is not limited to, a direction given, a notice given or served, a consent or approval given, a declaration made, an exemption granted, a certificate given or issued or any other instrument executed.

**(3)** A condition included in an instrument to which this section applies, or imposed in connection with such an instrument, under or for the purposes of a law corresponding to a provision of this Act, by the NCSC or the Ministerial Council has effect for the purposes of this Act as if it had been included or imposed by the Commission or the Minister, as the case may be, under or for the purposes of that provision.

**Effect of Act on existing laws in force in the Capital Territory**

**1350**. Subject to any other provision of this Act, this Act has effect despite anything in an Act that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980.*

**————————**

**SCHEDULE 1** Sections 9 and 173

TABLE A

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

***Interpretation***

1. (1) In these regulations:

“Act” means the *Corporations Act 1989*;

“seal” means the common seal of the company and includes any official seal of the company;

“secretary” means any person appointed to perform the duties of a secretary of the company.

(2) Section 46 of the *Acts Interpretation Act 1901* applies in relation to these regulations as if they were an instrument made by an authority under a power conferred by the *Corporations Act 1989* as in force on the day on which these regulations become binding on the company.

(3) Except so far as the contrary intention appears in these regulations, an expression has, in a provision of these regulations that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

***Share Capital and Variation of Rights***

2. Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the directors, subject to any resolution, determine.

3. Subject to the Act, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

(2) The provisions of these regulations relating to general meetings apply so far as they are capable of application and *mutatis mutandis* to every such separate meeting except that:

**SCHEDULE 1**—continued

(a) a quorum is constituted by 2 persons who, between them, hold or represent by proxy one-third of the issued shares of the class; and

(b) any holder of shares of the class, present in person or by proxy, may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

5. (1) The company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

(2) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

6. (1) Except as required by law, the company shall not recognise a person as holding a share upon any trust.

(2) The company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

7. (1) A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Act but, in respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

*Lien*

8. (1) The company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.

(2) The company also has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the company.

(3) The directors may at any time exempt a share wholly or in part from the provisions of this regulation.

**SCHEDULE 1**—continued

(4) The company’s lien (if any) on a share extends to all dividends payable in respect of the share.

9. (1) Subject to subregulation (2), the company may sell, in such manner as the directors think fit, any shares on which the company has a lien.

(2) A share on which the company has a lien shall not be sold unless:

(a) a sum in respect of which the lien exists is presently payable; and

(b) the company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, such part of the amount in respect of which the lien exists as is presently payable.

10. (1) For the purpose of giving effect to a sale mentioned in regulation 9, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.

(2) The company shall register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.

(3) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

11. The proceeds of a sale mentioned in regulation 9 shall be applied by the company in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue (if any) shall (subject to any like lien for sums not presently payable that existed upon the shares before the sale) be paid to the person entitled to the shares at the date of the sale.

*Calls on Shares*

12. (1) The directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, upon receiving at least 14 days’ notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on his shares.

(3) The directors may revoke or postpone a call.

**SCHEDULE 1**—continued

13. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

14. The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

15. If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the directors determine, but the directors may waive payment of that interest wholly or in part.

16. Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

17. The directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

18. (1) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.

(2) The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the directors and the member paying the sum.

(3) For the purposes of subregulation (2), the prescribed rate of interest is:

(a) if the company has, by resolution, fixed a rate—the rate so fixed; and

(b) in any other case—8% per annum.

*Transfer of Shares*

19. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the directors approve.

(2) An instrument of transfer referred to in subregulation (1) shall be executed by or on behalf of both the transferor and the transferee.

**SCHEDULE 1**—continued

(3) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

20. The instrument of transfer must be left for registration at the registered office of the company, together with such fee (if any) not exceeding $1.00 as the directors require, accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

21. The directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the company has a lien.

22. The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole 30 days in any year.

*Transmission of Shares*

23. In the case of the death of a member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognized by the company as having any title to his interest in the shares, but this regulation does not release the estate of a deceased joint holder from any liability in respect of a share that had been jointly held by him with other persons.

24. (1) Subject to the *Bankruptcy Act 1966*,a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these rules relating to the right to transfer, and the registration of transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

**SCHEDULE 1**—continued

25. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of these regulations, be deemed to be joint holders of the share.

*Forfeiture of Shares*

26. (1) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.

(2) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

27. (1) If the requirements of a notice served under regulation 26 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

(2) Such a forfeiture shall include all dividends declared in respect of the forefeited shares and not actually paid before the forfeiture.

28. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.

29. A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by him to the company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but his liability ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.

30. A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in

**SCHEDULE 1**—continued

the company has been duly forfeited on a date stated in the statement, is *prima facie* evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

31. (1) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(2) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.

(3) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

32. The provisions of these regulations as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

*Conversion of Shares into Stock*

33. The company may, by resolution, convert all or any of its paid up shares into stock and re-convert any stock into paid up shares of any nominal value.

34. (1) Subject to subregulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

35. (1) The holders of stock have, according to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.

(2) No such privilege or advantage (except participation in the dividends and profits of the company and in the property of the company on winding up) shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

**SCHEDULE 1**—continued

36. The provisions of these regulations that are applicable to paid up shares apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

*Alteration of Capital*

37. The company may by resolution:

(a) increase its authorised share capital by the creation of new shares of such amount as is specified in the resolution;

(b) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;

(c) subdivide all or any of its shares into shares of smaller amount than is fixed by the memorandum but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and

(d) cancel shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorised share capital by the amount of the shares so cancelled.

38. (1) Subject to any direction to the contrary that may be given by the company in general meeting, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with sub-regulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

39. Subject to the Act, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

**SCHEDULE 1**—continued

*General Meetings*

40. Any director may whenever he thinks fit convene a general meeting.

41. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by subregulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

*Proceedings at General Meetings*

42. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a member, shall be deemed to be a member.

43. If a quorum is not present within half an hour from the time appointed for the meeting:

(a) where the meeting was convened upon the requisition of members— the meeting shall be dissolved; or

(b) in any other case:

(i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and

(ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting:

(a) 2 members constitute a quorum; or

(b) where 2 members are not present—the meeting shall be dissolved.

44. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and:

(a) a chairman has not been elected as provided by sub-regulation (1); or

(b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present shall elect one of their number to be chairman of the meeting.

**SCHEDULE 1**—continued

45. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by subregulation (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

46. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the chairman;

(b) by at least 3 members present in person or by proxy;

(c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

47. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to sub-regulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

48. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), has a casting vote.

**SCHEDULE 1**—continued

49. Subject to any rights or restrictions for the time being attached to any class or classes of shares:

(a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney; and

(b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.

50. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

51. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may excercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

52. A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of shares in the company have been paid.

53. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

(2) Any such objection shall be referred to the chairman of the meeting, whose decision is final.

(3) A vote not disallowed pursuant to such an objection is valid for all purposes.

54. (1) An instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

**SCHEDULE 1**—continued

(4) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

[*Name of company*]

I/we, , of , being a member/members of the abovenamed company, hereby appoint of or, in his absence,

of as my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general

meeting of the company to be held on the day of 19 and at

any adjournment of that meeting.

†This form is to be used \*in favour of/\*against the resolution.

Signed this day of 19 .

\*Strike out whichever is not desired.

†To be inserted if desired.

55. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

56. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the the instrument is used or the power is exercised.

*Appointment, removal and remuneration of Directors*

57. (1) The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the memorandum of association or a majority of them.

**SCHEDULE 1**—continued

(2) The company may, by resolution, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

58. (1) At the first annual general meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

59. The directors to retire at an annual general meeting other than the first annual general meeting are those who have been longest in office since their election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

60. (1) The company may, at the meeting at which a director so retires, by resolution fill the vacated office by electing a person to that office.

(2) If the vacated office is not so filled, the retiring director shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected unless at that meeting:

(a) it is expressly resolved not to fill the vacated office; or

(b) a resolution for the re-election of that director is put and lost.

61. (1) The directors may at any time appoint any person to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number determined in accordance with these regulations.

(2) Any director so appointed holds office only until the next following annual general meeting and is then eligible for re-election but shall not be taken into account in determining the directors who are to retire by rotation at that meeting.

62. (1) The company may by resolution remove any director before the expiration of his period of office, and may by resolution appoint another person in his stead.

(2) The person so appointed is subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

63. (1) The directors shall be paid such remuneration as is from time to time determined by the company in general meeting.

(2) That remuneration shall be deemed to accrue from day to day.

**SCHEDULE 1**—continued

(3) The directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or otherwise in connection with the business of the company.

64. The share qualification for directors may be fixed by the company in general meeting and, unless and until so fixed, is one share.

65. In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director becomes vacant if the director:

(a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(b) resigns his office by notice in writing to the company;

(c) is absent without the consent of the directors from meetings of the directors held during a period of 6 months;

(d) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or principal executive officer; or

(e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest as required by the Act.

*Powers and Duties of Directors*

66. (1) Subject to the Act and to any other provision of these regulations, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting.

(2) Without limiting the generality of subregulation (1), the directors may exercise all the powers of the company to borrow money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

67. (1) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

(2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the

**SCHEDULE 1**—continued

directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

68. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

*Proceedings of Directors*

69. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

70. (1) Subject to these regulations, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.

(2) In case of an equality of votes, the chairman of the meeting, in addition to his deliberative vote (if any), has a casting vote.

71. A director shall not vote in respect of any contract or proposed contract with the company in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this subregulation, his vote shall not be counted.

72. (1) A director may, with the approval of the other directors, appoint a person (whether a member of the company or not) to be an alternate director in his place during such period as he thinks fit.

(2) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead.

(3) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.

(4) An alternate director is not required to have any share qualifications.

(5) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.

**SCHEDULE 1**—continued

(6) An appointment, or the termination of an appointment, of an alternate director shall be effected by a notice in writing signed by the director who makes or made the appointment and served on the company.

73. At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is such number as is determined by the directors and, unless so determined, is 2.

74. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

75. (1) The directors shall elect one of their number as chairman of their meetings and may determine the period for which he is to hold office.

(2) Where such a meeting is held and:

(a) a chairman has not been elected as provided by subregulation (1); or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present shall elect one of their number to be a chairman of the meeting.

76. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and:

(a) a chairman has not been elected as provided by subregulation (3); or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

**SCHEDULE 1**—continued

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

77. (1) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

(2) For the purposes of subregulation (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

(3) A reference in subregulation (1) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

78. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

*Managing Director*

79. (1) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

(2) A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors, but his appointment automatically terminates if he ceases from any cause to be a director.

80. A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

81. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.

**SCHEDULE 1**—continued

(2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

*Associate Directors*

82. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed is not required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, does not have any right to attend or vote at any meeting of directors.

*Secretary*

83. A secretary of the company holds office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

*Seal*

84. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

*Inspection of Records*

85. The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open to the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorised by the directors or by the company in general meeting.

*Dividends and Reserves*

86. (1) The company in general meeting may declare a dividend if, and only if the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

**SCHEDULE 1**—continued

87. The directors may authorise the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

88. Interest is not payable by the company in respect of any dividend.

89. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

90. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

91. The directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the company on account of calls or otherwise in relation to shares in the company.

92. (1) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the directors shall give effect to such a resolution.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

**SCHEDULE 1**—continued

93. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:

(a) the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder just first named in that register; or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

*Capitalisation of Profits*

94. (1) Subject to subregulation (2), the company in general meeting may resolve that it is desirable to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in subregulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

(2) The company shall not pass a resolution as mentioned in subregulation (1) unless the resolution has been recommended by the directors.

(3) The ways in which a sum may be applied for the benefit of members under subregulation (1) are:

(a) in paying up any amounts unpaid on shares held by members;

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid; or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

(4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among the themselves, may:

(a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and

(b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

**SCHEDULE 1**—continued

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

*Notices*

95. (1) A notice may be given by the company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register of members or the address supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within the Territory supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

96. (1) Notice of every general meeting shall be given in the manner authorised by regulation 95 to:

(a) every member;

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

(2) No other person is entitled to receive notices of general meetings.

*Winding up*

97. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.

**SCHEDULE 1**—continued

(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

*Indemnity*

98. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the Court.

TABLE B

REGULATIONS FOR MANAGEMENT OF A NO LIABILITY COMPANY

*Interpretation*

1. (1) In these regulations:

“Act” means the *Corporations Act 1989*;

“seal” means the common seal of the company and includes any official seal of the company;

“secretary” means any person appointed to perform the duties of a secretary of the company.

(2) Section 46 of the *Acts Interpretation Act 1901* applies in relation to these regulations as if they were an instrument made by an authority under a power conferred by the *Corporations Act 1989* as in force on the day on which these regulations became binding on the company.

(3) Except so far as the contrary intention appears in these regulations, an expression has, in a provision of these regulations that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

*Share Capital and Variation of Rights*

2.Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act, shares in the company may be issued by the directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the directors, subject to any resolution, determine.

**SCHEDULE 1**—continued

3. Subject to the Act, any preference shares may, with the sanction of a resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed.

4. (1) If any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of the class.

(2) The provision of these regulations relating to general meetings apply so far as they are capable of application and *mutatis mutandis* to every such separate meeting except that:

(a) a quorum is constituted by 2 persons who, between them, hold or represent by proxy one-third of the issued shares of the class; and

(b) any holder of shares of the class, present in person or by proxy, may demand a poll.

(3) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

5. (1) The company may exercise the power to make payments by way of brokerage or commission conferred by the Act in the manner provided by the Act.

(2) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

6. (1) Except as required by law, the company shall not recognise a person as holding a share upon any trust.

(2) The company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these regulations or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

7. (1) A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share under the seal of the company in accordance with the Act but, in

**SCHEDULE 1**—continued

respect of a share or shares held jointly by several persons, the company is not bound to issue more than one certificate.

(2) Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

*Calls on Shares*

8. (1) The directors may, subject to section 387 of the Act, make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way of premium) and not by the terms of issue of those shares made payable at fixed times.

(2) The directors may revoke or postpone a call.

9. A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.

10. At any sale by auction under section 388 of the Act, a share forfeited for non-payment of any call may, if the directors so determine, be offered for sale and sold credited as paid up to the sum of:

(a) the amount paid up at the time of forfeiture;

(b) the amount of the call; and

(c) the amount of any other call or calls becoming payable on or before the date of sale.

*Transfer of Shares*

11. (1) Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the directors approve.

(2) An instrument of transfer referred to in subregulation (1) shall be executed by or on behalf of both the transferor and the transferee.

(3) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.

12. The instrument of transfer must be left for registration at the registered office of the company together with such fee (if any) not exceeding $1.00 as the directors require, accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these regulations, register the transferee as a shareholder.

**SCHEDULE 1**—continued

13. The registration of transfer may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole 30 days in the year.

*Transmission of Shares*

14. In the case of the death of a member, the survivor or survivors where the deceased was a joint holder, and the legal personal representatives of the deceased where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

15. (1) Subject to the *Bankruptcy Act 1966*, a person becoming entitled to a share in consequence of the death or bankruptcy of a member may, upon such information being produced as is properly required by the directors, elect either to be registered himself as holder of the share or to have some other person nominated by him registered as the transferee of the share.

(2) If the person becoming entitled elects to be registered himself, he shall deliver or send to the company a notice in writing signed by him stating that he so elects.

(3) If he elects to have another person registered, he shall execute a transfer of the share to that other person.

(4) All the limitations, restrictions and provisions of these rules relating to the right to transfer, and the registration of transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

16. (1) Where the registered holder of a share dies or becomes bankrupt, his personal representative or the trustee of his estate, as the case may be, is, upon the production of such information as is properly required by the directors, entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the company, or to voting or otherwise), as the registered holder would have been entitled to if he had not died or become bankrupt.

(2) Where 2 or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purpose of these regulations, be deemed to be joint holders of the share.

*Conversion of Shares into Stock*

17. The company may, by resolution, convert all or any of its paid up shares into stock and re-convert any stock into paid up shares of any nominal value.

18. (1) Subject to subregulation (2), where shares have been converted into stock, the provisions of these rules relating to the transfer of shares

**SCHEDULE 1**—continued

apply, so far as they are capable of application, to the transfer of the stock or of any part of the stock.

(2) The directors may fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate of the nominal values of the shares from which the stock arose.

19. (1) The holders of stock have, accordingly to the amount of the stock held by them, the same rights, privileges and advantages as regards dividends, voting at meetings of the company and other matters as they would have if they held the shares from which the stock arose.

(2) No such privilege or advantage (except participation in the dividends and profits of the company and in the property of the company on winding up) shall be conferred by any amount of stock that would not, if existing in shares, have conferred that privilege or advantage.

20. The provisions of these regulations that are applicable to paid up shares apply to stock, and references in those provisions to share and shareholder shall be read as including references to stock and stockholder, respectively.

*Alteration of Capital*

21. The company may, by resolution:

(a) increase its authorised share capital by the creation of new shares of such amount as is specified in the resolution;

(b) consolidate and divide all or any of its authorised share cpaital into shares of a larger amount than its existing shares;

(c) subdivide all or any of its shares into shares of a smaller amount than is fixed by the memorandum but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each such share of a smaller amount is the same as it was in the case of the share from which the share of a smaller amount is derived; and

(d) cancel shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorised share capital by the amount of the shares so cancelled.

22. (1) Subject to any direction to the contrary that may be given by the company in general meeting, all unissued shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances allow, to the sum of the nominal values of the shares already held by them.

**SCHEDULE 1**—continued

(2) The offer shall be made by notice specifying the number of shares offered and limiting a time within which the offer, if not accepted, will be deemed to be declined.

(3) After the expiration of that time or on being notified by the person to whom the offer is made that he declines to accept the shares offered, the directors may issue those shares in such manner as they think most beneficial to the company.

(4) Where, by reason of the proportion that shares proposed to be issued bear to shares already held, some of the first-mentioned shares cannot be offered in accordance with subregulation (1), the directors may issue the shares that cannot be so offered in such manner as they think most beneficial to the company.

23. Subject to the Act, the company may, by special resolution, reduce its share capital, any capital redemption reserve fund or any share premium account.

*General Meetings*

24. Any director may whenever he thinks fit convene a general meeting.

25. (1) A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by subregulation (2), shall state the general nature of the business to be transacted at the meeting.

(2) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors, the election of directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.

*Proceedings at General Meetings*

26. (1) No business shall be transacted at any general meeting unless a quorum of members if present at the time when the meeting proceeds to business.

(2) For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a member, shall be deemed to be a member.

27. If a quorum is not present within half an hour from the time appointed for the meeting:

(a) where the meeting was convened upon the requisition of members— the meeting shall be dissolved; or

(b) in any other case:

(i) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination

**SCHEDULE 1**—continued

is made by the directors, to the same day in the next week at the same time and place; and

(ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting:

(a) 2 members constitute a quorum; or

(b) where 2 members are not present—the meeting shall

be dissolved.

28. (1) If the directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.

(2) Where a general meeting is held and:

(a) a chairman has not been elected as provided by subregulation (1); or

(b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present elect one of their number to be chairman of the meeting.

29. (1) The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(2) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(3) Except as provided by subregulation (2), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

30. (1) At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

(a) by the chairman;

(b) by at least 3 members present in person or by proxy;

(c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or

(d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

(2) Unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or

**SCHEDULE 1**—continued

by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(3) The demand for a poll may be withdrawn.

31. (1) If a poll is duly demanded, it shall be taken in such manner and (subject to subregulation (2)) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

(2) A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

32. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliverative vote (if any), has a casting vote.

33. Subject to any rights or restrictions for the time being attached to any class or classes of shares:

(a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney; and

(b) on a show of hands every person present who is a member or a representative of a member has one vote, and on a poll every person present in person or by proxy or attorney has one vote for each share he holds.

34. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders and, for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

35. If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

36. A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of the shares in the company have been paid.

37. (1) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

**SCHEDULE 1**—continued

(2) Any such objection shall be referred to the chairman of the meeting, whose decision is final.

(3) A vote not disallowed pursuant to such an objection is valid for all purposes.

38. (1) An instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.

(2) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

(3) An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

(4) An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

[*Name of company*]

I/we, , of , being a member/members of the abovenamed company, hereby appoint of or, in his absence, of as my/our proxy to vote for me/us on my/our behalf at the \*annual general/\*general

meeting of the company to be held on the day of 19 and at any adjournment of that meeting.

†This form is to be used \*in favour/\*against of the resolution.

Signed this day of 19 .

\*Strike out whichever is not desired.

†To be inserted if desired.

39. An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place within the Territory as is specified for that purpose in the notice convening the meeting.

40. A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or

**SCHEDULE 1**—continued

unsoundness of mind, of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

*Appointment, Removal and Remuneration of Directors*

41. (1) The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the memorandum of association or a majority of them.

(2) The company may, by resolution, increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

42. (1) At the first annual meeting of the company all the directors shall retire from office, and at the annual general meeting in every subsequent year one-third of the directors for the time being, or, if their number is not 3 or a multiple of 3, then the number nearest one-third, shall retire from office.

(2) A retiring director is eligible for re-election.

43. The directors to retire at an annual general meeting other than the first annual general meeting are those who have been longest in office since their last election, but, as between persons who became directors on the same day, those to retire shall (unless they otherwise agree among themselves) be determined by lot.

44. (1) The company may, at the meeting at which a director so retires, by resolution fill the vacated office by electing a person to that office.

(2) If the vacated office is not so filled, the retiring director shall, if offering himself for re-election and not being disqualified under the Act from holding office as a director, be deemed to have been re-elected unless at that meeting:

(a) it is expressly resolved not to fill the vacated office; or

(b) a resolution for the re-election of that director is put and lost.

45. (1) The directors may at any time appoint any person to be director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number determined in accordance with these regulations.

(2) Any director so appointed holds office only until the next following annual general meeting and is then eligible for re-election but shall not be

**SCHEDULE 1**—continued

taken into account in determining the directors who are to retire by rotation at that meeting.

46. (1) The company may by resolution remove any director before the expiration of his period of office, and may by resolution appoint another person in his stead.

(2) The person so appointed is subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director.

47. (1) The directors shall be paid such remuneration as is from time to time determined by the company in general meeting.

(2) The remuneration shall be deemed to accrue from day to day.

(3) The directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the directors, or any committee of the directors or general meetings of the company or otherwise in connection with the business of the company.

48. The share qualifications for directors may be fixed by the company in general meeting and, unless and until so fixed, is one share.

49. In addition to the circumstance in which the office of a director becomes vacant by virtue of the Act, the office of a director becomes vacant if the director:

(a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(b) resigns his office by notice in writing to the company;

(c) is absent without the consent of the directors from meetings of the directors held during a period of 6 months;

(d) without the consent of the company in general meeting holds any other office of profit under the company except that of managing director or principal executive officer; or

(e) is directly or indirectly interested in any contract or proposed contract with the company and fails to declare the nature of his interest as required by the Act.

*Powers and Duties of Directors*

50. (1) Subject to the Act and to any other provision of these regulations, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Act or by these regulations, required to be exercised by the company in general meeting.

**SCHEDULE 1**—continued

(2) Without limiting the generality of subregulation (1), the directors may exercise all the powers of the company to borrow money, to charge, any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.

51. (1) The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.

(2) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

52. All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, indorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

*Proceedings of Directors*

53. (1) The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

(2) A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.

54. (1) Subject to these regulations, questions arising at a meeting of directors shall be decided by a majority of votes of directors present and voting and any such decision shall for all purposes be deemed a decision of the directors.

(2) In case of an equality of votes, the chairman of the meeting, in addition to his deliberative vote (if any), has a casting vote.

55. A director shall not vote in respect of any contract or proposed contract with the company in which he is in any way, whether directly or indirectly, interested or in respect of any matter arising out of such a contract or proposed contract and, if he votes in contravention of this subregulation, his vote shall not be counted.

56. (1) A director may, with the approval of the other directors, appoint a person (whether a member of the company or not) to be an alternate director in his place during such period as he thinks fit.

**SCHEDULE 1—**continued

(2) An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead.

(3) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.

(4) An alternate director is not required to have any share qualifications.

(5) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.

(6) An appointment, or the termination of an appointment, of an alternate director shall be effected by a notice in writing signed by the director who makes or made the appointment and served on the company.

57. At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum is such number as is determined by the directors and, unless so determined, is 2.

58. In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute such a quorum or of convening a general meeting of the company.

59. (1) The directors may elect one of their number as chairman of their meetings and may determine the period for which he is to hold office.

(2) Where such a meeting is held and:

(a) a chairman has not been elected as provided by subregulation (1); or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present shall elect one of their number to be chairman of the meeting.

60. (1) The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.

(2) A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.

**SCHEDULE 1**—continued

(3) The members of such a committee may elect one of their number as chairman of their meetings.

(4) Where such a meeting is held and:

(a) a chairman has not been elected as provided by subregulation (3); or

(b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the members present may elect one of their number to be chairman of the meeting.

(5) A committee may meet and adjourn as it thinks proper.

(6) Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

(7) In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

61. (1) If all the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.

(2) For the purposes of subregulation (1), 2 or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

(3) A reference in subregulation (1) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

62. All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be, or to act as, a director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a director.

*Managing Directors*

63. (1) The directors may from time to time appoint one or more of their number to the office of managing director for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

**SCHEDULE 1**—continued

(2) A director so appointed shall not, while holding that office, be subject to retirement by rotation or be taken into account in determining the rotation of retirement of directors but his appointment automatically terminates if he ceases from any cause to be a director.

64. A managing director shall, subject to the terms of any agreement entered into in a particular case, receive such remuneration (whether by way of salary, commission or participation in profits, or partly in one way and partly in another) as the directors determine.

65. (1) The directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a managing director any of the powers exercisable by them.

(2) Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.

(3) The directors may at any time withdraw or vary any of the powers so conferred on a managing director.

*Associate Directors*

66. (1) The directors may from time to time appoint any person to be an associate director and may from time to time terminate any such appointment.

(2) The directors may from time to time determine the powers, duties and remuneration of any person so appointed.

(3) A person so appointed is not required to hold any shares to qualify him for appointment but, except by the invitation and with the consent of the directors, does not have any right to attend or vote at any meeting of directors.

*Secretary*

67. A secretary of the company holds office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

*Seal*

68. (1) The directors shall provide for the safe custody of the seal.

(2) The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

**SCHEDULE 1**—continued

*Inspection of Records*

69. The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open for the inspection of members other than directors, and a member other than a director does not have the right to inspect any document of the company except as provided by law or authorised by the directors or by the company in general meeting.

*Dividends and Reserves*

70. (1) The company in general meeting may declare a dividend if, and only if, the directors have recommended a dividend.

(2) A dividend shall not exceed the amount recommended by the directors.

71. The directors may authorise the payment by the company to the members of such interim dividends as appear to the directors to be justified by the profits of the company.

72. Interest is not payable by the company in respect of any dividend.

73. (1) The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as reserves, to be applied, at the discretion of the directors, for any purpose for which the profits of the company may be properly applied.

(2) Pending any such application, the reserves may, at the discretion of the directors, be used in the business of the company or be invested in such investments as the directors think fit.

(3) The directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.

74. (1) Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.

(2) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.

(3) An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this regulation to be paid or credited as paid on the share.

**SCHEDULE 1**—continued

75. (1) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other body corporate, and the directors shall give effect to such a resolution.

(2) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the directors consider expedient.

76. (1) Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:

(a) the address of the holder as shown in the register of members, or in the case of joint holders, to the address shown in the register of members as the address of the joint holder first named in that register; or

(b) to such other address as the holder or joint holders in writing directs or direct.

(2) Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

*Capitalisation of Profits*

77. (1) Subject to subregulation (2), the company in general meeting may resolve that it is desirable to capitalise any sum, being the whole or part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in subregulation (3), for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

(2) The company shall not pass a resolution as mentioned in subregulation (1) unless the resolution has been recommended by the directors.

(3) The ways in which a sum may be applied for the benefit of members under subregulation (1) are:

(a) in paying up any amounts unpaid on shares held by members;

(b) in paying up in full unissued shares or debentures to be issued to members as fully paid; or

(c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

**SCHEDULE 1**—continued

(4) The directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may:

(a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions; and

(b) authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all the members concerned.

*Notices*

78. (1) A notice may be given by the company to any member either by serving it on him personally or by sending it by post to him at his address as shown in the register of members or the address supplied by him to the company for the giving of notices to him.

(2) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

(3) A notice may be given by the company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

(4) A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) in Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

79. (1) Notice of every general meeting shall be given in the manner authorised by regulation 78 to:

(a) every member;

**SCHEDULE 1**—continued

(b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and

(c) the auditor for the time being of the company.

(2) No other person in entitled to receive notices of general meetings.

*Winding Up*

80. (1) If the company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the members or different classes of members.

(2) The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trust for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

81. (1) Subject to the rights of persons (if any) entitled to shares with special rights in a winding up, to the provisions of subsection 395 (2) of the Act and to subregulation (2), all moneys and property that are to be distributed among members on a winding up shall be so distributed in proportion to the shares held by them respectively irrespective of the amount paid up or credited as paid up on the shares.

(2) If a company ceases to carry on business within 12 months of its incorporation, shares issued for cash shall, in the distribution, to the extent of the capital contributed by subscribing shareholders, rank in priority to shares issued to vendors or promotors or both for consideration other than cash.

*Indemnity*

82. Every officer, auditor or agent of the company shall be indemnified out of the property of the company against any liability incurred by him in his capacity as officer, auditor or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application in relation to any such proceedings in which relief is under the Act granted to him by the Court.

**SCHEDULE 2**

FORMS OF TRANSFER OF MARKETABLE SECURITIES AND MARKETABLE RIGHTS

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| FORM 1 Section 1101 | | | | | |
| SECURITY TRANSFER FORM | | | MARKING STAMP | | |
| PART 1 | | | | | |
| Full name of company or other eligible body: | | | | | |
| Description of securities: | Class: | If not fully paid, paid to: | | | Register: |
| Quantity: | [Words] | | | (Figures] | |
| Transfer identification number: | | | | | |
| Full name(s) of transferor(s): | | | | | |

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

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

(a) as to the validity of documents; and

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

[Transferor’s broker’s stamp]

Affixed at ......................................................

on ...................................................................

(place and date of affixing stamp)

|  |  |
| --- | --- |
| PART 2 | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer;  [Transferee’s broker’s stamp] |
| Date of affixing stamp: |
| PART 3 | |
| Transferee’s broker hereby certifies:  (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.  [Transferee’s broker’s stamp] | |
| Date of affixing stamp: | |

**SCHEDULE 2**—continued

FORM 2 Section 1101

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

**SCHEDULE 2—**continued

FORM 3 Section 1101

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

**SCHEDULE 2—**continued

FORM 4 Section 1101

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| CONSOLIDATED TRANSFER FORM | | | | | MARKING STAMP | | |
| PART 1 | | | | | | | |
| Full name of company or other eligible body: | | | | | | | |
| Description of securities: | Class: | | | If not fully paid, paid to: | | |  |
| Quantity: | [Words] | | | | [Figures] | | |
| Transfer identification number: | | | | | | | |
| Transfer Consolidation Number(s): | | | | | | | |
| PART 2 | | | | | | | |
| Full name(s) and address(es) of transferee(s): | | | | | Transferee’s broker hereby certifies:  (a) that the securities set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (*or*are) set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that such entries be made in the register as are necessary to give effect to the transfer(s). | | |
| [Transferee’s broker’s stamp] | | |
| Date of affixing stamp: | | |
| FORM 5 Section 1101 | | | | | | | |
| SECURITY RENUNCIATION AND TRANSFER FORM | | | | | | MARKING STAMP | |
| PART 1 | | | | | | | |
| Full name of company or other eligible body: | | | | | | | |
| Description of rights: | |  | | | | Register: | |
| Quantity: | | | [Words] | | | [Figures] | |
| Transfer identification number: | | | | | | | |
| Full name(s) of transferor(s): | | | | | | | |

**SCHEDULE 2—**continued

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

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

(a) as to the validity of documents; and

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

[Transferor’s broker’s stamp]

Affixed at

on

(place and date of affixing stamp)

|  |  |
| --- | --- |
| PART 2 | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp] |
| Date of affixing stamp: |
| PART 3 | |
| Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer. | |
| [Transferee’s broker’s stamp] | |
| Date of affixing stamp: | |

**SCHEDULE 2**—continued

FORM 6 Section 1101

|  |  |  |
| --- | --- | --- |
| BROKER’S RENUNCIATION AND TRANSFER FORM | | MARKING STAMP |
| PART 1 | | |
| Full name of company or other eligible body: | | |
| Description of rights: | Register: | |
| Quantity: [Words] [Figures] | | |
| Transfer identification number: | Transferor’s broker hereby certifies:  (a) that the Security Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company’s or eligible body’s office; and  (b) that stamp duty, if payable, has been or will be paid.  [Transferor’s broker’s stamp] | |
| Full name(s) of transferor(s): |
|  | Affixed at  On  (place and date of affixing stamp) | |
| PART 2 | | |
| Full name(s) and address(es) of transferee(s): | Transferee’s broker hereby certifies:  (a) that, the rights set out in Part I above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp] | |
| Date of affixing stamp: | |
| PART 3 | | |
| Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp] | | |
| Date of affixing stamp: | | |

**SCHEDULE 2**—continued

FORM 7 Section 1101

|  |  |  |  |
| --- | --- | --- | --- |
| RENUNCIATION AND SPLIT TRANSFER FORM | | | MARKING STAMP |
| PART 1 | | | |
| Full name of company or other eligible body: | | | |
| Description of rights: | | Register: | |
| Quantity: | [Words] | [Figures] | |
| Transfer identification number: | | The [name of securities exchange] hereby certifies that the Security Renunciation and Transfer Form or the Broker’s Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company’s or eligible body’s office.  [Securities exchange stamp] | |
| Full name(s) of transferor(s): | |
|  | | Affixed at  on  (place and date of affixing stamp) | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s): | | Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.  [Transferee’s broker’s stamp] | |
|  | | Date of affixing stamp: | |
| PART 3 | | | |
| Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer. | | | |
| [Transferee’s broker’s stamp] | | | |
| Date of affixing stamp: | | | |

**SCHEDULE 2**—continued

FORM 8 Section 1101

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| RENUNCIATION AND CONSOLIDATED TRANSFER FORM | | | | | | MARKING STAMP | | |
| PART 1 | | | | | | | | |
| Full name of company or other eligible body: | | | | | | | | |
| Description of rights: | | | |  | | | | |
| Quantity: | | (Words) | | | | [Figures] | | |
| Transfer identification number: | | | | | | | | |
| Transfer Consolidation Number(s): | | | | | | | | |
| PART 2 | | | | | | | | |
| Full name(s) and address(es) of transferee(s): | | | | | Transferee’s broker hereby certifies:  (a) that, the rights set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (*or*are) set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and  (b) that stamp duty, if payable, has been or will be paid;  and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to the renunciation(s) and transfer(s).  [Transferee’s broker’s stamp] | | | |
|  | | | | | Date of affixing stamp: | | | |
| FORM 9 Section 1102 | | | | | | | | |
| TRUSTEE TRANSFER FORM | | | | MARKING STAMP | | | | |
| PART 1 | | | | | | | | |
| Full name of company or other eligible body: | | | | | | | | |
| Description of securities: | Class: | | If not fully paid, paid to: | | | | | Register: |
| Quantity: | | | [Words] | | | | [Figures] | |
| Transfer identification number, where appropriate: | | | | | | | | |
| Full name(s) of transferor(s): | | | | | | | | |

**SCHEDULE 2**—continued

|  |  |  |
| --- | --- | --- |
| PART 2 | | |
| Full name(s) and address(es) of transferee(s): | | Transferor hereby certifies that the securities set out in Part 1 above are to be registered in the name(s) of the transferee(s) named in this Part, being the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the execution of this transfer, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. |
| I (*or*We) hereby transfer the above securities to the transferee(s) named in Part 2 hereof. Execution by the transferor(s):  Date of execution: | | |
| FORM 10 Section 1102 | | |
| TRUSTEE RENUNCIATION AND TRANSFER FORM | | |
| PART 1 | | |
| Full name of company or other eligible body: | | |
| Description of rights: | Register: | |
| Quantity: [Words] [Figures] | | |
| Transfer identification number, where appropriate: | | |
| Full name(s) of transferor(s): | | |
| PART 2 | | |
| Full name(s) and address(es) of transferee(s): | | Transferor hereby certifies that, the rights set out in Part 1 above having been transferred to the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the transfer, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part, and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and that such entries be made in the register as are necessary to give effect to this renunciation and transfer. |
| I (*or* We) hereby renounce and transfer the above rights in favour of the transferee(s) named in Part 2 hereof. | | |
| Execution by the transferor(s): | | |
| Date of execution: | | |

**SCHEDULE 3** Section 1311

PENALTIES

**Section 126:**

Penalty: $500 for each day during all or part of which the contravention continues.

**Section 170:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 190:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 195:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 201:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 203:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 205:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 206:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 208:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 219:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 224:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 229:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 230:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 231:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Subsection 232 (4):**

Penalty: $5,000.

**Subsection 232 (5):**

Penalty: $20,000 or imprisonment for 5 years, or both.

**SCHEDULE 3**—continued

**Subsection 232 (6):**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 234:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 236:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 237:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 245:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 258:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 260:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 289:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 315:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 333:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 362:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 369:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 408:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 428:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 436:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 437:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 457:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 475:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**SCHEDULE 3**—continued

**Section 494:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 497:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 532:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 541:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 597:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Subsection 590 (1):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Subsection 590 (5):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 591:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 592 (1):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 592 (6):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 595:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 596:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 597:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 599:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 600:**

Penalty: $5,000 or imprisonment for I year, or both.

**Chapter 6 (other than a provision referred to in a later heading in this Schedule):**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 672:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 704:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**SCHEDULE 3**—continued

**Section 705:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 746 (2):**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Subsection 746 (4):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 767:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 775 (6):**

Penalty: $1,000 for each day during all or part of which the contravention continues.

**Section 776:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 780:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 781:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 806:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 807:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 809:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 813:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 814:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 815:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 835:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 839:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 843:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 844:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 845:**

Penalty: $2,500 or imprisonment for 6 months, or both.

SCHEDULE 3—continued

**Section 846:**

Penalty:

(a) for a first offence—$2,500 or imprisonment for 6 months, or both;

(b) for a later offence—$10,000 or imprisonment for 2 years, or both.

**Subsection 847 (5):**

Penalty: $1,000 for each day during all or part of which the contravention continues.

**Section 849:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 872:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 881:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 891:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 996:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 997:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 998:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 999:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1000:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1001:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1002:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1018:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1019:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1020:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Subsection 1024 (1):**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Subsection 1024 (4):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**SCHEDULE 3**—continued

**Section 1025:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1026:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1027:**

Penalty: $1,000 or imprisonment for 3 months, or both.

**Section 1028:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 1031 (6):**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Subsection 1031 (8):**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Subsection 1031 (9):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1032:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1036:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1040:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1043:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1052:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1054:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1064:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1065:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1072:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1074:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1078:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1079:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**SCHEDULE 3**—continued

**Section 1081:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1112:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Subsection 1114 (8):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 1117:**

Penalty: $5,000 or imprisonment for 12 months, or both.

**Section 1118:**

Penalty: $5,000 or imprisonment for 12 months, or both.

**Section 1123:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1123A:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1125:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1128:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1129:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1130:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Subsection 1138 (10) or (11):**

Penalty: $1,000 for each day on which a contravention occurs.

**Subsection 1139 (5):**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1142:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1143:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1153:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1154:**

Penalty: $1,000.

**Section 1192:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1205:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**SCHEDULE 3**—continued

**Section 1208:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1209:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1210:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1213:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1214:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 1219:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 1256:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1258:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 1259:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1260:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1261:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1262:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1263:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1264:**

Penalty: $20,000 or imprisonment for 5 years, or both.

**Section 1266:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1267:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1268:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Section 1269:**

Penalty: $2,500 or imprisonment for 6 months, or both.

**Section 1271:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**SCHEDULE 3**—continued

**Section 1272:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1274:**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1307:**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Subsection 1308 (2):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Subsection 1308 (3):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Subsection 1309 (1):**

Penalty: $10,000 or imprisonment for 2 years, or both.

**Subsection 1309 (2):**

Penalty: $5,000 or imprisonment for 1 year, or both.

**Section 1323:**

Penalty: $2,500 or imprisonment for 6 months, or both.

[*Minister’s second reading speech made in—*

*House of Representatives on 25 May 1988*

*Senate on 14 October 1988*]