



# Corporations (Unlisted Property Trusts) Amendment Act 1991

No. 200 of 1991

## TABLE OF PROVISIONS PART 1—PRELIMINARY

### Section

1. Short title
2. Commencement

### PART 2—AMENDMENTS OF THE CORPORATIONS LAW

3. Corporations Law
4. Insertion of new sections:
  - 733A. Interim orders where application made under section 733
  - 733B. Interim orders where declaration made under section 733 before application under section 734
5. Power of Panel to make orders
6. Miscellaneous provisions about orders by Panel
7. Lodgment of consolidated copies of deed
8. Covenants to be included in deeds
9. Insertion of new sections:
  - 1069A. Certain deeds not to be modified without approval of prescribed interest holders
  - 1069B. Proxy voting at 1069A meetings
  - 1069C. Conduct of 1069A meetings
10. Insertion of new Division:

#### *Division 5A—Special provisions relating to unlisted property trusts*

##### *Subdivision A—Interpretation*

- 1076A. Interpretation
- 1076B. Meaning of “buy back”
- 1076C. When document is given to, sent to, or received by, a Division 5A trust

TABLE OF PROVISIONS—*continued*

Section

*Subdivision B—Restrictions on redemption of units in certain unlisted property trusts*

- 1076D. Trustee to consider effect of redeeming units
- 1076E. Application for restriction on redemption of units
- 1076F. Commission may restrict redemption of units
- 1076G. Consequences of orders restricting redemptions
- 1076H. Review of restrictions where circumstances become more favourable
- 1076J. Contravention of this Subdivision not an offence

*Subdivision C—Special provisions in relation to certain unlisted property trusts in existence on 23 July 1991*

- 1076K. Provisions about buy-backs and redemptions taken to be included in trust deeds:

ENTRENCHED PROVISIONS ABOUT BUY-BACKS AND REDEMPTIONS

- Provision 1 — Interpretation
  - Provision 2 — Notice period for buy-backs
  - Provision 3 — Notice period for redemptions
  - Provision 4 — Entitlement to receive benefits is not lost because of Provisions 2 and 3
  - Provision 5 — Early buy-back of units in case of financial hardship
  - Provision 6 — Discount may apply to early buy-back
  - Provision 7 — Calculation of price at which units to be bought back or redeemed
  - Provision 8 — Withdrawal request may be revoked with approval of management company
  - 1076L. The entrenched provisions of the trust deed of a Subdivision C trust
  - 1076M. Entrenched provisions not to be contravened
  - 1076N. Buy-back of certain units issued pursuant to applications received after 11 April 1991 and before the commencement
  - 1076P. Convening of meetings to vote on special variation proposals
  - 1076Q. When and where special variation meetings to be held
  - 1076R. Proxies
  - 1076S. Conduct of special variation meeting
  - 1076T. Passing of special variation proposals
  - 1076U. Entrenched provisions taken to be amended if no application for disallowance made
  - 1076V. Applications for disallowance of special variation proposals
  - 1076W. Compliance with, and revocation of, withdrawal requests made after special variation proposal passed
  - 1076X. Entrenched provisions taken to be amended if application for disallowance refused
  - 1076Y. Special variation proposals do not generally apply to withdrawal requests received before proposal voted on
  - 1076Z. Lodgment of consolidated copies of entrenched provisions
  - 1076ZA. Transitional—revocation of withdrawal requests made before the commencement
  - 1076ZB. Transitional—revocation of withdrawal requests made after the commencement and before 21 August 1991
  - 1076ZC. This Division not to affect other rights to revoke withdrawal requests
11. Insertion of new Division:

TABLE OF PROVISIONS—*continued*

Section

*Division 2—Changes resulting from the Corporations (Unlisted Property Trusts) Amendment Act 1991*

- 1365. Commencement of changes to section 1069
- 1366. Commencement of sections 1069A, 1069B and 1069C and Division 5A of Part 7.12
- 1367. Orders in relation to things done during retrospective operation of sections 1069A etc. and Subdivision C of Division 5A of Part 7.12

**PART 3—AMENDMENT OF THE CORPORATIONS REGULATIONS**

- 12. Omission of paragraph 7.12.15(2)(d)



# **Corporations (Unlisted Property Trusts) Amendment Act 1991**

**No. 200 of 1991**

---

## **An Act to change the Corporations Law and the Corporations Regulations**

*[Assented to 18 December 1991]*

The Parliament of Australia enacts:

### **PART 1—PRELIMINARY**

#### **Short title**

1. This Act may be cited as the *Corporations (Unlisted Property Trusts) Amendment Act 1991*.

#### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**PART 2—AMENDMENTS OF THE CORPORATIONS LAW**

**Corporations Law**

**3. In this Part:**

**“Corporations Law”** means the Corporations Law set out in section 82 of the *Corporations Act 1989*<sup>1</sup>.

**4. The Corporations Law is amended by inserting after section 733 the following sections:**

**Interim orders where application made under section 733**

**“733A.(1) Where:**

- (a) the Commission makes an application under section 733 for a declaration (in this section called the **‘requested declaration’**); and
- (b) the Panel has not yet determined the application; and
- (c) the Panel, or the President of the Panel, is of the opinion that it is desirable to make an interim order of a kind that the Panel could make under section 734 if it had already made the requested declaration;

the Panel, or the President, as the case may be, may make such an interim order that is expressed to apply pending the determination of the application for the requested declaration.

**“(2) An interim order may be made under subsection (1) even if another interim order has already been so made because of the making of the application for the requested declaration.**

**Interim orders where declaration made under section 733 before application under section 734**

**“733B.(1) This section applies where, at the time when the Panel makes a declaration under subsection 733(3), the Commission has not yet applied to the Panel to make an order under section 734 in reliance on the declaration.**

**“(2) If, immediately before that time, there was in force an interim order made under subsection 733A(1) because of the making of the application on which the declaration was made, the Panel may make at that time an order declaring the interim order to apply, with specified modifications (if any), for the 60 days beginning on the day when the declaration is made.**

**“(3) If the Panel makes an order under subsection (2), the interim order applies accordingly.**

**“(4) If:**

- (a) subsection (2) does not apply; or
- (b) subsection (2) applies but the Panel decides not to make at that time an order under that subsection;

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

the Panel may make at that time an interim order that:

- (c) is of a kind that it could make under section 734 in reliance on the declaration; and
- (d) is expressed to apply for the 60 days beginning on the day when the declaration is made.

“(5) The Panel may only make an order under subsection (2) or (4) if, in the Panel’s opinion, it is desirable to do so.

“(6) If, after an order is made under subsection (2) or (4), the Commission applies to the Panel to make an order under section 734 in reliance on the declaration:

- (a) an interim order may not be made under subsection 735(2) because of the application; and
- (b) if the application is determined within the 60 days referred to in the first-mentioned order—the order ceases to have effect on the determination of the application.”.

**Power of Panel to make orders**

5. Section 734 of the Corporations Law is amended:

- (a) by omitting from subsection (1) “This” and substituting “Subsection (2) of this”;
- (b) by inserting after subsection (2) the following subsection:

“(2A) The Commission may apply to the Panel for an order under subsection (2) whether or not the Panel has yet made the necessary declaration under subsection 733(3).”.

**Miscellaneous provisions about orders by Panel**

6. Section 735 of the Corporations Law is amended:

- (a) by omitting from subsection (2) “Where” and substituting “Subject to paragraph 733B(6)(a) and subsection (2A) of this section, where”;
- (b) by omitting from subsection (2) “considers” and substituting “determines”;
- (c) by omitting subsection (3) and substituting the following subsections:

“(2A) Where an application for an order under section 734 is made before the Panel has made the necessary declaration under subsection 733(3), an interim order made under subsection (2) of this section because of the application does not take effect unless and until the declaration is made.

“(3) The provisions of subsections 734(3), (4), (5) and (7), of subsections (5), (6), (7) and (8) of this section, and of section 736, apply in relation to:

- (a) an interim order under subsection 733A(1) or 733B(4) or subsection (2) of this section; or

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

(b) an interim order under subsection 733A(1) as applying because of an order under subsection 733B(2);  
as if the interim order, or the interim order as so applying, as the case may be, were an order under subsection 734(2).”.

**Lodgment of consolidated copies of deed**

7. Section 1068 of the Corporations Law is amended:

(a) by adding “and” at the end of paragraphs (1)(a) and (c);

(b) by inserting after paragraph (c) the following paragraph:

“(d) if there are in force when it is lodged entrenched provisions of the deed within the meaning of Division 5A—sets out:

(i) those provisions as so in force; and

(ii) a note identifying those provisions as the entrenched provisions of the deed within the meaning of Division 5A of Part 7.12 of the Corporations Law; and

(iii) a note explaining that those provisions have effect despite anything else in the deed and that they may only be revoked or amended under section 1076U or 1076X of the Corporations Law;”.

**Covenants to be included in deeds**

8. Section 1069 of the Corporations Law is amended:

(a) by omitting from paragraph (1)(m) “purpose of:” and substituting “purpose of either or both of the following:”;

(b) by omitting from subparagraph (1)(m)(i) “and” (last occurring);

(c) by omitting subparagraph (1)(m)(ii) and substituting the following subparagraph:

“(ii) giving to the management company, or to the trustee or representative, directions:

(A) the terms of which are set out in the notice of the meeting; and

(B) that the meeting thinks appropriate to be given; whether or not the directions relate to the accounts, balance-sheet or statement referred to in subparagraph (i);”;

(d) by omitting from paragraph (1)(n) “other”;

(e) by inserting after subsection (2) the following subsections:

“(2A) The regulations may prescribe for the purposes of paragraph (1)(n) a covenant that elaborates, supplements, or otherwise deals with, any aspect of:

(a) a matter to which a covenant referred to in another paragraph of subsection (1) relates; or

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

(b) a matter to which a provision of this Division (other than subsection (1)) or of Division 5A relates.

“(2B) However, a covenant prescribed for the purposes of paragraph (1)(n) must be capable, when contained in a deed, of operating concurrently with:

(a) all the covenants that the deed contains because of subsection (1) (other than that paragraph); and

(b) this Division (other than subsection (1)) and Division 5A.”;

(f) by inserting after subsection (9) the following subsection:

“(9A) If a paragraph of subsection (1) changes so as to change the covenant that is required by the paragraph to be included in a deed, the following provisions have effect in relation to a deed that actually includes a covenant as required by the paragraph as in force before the change:

(a) the covenant ceases to have effect when the paragraph changes;

(b) a covenant, as required by the changed paragraph, is taken to be contained in the deed at and after the change.”;

(g) by omitting from subsection (13) “the trustee or representative” (first occurring) and substituting “a person (being the management company or the trustee or representative)”;

(h) by omitting from subsection (13) “trustee or representative” (last occurring) and substituting “person”;

(i) by omitting from subsection (14) “the trustee or representative” (first occurring) and substituting “a person (being the management company or the trustee or representative)”;

(j) by inserting in subsection (14) “to the person” after “given”;

(k) by omitting from subsection (14) “trustee or representative” (last occurring) and substituting “person”.

9. After section 1069 of the Principal Act the following sections are inserted:

**Certain deeds not to be modified without approval of prescribed interest holders**

“1069A.(1) This section applies to a deed:

(a) that is, or has at any time been, an approved deed; or

(b) to which subsection 1069(7) applies or has applied.

“(2) Subject to subsection (7), the deed cannot be modified unless:

(a) the question whether the modification should be made has been voted on at a meeting of the holders of the relevant prescribed interests; and



*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

- (b) the management company convened the meeting by sending by post, to the last known address of each of the holders of the relevant prescribed interests, at least 21 days before the meeting, a notice that set out:
  - (i) the date, time and place of the meeting; and
  - (ii) the reason for convening the meeting; and
- (c) the holders who, at the meeting, vote (whether in person or by proxy) on the question hold relevant prescribed interests equal in value to at least 25% of the total value of all the relevant prescribed interests that are held by persons entitled to vote on the question; and
- (d) the holders who, at the meeting, vote (whether in person or by proxy) in favour of making the modification hold relevant prescribed interests equal in value to at least 75% of the total value of all the relevant prescribed interests held by the holders who vote (whether in person or by proxy) on the question at the meeting.

“(3) For the purposes of paragraph (2)(b), a notice is taken to be sent by post to the last known address of each of 2 or more joint holders if the notice is sent by post to the last known address of the joint holder whose name appears first in the management company’s records.

“(4) For the purposes of paragraph (2)(c), a person who holds relevant prescribed interests is entitled to vote on a question unless the person is prohibited by the deed or by the regulations from voting on the question.

“(5) For the purposes of paragraphs (2)(c) and (d), the value of a prescribed interest is:

- (a) if there is a buy-back covenant in the deed (whether or not the operation of that covenant is suspended)—the price at which the management company would have to buy the prescribed interest if the management company were required to do so, pursuant to the buy-back covenant, on the day immediately before the day when the meeting is held; or
- (b) if paragraph (a) does not apply but there is a redemption covenant in the deed (whether or not the operation of that covenant is suspended)—the price at which the trustee or representative would have to redeem the prescribed interest if the trustee or representative were required to do so, pursuant to the redemption covenant, on the day immediately before the day when the meeting is held; or
- (c) in any other case—the amount that the trustee determines in writing to be the price that a willing but not anxious buyer would pay for the prescribed interest if it were sold on the day immediately before the day when the meeting is held.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

“(6) Subject to subsection (7), subsection (2) has effect despite anything in the deed.

“(7) Subsection (2) does not apply to a modification if:

- (a) the trustee or representative reasonably believes that the modification will not adversely affect the rights of the holders of the relevant prescribed interests; or
- (b) a covenant included, or taken to be included, in the deed because of paragraph 1069(1)(n) requires or permits the modification to be made without this section being complied with.

“(8) If:

- (a) subsection (2) applies in relation to a modification of the deed; and
- (b) but for this subsection, a provision of the deed would have the effect of prohibiting the making of the modification unless it had been considered in some way by some or all of the holders of the relevant prescribed interests;

the provision of the deed does not apply to the modification.

“(9) At the commencement of this section:

- (a) paragraph 7.12.15(2)(d) of the Corporations Regulations ceases to have effect; and
- (b) any covenant included, or taken to be included, in a deed because of that paragraph ceases to have effect.

“(10) If a proposed modification of the deed would, if made, only affect the rights of the holders of one or more particular classes of prescribed interests, then, for the purposes of the application of this section in relation to the modification, a reference to a relevant prescribed interest is a reference to a prescribed interest in that class or in one of those classes.

“(11) A person who contravenes this section is not guilty of an offence.

**Proxy voting at 1069A meetings**

“1069B.(1) A person (in this section called the ‘**interest holder**’) who holds a number of prescribed interests to which a deed to which section 1069A applies relates and who is entitled to vote, at a meeting convened under that section, on the question whether a particular modification of the deed should be made may, by writing signed by the interest holder, appoint a natural person as the interest holder’s proxy, in respect of such of the prescribed interests as are specified in the instrument, to vote on the question at the meeting.

“(2) If:

- (a) the proxy or the interest holder gives the trustee or representative

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

the instrument appointing the proxy at least 2 days before the meeting; and

(b) the instrument is still in force at the time of the meeting; the proxy has the same right as the interest holder to attend and speak at the meeting and to vote on the proposal.

“(3) Section 1069A applies to a vote cast by the proxy at the meeting as if:

- (a) the proxy held, and the interest holder did not hold, the prescribed interests in respect of which the proxy was appointed; and
- (b) if the proxy has also been appointed as a proxy of one or more other holders of relevant prescribed interests—the proxy in his or her capacity as proxy for one of those holders were a different person from the proxy in his or her capacity as proxy for any other of those holders; and
- (c) if, apart from the effect of paragraph (a), the proxy holds relevant prescribed interests—the proxy in his or her capacity as the holder of the last-mentioned prescribed interests were a different person from the proxy in his or her capacity as proxy for any holder of prescribed interests.

**Conduct of 1069A meetings**

“1069C.(1) A meeting convened for the purposes of section 1069A is 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) if no person is so appointed—a nominee of the trustee or representative approved by the Commission.

“(2) A meeting convened for the purposes of section 1069A is to be conducted in accordance with the provisions of the relevant deed or, in so far as the deed makes no provision, as directed by the person presiding at the meeting.”.

10. The Corporations Law is amended by inserting after section 1076 the following Division:

***“Division 5A—Special provisions relating to unlisted property trusts***

***“Subdivision A—Interpretation***

**Interpretation**

“1076A. In this Division, unless the contrary intention appears: ‘amendments’ includes additions, omissions and substitutions; ‘buy-back request’, in relation to a Division 5A trust, means a withdrawal request in relation to which subparagraph (b)(i) of the definition of

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

‘withdrawal request’ is satisfied (whether or not subparagraph (b)(ii) of that definition is also satisfied);

‘commencement’ means 4.50 p.m. Australian Eastern Standard Time on 23 July 1991;

‘Division 5A trust’ means a property trust in relation to which the following conditions are satisfied:

- (a) the trust is not included in an official list of a securities exchange;
- (b) the trust deed is, or has been, an approved deed for the purposes of Division 5 of Part 7.12 of the Corporations Law of this jurisdiction or of a corresponding previous law of this jurisdiction;

but does not include an approved deposit fund within the meaning of the *Occupational Superannuation Standards Act 1987*;

‘entrenched provisions’, in relation to the trust deed of a Subdivision C trust, has the meaning given by subsection 1076L(1);

‘mortgage-derived estate’ means an estate in land held by a person because the person is, or has exercised rights as, the mortgagee of that or another estate in the land;

‘property trust’ means a trust:

- (a) where at least 20%, by value, of the trust property consists of estates in land, other than mortgage-derived estates; or
- (b) that has been, or is being, promoted as, or held out to be, a trust where a significant proportion (being at least 20% by value) of the trust property is to consist of estates in land, other than mortgage-derived estates;

‘redemption request’, in relation to a Division 5A trust, means a withdrawal request in relation to which subparagraph (b)(ii) of the definition of ‘withdrawal request’ is satisfied (whether or not subparagraph (b)(i) of that definition is also satisfied);

‘special variation meeting’ means a meeting convened under section 1076P;

‘special variation proposal’ means a proposal:

- (a) to revoke all the entrenched provisions of the trust deed of a Subdivision C trust without substituting new provisions for them; or
- (b) to make particular amendments of the entrenched provisions of the trust deed of a Subdivision C trust;

‘Subdivision C trust’ means a trust that was in existence at the commencement and has been a Division 5A trust at all times since then;

‘total revocation proposal’ means a special variation proposal of the kind referred to in paragraph (a) of the definition of ‘special variation proposal’;

‘trust deed’, in relation to a property trust, means the deed that relates to units in the trust;

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**‘unit’** means:

- (a) in relation to a particular property trust—a prescribed interest that consists of, or includes, a beneficial interest (however described) under that property trust; or
- (b) otherwise—a prescribed interest that consists of, or includes, a beneficial interest (however described) under a property trust;

**‘unitholder’**, in relation to a property trust, means a person who holds a unit in the trust;

**‘withdrawal request’** means a request:

- (a) that is made by a person who holds units in a Division 5A trust and that relates to some or all of those units; and
- (b) in relation to which at least one of the following conditions is satisfied:
  - (i) the management company is, or may become, required or entitled to comply with the request by buying back units to which the request relates;
  - (ii) the trustee is, or may become, required or entitled to comply with the request by redeeming units to which the request relates.

**Meaning of “buy back”**

“1076B. For the purposes of this Division, units in a Division 5A trust are bought back if, and only if, the management company buys the units, or causes them to be bought, pursuant to a buy-back covenant.

**When document is given to, sent to, or received by, a Division 5A trust**

“1076C. For the purposes of this Division:

- (a) a document is given to a Division 5A trust when it is first given to either the management company or the trustee; and
- (b) a document is sent to a Division 5A trust when it is first sent to either the management company or the trustee; and
- (c) a document is received by a Division 5A trust when it is first received by either the management company or the trustee.

***“Subdivision B—Restrictions on redemption of units in certain unlisted property trusts***

**Trustee to consider effect of redeeming units**

“1076D.(1) Before redeeming units in a Division 5A trust pursuant to an outstanding request, the trustee must decide whether redeeming:

- (a) those units; and
- (b) all the units:
  - (i) to which the other outstanding requests that the trust has received relate; and

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

- (ii) that the trustee is required or entitled to redeem pursuant to those requests;

would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units.

“(2) In subsection (1):

‘**outstanding request**’ means a redemption request in so far as it relates to units that have not already been redeemed or bought back pursuant to the request (whether or not an order under section 1076F is in force in relation to the request).

“(3) If the trustee decides that redeeming the units referred to in paragraphs (1)(a) and (b) would have such an effect, the trustee must consider:

- (a) whether the trustee is satisfied, in relation to one or more redemption requests, as mentioned in subsection 1076E(1); and
- (b) whether the trustee is satisfied, in relation to a period, as mentioned in subsection 1076E(2).

“(4) In considering the matters referred to in paragraphs (3)(a) and (b), the trustee must disregard the effect of:

- (a) each order in force under section 1076F in relation to the trust; and
- (b) each determination in force under section 1076G because of such an order.

“(5) Nothing in this section limits the circumstances in which the trustee must apply as required by subsection 1076E(1) or (2).

**Application for restriction on redemption of units**

“1076E.(1) If the trustee of a Division 5A trust is satisfied that redeeming all the units to which one or more particular redemption requests relate would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units, the trustee must apply in writing to the Commission for:

- (a) a total prohibition on the redemption of units pursuant to the requests; or
- (b) a prohibition on the redemption of more than a particular number of the units to which the requests relate, being a number of units that the trustee thinks could be redeemed pursuant to the requests without such an effect.

“(2) If the trustee of a Division 5A trust is satisfied, in relation to a period, that redeeming:

- (a) if the period has already begun, or has begun and ended—all the units to which the redemption requests that the trust has

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

so far received, or has received, as the case may be, during the period relate; and

- (b) if the period has not yet begun, or has not yet ended—all the units in relation to which it is reasonable to expect that the trust will receive redemption requests during the period;

would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units, the trustee must apply in writing to the Commission for:

- (c) a total prohibition on the redemption of units pursuant to redemption requests received by the trust during the period; or
- (d) a prohibition on the redemption of more than a particular number of units pursuant to redemption requests received by the trust during the period, being a number of units that the trustee thinks could be redeemed pursuant to such requests without having such an effect.

“(3) During the period starting when an application under subsection (1) or (2) is received and ending when the Commission makes, or is taken to make, its decision on the application, the trustee must not redeem units pursuant to a redemption request to which the application relates, or pursuant to a redemption request received during the period to which the application relates, as the case may be.

**Commission may restrict redemption of units**

“1076F.(1) If:

- (a) the Commission receives an application for a prohibition of the kind referred to in paragraph 1076E(1)(a); and
- (b) the Commission is satisfied that redeeming all the units to which the requests specified in the application relate would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units;

the Commission must:

- (c) make an order totally prohibiting the redemption of units pursuant to the requests; or
- (d) make an order prohibiting the redemption, pursuant to the requests, of more than a particular number of units, being a number of units that the Commission is satisfied could be redeemed pursuant to the requests without such an effect.

“(2) If:

- (a) the Commission receives an application for a prohibition of the kind referred to in paragraph 1076E(1)(b); and
- (b) the Commission is satisfied that redeeming all the units to which the requests specified in the application relate would be likely to have a material adverse effect on the value of the

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

remaining units in the trust, or on the interests of the holders of those units;

the Commission must make an order prohibiting the redemption, pursuant to the requests, of more than:

- (c) if the Commission is satisfied that the number of units that could be redeemed pursuant to the requests without such an effect is greater than the number specified in the application—the first-mentioned number of units; or
- (d) otherwise—the number of units specified in the application.

“(3) If:

- (a) the Commission receives an application for a prohibition of the kind referred to in paragraph 1076E(2)(c); and
- (b) the Commission is satisfied that redeeming:
  - (i) if the period specified in the application has already begun, or has begun and ended—all the units to which the redemption requests that the trust has so far received, or has received, as the case may be, during that period relate; and
  - (ii) if that period has not begun, or has not yet ended—all the units in relation to which it is reasonable to expect that the trust will receive redemption requests during that period;

would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units;

the Commission must:

- (c) make an order totally prohibiting the redemption of units pursuant to redemption requests received by the trust during the period; or
- (d) make an order prohibiting the redemption, pursuant to redemption requests received by the trust during the period, of more than a particular number of units, being a number of units that the Commission is satisfied could be redeemed pursuant to such requests without such an effect.

“(4) If:

- (a) the Commission receives an application for a prohibition of the kind referred to in paragraph 1076E(2)(d); and
- (b) the Commission is satisfied that redeeming:
  - (i) if the period specified in the application has already begun, or has begun and ended—all the units to which the redemption requests that the trust has so far received, or has received, as the case may be, during that period relate; and
  - (ii) if that period has not yet begun, or has not yet ended—



*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

all the units in relation to which it is reasonable to expect that the trust will receive redemption requests during that period;

would be likely to have a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units;

the Commission must make an order prohibiting the redemption, pursuant to redemption requests received by the trust during the period, of more than:

- (c) if the Commission is satisfied that the number of units that could be redeemed pursuant to such requests without such an effect is greater than the number specified in the application—the first-mentioned number of units; or
- (d) otherwise—the number of units specified in the application.

“(5) The Commission must, in writing, refuse an application under subsection 1076E(1) or (2) if it is not satisfied as mentioned in subsection (1), (2), (3) or (4) of this section, as the case requires.

“(6) The Commission is taken to have refused an application under subsection 1076E(1) or (2) if the Commission has not made an order under subsection (1), (2), (3) or (4) of this section, as the case requires, in relation to the application within 14 days after its receipt by the Commission.

“(7) The Commission must give to an applicant under subsection 1076E(1) or (2) written notice of its decision (other than a decision that it is taken to have made because of subsection (6)) in relation to the application and of its reasons for that decision.

“(8) If the Commission has made, or is taken to have made, its decision in relation to an application under subsection 1076E(1) or (2), the trustee must give to:

- (a) the management company; and
- (b) if the Commission’s decision is to make an order under subsection (1), (2), (3) or (4) of this section in relation to the application—each person who holds units in the trust and who the trustee considers may, because of the order, have to wait longer to have a withdrawal request fully complied with;

a written notice:

- (c) that sets out the Commission’s decision; and
- (d) if the trustee has been notified of the reasons for that decision—that sets out those reasons.

“(9) A notice under subsection (8) must be given:

- (a) as soon as practicable after the trustee is notified of the Commission’s decision; or
- (b) if the Commission is taken by subsection (6) to have refused

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

the application concerned—as soon as practicable after the Commission is taken to have refused the application.

“(10) If the Commission makes an order under this section that relates to some or all of the redemption requests to which a previous order under this section relates, then:

- (a) the previous order is taken to be revoked, on the making of the first-mentioned order, in so far as the previous order relates to redemption requests to which the first-mentioned order relates; and
- (b) all determinations under paragraphs 1076G(2)(a) and (3)(a) that were made because of the previous order and that relate to requests in respect of which that order is taken to be revoked are also taken to be revoked on the making of the first-mentioned order.

**Consequences of orders restricting redemptions**

“1076G.(1) If the Commission makes an order under section 1076F in relation to a Division 5A trust:

- (a) totally prohibiting the redemption of units pursuant to one or more redemption requests; or
- (b) totally prohibiting the redemption of units pursuant to redemption requests received by the trust during a period;

the trustee must comply with the order despite anything in the trust deed.

“(2) If the Commission makes an order under section 1076F in relation to a Division 5A trust prohibiting the redemption, pursuant to one or more redemption requests, of more than a particular number (in this subsection called the ‘**quota**’) of units:

- (a) the trustee must determine, in writing, in relation to the request or each request, how many (if any) of the units to which the request relates will be redeemed pursuant to the request; and
- (b) the number, or the total number, of units that the trustee determines will be redeemed pursuant to the request or requests must equal the quota.

“(3) If the Commission makes an order under section 1076F in relation to a Division 5A trust prohibiting the redemption, pursuant to redemption requests received by the trust during a period, of more than a particular number (in this subsection called the ‘**quota**’) of units:

- (a) the trustee must determine, in writing, in relation to each redemption request received by the trust during the period, how many (if any) of the units to which the request relates will be redeemed pursuant to the request; and
- (b) the total number of units that the trustee decides will be redeemed pursuant to all the redemption requests received by the trust during the period must not exceed the quota; and

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

- (c) if, at the end of the period, the total number referred to in paragraph (b) is less than the quota and is also less than the total number of units to which all those requests relate:
- (i) as soon as practicable after the end of the period, the trustee must make a fresh determination or determinations under paragraph (a) in relation to one or more of the requests; and
  - (ii) the number of units specified in a fresh determination in relation to a request must not be less than the number of units specified in the previous determination in relation to the request; and
  - (iii) on the making of a fresh determination in relation to a request, the previous determination ceases to have effect; and
  - (iv) following the making of the fresh determination or determinations, the total number of units that the trustee determines may be redeemed pursuant to all those requests must equal the lesser of the quota and the total number of units to which all those requests relate.

“(4) In making a determination under subsection (2) or (3), the trustee of a Division 5A trust must, to the greatest extent practicable, treat the holders of units of the same class equally and treat the holders of units of different classes fairly.

“(5) If:

- (a) under subsection (2) or (3), the trustee of a Division 5A trust determines that some but not all of the units to which a redemption request relates will be redeemed pursuant to the request; and
- (b) either:
  - (i) the request is not also a buy-back request; or
  - (ii) the request is also a buy-back request but the management company is not required to buy back units pursuant to the request until a time after the trustee is (apart from this section) required to redeem units pursuant to the request;

the trustee must give the person who made the request a written notice that sets out its determination and its reasons for that determination.

“(6) While a determination under paragraph (2)(a) or (3)(a) is in force in relation to a redemption request, the request has effect, except for the purposes of this Division, in relation to the trustee of the Division 5A trust concerned as if it related only to the number of units specified in the determination.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**Review of restrictions where circumstances become more favourable**

“1076H.(1) This section applies where:

- (a) an order under section 1076F is in force, in relation to a Division 5A trust, in relation to:
  - (i) particular redemption requests; or
  - (ii) redemption requests received by the trust during a particular period; and
- (b) the trustee thinks that, because of a change in circumstances that has occurred since the order was made:
  - (i) if the order totally prohibits the redemption of units pursuant to requests to which it relates—a substantial number of units; or
  - (ii) if the order prohibits the redemption, pursuant to requests to which it relates, of more than a particular number of units—a substantial number of additional units;could be redeemed, pursuant to requests to which the order relates, without the likelihood of a material adverse effect on the value of the remaining units in the trust, or on the interests of the holders of those units.

“(2) The trustee may request the Commission to reconsider the application on which the order was made.

“(3) A request must:

- (a) be made in writing; and
- (b) specify the change in circumstances; and
- (c) specify the number of units, or additional units, as the case may be, that the trustee thinks could be redeemed as mentioned in paragraph (1)(b).

“(4) The Commission must comply with a request if it is satisfied that, since the order was made, a change of circumstances has occurred that justifies reconsideration of the application.

“(5) Otherwise, it must refuse the request.

“(6) In order to comply with a request, the Commission must redetermine the application:

- (a) in accordance with section 1076F (but subject to subsections (7), (8) and (9) of this section); and
- (b) on the basis of the circumstances existing when the Commission redetermines it.

“(7) Subsection 1076F(6) does not apply to the Commission’s reconsideration of the application.

“(8) If, on the reconsideration, the Commission decides that, despite the change in circumstances, the order is still appropriate, the Commission need not remake the order.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

“(9) If, apart from this subsection, the Commission would redetermine the application in a way that could result in the trustee redeeming, pursuant to requests to which the order relates, more than the total of:

- (a) the number of units specified under paragraph (3)(c); and
- (b) if the order prohibits the redemption of more than a particular number of units—that number of units;

the Commission must instead redetermine the application by making under section 1076F an order prohibiting the redemption, pursuant to such requests, of more than that total.

“(10) If the Commission redetermines the application by refusing it, the Commission must, by writing, revoke the order.

“(11) If the Commission redetermines the application by making a new order under section 1076F, then:

- (a) the previous order is taken to be revoked on the making of the new order; and
- (b) all determinations under paragraphs 1076G (2) (a) and (3) (a) that were made because of the previous order are also taken to be revoked on the making of the new order.

**Contravention of this Subdivision not an offence**

“1076J. A person who contravenes section 1076D or 1076E or subsection 1076F (8) or 1076G (1), (2), (3), (4) or (5) is not guilty of an offence.

*“Subdivision C—Special provisions in relation to certain unlisted  
property trusts in existence on 23 July 1991*

**Provisions about buy-backs and redemptions taken to be included in trust deeds**

“1076K. Subject to this Subdivision, the trust deed of a Subdivision C trust is taken to include the following provisions:

**ENTRENCHED PROVISIONS ABOUT BUY-BACKS AND  
REDEMPTIONS**

**Provision 1—Interpretation**

**[Definitions]**

(1) In these Provisions, unless the contrary intention appears: ‘unit’ means a prescribed interest to which this deed relates.

**[Expressions defined in the Corporations Law]**

(2) Except so far as the contrary intention appears in these Provisions, an expression used in these Provisions that is also used in Division 5A of Part 7.12 of the Corporations Law has the same meaning in these Provisions as it has when used in that Division.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**[When document is given to, sent to, or received by, the trust]**

**(3)** For the purposes of these Provisions:

- (a) a document is given to the trust when it is first given to either the management company or the trustee; and
- (b) a document is sent to the trust when it is first sent to either the management company or the trustee; and
- (c) a document is received by the trust when it is first received by either the management company or the trustee.

**[Meaning of 'buy back']**

**(4)** For the purposes of these Provisions, units in the trust are bought back if, and only if, the management company buys the units, or causes them to be bought, pursuant to a buy-back covenant.

**Provision 2—Notice period for buy-backs**

**(1)** This Provision applies to a buy-back request that the trust received at or after 4.50 p.m. Australian Eastern Standard Time on 23 July 1991, unless the management company is satisfied that the request was sent to the trust before that time.

**(2)** The management company must not buy back units pursuant to the request until the end of the period of 12 months starting on the day on which the trust received the request.

**(3)** If, apart from this Provision, the management company would be required to comply with the request by buying back units, the management company must so comply as soon as practicable after the end of that period, except so far as the trustee complies with the request (pursuant to another provision of this deed) by redeeming units.

**(4)** This Provision has effect subject to Provision 5.

**Provision 3—Notice period for redemptions**

**(1)** This Provision applies to a redemption request that the trust received at or after 4.50 p.m. Australian Eastern Standard Time on 23 July 1991, unless:

- (a) the trustee is satisfied that the request was sent to the trust before that time; or
- (b) the request was made in respect of units that have been bought back (otherwise than as permitted by subsection 1076N (2) of the Corporations Law) at or after that time and that have not been sold or transferred since being bought back.

**(2)** The trustee must not redeem units pursuant to the request until the end of the period of 12 months starting on the day on which the trust received the request.

**(3)** If, apart from this Provision, the trustee would be required to comply with the request by redeeming units, the trustee must so comply

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

as soon as practicable after the end of that period, except so far as the management company complies with the request (pursuant to another provision of this deed) by buying back units.

(4) This provision has effect subject to Provision 5.

**Provision 4—Entitlement to receive benefits is not lost because of Provisions 2 and 3**

If, because of the making of a withdrawal request, another provision of this deed would, apart from this Provision, have the effect of denying or reducing an entitlement of the maker of the request to receive a benefit in respect of units to which the request relates, that other provision does not have that effect in respect of the period during which subclause (2) of Provision 2 or 3, as the case requires, prohibits compliance with the request.

**Provision 5—Early buy-back of units in case of financial hardship**

(1) This Provision applies where the trust receives a withdrawal request, made by a natural person, that includes a statement to the effect that the person is making the request because he or she is in financial hardship.

(2) If the management company is satisfied, on reasonable grounds, that the request should be accepted in relation to a number of units (being some or all of the units to which it relates) because the person is in financial hardship, the management company must buy back that number of the person's units as soon as practicable.

(3) If the management company is not satisfied as mentioned in subclause (2), the management company must refer the request to the trustee as soon as practicable.

(4) Unless the request must be referred to the trustee, the management company must give the person a written notice:

- (a) that sets out its decision in relation to the request; and
- (b) if the decision is that the request should be accepted to the extent of some but not all of the units to which it relates—that advises the person of the effect of subclause (9).

(5) If the request is referred to the trustee and the trustee is satisfied, on reasonable grounds, that the request should be accepted in relation to a number of units because the person is in financial hardship, the trustee must direct the management company to buy back that number of the person's units.

(6) If the request is referred to the trustee, the trustee must give the person a written notice:

- (a) that sets out its decision in relation to the request; and
- (b) if the decision is that the request should be accepted to the

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

extent of some but not all of the units to which it relates—that advises the person of the effect of subclause (9).

(7) The management company must comply with a direction under subclause (5) as soon as practicable.

(8) If:

- (a) the management company is required by subclause (2) or (7) to buy back units to which the withdrawal request relates; and
- (b) but for Provision 3, the trustee would be required or entitled to comply with the request by redeeming some or all of the units that the management company must buy back;

then:

- (c) Provision 3 does not apply to the redemption, pursuant to the request, of the units that the management company is required to buy back; and
- (d) if the trustee redeems some or all of those units, pursuant to the request, at the price the management company would have had to pay if it had instead bought back those units:
  - (i) the trustee is taken to have been entitled to redeem those units at that price; and
  - (ii) that redemption of units is taken, to the extent of the number of units redeemed, to discharge the management company's obligation under this Provision to buy back units to which the request relates.

(9) If, because of subclause (2) or (7), the management company must buy back some, but not all, of the units to which the withdrawal request relates, the following provisions have effect:

- (a) during the period of 14 days starting on receipt by the person of a notice under subclause (4) or (6) in relation to the request, the request is suspended in relation to the rest of the units to which it relates unless the person gives the trust, before the end of that period, a written notice to the effect that he or she wants the request to continue to apply to the rest of the units;
- (b) if, within that period, the person gives the trust a notice under paragraph (a) in relation to the request—the request then continues to have effect in relation to the rest of the units;
- (c) otherwise—this deed applies in relation to the person and the request as if the request had never been made in relation to the rest of the units.

**Provision 6—Discount may apply to early buy-back**

(1) If subclause (2) of Provision 5 requires the management company to buy back units, the management company may determine in writing that the units are to be bought back at a discount of a specified percentage, not exceeding 7.5%.



*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

(2) If the trustee directs the management company under subclause (5) of Provision 5 to buy back units, the trustee may determine in writing that the units are to be bought back at a discount of a specified percentage, not exceeding 7.5%.

(3) A determination must be complied with.

(4) If the trustee is requested to redeem units that have been bought back at a discount of a specified percentage because of a determination under subclause (1) or (2), the trustee must not redeem the units except at a discount of the same percentage.

**Provision 7—Calculation of price at which units to be bought back or redeemed**

For the purposes of working out the price at which units are to be bought back or redeemed pursuant to a withdrawal request, the request is to be taken to have been made immediately before the buy-back or redemption.

**Provision 8—Withdrawal request may be revoked with approval of management company**

(1) A person who has made a withdrawal request may, by notice in writing given to the trust, apply to revoke the request to the extent of some or all of the units to which it relates.

(2) The management company may grant or refuse an application and must notify the applicant in writing of the grant or refusal.

(3) As from the grant of an application to revoke a withdrawal request to the extent of a number of units:

- (a) the withdrawal request is taken to have been revoked to the extent of that number of units; and
- (b) if the withdrawal request is taken to have been revoked to the extent of some but not all of the units to which it relates—the request continues to have effect in so far as it relates to the rest of the units.

(4) If, under subclause (3), a withdrawal request is taken to be revoked to the extent of some or all of the units to which it relates, the request is taken (except for the purposes of this Provision), to that extent, never to have been made.

(5) This Provision has effect in addition to any other provisions of this deed under which a withdrawal request may be revoked or withdrawn.

**The entrenched provisions of the trust deed of a Subdivision C trust**

“1076L.(1) Subject to subsection (3), the entrenched provisions of the trust deed of a Subdivision C trust are:

- (a) the provisions taken by section 1076K to be included in the deed; or

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

(b) if those provisions have been amended—those provisions as amended and in force from time to time (even if the amendments have removed all the provisions that were originally taken by section 1076K to be included in the deed).

“(2) The entrenched provisions of the deed have effect despite anything else in the deed.

“(3) The entrenched provisions of the deed may be revoked under section 1076U or 1076X, but not otherwise.

Note: If all the entrenched provisions are revoked, a special variation proposal cannot later be proposed or passed for the purpose of including in the deed provisions that are to have the status of entrenched provisions.

“(4) The entrenched provisions of the deed may be amended under section 1076U or 1076X, but not otherwise.

“(5) Provisions that, apart from this subsection, would be entrenched provisions of the deed because of paragraph (1)(b) are of no effect except in so far as they are provisions with respect to one or more of the following:

- (a) buying back units in the trust;
- (b) redeeming such units;
- (c) matters incidental to a matter referred to in paragraph (a) or (b).

“(6) The entrenched provisions of the trust deed of a Subdivision C trust cease to have effect if the trust ceases to be a Subdivision C trust.

**Entrenched provisions not to be contravened**

“1076M.(1) A person must not contravene the entrenched provisions of the trust deed of a Subdivision C trust.

“(2) A person who contravenes subsection (1) is not guilty of an offence.

**Buy-back of certain units issued pursuant to applications received after 11 April 1991 and before the commencement**

“1076N.(1) This section applies in relation to units in a Subdivision C trust if:

- (a) the management company in relation to the trust is any of the following:
  - (i) Advance Asset Management Limited;
  - (ii) AMP Investment Management Limited;
  - (iii) ANZ Funds Management Limited;
  - (iv) BT Financial Services Limited;
  - (v) National Mutual Assets Management Limited;
  - (vi) Westpac Financial Services Limited; and

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

- (b) the units were issued pursuant to an application that the trust received after 11 April 1991 and before the commencement, or that the management company is satisfied was sent to the trust during that period.

“(2) If:

- (a) a Subdivision C trust receives a buy-back request in relation to units to which this section applies; and
- (b) the units to which the request relates have, at all times since their issue, been held by the person who made the request;

the management company may buy back units pursuant to the request at a time before the management company is, under the trust deed (including the entrenched provisions of the trust deed), permitted to buy back the units.

**Convening of meetings to vote on special variation proposals**

“1076P.(1) The management company in relation to a Subdivision C trust:

- (a) may convene a meeting of the holders of units in the trust for the purpose of the holders voting on a special variation proposal that relates to the entrenched provisions of the trust deed; and
- (b) subject to subsection (2), must do so if so requested by writing signed by the trustee, or by writing signed by a number of holders of such units that equals or exceeds the lesser of 50 and 10% of the total number of holders of such units.

Note: The special variation proposal procedure should not be used for an amendment that is intended to operate after the trust ceases to be a Subdivision C trust, as using that procedure would result in an amendment of the entrenched provisions, which only operate for so long as a trust continues to be a Subdivision C trust.

“(2) A request under paragraph (1)(b) must set out the special variation proposal to be voted on at the meeting.

“(3) The management company need not convene a meeting because of a request under paragraph (1)(b) if the proposed modifications of the entrenched provisions would, if made, be of no effect because of subsection 1076L(5).

“(4) For the purposes of this section, if 2 or more documents signed by holders of units in a Subdivision C trust make the same request, those documents are taken to be a single request signed by those holders.

**When and where special variation meetings to be held**

“1076Q.(1) Subject to subsections (2) and (3), the date, time and place at which a special variation meeting is to be held is to be determined by the management company convening the meeting.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

“(2) If the meeting is convened because of a request under paragraph 1076P(1)(b), the meeting must be held within 60 days after the management company receives the request.

“(3) At least 21 days before the meeting is held, the management company must send by post to the last known address of each person who holds units in the trust a written notice that sets out:

- (a) the date, time and place at which the meeting is to be held; and
- (b) if the meeting is convened under paragraph 1076P (1)(a)—the special variation proposal that the management company wants the unitholders to vote on; and
- (c) if the meeting is convened because of a request under paragraph 1076P (1)(b)—the special variation proposal set out in the request.

“(4) A notice under subsection (3) is taken to be sent by post to the last known address of each of 2 or more joint holders of units if the notice is sent by post to the last known address of the joint holder whose name appears first in the management company’s records.

**Proxies**

“1076R.(1) A person who holds a number of units in a Subdivision C trust and who is entitled to vote on a special variation proposal at a special variation meeting may, by writing signed by the unitholder, appoint a natural person as the unitholder’s proxy, in respect of such of the units as are specified in the instrument, to vote on the proposal at the meeting.

“(2) If:

- (a) the proxy or the unitholder gives the trustee the instrument appointing the proxy at least 2 days before the meeting; and
- (b) the instrument is still in force at the time of the meeting;

the proxy has the same right as the unitholder to attend and speak at the meeting and to vote on the proposal.

“(3) Section 1076T applies to a vote cast by the proxy at the meeting as if:

- (a) the proxy held, and the unitholder did not hold, the units in respect of which the proxy was appointed; and
- (b) if the proxy has also been appointed as a proxy of one or more other unitholders—the proxy in his or her capacity as proxy for one unitholder were a different person from the proxy in his or her capacity as proxy for any other unitholder; and
- (c) if, apart from the effect of paragraph (a), the proxy holds units in the trust—the proxy in his or her capacity as the holder of the last-mentioned units were a different person from the proxy in his or her capacity as proxy for any unitholder.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**Conduct of special variation meeting**

“1076S.(1) A special variation meeting is to be presided over by:

- (a) a person appointed for the purpose by the holders of the relevant units who are present at the meeting; or
- (b) if no person is so appointed—a nominee of the trustee approved by the Commission.

“(2) Except as provided in this Subdivision or the regulations, a special variation meeting must be conducted in the same way as if it were a meeting convened for the purposes of a covenant of a kind referred to in paragraph 1069(1)(k) or (m).

**Passing of special variation proposals**

“1076T.(1) A special variation proposal in relation to the entrenched provisions of the trust deed of a Subdivision C trust is passed if, and only if:

- (a) the proposal is passed at a special variation meeting in accordance with subsection (2); or
- (b) the regulations prescribe conditions to be satisfied for a special variation proposal to be passed otherwise than at a special variation meeting and those conditions are satisfied in relation to the proposal.

“(2) A special variation proposal is passed at a special variation meeting if, and only if:

- (a) the proposal was set out in the notice given under subsection 1076Q(3) to the holders of units in the trust; and
- (b) the unitholders who vote on the proposal at the meeting hold units in the trust equal in value to at least 25% of the total value of the units in the trust that are held by unitholders who are entitled to vote on the proposal; and
- (c) the unitholders who vote in favour of the proposal at the meeting hold units in the trust equal in value to at least 75% of the total value of the units in the trust held by the unitholders who vote on the proposal at the meeting.

“(3) For the purposes of paragraph (2)(b), a person who holds units in a Subdivision C trust is entitled to vote on a special variation proposal unless the person is:

- (a) the management company; or
- (b) an associate of the management company in relation to the power to exercise, or to control the exercise of, the voting power attached to units in the trust.

“(4) For the purposes of paragraphs (2)(b) and (c), the value of a unit is the price at which the management company would have to buy the unit if the management company were required to do so, pursuant

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

to a buy-back covenant, on the day immediately before the day when the special variation meeting is held.

“(5) As soon as practicable after a special variation proposal in relation to the entrenched provisions of the trust deed of a Subdivision C trust is passed, the management company must give the Commission a written notice that sets out the proposal and that specifies the day when it was passed.

**Entrenched provisions taken to be amended if no application for disallowance made**

“1076U. If:

- (a) a special variation proposal has been passed; and
- (b) neither the management company nor the trustee of the Subdivision C trust concerned gives the Commission an application under section 1076V in relation to the proposal within 7 days after the passing of the proposal;

then, at the end of the period referred to in paragraph (b):

- (c) if the proposal is a total revocation proposal—the entrenched provisions of the trust deed are revoked by force of this section; or
- (d) in any other case—the entrenched provisions of the trust deed are amended in accordance with the proposal by force of this section.

**Applications for disallowance of special variation proposals**

“1076V.(1) If:

- (a) a special variation proposal is passed; and
- (b) the management company or the trustee of the Subdivision C trust concerned thinks that giving effect to the proposal would be likely to have a serious adverse effect on the liquidity of the trust or of the management company;

the management company or the trustee, as the case may be, may apply to the Commission to have the proposal disallowed.

“(2) An application must be in writing and must be given to the Commission within 7 days after the passing of the proposal.

“(3) If the Commission is satisfied that giving effect to the proposal would be likely to have a serious adverse effect on the liquidity of the trust or of the management company, the Commission must:

- (a) accept the application; and
- (b) give the management company and the trustee written notice of the acceptance of the application, and of the reasons for the acceptance of the application, as soon as practicable after its acceptance.

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

“(4) If the Commission is not satisfied as mentioned in subsection (3), the Commission must:

- (a) refuse the application; and
- (b) give the management company and the trustee written notice of the refusal of the application, and of the reasons for the refusal of the application, as soon as practicable after its refusal.

“(5) The Commission is taken to have refused the application if the Commission has not accepted it within 28 days after its receipt by the Commission.

“(6) If the Commission has made, or is taken to have made, its decision in relation to the application, the management company must give each person who holds units in the trust a written notice:

- (a) that sets out the Commission’s decision; and
- (b) if the management company has been notified of the reasons for that decision—that sets out those reasons; and
- (c) that advises unitholders of the effect of subsection 1076W (3).

“(7) A notice under subsection (6) must be given:

- (a) as soon as practicable after the management company is notified of the Commission’s decision; or
- (b) if the Commission is taken by subsection (5) to have refused the application concerned—as soon as practicable after the Commission is taken to have refused the application.

**Compliance with, and revocation of, withdrawal requests made after special variation proposal passed**

“1076W.(1) This section applies where:

- (a) a special variation proposal in relation to the entrenched provisions of the trust deed of a Subdivision C trust has been passed; and
- (b) the management company or the trustee has made an application under section 1076V for the disallowance of the proposal; and
- (c) after the proposal was passed and before the Commission makes its decision in relation to the application, the trust receives a withdrawal request to which the proposal applies.

“(2) The management company must not buy back units, and the trustee must not redeem units, pursuant to the request during the period starting when the trust receives the request and ending 14 days after the person who made the request is given notice under subsection 1076V (6) of the Commission’s decision in relation to the application under section 1076V, unless the person has given the trust a notice in writing consenting to the buy-back or redemption of units pursuant to the request.

“(3) The person may revoke the request by notice in writing given to the trust during the period of 14 days starting when the person is

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

given notice under subsection 1076V(6) of the Commission's decision in relation to the application under section 1076V.

“(4) If the unitholder revokes the request in accordance with subsection (3), the request is taken (except for the purposes of this section) never to have been made.

“(5) For the purposes of this section, a special variation proposal applies to a withdrawal request in relation to a Subdivision C trust if, were the entrenched provisions of the trust deed amended in accordance with the proposal, those amendments would apply to the buy-back or redemption of units pursuant to the request.

**Entrenched provisions taken to be amended if application for disallowance refused**

“1076X.(1) If the Commission refuses an application under section 1076V for the disallowance of a special variation proposal in relation to the entrenched provisions of the trust deed of a Subdivision C trust, then, at the time when the Commission refuses the application:

- (c) if the proposal is a total revocation proposal—the entrenched provisions of the trust deed are revoked by force of this subsection; or
- (d) in any other case—the entrenched provisions are amended in accordance with the proposal by force of this subsection.

“(2) This section has effect subject to:

- (a) section 41 of the *Administrative Appeals Tribunal Act 1975* or that section as it applies as a law of this jurisdiction; and
- (b) section 15 of the *Administrative Decisions (Judicial Review) Act 1977* or that section as it applies as a law of this jurisdiction.

**Special variation proposals do not generally apply to withdrawal requests received before proposal voted on**

“1076Y. A special variation proposal that relates to the entrenched provisions of the trust deed of a Subdivision C trust and has been passed, and amendments of the entrenched provisions of the deed in accordance with the proposal, do not apply to the buying back or redemption of units pursuant to a withdrawal request received by the trust before the proposal was passed, except so far as the contrary intention is expressed in the proposal.

**Lodgment of consolidated copies of entrenched provisions**

“1076Z.(1) If the entrenched provisions of the trust deed of a Subdivision C trust are taken to be amended after the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*, the management company must lodge a printed copy of the entrenched provisions as in force when the copy is lodged and must do so within 14 days after the provisions are so taken to be amended.



*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

“(2) A copy lodged under subsection (1) must:

- (a) be verified by a written statement; and
- (b) bear a notation sufficient to identify the amendments; and
- (c) bear a notation sufficient to distinguish the copy from each previously lodged copy (if any) of the entrenched provisions.

**Transitional—revocation of withdrawal requests made before the commencement**

“1076ZA.(1) If the holder of units in a Subdivision C trust has made a withdrawal request:

- (a) that the trust received before the commencement; or
- (b) that the management company or the trustee is satisfied was sent to the trust before the commencement;

then:

- (c) the unitholder may revoke the request by notice in writing given to the trust during the period starting at the commencement and ending on 20 August 1991; and
- (d) during that period, the management company must not buy back units, and the trustee must not redeem units, pursuant to the request;

unless the unitholder has given the trust a notice in writing to the effect that the unitholder does not want to revoke the request.

“(2) If the unitholder revokes the request in accordance with subsection (1), the request is taken (except for the purposes of this section) never to have been made.

“(3) A person who contravenes subsection (1) is not guilty of an offence.

**Transitional—revocation of withdrawal requests made after the commencement and before 21 August 1991**

“1076ZB.(1) This section applies where the holder of units in a Subdivision C trust (other than the management company) has made a withdrawal request:

- (a) that the trust received before 21 August 1991; or
- (b) that the management company or the trustee is satisfied was sent to the trust before 21 August 1991;

other than a request to which section 1076ZA applies.

“(2) As soon as practicable after the trust receives the request, there must be given to the unitholder a written notice that:

- (a) advises the unitholder of the Commonwealth Government’s decision to impose a 12 month notice period for the withdrawal of funds from the trust; and
- (b) tells the unitholder that he, she or it may revoke the request by

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

notice in writing given to the trust within 28 days after he, she or it receives the first-mentioned notice.

“(3) If subsection (2) is not complied with, the management company and the trustee each contravene this section.

“(4) The unitholder may revoke the request by notice in writing given to the trust, unless:

- (a) the notice is given to the trust more than 28 days after the unitholder receives a notice under subsection (2) in relation to the request; or
- (b) the unitholder has given the trust a notice in writing to the effect that the unitholder does not want to revoke the request.

“(5) While subsection (4) entitles the unitholder to revoke the request, the management company must not buy back units, and the trustee must not redeem units, pursuant to the request.

“(6) If the unitholder revokes the request in accordance with subsection (4), the request is taken (except for the purposes of this section) never to have been made.

“(7) A person who contravenes subsection (2) or (5) is not guilty of an offence.

**This Division not to affect other rights to revoke withdrawal requests**

“1076ZC. Subsection 1076W (3), paragraph 1076ZA (1) (c) and subsection 1076ZB (4) have effect in addition to any provisions of a deed under which a withdrawal request may be revoked or withdrawn.”.

11. The Corporations Law is amended by inserting after section 1364 the following Division:

***“Division 2—Changes resulting from the Corporations (Unlisted Property Trusts) Amendment Act 1991***

**Commencement of changes to section 1069**

“1365. The following provisions of this Law, as in force immediately after the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraph 1069(1)(n);
- (b) subsections 1069(2A) and (2B).

**Commencement of sections 1069A, 1069B and 1069C and Division 5A of Part 7.12**

“1366. Sections 1069A, 1069B and 1069C and Division 5A of Part 7.12 of this Law, as in force immediately after the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*, are

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

taken to have commenced at 4.50 p.m. Australian Eastern Standard Time on 23 July 1991.

**Orders in relation to things done during retrospective operation of sections 1069A etc. and Subdivision C of Division 5A of Part 7.12**

“1367.(1) The Commission may make written orders in relation to:

- (a) the effect, for the purposes of sections 1069A, 1069B and 1069C, of things done in relation to a deed to which section 1069A applies, otherwise than in accordance with those sections, during the period of retrospectivity; or
- (b) the effect, for the purposes of Subdivision C of Division 5A of Part 7.12, of things done in relation to a Subdivision C trust, otherwise than in accordance with that Subdivision, during the period of retrospectivity.

“(2) The Commission may include in an order under paragraph (1)(a) a declaration to the effect that a provision of section 1069A, 1069B or 1069C has or had effect, in relation to the deed and the thing to which the order relates, as if the provision were omitted, modified or varied in a manner specified in the order.

“(3) The Commission may include in an order under paragraph (1)(b) a declaration to the effect that a provision of Subdivision C of Division 5A of Part 7.12 has or had effect, in relation to the trust and the thing to which the order relates, as if the provision were omitted, modified or varied in a manner specified in the order.

“(4) The Commission must give a copy of an order to the management company or to the trustee or representative.

“(5) An order (including a declaration in an order) has effect accordingly.

“(6) In this section:

‘**period of retrospectivity**’ means the period starting at 4.50 p.m. Australian Eastern Standard Time on 23 July 1991 and ending at the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*;

‘**Subdivision C trust**’ means a trust that is, for the purposes of Division 5A of Part 7.12, a Subdivision C trust.”

**PART 3—AMENDMENT OF THE CORPORATIONS  
REGULATIONS**

**Omission of paragraph 7.12.15(2)(d)**

12. The Corporations Regulations<sup>2</sup>, being regulations in force under section 22 of the *Corporations Act 1989*, are amended by omitting paragraph 7.12.15(2)(d).

*Corporations (Unlisted Property Trusts) Amendment  
No. 200, 1991*

**NOTES**

1. No. 109, 1989, as amended. For previous amendments, see No. 110, 1990; and No. 110, 1991.
2. Statutory Rules 1990 No. 455 as amended by 1991 Nos. 218 and 219.

*[Minister's second reading speech made in—  
House of Representatives on 7 November 1991  
Senate on 13 November 1991]*