



Corporations Legislation Amendment Act (No. 2) 1991

No. 201 of 1991

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Corporations Legislation Amendment Act (No. 2) 1991

No. 201 of 1991

An Act to amend laws relating to corporations and securities

[Assented to 18 December 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Corporations Legislation Amendment Act (No. 2) 1991*.

Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Part 2 commences, or is taken to have commenced, as the case requires, immediately after the commencement of the amendment of

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the *Corporations Act 1989* referred to in paragraph 2(3)(d) of the *Corporations Legislation Amendment Act 1991*.

(3) Part 4 is taken to have commenced on 1 January 1991.

PART 2—AMENDMENT OF THE CORPORATIONS ACT 1989

Amendment of section 52 of the *Corporations Act 1989*

3. Section 52 of the *Corporations Act 1989*¹ is amended by inserting in subsection (5) “(except in accordance with the law of the State under which the State Family Court is constituted)” after “or” (last occurring).

PART 3—AMENDMENTS OF THE CORPORATIONS LAW

Corporations Law

4. In this Part, “Corporations Law” means the Corporations Law set out in section 82 of the *Corporations Act 1989*¹.

Amendments relating to the National Guarantee Fund

5. The Corporations Law is amended as set out in Schedule 1.

Amendments relating to fundraising

6. The Corporations Law is amended as set out in Schedule 2.

Amendments relating to registration numbers of companies and registrable bodies

7. The Corporations Law is amended as set out in Schedule 3.

Amendments relating to registration of charges

8. The Corporations Law is amended as set out in Schedule 4.

Miscellaneous substantive and technical amendments

9. The Corporations Law is amended as set out in Schedule 5.

Commencement and application of changes to the Corporations Law resulting from this Act

10. The Corporations Law is amended as set out in Schedule 6.

**PART 4—AMENDMENT OF THE CORPORATIONS
LEGISLATION AMENDMENT ACT 1990**

Principal Act

11. In this Part, “Principal Act” means the *Corporations Legislation Amendment Act 1990*².

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Schedule 1

12. Schedule 1 to the Principal Act is amended by inserting “(last occurring)” before “, substitute” in the amendment of subsection 1224(1).

**PART 5—AMENDMENTS OF THE COMPANIES AND
SECURITIES LEGISLATION (MISCELLANEOUS
AMENDMENTS) ACT 1985**

Principal Act

13. In this Part, “Principal Act” means the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985*³.

Repeal of sections 78, 80, 81, 83 and 116

14. Sections 78, 80, 81, 83 and 116 of the Principal Act are repealed.

**PART 6—AMENDMENTS OF THE CO-OPERATIVE SCHEME
LEGISLATION AMENDMENT ACT 1989**

Principal Act

15. In this Part, “Principal Act” means the *Co-operative Scheme Legislation Amendment Act 1989*⁴.

Repeal of Parts 4 and 9

16. Parts 4 and 9 of the Principal Act are repealed.

SCHEDULE 1

Section 5

**AMENDMENTS OF THE CORPORATIONS LAW RELATING TO
THE NATIONAL GUARANTEE FUND**

Subsection 920(1) (definition of “claim”):

After “6,” insert “6A, 6B, 6C.”

Subsection 920(1) (definition of “property”):

After “money” insert “, securities”.

Subsection 920(1) (definition of “settlement documents”):

After “a transaction” insert “(other than a guaranteed securities loan)”.

Subsection 920(1) (definition of “transaction”):

Omit the definition, substitute:

“‘**transaction**’, except in Division 6B, means a sale or purchase of securities or a guaranteed securities loan;”.

Subsection 920(1):

Insert:

“‘**borrower**’, in relation to a guaranteed securities loan, has the meaning given by section 954B;

‘**clearing nominee**’, in relation to a participating exchange, means a subsidiary of the participating exchange operated for the purpose of facilitating the transfer of securities;

‘**guaranteed securities loan**’ has the meaning given by section 954B;

‘**replacement agreement**’, in relation to an agreement that has been novated, has the meaning given by section 924A;

‘**securities**’:

(a) except in Division 7—includes marketable securities, or marketable rights, within the meaning of Division 3 of Part 7.13; and

(b) in Division 7—has the meaning given by subsection 955(1);

‘**TDS nominee**’, in relation to the transfer delivery service provisions of a participating exchange, means the clearing nominee referred to in the definition of ‘transfer delivery service provisions’;

‘**transfer**’, except in Division 7, has a meaning affected by section 924;

‘**transfer delivery service provisions**’, in relation to a participating exchange, means provisions of the business rules of the participating exchange under which a person or partnership may elect to bring about

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a transfer of securities of a particular kind and number to another person or partnership by:

- (a) the first-mentioned person or partnership transferring securities of that kind and number to a clearing nominee of the participating exchange; and
- (b) the clearing nominee transferring securities of that kind and number to the other person or partnership;

‘transfer documents’, except in Division 7, has the meaning given by section 924.”.

After section 923:

Insert in Division 1 of Part 7.10:

Transfer of securities etc. and payment of money

“924.(1) This section has effect for the purposes of this Part (other than Division 7).

“(2) A person (called the **‘transferor’**) transfers securities to another person (called the **‘transferee’**) if, and only if, the transferor delivers, or causes to be delivered, to the transferee documents (called **‘transfer documents’**) that are sufficient to enable the transferee:

- (a) except in the case of marketable rights within the meaning of Division 3 of Part 7.13—to become registered as the holder of the securities; or
- (b) in the case of such marketable rights—to obtain the issue to the transferee of the securities to which the marketable rights relate;

without the transferor doing anything more, or causing anything more to be done, by way of executing or supplying documents.

“(3) If a person:

- (a) causes property (other than securities or money) to be transferred to another person; or
- (b) causes documents that are sufficient to enable another person to become the legal owner of property (other than securities or money) to be delivered to another person;

the first-mentioned person is taken to have transferred the property to the other person.

“(4) If a person causes money to be paid to another person, the first-mentioned person is taken to have paid the money to the other person.

“(5) In this section:

‘person’ includes a partnership.

SCHEDULE 1—continued

Novation of agreements

“924A. For the purposes of this Part, an agreement is novated if, and only if, because of the operation of a participating exchange’s business rules, the agreement is discharged and replaced with one or more other agreements (each of which is called a ‘**replacement agreement**’).

Attributing securities and payments to transactions

“924B. If:

(a) either:

- (i) a number of securities are transferred to a participating exchange or a member organisation of a participating exchange in respect of a number of transactions; or
- (ii) a payment is made to a participating exchange or a member organisation of a participating exchange in respect of a number of transactions; and

(b) apart from this section, it is not possible to tell, for the purposes of this Part, how many of the securities are transferred, or how much of the payment is made, in respect of each of the transactions; and

(c) the business rules of the participating exchange include provisions determining how many of the securities are transferred, or how much of the payment is made, in respect of each of the transactions;

those provisions have effect accordingly for the purposes of this Part.”.

Subsection 927(2):

After “954(5)” insert “, 954F(2), 954Q(2), 954Y(2), 959(3)”.

After subsection 927(5):

Insert:

“(5A) A delegation under this section continues in force even if there is a change in the membership of the Board or of the sub-committee.”.

After section 927:

Insert:

Sub-delegation by management sub-committee

“927A.(1) A management sub-committee may delegate to:

- (a) a member of the Board; or
- (b) a member of the sub-committee; or
- (c) an officer of SEGC;

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all or any of the powers, authorities and discretions that have been delegated under subsection 927(2) to the sub-committee.

“(2) A delegation must be in writing signed by a majority of the members of the sub-committee.

“(3) A delegation may be varied or revoked at any time by writing signed by a majority of the members of the sub-committee.

“(4) A delegation continues in force even if there is a change in the membership of the sub-committee.

“(5) A power, authority or discretion performed or exercised by a person under a delegation is taken to have been exercised by the Board.

“(6) A delegation of a power, authority or discretion does not prevent the performance or exercise of the power, authority or discretion by the Board, or by the sub-committee that made the delegation.

“(7) Section 109ZE has effect in relation to a delegation subject to this section.

“(8) In this section:

‘**delegation**’ means a delegation under this section;

‘**management sub-committee**’ means a management sub-committee appointed under subsection 927(1).”.

After section 928:

Insert in Division 3 of Part 7.10:

Interpretation—borrowing

“928A. In this Division, a reference to borrowing money includes a reference to obtaining credit.”.

After paragraph 930(f):

Insert:

“(fa) money paid into the Fund under subsection 930B(2);”.

Paragraph 930(j):

Omit the paragraph, substitute:

“(j) money paid to SEGC for the purposes of a claim under Division 6, 6A or 6C; and”.

After section 930:

Insert:

SCHEDULE 1—continued

Power to borrow etc. for purposes of the Fund

“930A.(1) If the Board considers that, in the interests of the sound financial management of the Fund, money should be borrowed for the purpose of meeting a payment due out of the Fund, SEGC may borrow money for that purpose on such terms and conditions as the Board thinks appropriate.

“(2) SEGC may give security, including security over the assets of the Fund, in respect of SEGC’s obligations in relation to a borrowing under subsection (1).

“(3) If:

- (a) money borrowed under subsection (1) is a loan from a participating exchange; and
- (b) the participating exchange borrowed money for the purpose of making the loan to SEGC;

SEGC may give security, including security over the assets of the Fund, in relation to the participating exchange’s obligations in respect of the borrowing referred to in paragraph (b).

Money borrowed and paid to SEGC

“930B.(1) This section applies where money borrowed by SEGC under subsection 930A(1) is paid to SEGC.

“(2) SEGC must pay the money into the Fund.

“(3) If:

- (a) the money was borrowed for the purpose of meeting a payment due out of the Fund; and
- (b) the borrowed money has been paid into the Fund; and
- (c) the payment due out of the Fund has not yet been made;

then, for the purposes of Division 4, the amount in the Fund is taken to be reduced by the amount of the borrowed money.

Money borrowed and not paid to SEGC

“930C.(1) This section applies where money borrowed by SEGC under subsection 930A(1) is not paid to SEGC but is payable to other persons at the direction of SEGC.

“(2) SEGC must not direct that any of the money be paid to a person unless the payment is of a kind that can, under section 932, be made out of the Fund.”

After paragraph 932(1)(b):

Insert:

- “(ba) money payable to a person or partnership under section 972A;”.

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After paragraph 932(1)(c):

Insert:

“(da) to the extent that the money referred to in section 935 is insufficient for the purpose, payments of principal, interest and other amounts payable by SEGC in respect of money borrowed, and security given, under section 930A;”.

Subsections 932(2) and (3):

After “Division 6” insert “, 6A, 6B, 6C”.

Subsection 935(1):

Add at the end:

“; and (c) principal, interest and other amounts payable by SEGC in respect of money borrowed, and security given, under section 930A.”.

Subsection 938(1) (paragraph (b) of the definition of “leviable dealer”):

Add at the end:

“; or (iii) in the case of a guaranteed securities loan—the borrower;”.

Subsection 938(1) (definition of “reportable transaction”):

Omit the definition.

Subsection 938(1):

Insert:

“ ‘leviable transaction’ means:

- (a) a sale or purchase of securities by a person or partnership where, as at the time when the agreement for the sale or purchase is made:
 - (i) the sale or purchase is a reportable transaction as defined in subsection 920(1); and
 - (ii) the person or partnership is a member organisation of a participating exchange and carries on a securities business in this jurisdiction; or
- (b) a guaranteed securities loan where, as at the time when the loan is entered into, the borrower carries on a securities business in this jurisdiction.”.

Subsections 938(2), (3) and (5):

Omit “reportable”, substitute “leviable”.

After section 948:

Insert:

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Effect of using a transfer delivery service

“948A. If:

- (a) under an agreement for the sale or purchase of securities, or under a replacement agreement in relation to such an agreement that has been novated, a person or partnership is obliged to transfer securities of a particular kind and number to another person or partnership; and
- (b) for the purpose of discharging the obligation, the first-mentioned person or partnership:
 - (i) elects, in accordance with the transfer delivery service provisions of a participating exchange, to bring about a transfer of securities of that kind and number to the other person or partnership by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about that transfer, transfers securities of that kind and number to the TDS nominee;

then, for the purposes of the application of this Division in relation to the sale or purchase, the obligation of the first-mentioned person or partnership to supply settlement documents in relation to the sale or purchase is taken to be discharged by the transfer of securities to the TDS nominee.”.

Subsections 949(3), (4) and (5):

Omit “Exchange subsidiary”, substitute “Exchange body”.

Subsections 949(3) and (4):

Omit “that subsidiary” (wherever occurring), substitute “that body”.

Subsection 949(3):

After “a dealer” insert “who is a member organisation of the Exchange”.

Section 949:

Add at the end:

“(7) In this section:

‘Exchange body’ means the Exchange or an Exchange subsidiary.”.

After subsection 950(1):

Insert:

“(1A) A dealer may make a single claim under this section in respect of 2 or more purchases.

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SCHEDULE 1—continued

“(1B) A claim made under subsection (1A) is to be treated for the purposes of subsection (2) as if it consisted of a separate claim in respect of each of the purchases to which it relates.”.

After section 950:

Insert:

Effect of novation, under business rules, of agreement for purchase

“950A.(1) Where:

- (a) a dealer (in this section called the ‘**buyer**’) agrees to buy securities from another dealer (in this section called the ‘**seller**’); and
- (b) the purchase is a reportable transaction; and
- (c) the agreement for the purchase is novated; and
- (d) under a replacement agreement, the seller becomes obliged to transfer securities to the buyer;

this section has effect for the purposes of:

- (e) making a claim under section 950 in respect of the purchase; and
- (f) the application of this Part (other than section 980) in relation to such a claim.

“(2) Subject to subsections (3) and (4), the novation is to be disregarded.

“(3) If:

- (a) the buyer’s obligation to supply to the seller, under the agreement for the purchase, the consideration for the purchase is replaced by an obligation under a replacement agreement to pay an amount; and
- (b) that obligation under the replacement agreement has been, or is to be, taken into account for the purposes of provisions of the business rules of a participating exchange that are of the kind referred to in subsection 954N(1);

the buyer is taken to have so supplied the consideration for the purchase.

“(4) If the replacement agreement or agreements is or are discharged or otherwise terminated, the agreement for the purchase is taken to be discharged or otherwise terminated.”.

Section 953:

Omit all the words after paragraph (c), substitute:

“SEGC must satisfy the claim by paying 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.”.

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After section 954:

Insert:

“Division 6A—Securities loans guarantees

Interpretation—general definitions

“954A.(1) In this Division:

‘borrower’, in relation to a guaranteed securities loan, has the meaning given by section 954B;

‘claim’ means a claim under this Division against SEGC;

‘compliance period’, in relation to an obligation under a guaranteed securities loan, means:

- (a) if the business rules of the lender as in force when the loan is made prescribe a period in relation to the obligation for the purposes of this paragraph—that period; or
- (b) otherwise—a period that is reasonable having regard to the obligation and all the circumstances relating to the loan;

‘excluded amount’, in relation to a guaranteed securities loan, means an amount payable by the borrower by way of a fee or charge, or by way of interest or a penalty, in respect of the loan;

‘guaranteed securities loan’ has the meaning given by section 954B;

‘lender’, in relation to a guaranteed securities loan, has the meaning given by section 954B;

‘security benefit’ means:

- (a) property (other than securities) or money transferred or paid to a person because the person is or was the holder of a security; or
- (b) a right that a person has because the person is or was the holder of a security, including, for example:
 - (i) a right to be paid an amount or to be issued with additional securities; or
 - (ii) a right that arises out of a reduction of share capital, a scheme of arrangement or compromise or a takeover.

“(2) A reference in the definition of ‘security benefit’ in subsection (1) to a right is a reference to a right, whether existing or future, and whether contingent or not.

Interpretation—guaranteed securities loan and related concepts

“954B.(1) For the purposes of this Part, an agreement is a guaranteed securities loan if:

- (a) under the agreement:
 - (i) a participating exchange is to transfer securities of a

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specified kind and number to, or as directed by, a person or partnership; and

- (ii) in order to put the participating exchange in the same position (as nearly as practicable) as if the agreement had not been made, the person or partnership is later to transfer to, or as directed by, the participating exchange such securities and security benefits as the agreement requires; and
- (b) the person or partnership is a member organisation of the participating exchange on the day when the agreement is entered into; and
- (c) the agreement is entered into after the commencement of this section; and
- (d) the agreement is of a kind that, according to the business rules of the participating exchange, is to be guaranteed under this Division.

“(2) For the purposes of the application of this Part in relation to a guaranteed securities loan:

- (a) the participating exchange referred to in subparagraph (1)(a)(i) is the **lender**; and
- (b) the person or partnership referred to in subparagraph (1)(a)(i) is the **borrower**; and
- (c) the securities transferred as mentioned in subparagraph (1)(a)(i) are **borrowed securities**.

“(3) The fact that an agreement includes obligations in addition to those mentioned in subsection (1) does not prevent the agreement from being a guaranteed securities loan.

Effect of using a transfer delivery service

“954C. If:

- (a) under a guaranteed securities loan, or under a replacement agreement in relation to a guaranteed securities loan that has been novated, a person or partnership is obliged to transfer securities of a particular kind to, or as directed by, another person or partnership; and
- (b) for the purpose of wholly or partly discharging the obligation, the first-mentioned person or partnership:
 - (i) elects, in accordance with the transfer delivery service provisions of a participating exchange, to bring about a transfer of a particular number of securities of that kind to, or as directed by, the other person or partnership by the means provided for in those provisions; and

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- (ii) for the purpose of so bringing about that transfer, transfers that number of securities of that kind to the TDS nominee;

then, for the purposes of the application of this Division in relation to the guaranteed securities loan, the obligations of the first-mentioned person or partnership to transfer securities under the loan are taken to be discharged, to the extent of that number of securities of that kind, by the transfer of securities to the TDS nominee.

Claim by lender in respect of borrower's failure to discharge obligation

“954D.(1) If, as at the end of the compliance period in relation to an obligation of the borrower under a guaranteed securities loan to transfer or pay securities or security benefits, or to pay some other amount (except an excluded amount):

- (a) the lender has transferred borrowed securities in accordance with the agreement; and
- (b) the obligation remains undischarged to any extent;

the lender may, subject to section 954J, make a claim in respect of the obligation.

“(2) A participating exchange may make a single claim under this section in respect of a number of obligations, whether arising under the same or different guaranteed securities loans.

“(3) A claim made under subsection (2) is to be treated for the purposes of sections 954G and 954H as if it were a separate claim in respect of each of the obligations to which it relates.

Effect of novation, under business rules, of guaranteed securities loan

“954E.(1) Where:

- (a) an agreement is novated; and
- (b) before the novation, the agreement was a guaranteed securities loan;

this section has effect for the purposes of:

- (c) making a claim under section 954D in respect of the loan; and
- (d) the application of this Part (other than section 980) in relation to such a claim.

“(2) Subject to subsections (3) and (4), the novation is to be disregarded.

“(3) If:

- (a) an obligation under the loan to pay an amount is replaced by an obligation under a replacement agreement to pay an amount; and

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(b) that obligation under the replacement agreement has been, or is to be, taken into account for the purposes of provisions of the business rules of a participating exchange that are of the kind referred to in subsection 954N(1);
the obligation to pay that amount under the loan is taken to be discharged.

“(4) If the replacement agreement or agreements is or are discharged or otherwise terminated, the loan agreement is taken to be discharged or otherwise terminated.

How and when claim to be made

“954F.(1) A claim must be in writing and must be served on SEGC within 6 months after the day when the claimant became entitled to make the claim.

“(2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

How claim in respect of securities or non-money security benefits is to be satisfied

“954G.(1) Subject to section 954K, SEGC must allow a claim in respect of an obligation under a guaranteed securities loan to transfer securities or security benefits (other than money) if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) the obligation is still undischarged to the extent of a particular number of securities or security benefits of a particular kind (in this section called the ‘**outstanding items**’).

“(2) Subject to subsection (3), if:

- (a) SEGC allows the claim; and
- (b) the claimant has:
 - (i) under the guaranteed securities loan, paid as directed by the borrower; or
 - (ii) for the purposes of the claim, paid to SEGC; each amount (if any) required to be paid under the loan by the claimant upon the discharge of the obligation;

SEGC must transfer to, or as directed by, the claimant, securities or security benefits of the same kind and number as the outstanding items.

“(3) If:

- (a) SEGC allows the claim; and
- (b) either:
 - (i) paragraph (2)(b) is not satisfied; or

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- (ii) paragraph (2)(b) is satisfied but the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities or security benefits of the same kind and number as the outstanding items within the pre-cash settlement period;

SEGC must satisfy the claim by paying to the claimant the amount that, as at the time when the Board decides it is so satisfied, is the actual pecuniary loss suffered by the claimant in respect of the failure to discharge the obligation.

“(4) In working out the amount of the actual pecuniary loss suffered in respect of the failure to discharge the obligation, regard may be had to the cost to the claimant of any securities or security benefits of the same kind as the outstanding items that the claimant obtained because the obligation was not discharged.

“(5) In this section:

‘pre-cash settlement period’ means:

- (a) if the business rules of the claimant, 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
- (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

How claim in respect of an amount of money is to be satisfied

“954H.(1) Subject to section 954K, SEGC must allow a claim in respect of an obligation under a guaranteed securities loan to pay a security benefit that is an amount of money, or to pay some other amount, if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) the obligation is still undischarged to the extent of a particular amount (in this section called the **‘outstanding amount’**).

“(2) If SEGC allows the claim, it must pay to, or as directed by, the claimant an amount equal to the outstanding amount.

Nexus with this jurisdiction

“954J. A participating exchange may not make a claim in respect of a guaranteed securities loan unless:

- (a) the borrower was carrying on a securities business in this jurisdiction on the day when the loan was entered into; or
- (b) if the borrower was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the borrower

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carried on in a jurisdiction before that day was carried on in this jurisdiction.

Preventing double recovery

“954K. If SEGC allows a claim under section 954D of the Corporations Law of another jurisdiction in respect of a failure to discharge an obligation, SEGC must not allow a claim under section 954D of the Corporations Law of this jurisdiction in respect of the same failure.

“Division 6B—Claims in respect of net obligations

Interpretation

“954L. In this Division:

‘claim’ means a claim under this Division against SEGC;

‘dealer’, in relation to a participating exchange, means the participating exchange or a member organisation of the participating exchange.

Effect of using a transfer delivery service

“954M. If:

- (a) a person or partnership (in this section called the **‘transferor’**) is, under provisions of a kind referred to in subsection 954P(1), obliged to transfer securities of a particular kind to another person or partnership (in this section called the **‘transferee’**); and
- (b) for the purpose of wholly or partly discharging the obligation, the transferor:
 - (i) elects, in accordance with the transfer delivery service provisions of a participating exchange, to bring about a transfer of a particular number of securities of that kind to the transferee by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about the transfer, transfers that number of securities of that kind to the TDS nominee;

then, for the purposes of the application of this Division, the obligation is taken to have been discharged, to the extent of that number of securities of that kind, by the transfer of securities to the TDS nominee.

Claim in respect of failure to pay net amount in respect of transactions

“954N.(1) If:

- (a) under provisions of the business rules of a participating exchange, the total of the amounts that become due and payable to a dealer by a subsidiary of the participating exchange on a

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particular day in respect of transactions (as defined in the business rules) of a kind or kinds specified in the business rules is set off against the total of the amounts that become due and payable by the dealer to the subsidiary on that day in respect of transactions (as so defined) of that kind or those kinds; and

(b) depending on which of those totals is the greater, the provisions oblige:

(i) the dealer to pay to the subsidiary, or to some other dealer or dealers nominated under the provisions; or

(ii) the subsidiary, or some other dealer or dealers nominated under the provisions, to pay to the dealer;

within a specified period, the difference between those totals; and

(c) as at the end of that period, that obligation remains undischarged to the extent of a particular amount;

the person or partnership to which the amount is payable may, subject to section 954U, make a claim in respect of the obligation.

“(2) Entitlement to make the claim is not affected by a dealer ceasing to be a member organisation of the participating exchange after the obligation arose.

“(3) For the purposes of this section, a total may be a nil amount.

Claim in respect of failure to transfer net number of securities in respect of transactions

“954P.(1) This section applies if:

(a) under provisions of the business rules of a participating exchange, the total number of securities of a particular kind to be transferred on a particular day to a dealer by a subsidiary of the participating exchange in respect of transactions (as defined in the business rules) of a kind or kinds specified in the business rules is set off against the total number of securities of that kind to be transferred on that day by the dealer to the subsidiary in respect of transactions (as so defined) of that kind or those kinds; and

(b) depending on which of those totals is the greater, the provisions oblige:

(i) the dealer to transfer to some other dealer or dealers nominated under the provisions; or

(ii) some other dealer or dealers nominated under the provisions to transfer to the dealer;

within a specified period, securities of that kind equal in number to the difference between those totals; and

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- (c) as at the end of that period, the obligation to transfer, or any of the obligations to transfer, as the case requires, remains undischarged to the extent of a particular number of securities of that kind (in this section called the ‘default securities’).

“(2) If the participating exchange has not taken action as mentioned in subsection (3), the person or partnership to which the default securities should have been transferred may, subject to section 954U, make a claim in respect of the failure to transfer the default securities.

“(3) If, for the purpose of remedying the failure to transfer the default securities, the participating exchange has transferred securities of the same kind and number as the default securities to the person or partnership to which the default securities should have been transferred:

- (a) the participating exchange is subrogated to all the rights and remedies of the person or partnership in relation to the failure to transfer the default securities; and
- (b) the participating exchange may, subject to section 954U, make a claim in respect of its actions to remedy the failure; and
- (c) any claim made under subsection (2) in respect of the failure is taken not to have been entitled to be made.

“(4) Entitlement to make a claim is not affected by a dealer ceasing to be a member organisation of the participating exchange after the obligation to transfer arose.

“(5) For the purposes of this section, a total number of marketable securities of a particular kind may be zero.

How and when claim to be made

“954Q.(1) A claim must be in writing and must be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.

“(2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

How claim under subsection 954N(1) is to be satisfied

“954R.(1) Subject to section 954V, SEGC must allow a claim under subsection 954N(1) if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) the obligation referred to in paragraph 954N(1)(c) still remains undischarged to the extent of a particular amount.

“(2) If SEGC allows the claim, SEGC must pay to the claimant the amount referred to in paragraph (1)(b).

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How claim under subsection 954P(2) is to be satisfied

“954S.(1) Subject to section 954V, SEGC must allow a claim under subsection 954P(2) if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) the obligation referred to in paragraph 954P(1)(c) still remains undischarged to the extent of a particular number of securities of a particular kind (in this section called the ‘**outstanding securities**’).

“(2) Subject to subsection (3), if SEGC allows the claim, it must transfer to the claimant securities of the same kind and number as the outstanding securities.

“(3) If the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities of the same kind and number as the outstanding securities within the pre-cash settlement period, SEGC must satisfy the claim by paying to the claimant the amount that, as at the time when the Board decides it is so satisfied, is the actual pecuniary loss suffered by the claimant in respect of the failure to transfer the outstanding securities.

“(4) In working out the amount of the actual pecuniary loss suffered in respect of the failure to transfer the outstanding securities, regard may be had to the cost to the claimant of any securities of the same kind as the outstanding securities that the claimant obtained because the outstanding securities were not transferred.

“(5) In this section:

‘**pre-cash settlement period**’ means:

- (a) if the business rules of the participating exchange that is referred to in paragraph 954P(1)(a), 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
- (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

How claim under subsection 954P(3) is to be satisfied

“954T.(1) Subject to section 954V, SEGC must allow a claim by a participating exchange under subsection 954P(3) if the Board is satisfied that:

- (a) the participating exchange is entitled to make the claim; and
- (b) the participating exchange has paid or transferred to SEGC any money or property it has obtained because of the right of subrogation given by paragraph 954P(3)(a) in relation to the failure to transfer the default securities.

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“(2) If SEGC allows the claim, it must pay to the participating exchange the amount that, as at the time when the claim is allowed, is the actual pecuniary loss suffered by the participating exchange because of the actions it has taken to remedy its subsidiary’s default.

“(3) In working out the amount of the actual pecuniary loss suffered in respect of the actions taken by the participating exchange to remedy its subsidiary’s default, regard may be had to the cost to the participating exchange of obtaining the securities transferred as mentioned in subsection 954P(3).

“(4) Money or property paid or transferred to SEGC under paragraph (1)(b) forms part of the Fund.

Nexus with this jurisdiction

“954U. A person or partnership may not make a claim in respect of a failure by a person or partnership (in this section called the ‘defaulter’) to discharge an obligation to pay an amount or transfer securities unless:

- (a) the defaulter was carrying on a securities business in this jurisdiction on the day on which the obligation arose; or
- (b) if the defaulter was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the defaulter carried on in a jurisdiction before that day was carried on in this jurisdiction.

Preventing double recovery

“954V.(1) If SEGC allows a claim under subsection 954N(1) of the Corporations Law of another jurisdiction in respect of a failure to pay an amount, SEGC must not allow a claim under the corresponding subsection of the Corporations Law of this jurisdiction that relates to the same failure.

“(2) If SEGC allows a claim under section 954P of the Corporations Law of this or another jurisdiction in respect of a failure to transfer securities, SEGC must not allow a claim, or another claim, as the case requires, under section 954P of the Corporations Law of this jurisdiction that relates to the same failure.

“Division 6C—Transfer delivery service guarantees

Interpretation

“954W. In this Division:

‘**claim**’ means a claim under this Division against SEGC;

‘**claimable obligation**’ means:

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- (a) an obligation to transfer securities under an agreement for the purchase of securities, where the purchase is, for the purposes of Division 6, a reportable transaction; or
- (b) an obligation to transfer securities under a replacement agreement in relation to an agreement of the kind referred to in paragraph (a) that has been novated; or
- (c) an obligation to transfer securities under a guaranteed securities loan; or
- (d) an obligation to transfer securities under a replacement agreement in relation to a guaranteed securities loan that has been novated; or
- (e) an obligation to transfer securities that arose as mentioned in paragraph 954P(1)(b);

‘discharge’, in relation to an obligation, means:

- (a) except in the case of a purchase obligation—discharge the whole or a part of the obligation; or
- (b) in the case of a purchase obligation—discharge the whole of the obligation;

‘purchase obligation’ means an obligation of the kind referred to in paragraph (a) of the definition of ‘claimable obligation’.

Claims in respect of default by TDS nominee

“954X.(1) This section applies if:

- (a) a person or partnership (in this Division called the **‘transferor’**) is obliged to transfer securities of a particular kind to, or as directed by, another person or partnership (in this Division called the **‘transferee’**); and
- (b) the obligation is a claimable obligation; and
- (c) for the purpose of discharging the obligation, the transferor:
 - (i) elects, in accordance with the transfer delivery service provisions of a participating exchange, to bring about a transfer of a particular number of securities of that kind to, or as directed by, the transferee by the means provided for in those provisions; and
 - (ii) for the purpose of so bringing about the transfer, transfers that number of securities of that kind to the TDS nominee; and
- (d) for the purpose of bringing about the transfer of securities referred to in subparagraph (c)(i) by the means provided for in those provisions, the TDS nominee later purports to transfer that number of securities of that kind to, or as directed by, the transferee; and
- (e) the TDS nominee is in default under the transfer delivery

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service provisions because the transfer documents in relation to the purported transfer, so far as they relate to a particular number of securities of that kind (in this Division called the ‘default securities’), are not sufficient for the purpose referred to in subsection 924(2); and

- (f) if the obligation is a purchase obligation—the transferee has paid, or is ready, willing and able to pay, to the transferor, under the agreement for the purchase, the consideration for the purchase.

“(2) If the participating exchange has not taken action as mentioned in paragraph (3)(a) or (b), the transferee (even if it is the participating exchange) may, subject to section 954ZB, make a claim in respect of the TDS nominee’s default.

“(3) If the participating exchange has, for the purpose of remedying the TDS nominee’s default:

- (a) where the participating exchange is also the transferee—obtained marketable securities of the same kind and number as the default securities; or
- (b) otherwise—transferred securities of the same kind and number as the default securities to, or as directed by, the transferee;

the following provisions have effect:

- (c) unless the participating exchange is also the transferee—the participating exchange is subrogated to all the rights and remedies of the transferee in relation to the purported transfer of securities by the TDS nominee;
- (d) the participating exchange may, subject to section 954ZB, make a claim in respect of its actions to remedy the default;
- (e) any claim made under subsection (2) in respect of the TDS nominee’s default is taken not to have been entitled to be made.

“(4) A person or partnership may make a single claim under subsection (2) or (3) in respect of 2 or more defaults.

“(5) A claim made under subsection (4) is to be treated for the purposes of sections 954Z and 954ZA as if it were a separate claim in respect of each of the defaults to which it relates.

“(6) Entitlement to make a claim in respect of a claimable obligation is not affected by a person or partnership ceasing after the obligation arose to be a member organisation of a participating exchange.

How and when claim to be made

“954Y.(1) A claim must be in writing and must be served on SEGC within 6 months after the day on which the claimant became entitled to make the claim.

SCHEDULE 1—continued

“(2) A claim that is not made within the period required by subsection (1) is barred unless the Board otherwise determines.

How claim under subsection 954X(2) is to be satisfied

“954Z.(1) Subject to section 954ZC, SEGC must allow a claim under subsection 954X(2) if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) if paragraph 954X(1)(f) applies—the claimant has:
 - (i) paid to the transferor; or
 - (ii) for the purposes of the claim, paid to SEGC;the consideration, under the agreement for the purchase, for the purchase.

“(2) Subject to subsection (3), if SEGC allows the claim, it must transfer to, or as directed by, the claimant securities of the same kind and number as the default securities.

“(3) If the Board is satisfied that it is not reasonably practicable for SEGC to obtain securities of the same kind and number as the default securities within the pre-cash settlement period, SEGC must satisfy the claim by paying 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 TDS nominee’s default.

“(4) In working out the amount of the actual pecuniary loss suffered in respect of the TDS nominee’s default, regard may be had to the cost to the claimant of any securities of the same kind as the default securities that the claimant obtained because the TDS nominee failed to transfer the default securities.

“(5) In this section:

‘pre-cash settlement period’ means:

- (a) if the business rules of the participating exchange concerned, 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
- (b) otherwise—such period as the Board, having regard to all the circumstances of the claim, considers reasonable.

How claim under subsection 954X(3) is to be satisfied

“954ZA.(1) Subject to section 954ZD, SEGC must allow a claim under subsection 954X(3) if the Board is satisfied that:

- (a) the claimant is entitled to make the claim; and
- (b) if paragraph 954X(1)(f) applies—the transferee has paid to the transferor the consideration payable, under the agreement for the purchase, for the purchase; and

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(c) the claimant has paid or transferred to SEGC any money or property it has obtained because of the right of subrogation given by paragraph 954X(3)(c) in relation to the purported transfer of securities by the TDS nominee.

“(2) If SEGC allows the claim, it must pay to the claimant the amount that, as at the time when the claim is allowed, is the actual pecuniary loss suffered by the claimant because of the actions it has taken to remedy the TDS nominee’s default.

“(3) In working out the amount of the actual pecuniary loss suffered in respect of actions taken by the claimant to remedy the TDS nominee’s default, regard may be had to the cost to the claimant of obtaining the securities obtained or transferred as mentioned in paragraph 954X(3)(a) or (b), as the case requires.

“(4) Money or property paid or transferred to SEGC under paragraph (1)(c) forms part of the Fund.

Nexus with this jurisdiction

“954ZB. A person or partnership may not make a claim under subsection 954X(2) or (3) unless:

(a) in the case of the participating exchange referred to in that subsection—the participating exchange was carrying on business in this jurisdiction on the day of the purported transfer referred to in paragraph 954X(1)(d); or

(b) otherwise:

(i) the person or partnership was carrying on a securities business in this jurisdiction on the day of the purported transfer referred to in paragraph 954X(1)(d); or

(ii) if the person or partnership was not so carrying on such a business and was not carrying on a securities business in any other jurisdiction on that day—the last securities business that the person or partnership carried on in a jurisdiction before that day was carried on in this jurisdiction.

Preventing double recovery

“954ZC. If SEGC allows a claim under section 954X of the Corporations Law of this or another jurisdiction in respect of a purported transfer of securities, SEGC must not allow, under section 954X of the Corporations Law of this jurisdiction, a claim, or another claim, as the case requires that relates to the same purported transfer.”.

Section 959:

Repeal the section, substitute:

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How and when claim may be made

“959.(1) A claim must:

- (a) be in writing; and
- (b) be served on SEGC:
 - (i) if a notice under subsection (4) applies to the claim—before the end of the last application day specified in the notice; or
 - (ii) in any other case—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) For the purposes of subsection (1), a notice under subsection (4) applies to a claim if the claim is in respect of an unauthorised execution, by the dealer named in the notice, during the applicable period specified in the notice.

“(3) A claim that is not served on SEGC by the time required by paragraph (1)(b) is barred unless the Board otherwise determines.

“(4) SEGC may publish, in each State and Territory in a daily newspaper circulating in that State or Territory, a notice that:

- (a) is in the prescribed form; and
- (b) names a particular dealer; and
- (c) requires that all claims in respect of unauthorised executions, by the named dealer, during a period (in this section called the ‘**applicable period**’) specified in the notice in accordance with subsection (5) must be served on SEGC before the day (in this section called the ‘**last application day**’) specified in the notice in accordance with subsection (6).

“(5) The applicable period must be a period that starts and ends before:

- (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
- (b) in any other case—the first day on which the notice is published.

“(6) The last application day must be at least 3 months after:

- (a) if each publication of the notice occurs on the same day—the day on which the notice is published; or
- (b) in any other case—the last day on which the notice is published.

“(7) 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 (4).”.

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Paragraph 961A(b):

- (a) After “such a business” insert “and was not carrying on a securities business in any other jurisdiction on that day”.
- (b) After “carried on” insert “in a jurisdiction”.

Paragraph 966A(b):

- (a) After “such a business” insert “and was not carrying on a securities business in any other jurisdiction on that day”.
- (b) After “carried on” insert “in a jurisdiction”.

Division 9 of Part 7.10 (heading):

Omit the heading, substitute:

“Division 9—General provisions relating to claims”.

After section 970:

Insert:

Claimant may be required to exercise right of set-off

“970A. If:

- (a) a person (in this section called the ‘claimant’) has made a claim in respect of a liability of another person (in this section called the ‘defaulter’); and
- (b) the claimant has a right, whether under an agreement or otherwise, to set off a liability of the claimant to the defaulter against the liability referred to in paragraph (a);

SEGC may refuse to allow the claim until the claimant has exercised the right.

Effect of set-off on claim

“970B.(1) If:

- (a) SEGC allows a claim by a person (in this section called the ‘claimant’) in respect of a liability of another person (in this section called the ‘defaulter’); and
- (b) the liability of the defaulter to the claimant has been reduced, by an amount of money or a number of securities (in this section called the ‘set-off reduction’), because of:
 - (i) the exercise by the claimant or the defaulter of a right of set-off, whether under an agreement or otherwise; or
 - (ii) the operation of an agreement so far as it provides for the automatic set-off of liabilities; and
- (c) but for this section, the reduction of the defaulter’s liability

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would not be taken into account when working out the obligations of SEGC in respect of the claim;
this section applies for the purposes of working out those obligations.

“(2) If:

- (a) SEGC is required to satisfy the claim by paying an amount;
and
- (b) the set-off reduction consists of an amount;

the amount SEGC must pay in respect of the claim is reduced by the amount of the set-off reduction.

“(3) If:

- (a) SEGC is required to satisfy the claim by paying an amount;
and
- (b) the set-off reduction consists of a number of securities;

then:

- (c) the Board must work out the value of the securities; and
- (d) the amount SEGC must pay in respect of the claim is reduced by the value worked out under paragraph (c).

“(4) If:

- (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
- (b) the set-off reduction consists of a number of securities of that kind;

the number of securities that SEGC must transfer in respect of the claim is reduced by the number referred to in paragraph (b).

“(5) If:

- (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
- (b) the set-off reduction consists of a number of securities that are not of that kind;

then:

- (c) the Board must work out:
 - (i) the value of the securities that constitute the set-off reduction; and
 - (ii) the number of securities of the kind referred to in paragraph (a) that are equal in value to the value worked out under subparagraph (i); and
- (d) the number of securities that SEGC is required to transfer in respect of the claim is reduced by the number worked out under subparagraph (c)(ii).

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“(6) If:

- (a) SEGC is required to satisfy the claim by transferring securities of a particular kind; and
- (b) the set-off reduction consists of an amount of money;

then:

- (c) the Board must work out the number of securities of that kind that are equal in value to that amount; and
- (d) the number of securities that SEGC must transfer in respect of the claim is reduced by the number worked out under paragraph (c).”.

Subsection 972(1):

Omit “prescribed”, substitute “determined in writing by the Board”.

After subsection 972(1):

Insert:

“(1A) A rate of interest determined by the Board for the purposes of subsection (1):

- (a) must not exceed the rate that, when the determination is made, is fixed by Rules of Court for the purposes of paragraph 52(2)(a) of the *Federal Court of Australia Act 1976*; and
- (b) must not be less than 5% per year.

“(1B) As soon as practicable after determining a rate of interest for the purposes of subsection (1), the Board must cause a copy of the determination to be published in the *Gazette*.”.

After section 972:

Insert:

Discretion to pay amounts not received etc. because of failure to transfer securities

“972A.(1) If the Board is satisfied that:

- (a) a person or partnership (in this section called the ‘**defaulter**’) has failed to discharge an obligation to transfer securities to another person or partnership (in this section called the ‘**entitled entity**’); and
- (b) the entitled entity:
 - (i) has made a claim under Division 6, 6A, 6B or 6C in respect of the failure and has had securities transferred to it, or an amount paid to it, in satisfaction of the claim; or
 - (ii) unless it is a participating exchange—would have been

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entitled to make a claim under Division 6B or 6C in respect of the failure if a participating exchange had not transferred securities to it for the purpose of remedying the failure; or

- (iii) if it is a participating exchange—would have been entitled to make a claim under Division 6C in respect of the failure if it had not obtained securities for the purpose of remedying the failure; and
- (c) if the defaulter had duly transferred securities in accordance with the obligation, an amount would have been paid, or property would have been transferred, to the entitled entity as the holder of the securities; and
- (d) the entitled entity has not received, and is not entitled to receive (otherwise than from the defaulter):
 - (i) the amount or property; or
 - (ii) an equivalent amount or equivalent property in respect of securities transferred or obtained as mentioned in paragraph (b); and
- (e) if subparagraph (b)(i) applies and an amount has been paid in satisfaction of the claim—the amount paid does not adequately compensate the entitled entity for the loss of the amount or property referred to in paragraph (c);

the Board may determine in writing that there be paid to the entitled entity, in respect of the loss of the amount or property referred to in paragraph (c), 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 must pay to the entitled entity the amount specified in it.”

Paragraph 973(1)(a):

Omit “or 952(3)”, substitute “, 952(3), 954G(2), 954S(2) or 954Z(2)”.

Subsection 973(3):

Omit the subsection, substitute:

“(3) If:

- (a) SEGC buys securities for the purpose of complying, in relation to a claim, with a provision referred to in paragraph (1)(a); and
 - (b) SEGC satisfies the claim by paying an amount to the claimant;
- SEGC must, as soon as practicable after satisfying the claim, sell the securities and pay the proceeds of the sale into the Fund.

“(4) In this section:

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'securities' includes security benefits, within the meaning of Division 6A, other than amounts of money.”.

Paragraph 977(1)(a):

Omit the paragraph, substitute:

“(a) a cash settlement provision requires SEGC to pay an amount in respect of a claim; and”.

Paragraph 977(1)(b):

Omit “person”, substitute “claimant”.

After subsection 977(1):

Insert:

“(1A) Where:

- (a) in relation to a claim, paragraph 970B(3)(c), (5)(c) or (6)(c) requires the Board to work out the value of securities, or the number of securities that are equal in value to some other value or amount; and
- (b) the value or number cannot be determined by agreement between the Board and the claimant;

the value or number is to be determined by arbitration in accordance with this section.”.

Section 977:

Add at the end:

“(7) In this section:

'cash settlement provision' means section 953, subsection 954G(3), 954H(2), 954R(2), 954S(3), 954T(2), 954Z(3) or 954ZA(2), section 960 or subsection 964(1) or (2) of the Corporations Law of this jurisdiction.”.

After subsection 979(1):

Insert:

“(1A) The Board may, for the purposes of section 970A or 970B, by notice in writing served on a person, require the person to give SEGC specified information relating to the existence or exercise of rights of set-off.”.

Subsection 979(2):

After “(1)” insert “or (1A)”.

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After subsection 980(1):

Insert:

“(1A) Where SEGC allows a claim under section 950 in respect of a purchase the agreement for which has been novated, SEGC is subrogated to all the rights and remedies of the claimant in relation to the replacement agreement or agreements.

“(1B) Where SEGC allows a claim under Division 6A in respect of an obligation under a guaranteed securities loan, SEGC is subrogated to all the claimant’s rights and remedies in relation to that obligation.

“(1C) Where SEGC allows a claim under section 954D in respect of an obligation under a guaranteed securities loan that has been novated, SEGC is subrogated to all the claimant’s rights and remedies in relation to the obligation, under a replacement agreement, that replaced the first-mentioned obligation.

“(1D) Where SEGC allows a claim under subsection 954N(1) or 954P(2) in respect of an obligation to pay an amount or to transfer securities, SEGC is subrogated to all the claimant’s rights and remedies in relation to that obligation.

“(1E) Where SEGC allows a claim under subsection 954P(3) in respect of a failure to transfer securities, SEGC is subrogated to all the rights and remedies that the claimant has in relation to that failure because of the subrogation effected by paragraph 954P(3)(a).

“(1F) Where SEGC allows a claim under subsection 954Y(2) in respect of a purported transfer of securities, SEGC is subrogated to all the claimant’s rights and remedies in relation to that purported transfer.

“(1G) Where SEGC allows a claim under subsection 954Y(3) in respect of a purported transfer of securities, SEGC is subrogated to:

- (a) if the claimant is also the transferee referred to in that subsection—all the claimant’s rights and remedies in relation to that purported transfer; or
- (b) otherwise—all the rights and remedies that the claimant has in relation to that purported transfer because of the subrogation effected by paragraph 954Y(3)(c).”.

Subsection 980(5):

After “6,” insert “6A, 6B, 6C,”.

Subsection 983(2) (definition of “claim”):

After “6,” insert “6A, 6B, 6C,”.

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After section 983:

Insert in Division 9 of Part 7.10:

Power of Commission to modify effect of claims Divisions

“983A.(1) The Commission may, in writing, declare that the provisions of a claims Division are to have effect in their application in relation to a particular transaction, or a particular class of transactions, either generally or as otherwise provided in the declaration, as if specified modifications were made to the provisions.

“(2) A declaration may relate to transactions whether entered into before or after the making of the declaration.

“(3) A declaration has effect accordingly.

“(4) The Commission must cause a copy of a declaration to be published in the *Gazette*.

“(5) A reference in this section to the provisions of a claims Division includes a reference to regulations made for the purposes of the provisions, or any of the provisions, of the Division.

“(6) In this section:
‘claims Division’ means Division 6, 6A, 6B, 6C, 7 or 8.”

SCHEDULE 2

Section 6

**AMENDMENTS OF THE CORPORATIONS LAW RELATING TO
FUNDRAISING**

Section 9 (definition of “minimum subscription”):

- (a) Omit “to the public”.
- (b) Omit “or for which the public are invited to subscribe”, substitute “, or in relation to which an invitation to subscribe has been issued”.

Section 9:

Insert:

“‘excluded prospectus’, in relation to securities of a body corporate, means a primary prospectus in relation to the securities where:

- (a) each offer of any of the securities for subscription that is contained in the prospectus is an excluded offer; and
- (b) each invitation to subscribe for any of the securities that is contained in the prospectus is an excluded invitation;

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‘primary prospectus’, in relation to securities of a body corporate, means a written notice or other instrument:

- (a) inviting applications to subscribe for the securities; or
- (b) offering the securities for subscription;

and includes a document that is taken because of paragraph 1030(1)(a) to be a primary prospectus in relation to the securities;

‘secondary prospectus’, in relation to securities of a body corporate, means a written notice or other instrument:

- (a) inviting offers to buy the securities; or
- (b) offering the securities for purchase;

but does not include a document that is taken because of paragraph 1030(1)(a) to be a primary prospectus in relation to the securities;

‘seller’, in relation to a secondary prospectus in relation to securities of a body corporate, means the person inviting offers to buy the securities, or offering the securities for purchase;”.

Section 96:

Repeal the section.

Paragraph 244(1)(a):

Omit the paragraph, substitute:

- “(a) issues a primary prospectus (other than an excluded prospectus) in relation to shares in the company; and”.

After section 993:

Insert in Part 7.11:

“Division 1—Interpretation

Interpretation—statement in a prospectus

“994. For the purposes of this Part, a statement is taken to be in a prospectus if it is:

- (a) contained in a report or memorandum that appears on the face of, or is issued with, the prospectus; or
- (b) incorporated by reference in the prospectus, whether the reference occurs in the prospectus or in any other document.”.

After subsection 996(1):

Insert:

“(1A) Subsection (1) does not apply in relation to a statement or omission that is material only in respect of an excluded offer or excluded invitation.”.

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Subsection 1006(2):

Omit “The”, substitute “If the prospectus is a primary prospectus, the”.

Paragraph 1006(2)(e):

Omit the paragraph, substitute:

“(e) if the prospectus includes a statement that purports to be, or to be based on, a statement made by an expert and the expert gave consent under section 1032 to the issue of the prospectus—that expert;”.

After subsection 1006(2):

Insert:

“(2A) If the prospectus is a secondary prospectus, the reference in subsection 1005(1) to any person involved in the contravention includes a reference to all or any of the following persons:

- (a) the seller;
- (b) if the seller is a corporation—a person who was a director of the corporation at the time of the issue of the prospectus;
- (c) if the prospectus includes a statement that purports to be, or to be based on, a statement made by an expert and the expert gave consent under section 1032 to the issue of the prospectus—that expert;
- (d) a person named, with the consent of the person, in the prospectus as stockbroker, sharebroker or underwriter of the seller or for or in relation to the sale of the securities;
- (e) a person named, with the consent of the person, in the prospectus as an auditor, banker or solicitor of the seller or for or in relation to the sale of the securities;
- (f) 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 (c), (d) or (e) for the seller or in relation to the sale of the securities.”.

Section 1007:

After “1006(2)” insert “or (2A)”.

Subsection 1008(1):

Omit the subsection, substitute:

“(1) A person referred to in paragraph 1006(2)(b) or (c) or (2A)(b) is not, in the circumstances set out in the following provisions of this section, liable in an action under section 1005 to a person who suffered

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loss or damage as a result of a false or misleading statement in, or an omission from, the prospectus.”.

Subsection 1008(2):

Omit “The”, substitute “If the person is a person referred to in paragraph 1006(2)(c), the”.

Subsection 1008(4):

After “statement in” insert “, or omission from,”.

Subsection 1008(5):

Omit the subsection.

After section 1008:

Insert:

Directors not liable where they have reasonable grounds for believing prospectus to be correct

“1008A.(1) A person referred to in paragraph 1006(2)(b) or (c) or (2A)(b) is not, in the circumstances set out in the following provisions of this section, liable in an action under section 1005 to a person who suffered loss or damage as a result of:

- (a) a false or misleading statement (in this section called the ‘defective statement’) in the prospectus; or
- (b) an omission from a statement (in this section also called the ‘defective statement’) in the prospectus.

“(2) If the defective statement:

- (a) purports to be, or to be based on, a statement made by an expert; or
- (b) is contained in what purports to be a copy of, or extract from, a report or valuation of an expert;

the person is not liable if it is proved that:

- (c) the defective statement fairly represented the statement referred to in paragraph (a), or the purported copy or extract was a correct and fair copy of, or extract from, the report or valuation, as the case may be; and
- (d) the person, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the allotment, issue or sale of the securities, that the person who made the statement referred to in paragraph (a), or who made the report or valuation, as the case may be:
 - (i) was competent to make it; and
 - (ii) had given the consent required by section 1032 to the issue of the prospectus; and

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(iii) had not withdrawn that consent.

“(3) If the defective statement:

- (a) purports to be a statement made by an official person; or
- (b) is contained in what purports to be a copy of, or extract from, a public official document;

the person is not liable if it is proved that the defective statement fairly represented the statement referred to in paragraph (a), or that the purported copy or extract was a correct and fair copy of, or extract from, the document, as the case may be.

“(4) If none of paragraphs (2)(a) and (b) and (3)(a) and (b) applies in relation to the defective statement, the person is not liable if it is proved that he or she, after making such inquiries (if any) as were reasonable, had reasonable grounds to believe, and did believe until the time of the allotment, issue or sale of the securities:

- (a) if paragraph (1)(a) applies—that the defective statement was true and not misleading; or
- (b) if paragraph (1)(b) applies—that there were no material omissions from the defective statement.”.

Subsection 1009(1):

Omit the subsection.

Subsection 1009(2):

After “(h)” insert “or (2A)(c), (e) or (f)”.

Paragraph 1009(2)(a):

Omit “an expert”, substitute “a person referred to in that paragraph, or to be based on a statement made by the person as a person referred to in that paragraph”.

After paragraph 1009(2)(a):

Insert:

- “(ba) in the case of a person referred to in paragraph 1006(2)(e) or (2A)(c)—an omission of any material matter from a statement in the prospectus purporting to be made by the person as a person referred to in paragraph 1006(2)(e) or (2A)(c), as the case may be, or to be based on a statement made by the person as such a person; or”.

Paragraph 1009(2)(b):

- (a) Before “an omission” insert “in the case of a person referred to in paragraph 1006(2)(g) or (h) or (2A)(e) or (f)—”.

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- (b) Omit “an expert”, substitute “a person referred to in paragraph 1006(2)(g) or (h) or (2A)(e) or (f), as the case may be”.

Subsection 1009(3):

- (a) After “1006(2)(e)” insert “or (2A)(c)”.
- (b) After “statement” (first occurring) insert “in, or an omission from, the prospectus”.

Paragraph 1009(3)(b):

After “statement,” insert “or of the omission, as the case may be,”.

Paragraph 1009(3)(c):

Omit “that the statement was true and not misleading.”, substitute: “that:

- (i) if the action is in respect of a false or misleading statement—the statement was true and not misleading; or
- (ii) if the action is in respect of an omission from a statement—there were no material omissions from the statement.”.

Subsection 1009(4):

After “(h)” insert “or (2A)(e) or (f)”.

Subsection 1009(4):

After “statement” (first occurring) insert “in, or an omission from, the prospectus”.

Paragraph 1009(4)(a):

After “statement,” insert “or of the omission, as the case may be,”.

Paragraph 1009(4)(b):

Omit “that” (first occurring), substitute “in the case of a statement—that”.

Subsection 1009(4):

Add at the end:

- “; or (c) in the case of an omission—that 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 there were no omissions from the prospectus of material matters for which the person was responsible in the person’s capacity as a person referred to in paragraph 1006(2)(g) or (h) or (2A)(e) or (f), as the case may be, and that the person was competent to act in that capacity.”.

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SCHEDULE 2—continued

Subsections 1010(1) and (2):

After “or (h)” insert “or (2A)(d), (e) or (f)”.

Subsection 1011(1):

After “(f)” insert “or (2A)(a) or (d)”.

Subparagraph 1017A(3)(b)(iii) and paragraph 1017A(4)(b):

After “corporation” (last occurring) insert “or of a body corporate that is related to the corporation”.

Paragraph 1018(5)(b):

After “occasion” insert “(if any)”.

After subsection 1018(7):

Insert:

“(7A) For the purposes of this section, securities of a corporation are not taken to have stopped being listed for quotation on a stock market of a stock exchange merely because of a temporary suspension of quotation of the securities.

“(7B) If, while quotation of securities of a corporation on a stock market of a stock exchange is suspended, the corporation ceases to be included in an official list of the stock exchange, the securities are taken, for the purposes of this section, to have stopped being listed for quotation on a stock market of the stock exchange when the corporation ceased to be so included.

“(7C) Subsection (7B) does not limit the circumstances in which securities may be taken to have stopped being listed securities.”.

Section 1020:

After “the issue of” insert “, or a form of offer to buy,”.

Subsection 1021(5):

Omit the subsection, substitute:

“(5) The prospectus must contain a statement:

- (a) in the case of a primary prospectus—that no securities will be allotted or issued; or
- (b) in the case of a secondary prospectus—that no securities will be sold;

on the basis of the prospectus later than 6 months after the date of issue of the prospectus.”.

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SCHEDULE 2—continued

Subsection 1021(6):

Omit “The prospectus shall”, substitute “If the prospectus is a primary prospectus, it must”.

After subsection 1021(6):

Insert:

“(6A) If the prospectus is a secondary prospectus and the seller is not a corporation, the prospectus must include an address in Australia for the purposes of section 1029A.”.

Subsection 1021(8):

Add at the end:

“; (d) primary prospectuses;
(e) secondary prospectuses.”.

Subsection 1021(9):

Omit the subsection.

Subsection 1021(13):

Omit “The prospectus shall”, substitute “If the prospectus is a primary prospectus, it must”.

After subsection 1021(13):

Insert:

“(13A) If the prospectus is a secondary prospectus, it must be signed by the seller.”.

Paragraph 1022(2)(a):

Before “any” insert “if the prospectus is a primary prospectus—”.

After paragraph 1022(2)(a):

Insert:

“(ba) if the prospectus is a secondary prospectus:

- (i) if the seller is a natural person—any person referred to in any of paragraphs 1006(2A)(a) to (f) inclusive; or
- (ii) if the seller is a corporation—any person referred to in any of paragraphs 1006(2A)(b) to (f) inclusive; or”.

Paragraph 1022(2)(b):

Before “any” insert “in any case —”.

After section 1022:

Insert:

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SCHEDULE 2—continued

Conditions requiring waiver of requirements etc. void

“1022A. A condition is void if it:

- (a) requires or binds an applicant for, or buyer of, securities of a corporation to waive compliance with any requirement of section 1021 or 1022; or
- (b) purports to affect an applicant for, or buyer of, securities of a corporation with notice of any contract, document or matter not specifically referred to in the prospectus.”.

Subsection 1023(1):

Omit all the words before “contain”, substitute “A primary prospectus in relation to debentures of a corporation must”.

Subsection 1023(2):

Omit “an invitation or offer referred to in subsection (1), a”, substitute “a primary prospectus in relation to debentures of a corporation, the”.

Paragraph 1024(1)(b):

After “issued” insert “, or sold, as the case requires,”.

Subsection 1024(3):

After “1006(2)” insert “, or 1006(2A), as the case requires,”.

Paragraph 1024(4)(a):

After “1006(2)” insert “, or 1006(2A), as the case requires”.

Subsection 1024(7):

- (a) Omit “96” substitute “994”.
- (b) After “(13)” insert “, (13A)”.
- (c) After “1029,” insert “1029A,”.

Paragraph 1025(2)(e):

Omit “or purchase of”.

Paragraph 1025(3)(a):

Omit “or purchase”.

Paragraph 1025(3)(b):

Omit “or buy”.

Subparagraph 1025(3)(c)(i):

Before “prospectus” insert “primary”.

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SCHEDULE 2—continued

Subparagraph 1025(3)(c)(ii):

Omit “or purchase”.

Subparagraph 1025(3)(c)(iii):

Omit “or buy”.

Subparagraph 1025(3)(c)(iv):

Before “prospectus” insert “primary”.

Subparagraph 1026(2)(c)(ii):

(a) Omit “or purchase”.

(b) Omit “or buy”.

Subsection 1026(3):

Before “prospectus” insert “primary”.

After section 1027:

Insert:

Application of sections 1025, 1026 and 1027 to sales of securities

“1027A. The regulations may provide for the application of sections 1025, 1026 and 1027, with prescribed modifications, in relation to:

- (a) an offer, or intended offer, of securities of a corporation, for purchase; or
- (b) an invitation, or intended invitation, to buy securities of a corporation; or
- (c) a secondary prospectus in relation to securities of a corporation.”.

Section 1029:

Omit “which a”, substitute “whose securities a primary”.

After section 1029:

Insert:

Secondary prospectuses—documents to be kept

“1029A.(1) The seller in relation to a secondary prospectus in relation to securities of a corporation must 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;

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to be deposited at the relevant address within 7 days after lodgment of the prospectus.

“(2) The seller must cause the copies of the documents so deposited to be kept at the relevant address for at least 6 months after lodgment of the prospectus and, during that period, must allow any person to inspect the copies without charge.

“(3) In this section:

‘relevant address’ means:

- (a) if the seller is a corporation—the registered office of the corporation; or
- (b) in any other case—the address specified in the prospectus for the purposes of this section.”.

Subsection 1030(1):

Omit “Where”, substitute “Subject to subsection (1A), where”.

Paragraph 1030(1)(a):

After “be a” insert “primary”.

After subsection 1030(1):

Insert:

“(1A) Subsection (1) does not apply in relation to an offer for sale, or an invitation to make an offer to buy, if:

- (a) the offer or invitation is made or issued at an official meeting of a securities exchange in the ordinary course of trading on a stock market of that securities exchange; and
- (b) a sale resulting from the acceptance of the offer, or from the acceptance of an offer made because of the invitation, as the case may be, would not be a transaction that, when reported to the securities exchange, would, under the securities exchange’s business rules or listing rules, be described as ‘special’.”.

Subsection 1030(7):

After “section” insert “(other than subsection (1A))”.

Subsection 1031(1):

- (a) Before “is void” insert “, or any sale, whenever made, pursuant to the prospectus, as the case requires,”.
- (b) Omit “the corporation”, substitute “the responsible person”.

Subsection 1031(2):

Omit “a corporation”, substitute “a person”.

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SCHEDULE 2—continued

Paragraph 1031(2)(b):

After “if ” (first occurring) insert “the person is a corporation and”.

Subsection 1031(3):

Omit all the words after “application of”, substitute “the responsible person in relation to the prospectus concerned made before any security is purported to be allotted or issued, or sold, as the case requires, as mentioned in subsection (1), exempt the allotment or issue, or the sale, as the case may be, of the securities from the operation of this section.”.

Subsection 1031(5):

Omit the subsection, substitute:

“(5) Without limiting the application of any of the provisions of this section apart from this subsection, this section applies, in relation to securities agreed to be taken by a person underwriting an offer of, or invitation in relation to, those securities that is contained in a prospectus, as if the person had applied for those securities pursuant to the prospectus.”.

Subsection 1031(6):

- (a) Omit “corporation that”, substitute “person who”.
- (b) Omit “corporation is”, substitute “person is”.

Subsection 1031(7):

After “directors” insert “of the corporation referred to in subsection (1)”.

Subsection 1031(9):

Omit “inviting persons to subscribe for, or offering to accept subscriptions for,”, substitute “in relation to”.

Subsection 1031(10):

After “applicant for” insert “, or buyer of”.

Subsection 1031(11):

Insert:

“‘responsible person’, in relation to a prospectus in relation to securities of a corporation, means:

- (a) in the case of a primary prospectus—the corporation; or
- (b) in the case of a secondary prospectus—the seller in relation to the secondary prospectus.”.

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SCHEDULE 2—continued

Subsection 1033(1):

Omit all the words after “direct”, substitute:

“that:

- (a) if the prospectus is a primary prospectus—no further securities to which the prospectus relates be allotted or issued; or
- (b) if the prospectus is a secondary prospectus—no further securities be sold pursuant to the prospectus.”.

Paragraph 1033(7)(b):

Omit the paragraph, substitute:

- “(b) if the order relates to a primary prospectus—a person is not entitled to lodge a further primary prospectus in relation to the securities, other than a supplementary prospectus under section 1024; and
- (c) if the order relates to a secondary prospectus—a person is not entitled to lodge a further secondary prospectus in relation to securities that are or include any of the securities to which the first-mentioned secondary prospectus relates, unless:
 - (i) the seller in relation to the further secondary prospectus is not, and is not an associate of, the seller in relation to the first-mentioned secondary prospectus; or
 - (ii) the further secondary prospectus is a supplementary prospectus under section 1024.”.

Subsection 1035(1):

Omit “A”, substitute “Subject to subsection (1A), a”.

After subsection 1035(1):

Insert:

“(1A) Subsection (1) does not prohibit a company from making an allotment of shares if:

- (a) the allotment is an excluded issue; or
- (b) the offer or invitation referred to in that subsection is an excluded offer or an excluded invitation.”.

Subsection 1036(1):

Omit all the words before “4 months” (first occurring), substitute “If subsection 1035(1) still prohibits allotment of shares at the end of”.

Section 1038:

Omit “prospectus”, substitute “primary prospectus (other than an excluded prospectus)”.

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SCHEDULE 2—continued

Section 1039:

After “applicant for” insert “, or buyer of,”.

Section 1040:

- (a) Omit “A”, substitute “Subject to subsection (2), a”.
- (b) Omit “prospectus” (first occurring), substitute “primary prospectus”.
- (c) Add at the end:

“(2) Subsection (1) does not prohibit a corporation from making, or an officer or promoter of a proposed corporation from authorising or permitting, an allotment or issue of securities if:

- (a) the allotment or issue is an excluded issue; or
- (b) the prospectus referred to in that subsection is an excluded prospectus.

“(3) The seller in relation to a secondary prospectus must not sell securities on the basis of the prospectus after the end of 6 months after the issue of the prospectus.”.

Section 1041:

Omit “or issue”, substitute “, issue or sale”.

Section 1042:

Repeal the section.

Subsection 1043(1):

- (a) Omit “Where”, substitute “Subject to subsection (3), where”.
- (b) Omit “or purchase”.
- (c) Omit “or buy”.

Section 1043:

Add at the end:

“(3) This section does not apply to money paid because of an excluded offer or an excluded invitation.”.

Paragraph 1066(1)(a):

Add at the end “and that approval has not been revoked”.

Subsection 1066(2):

Omit the subsection, substitute:

“(2) Where a deed has ceased after the commencement of this Division to be an approved deed, section 1065 does not prevent:

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- (a) a person from asking the management company to do an act involved in complying with the terms of a buy-back covenant contained, or taken to be contained, in the deed; or
- (b) the management company from doing such an act.”.

Subparagraph 1069(1)(e)(iii):

After “keep” insert “, or cause to be kept,”.

Paragraph 1069(1)(f):

After “send,” insert “or cause to be sent,”.

Subsection 1073(1A):

Omit the subsection, substitute:

“(1A) A person must not contravene:

- (a) a covenant contained, or taken to be contained, in a deed that is, or has at any time been, an approved deed; or
- (b) a covenant deemed or taken, because of subsection 1069(7) or (9A), to be contained in a deed; or
- (c) a covenant deemed, because of subsection 1069(8), to be given by a deed.”.

Subsection 1073(2):

Add at the end “by notice in writing given to the management company”.

Section 1073:

Add at the end:

“(3) The obligations of the parties to a contract are suspended:

- (a) during the period of 21 days after a notice is given under subsection (2) in relation to the contract; and
- (b) during the period beginning when an application is made under subsection 1073A(1) in relation to a notice so given and ending when the application, and each appeal (if any) arising out of it, have been finally determined or otherwise disposed of.

“(4) Subject to an order under subsection 1073A(3), a notice under subsection (2) of this section takes effect:

- (a) unless, within 21 days after the notice is given, the management company applies under subsection 1073A(1) in relation to the notice—at the end of those 21 days; or
- (b) otherwise—at the end of the period during which the obligations of the parties to the contract are suspended because of paragraph (3)(b) of this section.”.

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SCHEDULE 2—continued

After section 1073:

Insert:

Court may affirm voidable contract where breach is not material

“1073A.(1) Within 21 days after a person gives a notice under subsection 1073(2), the management company may apply to the Court for an order declaring the notice to have had no effect.

“(2) The Court may extend the period within which the management company may apply under subsection (1), even if the notice under subsection 1073(2) has taken effect.

“(3) If, on an application under subsection (1), the Court is satisfied that:

- (a) the offer or invitation that led to the contract being entered into contravened section 1018, but only because of a contravention of Division 2 of Part 7.12 (or of regulations in force for the purposes of a provision of that Division) that:
 - (i) was minor or insubstantial; and
 - (ii) has not materially prejudiced, and is not reasonably likely to prejudice materially, the interests of the person who gave the notice under subsection 1073(2); and
- (b) in all the circumstances, it is just and equitable to declare the notice to have had no effect;

the Court may by order so declare.

“(4) On an application under subsection (1), the onus of proving the matter referred to in subparagraph (3)(a)(ii) is on the management company.”.

Sections 1079 and 1080:

Repeal the sections.

SCHEDULE 3

Section 7

**AMENDMENTS OF THE CORPORATIONS LAW RELATING TO
REGISTRATION NUMBERS OF COMPANIES AND
REGISTRABLE BODIES**

Section 9:

Omit the definition of “public document”, substitute:
“‘**public document**’, in relation to a body corporate, has the meaning given by section 88A;”.

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SCHEDULE 3—continued

Section 9:

Insert:

“‘**abbreviation**’, in the case of a reference to a particular abbreviation containing one or more full stops, has a meaning affected by section 99A;”.

After section 88:

Insert:

Public document of a body corporate

“88A.(1) Subject to this section, ‘**public document**’, in relation to a body corporate, means:

- (a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the body that:
 - (i) when signed, issued or published, is intended to be lodged or is required by or under this Law or the ASC Law to be lodged; or
 - (ii) is signed, issued or published under or for the purposes of this Law, the ASC Law or any other Australian law; or
- (b) an instrument of, or purporting to be signed or issued by or on behalf of, the body that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or
- (c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.

“(2) A thing is not a public document of a body corporate if it:

- (a) is applied, or is intended or required to be applied:
 - (i) to goods; or
 - (ii) to a package, label, reel or thing in or with which goods are, or are to be, supplied; and
- (b) is so applied, or is intended or required to be so applied, for a purpose connected with the supply of the goods.

“(3) In subsection (2):

‘**apply to**’ includes print on, weave in, impress on, work into, or annex, affix or attach to;

‘**label**’ includes a band or ticket;

‘**package**’ includes:

- (a) a covering, stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; or

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SCHEDULE 3—continued

(b) any other container or thing in which goods are, or are to be, packed.”.

Before section 100:

Insert in Division 8 of Part 1.2:

Abbreviations containing full stops

“99A. A reference to a particular abbreviation containing one or more full stops includes a reference to that abbreviation without the full stop, or without one or more of the full stops, as the case may be.”.

Subsection 102A(3):

Omit “, 344,”, substitute “or 344, subsection 383C(1) or section”.

After subsection 219(3):

Insert:

“(3A) Subsection (3) has effect subject to Division 2 of Part 4.2.”.

Subparagraph 362(2)(c)(ii):

Omit “abbreviated”, substitute “abbreviation”.

After subsection 362(4):

Insert:

“(4A) Subsection (4) has effect subject to Division 2 of Part 4.2.”.

Paragraph 362(9)(b):

Omit “abbreviated”, substitute “abbreviation”.

Heading to Part 4.2:

Omit the heading, substitute:

“PART 4.2—NAMES AND REGISTRATION NUMBERS

“Division 1—Names”.

After section 383A:

Insert in Part 4.2:

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SCHEDULE 3—continued

“Division 2—Exemptions from requirements to publish registration numbers

Machine-produced receipts

“383B. Neither of paragraphs 219(3)(a) and 362(4)(a) applies in relation to a receipt that:

- (a) is produced by an electronic, mechanical or other device; and
- (b) sets out information reproduced from, or worked out on the basis of, information entered, recorded or stored in the device.

Transport documents

“383C.(1) On application by a body, the Commission may by writing exempt the body, or a specified class of bodies that includes the body, from complying (either generally or as otherwise specified) with subsection 219(3) or 362(4), as the case requires, in relation to specified documents.

“(2) However, the Commission may do so only if it is satisfied that the exemption is necessary or desirable in the interests of promoting or maintaining consistency in international practices relating to the form, content or use of transport documents.

“(3) An application under subsection (1) must:

- (a) specify the documents to which the exemption applied for would relate; and
- (b) if the application is for an exemption to be given to a class of bodies—specify the class; and
- (c) set out why, in the applicant’s opinion, the exemption should be given to the body, or to that class, as the case requires.

“(4) Subsection (1) has effect subject to section 102A.

“(5) The Commission may require an applicant under subsection (1) to give the Commission such further information in relation to the application as the Commission thinks necessary.

“(6) An exemption may be given subject to specified conditions that, in the Commission’s opinion, are necessary or desirable to ensure that the registration number of a body to which the exemption relates can easily be found out by persons to whom the body issues or publishes documents specified in the exemption.

“(7) For example (but without limitation), an exemption might be subject to a condition that a body to which the exemption relates must display its name and registration number in a particular way at each place where documents specified in the exemption are issued or published.

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“(8) A body to which an exemption relates must not contravene a condition to which the exemption is subject.

“(9) On application by the Commission, the Court may order a body to which an exemption relates to comply with a condition:

- (a) to which the exemption is subject; and
- (b) that the body has contravened.

“(10) The Commission may by writing vary or revoke an exemption.

“(11) An exemption, or a variation or revocation of an exemption, takes effect on the day when:

- (a) the exemption, or the variation or revocation of the exemption, as the case may be, is given to the body that applied for the exemption; or
- (b) a copy of the exemption, or of the variation or revocation, as the case may be, is published in the *Gazette*;

whichever happens later.

“(12) In this section:

‘body’ means a company or a registrable body;

‘document’ includes a public document, or an eligible negotiable instrument, of a body;

‘transport document’ means a document (for example, but without limitation, a ticket, waybill or bill of lading) used in connection with the transportation, by sea, land or air, of persons, goods or mail.”.

Schedule 3:

Insert before “**Section 408:**”:

“**Subsection 383C(8):**

Penalty: \$1,000 or imprisonment for 3 months.”.

SCHEDULE 4

Section 8

**AMENDMENTS OF THE CORPORATIONS LAW RELATING TO
REGISTRATION OF CHARGES**

Section 9 (paragraph (b) of the definition of “company”):

Omit the paragraph, substitute:

- “(b) in Part 3.5 (other than section 273), includes a registrable body (other than a registrable local body) that is registered under

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SCHEDULE 4—continued

Division 1 or 2 of Part 4.1 of the Corporations Law of this jurisdiction; and

(ba) in section 273, includes:

(i) a recognised company; and

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

Subsection 261(1) (definition of “company”):

Omit the definition.

Subsection 265(4):

Omit “next to”, substitute “in relation to”.

Paragraph 265(5)(a):

Omit “next to”, substitute “in relation to”.

Subsection 265(5):

Omit “from the entry in the Register”, substitute “that was so entered in relation to the entry”.

Paragraph 265(6)(a):

Omit “next to”, substitute “in relation to”.

Subsection 265(9):

Omit “next to”, substitute “in relation to”.

Subsection 272(1):

Omit “next to”, substitute “in relation to”.

Subsection 272(3):

Omit “next to”, substitute “in relation to”.

Paragraph 273(1)(c):

Omit “a charge”, substitute “the charge”.

Paragraphs 273(4)(a) and (b):

Omit the paragraphs, substitute:

“(a) do not apply; or

(b) apply, because of the regulations and with the prescribed modifications (if any);

in relation to specified charges in relation to which notices must be lodged under this Division.”.

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SCHEDULE 4—continued

Paragraph 275(2)(c):

After “previous law” insert “of this jurisdiction”.

Paragraph 275(2)(d):

After “previous law” insert “of this jurisdiction”.

Subsection 275(4):

After “previous law” insert “of this jurisdiction”.

Section 276:

Repeal the section, substitute:

Charges of bodies to which section 365B applies

“275A.(1) This section applies where, because of section 365B, a registrable body is taken to have been registered under Division 1 or 2 of Part 4.1.

“(2) This Part (other than this section) applies in relation to the body, with such modifications as the circumstances require, as if:

- (a) this Law had always been in operation; and
- (b) the body had been a registered body throughout each period before 1 January 1991 throughout which it was registered under a previous law of this jurisdiction relating to foreign companies within the meaning of that law; and
- (c) an act or thing done by or in relation to the body under, or for the purposes of, a previous law of this jurisdiction 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 previous law of this jurisdiction corresponding to section 265.

“(3) Nothing in subsection (2) makes a person guilty of a contravention of this Law in respect of an act or thing done, or an omission made, before 1 January 1991.

“(4) Subsection (5) applies to each charge on property of the body that, immediately before 1 January 1991, was registered under a previous law of this jurisdiction corresponding to this Division.

“(5) The Commission is taken to have entered in the Register at the beginning of 1 January 1991, in accordance with subsection 265(2), the time and date, and the particulars, entered in relation to the charge under the previous law referred to in subsection (4) of this section.

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SCHEDULE 4—continued

Charges of Division 3 company

“276. Where, immediately before a Division 3 company’s registration day, a charge on property of the company was registered under a law corresponding to this Division and was not also registered under this Division, the Commission is taken to have entered in the Register at the beginning of that day, in accordance with subsection 265(2), the time and date, and the particulars, entered in relation to the charge under that corresponding law.

Charges of Division 4 company

“276AA. Where, immediately before a Division 4 company’s registration day:

- (a) the company was, because of the definition of ‘company’ in section 9 of the Corporations Law of another jurisdiction, a company for the purposes of that section of that Law; and
- (b) a charge on property of the company was registered under Division 2 of Part 3.5 of that Law and was not also registered under this Division;

the Commission is taken to have entered in the Register at the beginning of that day, in accordance with subsection 265(2) of this Law, the time and date, and the particulars, entered in relation to the charge under Division 2 of Part 3.5 of that Law.”.

Section 276A:

Omit “applies”, substitute “, and the Corporations Regulations of that jurisdiction, so far as they have effect for the purposes of that Part, apply”.

SCHEDULE 5

Section 9

**MISCELLANEOUS SUBSTANTIVE AND TECHNICAL
AMENDMENTS OF THE CORPORATIONS LAW**

Section 9 (paragraph (a) of the definition of “clients’ segregated account”):

Omit the paragraph, substitute:

- “(a) the person maintains, whether in Australia or elsewhere, with an Australian bank; and”.

Section 85A:

Omit “law”, substitute “Law”.

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SCHEDULE 5—continued

Paragraph 224(1)(d):

Omit the paragraph, substitute:

“(d) is convicted as mentioned in subsection 229(3);”.

Subsection 240(4):

Omit “each” substitute “one”.

Paragraph 318(2)(b):

Omit “members of”, substitute “members or”.

Section 369:

(a) Omit “that word, is the final word”, substitute “either of those expressions, is the final expression”.

(b) Omit “company”.

Subsection 408B(1):

Omit “Subject to this Part,”.

Subsection 408B(2):

(a) Omit “Subject to this Part,”, substitute “For the purposes of”.

(b) Omit “apply in relation to” (last occurring), substitute “a reference to an entity includes a reference to”.

Section 408B:

Add at the end:

“(3) The application that Parts 3.6 and 3.7 have because of subsections (1) and (2) is subject to this Part.”.

Paragraph 874(1)(b):

After “Part” insert “or a corresponding previous law”.

Subsection 874(3):

Omit “in Australia (whether in this jurisdiction or not),”, substitute “(whether in Australia or elsewhere),”.

After section 955:

Insert:

Extended application of Division to non-marketable securities

“955A.(1) If a declaration by the Commission under subsection 1113A(1) is in force in relation to particular non-marketable securities, or a particular class of non-marketable securities:

(a) this Division, including the regulations made for the purposes

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SCHEDULE 5—continued

of the provisions of this Division, applies in relation to those non-marketable securities, or non-marketable securities of that class, as if they were securities as defined in subsection 955(1); and

- (b) the Commission may, by writing, declare that this Division, and regulations made for the purposes of this Division, are to have effect in relation to their application to those non-marketable securities, or non-marketable securities of that class, subject to modifications specified in the declaration.

“(2) A declaration under paragraph (1)(b) has effect accordingly.

“(3) The Commission must cause a copy of a declaration under paragraph (1)(b) to be published in the *Gazette*.

“(4) In this section:
‘non-marketable securities’ has the same meaning as in section 1113A.”.

Subsection 995(4):

Omit “subsection (1)”, substitute “subsection (2)”.

Subsection 1030(3):

Omit “Act”, substitute “Law”.

After section 1113:

Insert in Part 7.13:

Power of Commission to extend application of Division 3

“1113A.(1) The Commission may, by writing, declare that Division 3, and regulations made for the purposes of the provisions of that Division, are to apply to particular non-marketable securities, or a particular class of non-marketable securities, as if those securities, or securities of that class, were marketable securities or marketable rights within the meaning of that Division.

“(2) In a declaration under subsection (1), the Commission may also specify modifications of Division 3, and of regulations made for the purposes of the provisions of that Division, that are to have effect in relation to the application of that Division and those regulations to the non-marketable securities, or the class of non-marketable securities, to which the declaration relates.

“(3) A declaration under subsection (1) has effect accordingly.

“(4) The Commission must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.

“(5) In this section:

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SCHEDULE 5—continued

‘non-marketable securities’ means securities that are not marketable securities or marketable rights within the meaning of Division 3.”.

Paragraph 1224(1)(c):

Omit all the words after “account”, substitute “of the person as required by this Chapter or a corresponding previous law; or”.

Subsection 1224(1):

Omit all the words after “specified bank accounts”, substitute “that the person holds or maintains (whether in Australia or elsewhere), subject to such terms and conditions as the Court imposes”.

SCHEDULE 6

Section 10

**COMMENCEMENT AND APPLICATION OF CHANGES TO THE
CORPORATIONS LAW RESULTING FROM THIS ACT**

Paragraph 1363(j):

Omit the paragraph.

Part 9.11:

Add at the end:

***“Division 3—Changes resulting from the Corporations Legislation
Amendment Act (No. 2) 1991***

Commencement of certain changes

“1368.(1) The following provisions of this Law, as in force after the commencement of section 5 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:

- (a) the definition of ‘property’ in subsection 920(1);
- (b) subsection 927(5A);
- (c) paragraph 961A(b);
- (d) paragraph 966A(b).

“(2) The following provisions of this Law, as in force after the commencement of section 6 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:

- (a) subparagraph 1069(1)(e)(iii);
- (b) paragraph 1069(1)(f).

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SCHEDULE 6—continued

“(3) The following provisions of this Law, as in force immediately after the commencement of section 8 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraphs (b) and (ba) of the definition of ‘company’ in section 9;
- (b) subsection 261(1);
- (c) subsections 265(4), (5), (6) and (9);
- (d) subsections 272(1) and (3);
- (e) subsections 273(1) and (4);
- (f) subsections 275(2) and (4);
- (g) sections 275A, 276, 276AA and 276A.

“(4) The following provisions of this Law, as in force after the commencement of section 9 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraph (a) of the definition of ‘clients’ segregated account’ in section 9;
- (b) section 369;
- (c) paragraph 874(1)(b);
- (d) paragraph 1224(1)(c).

Application of certain changes

“1369.(1) In relation to a claim under Division 7 of Part 7.10 in respect of a loss that a person became aware of before the commencement of section 5 of the *Corporations Legislation Amendment Act (No. 2) 1991*:

- (a) section 959 of this Law, as in force after that commencement, does not apply; and
- (b) section 959 of this Law, as in force before that commencement, continues to apply.

“(2) In relation to a prospectus issued before the commencement of section 6 of the *Corporations Legislation Amendment Act (No. 2) 1991*:

- (a) the following Division and sections of this Law, as in force after that commencement, do not apply:
 - (i) Division 4 of Part 7.11;
 - (ii) section 1029;
 - (iii) section 1029A;
 - (iv) section 1031;
 - (v) section 1040;
 - (vi) section 1041; and

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SCHEDULE 6—continued

(b) the following Division and sections of this Law as in force before that commencement continue to apply:

- (i) Division 4 of Part 7.11;
- (ii) section 1029;
- (iii) section 1031;
- (iv) section 1040;
- (v) section 1041.”.

NOTES

1. No. 109, 1989, as amended. For previous amendments, see No. 110, 1990; and No. 110, 1991.
2. No. 110, 1990.
3. No. 192, 1985.
4. No. 92, 1989.

NOTES ABOUT SECTION HEADINGS

1. On the commencement of section 5 of this Act, the headings to sections 938 and 939 of the Corporations Law set out in section 82 of the *Corporations Act 1989* are altered by omitting “reportable”.
2. On the commencement of section 6 of this Act, headings to sections of the Corporations Law set out in section 82 of the *Corporations Act 1989* are altered as follows:
 - (a) the heading to section 1008 is omitted and the following heading is substituted:
“Non-consenting directors not liable”;
 - (b) the heading to section 1009 is altered by adding at the end “, auditors etc.”;
 - (c) the heading to section 1023 is altered by inserting “primary” before “prospectuses”;
 - (d) the heading to section 1029 is omitted and the following heading is substituted:
“Primary prospectuses—documents to be kept”;
 - (e) the heading to section 1038 is altered by inserting “primary” before “prospectus”;
 - (f) the heading to section 1040 is altered by omitting “or issued” and substituting “, issued or sold”;
 - (g) the heading to section 1041 is altered by omitting “or issue” and substituting “, issue or sale”.
3. On the commencement of section 7 of this Act, the heading to section 362 of the Corporations Law set out in section 82 of the *Corporations Act 1989* is

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altered by omitting “name etc.” and substituting “body’s name and registration number”.

4. On the commencement of section 9 of this Act, headings to sections of the Corporations Law set out in section 82 of the *Corporations Act 1989* are altered as follows:
 - (a) the headings to sections 150 and 151 are altered by omitting “or 3” and substituting “, 3 or 4”;
 - (b) the heading to section 323 is altered by inserting “or 4” after “3”;
 - (c) the heading to section 1113 is altered by omitting “Powers” and substituting “General powers”.

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