



# **Pooled Development Funds Act 1992**

**No. 100, 1992**

## **Compilation No. 27**

**Compilation date:** 14 October 2024

**Includes amendments:** Act No. 39, 2024

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Pooled Development Funds Act 1992* that shows the text of the law as amended and in force on 14 October 2024 (the **compilation date**).

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

### Uncommenced amendments

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

### Application, saving and transitional provisions for provisions and amendments

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

### Editorial changes

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act about pooled development funds, and for related purposes

## Part 1—Preliminary

### 1 Short title

This Act may be cited as the *Pooled Development Funds Act 1992*.

### 2 Commencement

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

### 3 Object of the Act

- (1) The object of this Act is to develop, and demonstrate the potential of, the market for providing patient equity capital (including venture capital) to small or medium-sized Australian enterprises that carry on eligible businesses.
- (2) To achieve this object, the Act establishes a scheme under which companies that provide that kind of capital can become pooled development funds (*PDFs*), which entitles them to more competitive tax treatment.

### 4 Interpretation

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

*ADI* (authorised deposit-taking institution) means:

- (a) a body corporate that is an ADI for the purposes of the *Banking Act 1959*; or
- (b) the Reserve Bank of Australia; or
- (c) a bank constituted by a law of a State or internal Territory.

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**AFOF** means an Australian venture capital fund of funds within the meaning of subsection 118-410(3) of the *Income Tax Assessment Act 1997*.

**approved investment plan**, in relation to a PDF, has the meaning given by subsection 17(2).

**Board** means Industry Innovation and Science Australia, established by section 6 of the *Industry Research and Development Act 1986*.

**Chairperson** means the Chairperson of the Board.

**committee** means a committee appointed under section 22 of the *Industry Research and Development Act 1986*.

**company** means a company that is incorporated, or taken to be incorporated, under the *Corporations Act 2001* and that has a share capital.

**director**, in relation to a body corporate, means a person who is a director of the body for the purposes of the *Corporations Act 2001*.

**eligible business** means a business that does not consist, or consist primarily, of an excluded activity.

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

**ESVCLP** means an early stage venture capital limited partnership within the meaning of subsection 118-407(4) of the *Income Tax Assessment Act 1997*.

**excluded activity** means a prescribed activity.

**executive officer**, in relation to a body corporate, means a person, by whatever name called and whether or not a director of the body, who is concerned, or takes part, in the management of the body.



**give information to the Board** has the meaning given by subsection 4(8) of the *Industry Research and Development Act 1986*.

**hold**, in relation to shares, has the meaning given by subsection (4).

**investment manager**, in relation to a company, means:

- (a) an eligible corporation that is engaged to supply investment management services to the company; or
- (b) an eligible corporation that is a member of a partnership that is so engaged; or
- (c) an officer of an eligible corporation that is so engaged or is such a member; or
- (d) a person (other than an eligible corporation) who is a member or employee of such a partnership; or
- (e) a person (other than an eligible corporation) who is engaged to supply (otherwise than as an officer of the company) investment management services to the company; or
- (f) an employee of a natural person of a kind referred to in paragraph (e); or
- (g) an officer of a body corporate (other than an eligible corporation) that is a person of a kind referred to in paragraph (d) or (e).

**life office** means:

- (a) a body corporate that is registered under section 21 of the *Life Insurance Act 1995*; or
- (b) a public authority:
  - (i) that is constituted by a law of a State or internal Territory; and
  - (ii) that carries on life insurance business within the meaning of section 11 of the *Life Insurance Act 1995*.

**limited partnership** has the same meaning as in the *Income Tax Assessment Act 1997*.

**member**, except in relation to a partnership, means a member of the Board.

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**object of this Act** means the object set out in subsection 3(2).

**officer**, in relation to a body corporate, means a director, secretary, executive officer or employee of the company.

**paid** includes credited as paid.

**PDF** (pooled development fund) means a company in relation to which a registration declaration is in force.

**PDF constitution requirements** has the meaning given by subsection (3).

**PDF investment** means an investment made in accordance with Division 1 of Part 4.

**permitted short-term borrowing** means a borrowing of money that is made:

- (a) because of temporary cash flow problems; and
- (b) solely for temporary purposes (other than the purpose of repaying other money borrowed for temporary purposes).

**person affected**, in relation to a reviewable decision, means the company, PDF or person referred to in the relevant paragraph of the definition of **reviewable decision**.

**produce a document to the Board** has the meaning given by subsection 4(8) of the *Industry Research and Development Act 1986*.

**registration application** means an application under section 11 that was made before the day on which Part 4 of Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* commenced.

**registration declaration** means a declaration under section 14 that a company is registered as a PDF.

**relevant officer**, in relation to a company, means:

- (a) a director of the company; or
- (c) any other person who, as an officer of the company, supplies investment management services to the company.

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**resident investment vehicle** has the same meaning as in the *Income Tax Assessment Act 1997*.

**reviewable decision** means a decision:

- (a) under section 14 to refuse to make a registration declaration in relation to a company; or
- (b) under section 17 to refuse to approve a variation of a PDF's approved investment plan; or
- (c) under paragraph 20(1)(b), subsection 20(2), 23(1), 24(2) or 25(1), or section 27, to refuse to give an approval in relation to an investment proposed to be made by a PDF; or
- (d) under paragraph 29(2)(b) to refuse to give an approval to a PDF entering into a transaction; or
- (e) under subsection 31(1) to refuse to give an approval in relation to a person's shareholding in a PDF; or
- (f) under subsection 32(1) to refuse to make, in relation to a payment day (within the meaning of that subsection) of a PDF, a determination for the purposes of paragraph (a) of the definition of **investment period** or **required percentage** in that subsection; or
- (g) under subsection 33(2), 34(1), 35(1) or 36(1) to give a person a direction; or
- (h) under section 47 to revoke a registration declaration in relation to a company; or
- (i) under section 52A to refuse to register an entity under Part 7A; or
- (j) under section 52D to revoke such a registration.

**shareholders' funds**, in relation to a company, means the total of:

- (a) the amount of the company's share capital (but not including any amounts remaining unpaid on the shares); and
- (d) any amount held in any other capital reserve of the company; and
- (e) any amount held in any revenue reserve of the company; and
- (f) the amount of any undistributed profits of the company.

**unregulated investment** means an investment of a prescribed kind.

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**VCLP** means a venture capital limited partnership within the meaning of subsection 118-405(2) of the *Income Tax Assessment Act 1997*.

**venture capital entity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**venture capital equity** has the same meaning as in the *Income Tax Assessment Act 1997*.

**widely-held complying superannuation fund** has the meaning given by section 4A.

- (2) The effect that a provision of this Act has because of a paragraph of the definition of **investment manager** in subsection (1) is additional to, and does not prejudice, the effect that:
  - (a) the provision has because of any other paragraph of that definition; or
  - (b) any other provision of this Act has because of the first-mentioned paragraph.
- (3) For the purposes of this Act, a company's constitution satisfies the PDF constitution requirements if, and only if, it:
  - (a) prohibits the division of the company's shares into classes; and
  - (b) prohibits the issue or allotment of a share in the company, or a unit (as defined in section 9 of the *Corporations Act 2001*) of such a share, unless the share is an ordinary share; and
  - (c) prohibits the issue or allotment of a share in the company, or a unit (as so defined) of such a share, if the rights attached to the share would be different from the rights attached to other shares in the company that are still on issue.
- (4) For the purposes of this Act, a person who subscribes for or buys shares is taken to hold the shares from the time of the subscription or purchase until the person no longer has in the shares an interest of any kind (whether legal or equitable).

**4A Definition of *widely-held complying superannuation fund***

- (1) For the purposes of this Act, a fund is a ***widely-held complying superannuation fund*** if:
- (a) it has 5 or more members; and
  - (b) it satisfies the test in either subsection (2) or (3).

*Resident funds*

- (2) A fund satisfies the test in this subsection at a particular time during a year of income of the fund (within the meaning of the *Income Tax Assessment Act 1936*) if it is a complying superannuation fund for the purposes of the *Income Tax Assessment Act 1997* in relation to the year of income.

*Non-resident funds*

- (3) A fund satisfies the test in this subsection if:
- (a) it is a superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*); and
  - (b) it is a foreign superannuation fund (within the meaning of the *Income Tax Assessment Act 1997*); and
  - (c) it is established for the sole or principal purpose of providing retirement benefits for its members; and
  - (d) it complies with the applicable laws of a foreign country that regulate funds established for that purpose.

**4B Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences created by this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## Part 3—Becoming a PDF

### 10 How a company becomes a PDF

- (1) A company becomes a PDF when a registration declaration made in relation to the company comes into force.
- (2) A registration declaration:
  - (a) comes into force:
    - (i) on the day when it is made; or
    - (ii) if it is expressed to take effect on a later day—on that later day; and
  - (b) remains in force until it is revoked under Part 6.

### 11 Application for registration declaration

- (1) A company may apply to the Board for a registration declaration to be made in relation to the company.
- (2) An application must be in writing and must include the following information:
  - (a) the name, address, occupation, qualifications and experience of each relevant officer of the applicant;
  - (b) for each person or partnership (if any) whom or that the applicant has engaged, or proposes to engage, to supply (otherwise than as an officer of the applicant) investment management services to the applicant:
    - (i) the name and address of the person or partnership; and
    - (ii) in the case of a natural person—the person's occupation, qualifications and experience; and
    - (iii) the name, address, occupation, qualifications and experience of each natural person who is supplying, or will supply, such services to the applicant:

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- (A) if the first-mentioned person is a natural person—as an employee of the first-mentioned person; or
  - (B) if the first-mentioned person is a body corporate—as an officer of the body; or
  - (C) in the case of a partnership—as a member or employee of the partnership or as an officer of a body corporate that is such a member;
- (c) the applicant's issued share capital and paid-up share capital;
  - (d) the capital-raising plan that the applicant proposes to implement if it becomes a PDF;
  - (e) the investment plan that the applicant proposes to implement if it becomes a PDF;
  - (f) the address of the applicant's registered office;
  - (g) the name and address of, and number of shares in the applicant held by:
    - (i) if there are not more than 10 shareholders in the applicant—each of those shareholders; or
    - (ii) if there are more than 10 shareholders in the applicant—each of the 10 of those shareholders who hold the greatest number of shares in the applicant;
  - (h) any other information that a determination in force under subsection (5) requires the application to include.
- (3) An application may also include any other information that the applicant thinks is relevant.
  - (4) An application must be accompanied by a copy of the applicant's constitution.
  - (4A) An application must not be made on or after the day on which Part 4 of Schedule 8 to the *Tax Laws Amendment (2007 Measures No. 2) Act 2007* commenced.
  - (5) The Board may, for the purposes of paragraph (2)(h), determine, by legislative instrument signed by the Chairperson pursuant to a resolution of the Board, that specified information is to be included in registration applications.
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### **12 Further information may be requested**

If the Board needs further information to decide a registration application, it may ask the applicant to provide the information.

### **13 Period within which registration application to be decided**

- (1) Subject to this section, the Board must decide a registration application within 60 days after receiving it.
- (2) If the Board thinks that it will take longer to decide the application, the Board may extend, by up to 60 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 60 days after the Board receives the application.
- (4) If the Board makes an extension, the Board must decide the application within the extended period.
- (5) If the Board has not decided the application by the end of the day by which the Board is required to decide it, the Board is taken to have decided, at the end of that day, to refuse the application.

### **14 Deciding a registration application**

- (1) The Board must grant a registration application, and declare the applicant to be registered as a PDF, if the Board is satisfied that:
  - (a) the applicant has complied, in relation to the application, with this Part and with any requests made by the Board under section 12; and
  - (b) the applicant is an eligible corporation; and
  - (c) the applicant's investment plan (being the investment plan set out in the registration application or that plan as since varied in negotiations with the Board) is appropriate, having regard to:
    - (i) the object of this Act; and
    - (ii) the requirements of this Act relating to the making and holding of investments by a PDF; and



- (d) the capital-raising plan set out in the registration application is appropriate, having regard to the requirements of this Act relating to the raising of capital by a PDF; and
- (e) the applicant is reasonably likely to be able to implement those plans and comply with this Act; and
- (f) granting the application will help achieve the object of this Act; and
- (g) the applicant's capital structure is consistent with the requirements of this Act relating to a PDF's capital structure; and
- (h) the applicant's constitution satisfies the PDF constitution requirements; and
- (i) section 31 will be complied with in relation to the applicant; and
- (j) the applicant holds no investments, other than unregulated investments; and
- (k) the applicant has not previously carried on business; and
- (l) the applicant has not previously derived assessable income within the meaning of the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*, otherwise than from holding or disposing of an unregulated investment; and
- (m) the applicant has not previously paid a dividend to any of its shareholders; and
- (n) if the applicant has previously raised capital:
  - (i) the capital was raised for one or more of the following purposes:
    - (A) unless the applicant was incorporated on or after 1 July 1992—the applicant providing development capital to Australian businesses;
    - (B) meeting the applicant's costs of becoming a PDF;
    - (C) meeting the applicant's administrative expenses; and
  - (ii) whatever the applicant has done by way of raising capital is consistent with the requirements of this Act relating to a PDF raising capital.

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- (2) For the purposes of paragraph (1)(k), the applicant is not taken to have carried on business merely because the applicant has:
  - (a) raised capital by issuing ordinary shares; or
  - (b) made, held, or disposed of, unregulated investments.
- (3) In deciding whether it is satisfied as mentioned in subsection (1), the Board must have regard to the information provided to it by the applicant and may have regard to any other relevant information that is available to the Board.
- (4) If the Board is not satisfied as mentioned in subsection (1), it must refuse the application.

### **15 Applicant to be notified of decision**

- (1) The Board must give the applicant written notice of its decision on a registration application as soon as practicable after the decision is made.
- (2) If the decision is to refuse the application, the notice must also include a statement of the Board's reasons for the decision.
- (3) Subsection (2) does not apply in relation to a decision that is taken to have been made because of subsection 13(5).
- (4) A failure to comply with subsection (1) or (2) in relation to a decision does not affect the validity of the decision.

### **16 Board to publish notice of registration declaration in the *Gazette***

- (1) As soon as practicable after making a registration declaration, the Board must cause to be published in the *Gazette* a notice that states the name of the company and advises that the company became, or will become, as the case requires, a PDF on a specified day.
- (2) A failure to comply with subsection (1) in relation to a registration declaration does not affect the validity of the declaration.

**17 A PDF's approved investment plan**

- (1) A resolution declaring a company to be registered as a PDF must specify a document that sets out the investment plan in relation to which the Board is satisfied as mentioned in paragraph 14(1)(c).
- (2) For the purposes of this Act, a PDF's approved investment plan is:
  - (a) the investment plan set out in the document that the PDF's registration declaration specifies under subsection (1); or
  - (b) if that plan has been varied under this section on one or more occasions, that plan as so varied.
- (3) A PDF may, by writing, request the Board to approve a specified variation of the PDF's approved investment plan.
- (4) A variation of a plan may take the form of revoking the plan and replacing it with another plan.
- (5) A request must state why the PDF wants the variation.
- (6) If the Board is satisfied that a requested variation is appropriate, having regard to:
  - (a) the object of this Act; and
  - (b) the requirements of this Act relating to the making and holding of investments by PDFs;the Board must grant the request and approve the variation.
- (7) If the Board approves a variation of a PDF's approved investment plan, that plan is varied accordingly on the giving of the approval.
- (8) If the Board is not satisfied as mentioned in subsection (6) in relation to a request, the Board must refuse the request.
- (9) The Board must give a PDF that has made a request written notice of its decision on the request as soon as practicable after the decision is made.
- (10) If the Board's decision is to refuse a request, the notice must also include a statement of the Board's reasons for its decision.

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- (11) A failure to comply with subsection (9) or (10) in relation to a decision does not affect the validity of the decision.

**18 Conditions of registration declaration**

A PDF's registration declaration is subject to the following conditions:

- (a) a condition that the following be complied with by, and in relation to, the PDF:
  - (i) this Act;
  - (ii) any direction given, or requirement made, by the Board under this Act;
  - (iii) any condition to which an approval given, or determination made, by the Board under this Act is subject;
- (b) a condition that the PDF's constitution:
  - (i) satisfies the PDF constitution requirements; and
  - (ii) be complied with in so far as it prohibits as mentioned in subsection 4(3);
- (c) a condition that the PDF not reduce its share capital, or buy shares in itself, within 2 years after becoming a PDF or merging with another PDF as mentioned in section 32A.

## **Part 4—Regulation of PDFs**

### **Division 1—Making investments**

#### **19 Investments to be in accordance with this Division**

- (1) A PDF must not make an investment, other than an unregulated investment, except in accordance with this Division.
- (2) There are 3 kinds of investment that a PDF is allowed to make under this Division:
  - (a) subscribing for or buying shares (see section 20);
  - (b) acquiring non-transferable options to buy shares (see section 20A);
  - (c) lending money to companies (see section 20B).
- (3) The other sections of this Division (sections 21 to 28A) apply to each of those kinds of investment.

Note: In particular, section 27 provides that, unless the Board otherwise approves, immediately after an investment of any of the above kinds is made, the total of all amounts paid on the shares in the investee company held by the PDF must be at least 10% of the total of all amounts paid on the issued shares in the investee company. (This means that the PDF must hold at least 10% of the paid-up share capital in the investee company before the PDF can acquire non-transferable options in the company or lend it money.)

#### **20 First kind of allowed investment: acquiring shares**

- (1) A PDF may make an investment by subscribing for or buying:
  - (a) ordinary shares in a company (in this Division called the *investee company*); or
  - (b) some other kind of shares in a company (in this Division also called the *investee company*) that the Board approves the PDF investing in.

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- (2) Unless the Board otherwise approves, the shares must not be pre-owned shares.
- (3) The Board may give an approval for the purposes of subsection (2) only if it is satisfied:
- (a) that it is in the investee company's best interests for the person who holds the shares to which the investment relates to cease to hold shares in the investee company; and
  - (b) that that person proposes to dispose of all shares in the investee company that the person holds; and
  - (c) that the value of the investee company will be increased by the PDF acquiring the shares to which the investment relates; and
  - (d) that either:
    - (i) the PDF already holds other shares in the investee company, some or all of which are not pre-owned shares; or
    - (ii) the PDF will, in connection with acquiring the shares, acquire other shares in the investee company, some or all of which are not pre-owned shares.
- (4) A reference in this Part to all amounts paid on shares held by a PDF is, in so far as the shares are pre-owned shares, a reference to:
- (a) the amount that the PDF paid for the shares; and
  - (b) the amounts (if any) paid on the shares since the PDF acquired them.
- (5) In this section:
- pre-owned shares*** means shares that were issued or allotted to a person other than the PDF, but does not include any such shares that:
- (a) were issued:
    - (i) to an underwriter or sub-underwriter of the share issue; or
    - (ii) to a person for the purpose of being offered for sale; and

- (b) were still held by the underwriter, sub-underwriter or person immediately before being acquired by the PDF.

**20A Second kind of allowed investment: acquiring non-transferable options**

- (1) A PDF may make an investment by acquiring an option to subscribe for or buy shares in a company (in this Division also called the *investee company*).

Note: However, section 27 provides that, unless the Board otherwise approves, a PDF cannot make such an investment unless it first holds shares in the investee company. The total of all amounts paid on those shares must be at least 10% of the total of all amounts paid on the issued shares in the investee company.

- (2) The option must be exercisable only by the PDF. It must not be capable of being transferred to another person.
- (3) If the PDF later wishes to exercise the option by subscribing for or buying any of those shares, it must comply with section 20 and the other provisions of this Division that relate to section 20 investments: the exercise of the option is treated as a new investment that is separate from the acquisition of the option.

**20B Third kind of allowed investment: lending money to existing investee companies**

- (1) A PDF may make an investment by lending money to a company (in this Division also called the *investee company*) under an agreement with the investee company.

Note: However, section 27 provides that, unless the Board otherwise approves, a PDF cannot make such an investment unless it first holds shares in the investee company. The total of all amounts paid on those shares must be at least 10% of the total of all amounts paid on the issued shares in the investee company.

- (2) Immediately after the agreement is entered into, the total of the outstanding amounts of loans that the PDF has made (other than the amounts of unregulated investments) must not exceed 20% of the shareholders' funds of the PDF.

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**21 Intended use by investee company of money invested by PDF**

- (1) The PDF must believe, on reasonable grounds, that:
  - (aa) if the investment is covered by section 20 (shares)—the shares concerned are being, or were, issued or allotted for the sole or principal purpose of raising money; or
  - (ab) if the investment is covered by section 20A (options)—the money paid as consideration for the option concerned is being raised solely or principally; or
  - (ac) if the investment is covered by section 20B (loans)—the loan money concerned is being borrowed solely or principally; for use in doing one or more of the following:
    - (a) establishing an eligible business carried on, or to be carried on, by the investee company, whether alone or together with any other person or persons;
    - (b) substantially expanding:
      - (i) the production capacity; or
      - (ii) the capacity to supply services; of an established eligible business so carried on;
    - (c) substantially expanding existing markets, or developing substantial new markets, for goods or services supplied in the course of an established eligible business so carried on.
- (2) If the investment is authorised by a resolution of the PDF's directors, the PDF is taken to believe as mentioned in subsection (1) if, and only if, each director who voted in favour of the resolution so believed when the resolution was passed.
- (3) If the investment is not authorised by a resolution of the PDF's directors, the PDF is taken to believe as mentioned in subsection (1) if, and only if:
  - (a) at least one of the following subparagraphs applies to each person who is a director of the PDF at the time when the investment is made:
    - (i) the person believes as mentioned in subsection (1) at that time;



- (ii) the person believes at that time, on reasonable grounds, that a competent and reliable person:
  - (A) is responsible for ensuring that investments by the PDF (other than unregulated investments) are made in accordance with this Division; and
  - (B) is fulfilling that responsibility; and
- (b) each person (whether or not an officer of the PDF) who is at that time responsible for so ensuring believes at that time, on reasonable grounds, as mentioned in subsection (1).
- (4) This section does not apply to an investment (including the acquisition of an option) that relates to pre-owned shares within the meaning of section 20.

## **22 Investee company must not be a PDF**

- (1) The investee company must not be a PDF.
- (2) However, nothing in this Division prevents a PDF from making an investment that is allowed by section 32A (which deals with mergers of PDFs).

## **23 Primary activity of investee company must not be an excluded activity**

- (1) Unless the Board otherwise approves, the investee company's primary activity must not be an excluded activity.
- (2) The Board may give an approval for the purposes of subsection (1) only if:
  - (a) the Board is satisfied that the investee company intends to change its primary activity to an activity that is not an excluded activity; or
  - (b) the PDF already holds other shares in the investee company and the Board is satisfied that it is desirable that the investment be made in order to protect the PDF's existing investment in the investee company.

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**24 Limit on size of investee company**

- (1) If the PDF does not already hold other shares in the investee company, the total value of the investee company's assets, as determined in accordance with this section, must not exceed \$50 million.
- (2) If the PDF already holds other shares in the investee company, the total value of the investee company's assets, as determined in accordance with this section, must not exceed \$50 million unless the Board otherwise approves.
- (3) The Board may give an approval for the purposes of subsection (2) only if it is satisfied that it is desirable that the investment be made (in spite of the value of the investee company's assets) in order to protect the PDF's existing investment in the investee company.
- (4) Subject to subsections (5) and (6), for the purposes of this section, the total value of the investee company's assets is the total value of its assets (both current and non-current) as shown in the last audited accounts prepared in relation to the company for the purposes of Division 4 of Part 3.6 of the *Corporations Act 2001* before the investment is made.
- (5) If:
  - (a) no audited accounts of the kind referred to in subsection (4) have been so prepared within the period of 12 months ending when the investment is made; or
  - (b) the last such audited accounts so prepared relate to a period that ended more than 18 months before the investment is made;then:
  - (c) the PDF must not make the investment unless it first obtains an audited statement showing the total value of the investee company's assets as at a time not more than 12 months before the investment is made; and
  - (d) for the purposes of this section, the total value of the investee company's assets is the total value as shown in that statement.

- (6) If the PDF has reason to believe that the last audited accounts of the kind referred to in subsection (4) do not accurately reflect the total value of the investee company's assets, then:
- (a) subject to subsection (7), the PDF may, before making the investment, obtain an audited statement showing the total value of the investee company's assets as at a time:
    - (i) after those last audited accounts were prepared; and
    - (ii) not more than 12 months before the investment is made; and
  - (b) if the PDF obtains such a statement, then, for the purposes of this section, the total value of the investee company's assets is the total value as shown in that statement.
- (7) The PDF must not make the investment without first obtaining a statement as mentioned in subsection (6) if an officer or investment manager of the PDF:
- (a) performs duties in connection with the making of the investment; and
  - (b) has reason to believe that, since the last audited accounts of the kind referred to in subsection (4) were prepared, the total value of the investee company's assets has, or may have, increased to an amount that exceeds \$50 million.
- (8) A reference in subsection (5) or (6) to an audited statement is a reference to a statement audited by a person or firm:
- (a) who or that is appointed as the investee company's auditor in accordance with the *Corporations Act 2001*; or
  - (b) who or that is eligible to consent to being so appointed.

## **25 PDF not to commit more than 30% of its committed capital to investee company**

- (1) Unless the Board otherwise approves, the investment must be such that, immediately after it is made, the total of:
- (a) all amounts paid on the shares in the investee company held by the PDF; and

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- (b) all amounts remaining unpaid on those shares; and
  - (ba) all amounts the PDF has paid to acquire options in the investee company that the PDF has not yet exercised; and
  - (bb) all amounts the PDF has lent to the investee company that remain outstanding;
- does not exceed 30% of the total of:
- (c) the shareholders' funds of the PDF; and
  - (d) all amounts remaining unpaid on the issued shares in the PDF.
- (2) The Board must not give an approval under subsection (1) if the Board is satisfied that the investment is connected with a scheme or proposed scheme to which Part IVA of the *Income Tax Assessment Act 1936* applies or would apply, as the case requires.
- (3) An expression used in subsection (2) of this section and in Part IVA of the *Income Tax Assessment Act 1936* has the same meaning in that subsection as it has in that Part.

**27 Amount invested in investee company to be at least 10% of its paid-up capital**

Unless the Board otherwise approves, the investment must be such that, immediately after it is made, the total of all amounts paid on the shares in the investee company held by the PDF is at least 10% of the total of all amounts paid on the issued shares in the investee company.

**27A PDF to notify Board of initial investments**

As soon as practicable, and in any event within 30 days, after a PDF invests in a particular investee company for the first time, the PDF must give the Board a written notice setting out full particulars of the investment.

**28 Provisions relating to approvals by Board**

- (1) An approval for the purposes of an approval provision:
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- (a) must be given before the investment is made; and
  - (b) may be given subject to one or more of the following:
    - (i) a condition in accordance with which the investment must be made;
    - (ii) a condition that must be complied with at or before the time when the investment is made.
- (2) If an approval for the purposes of an approval provision is given as mentioned in paragraph (1)(b), the investment must not be made unless the condition or conditions are complied with.
- (2A) An approval for the purposes of subsection 25(1) must be given subject to a condition that, at the end of a specified period, the total of:
- (a) all amounts paid on the shares in the investee company held by the PDF; and
  - (b) all amounts remaining unpaid on those shares;
- must not exceed 30% of the total of:
- (c) the shareholders' funds of the PDF; and
  - (d) all amounts remaining unpaid on the issued shares in the PDF.
- (2B) A PDF contravenes this subsection if:
- (a) an approval is given for the purposes of subsection 25(1); and
  - (b) the PDF makes the investment; and
  - (c) the PDF engages in conduct; and
  - (d) the PDF's conduct contravenes the condition covered by subsection (2A).
- (3) In this section:
- approval provision** means:
- (a) paragraph 20(1)(b); or
  - (b) subsection 20(2); or
  - (c) subsection 23(1); or
  - (d) subsection 24(2); or
  - (da) subsection 25(1); or

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(e) section 27.

***engage in conduct*** means:

- (a) do an act; or
- (b) omit to perform an act.

**28A Indirect investments**

This Act applies to investments made by a PDF through one or more interposed entities as if the PDF had made the investments directly.

## **Division 2—Other provisions regulating the capital structure and activities of PDFs**

### **29 PDF to carry on a business of making and holding PDF investments**

- (1) A PDF must carry on a business of making and holding PDF investments.
- (2) A PDF must not enter into a transaction except:
  - (a) in the course of, or for the purposes of, carrying on a business of making and holding PDF investments; or
  - (aa) as allowed by section 32A (which deals with mergers of PDFs); or
  - (b) with the Board's approval.
- (3) Subsection (2) neither allows a PDF to do, nor empowers the Board to approve a PDF doing, something that the PDF is prohibited from doing under another provision of this Part.
- (4) Subject to subsection (2), nothing in subsection (1) prevents a PDF from realising a particular investment.
- (5) Nothing in this section prohibits a PDF from doing something in the course of, or for the purposes of:
  - (a) providing management assistance to a company in which the PDF holds a PDF investment; or
  - (b) complying with a direction under subsection 33(2), 34(1) or 35(1); or
  - (c) making, holding, or disposing of, an unregulated investment.

### **30 Restrictions on raising money etc.**

- (1) A PDF must not:
  - (a) borrow money; or
  - (b) accept a deposit of money; or

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- (c) issue a debenture; or
  - (d) issue a convertible note; or
  - (e) issue or make available an interest in a managed investment scheme (including a notified foreign passport fund).
- (2) An expression has in subsection (1) the same meaning as in the *Corporations Act 2001*.
- (3) Nothing in subsection (1) prohibits a PDF from making a permitted short-term borrowing.

**31 Limit on shareholding in a PDF**

- (1) Unless the Board otherwise approves, a person (not being an ADI, a life office or a widely-held complying superannuation fund), together with associates (not being ADIs, life offices or widely-held complying superannuation funds) of the person, must not hold more than 30% of the issued shares in a PDF.
- (2) In this section:
- associate**, in relation to a person, means:
- (a) a parent or remoter lineal ancestor, a child or remoter issue, or a brother or sister, of the person; or
  - (b) the spouse or a de facto partner of the person; or
  - (c) if the person is a company:
    - (i) an officer of the company; or
    - (ii) an officer of a company that is related to the first-mentioned company; or
    - (iii) a person who holds a substantial ownership interest in the company; or
  - (d) an officer of a company of which the person is an officer; or
  - (e) a person who is, because of this subsection, an associate of any other person who is an associate of the person (including a person who is an associate of the person by another application or other applications of this paragraph).



**child:** without limiting who is a child of a person for the purposes of this section, someone is the **child** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

**de facto partner** has the meaning given by the *Acts Interpretation Act 1901*.

**parent:** without limiting who is a parent of a person for the purposes of this Act, someone is the **parent** of a person if the person is his or her child because of the definition of **child** in this section.

- (2A) However, in determining whether a person is an **associate** of another person, disregard any connection those persons have with or through a PDF.

Example: This means that, despite paragraph (1)(d), the fact that 2 persons are both officers of the same PDF does not make the officers **associates** of one another (although they would still be associates if they were both officers of the same non-PDF company).

- (2AA) For the purposes of paragraph (a) of the definition of **associate** in subsection (2), if one person is the child of another person because of adoption or because of the definition of **child** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.
- (2B) This section does not prevent a PDF from merging with another PDF as mentioned in section 32A.
- (3) For the purposes of subparagraph (c)(ii) of the definition of **associate** in subsection (2), the question whether companies are related to each other is to be determined in the same manner as the question whether bodies corporate (within the meaning of the *Corporations Act 2001*) are related to each other is determined under the *Corporations Act 2001*.
- (4) For the purposes of subparagraph (c)(iii) of the definition of **associate** in subsection (2), a person holds a substantial ownership interest in a company if the total of all amounts paid on the shares

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in the company in which the person holds interests equals or exceeds 15% of the total of all amounts paid on all shares in the company.

- (5) For the purposes of subsection (4):
- (a) a person holds an interest in a share if the person has any legal or equitable interest in the share; and
  - (b) without limiting the generality of paragraph (a), a person holds an interest in a share if the person, although not the registered holder of the share, is entitled to exercise, or control the exercise of, a right attached to the share, otherwise than because the person has been appointed as a proxy or representative to vote at a meeting of members of a company or of a class of its members.

### 32 Timetable for investing funds raised by PDF

- (1) In this section:

***investment period***, in relation to a payment day of a PDF, means:

- (a) if, at the end of the period that would apart from this paragraph be the investment period after that payment day of the PDF, there is in force a determination by the Board that a specified longer period is the investment period after that payment day of the PDF—the specified period; or
- (b) if paragraph (a) does not apply and the regulations, as in force at the start of that day, prescribe a period (other than 5 years)—the prescribed period; or
- (c) otherwise—5 years.

***payment day***, in relation to a PDF, means a day on which an amount becomes due and payable to the PDF in respect of:

- (a) an issue or allotment of shares in the PDF; or
- (b) a call made in respect of such shares.

***required amount***, in relation to a payment day of a PDF, means an amount equal to the required percentage of the amount, or of the

total of the amounts, that became due and payable to the PDF on that day as mentioned in the definition of *payment day*.

*required percentage*, in relation to a payment day of a PDF, means:

- (a) if:
    - (i) at the end of the investment period after that payment day of the PDF there is in force a determination by the Board that a specified percentage is the required percentage for that payment day of the PDF; and
    - (ii) the specified percentage is lower than the percentage that would, apart from this paragraph, be the required percentage for that payment day of the PDF;  
the specified percentage; or
  - (b) if paragraph (a) does not apply and the regulations, as in force at the start of that day, prescribe a percentage (other than 65%)—the prescribed percentage; or
  - (c) otherwise—65%.
- (2) Within the investment period after each payment day of a PDF, the PDF must invest, in accordance with Division 1, an amount or total equal to or greater than the required amount.
  - (3) In determining whether a PDF has complied with subsection (2) in relation to a particular day, so much of an amount invested as is taken into account in determining whether the PDF has complied with that subsection in relation to another day must be disregarded.
  - (4) However, if:
    - (a) the amount, or the total of the amounts, that may be taken into account in determining whether a PDF has complied with subsection (2) in relation to a particular payment day of the PDF exceeds the required amount in relation to that payment day of the PDF; and
    - (b) the first-mentioned amount is, or amounts forming part of the first-mentioned total are, invested during the investment period after another payment day of the PDF;

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then, in determining whether the PDF has complied with subsection (2) in relation to the other day, so much of the first-mentioned amount, or of the total of the amounts referred to in paragraph (b), as the case may be, as does not exceed the excess referred to in paragraph (a) is taken not to have been taken into account in determining whether the PDF complied with subsection (2) in relation to the day referred to in paragraph (a).

**32A PDFs may merge**

- (1) A PDF (the *investor PDF*) may acquire shares in another PDF (the *investee PDF*) if, and only if, the acquisition is part of a process of the 2 PDFs merging into one PDF.
- (2) Any consideration given to the shareholders in the investee PDF for the acquisition must be in the form of:
  - (a) shares in the investor PDF; or
  - (b) a genuine dividend payable from any undistributed profits of the investee PDF;or both.
- (3) The investor PDF must give the Board written notice before making an acquisition allowed by this section.

## **Division 3—Board's powers to give directions**

### **33 PDF to comply with directions in relation to its approved investment plan**

- (1) If the Board considers that a PDF is not implementing its approved investment plan, the Board may, by notice in writing to the PDF, ask the PDF to explain why it is not implementing that plan.
- (2) If:
  - (a) a PDF fails to give any explanation within 30 days after being given a notice; or
  - (b) the Board considers that the PDF's explanation is not acceptable;the Board may, by notice in writing to the PDF, direct the PDF to take such action relating to the making, holding or disposal of investments (being action that is consistent with this Act) as the Board thinks appropriate, having regard to:
  - (c) the PDF's approved investment plan; and
  - (d) the PDF's explanation (if any); and
  - (e) the PDF's past investment activities and present investments; and
  - (f) the object of this Act; and
  - (g) any other relevant matter.
- (3) A direction must specify a reasonable period within which it must be complied with.
- (4) A PDF must, within the specified period, comply with a direction given to it.

### **34 PDF to comply with directions if investee company's primary activity is an excluded activity**

- (1) If the Board is satisfied that:
  - (a) a PDF holds shares in a company; and

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(b) the primary activity of the company is an excluded activity; the Board may, by notice in writing to the PDF, direct the PDF to take such action in relation to disposal of the shares as the Board thinks appropriate, having regard to:

- (c) the PDF's approved investment plan; and
  - (d) the PDF's past investment activities and present investments; and
  - (e) the object of this Act; and
  - (f) any other relevant matter.
- (2) A direction must specify a reasonable period within which it must be complied with.
- (3) A PDF must, within the specified period, comply with a direction given to it.

**35 PDF to comply with other directions**

- (1) If the Board is satisfied that a PDF has contravened a direction provision, or a previous direction under this section, section 33 or section 34, the Board may, by notice in writing to the PDF, direct the PDF to take such action in relation to the contravention as the Board thinks appropriate, having regard to any relevant matter.
- (2) A direction must specify a reasonable period within which it must be complied with.
- (3) A PDF must, within the specified period, comply with a direction given to it.
- (4) In this section:

***direction provision*** means:

- (a) section 19; or
- (b) subsection 29(1); or
- (c) subsection 29(2); or
- (d) subsection 30(1); or
- (e) section 32.

### **36 Shareholders to comply with directions about shareholdings in PDFs**

- (1) If the Board is satisfied that a person holds shares in a PDF in contravention of section 31, the Board may, by notice in writing to the person, direct the person to dispose of a specified number of those shares.
- (2) A direction must specify a reasonable period within which it must be complied with.
- (3) A person must, within the specified period, comply with a direction given to the person.

### **37 Board to advise of reasons for giving directions**

- (1) The Board must include in a direction notice a statement of its reasons for giving the direction.
- (2) A failure to comply with subsection (1) in relation to a notice does not affect the validity of the notice.
- (3) In this section:

*direction notice* means a notice under subsection 33(2), 34(1), 35(1) or 36(1) giving a person a direction.

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**Division 4** Consequences of contravention of this Part

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**Division 4—Consequences of contravention of this Part**

**38 Acts in contravention of Part not invalid**

A contravention of this Part does not, of itself, invalidate an act or transaction.



## **Part 5—Monitoring compliance**

### **39 Board to monitor compliance**

- (1) The Board must, as and when required by section 40, consider whether a PDF has been complying with this Act.
- (2) The Board may, at such other times as it considers appropriate, consider whether a PDF has been complying with this Act.

### **40 Board to consider compliance on receipt of annual return**

- (1) As soon as practicable after the Board receives a return under section 41 from a PDF, the Board must consider whether the PDF has been complying with this Act since:
  - (a) if the Board has received from the PDF an earlier return, or earlier returns, under that section—the Board received the earlier return, or the last of the earlier returns, as the case requires; or
  - (b) otherwise—the day on which the PDF became a PDF.
- (2) In considering whether the PDF has been so complying, the Board must have regard to the information included in the first-mentioned return and to any other relevant information that is available to the Board.

### **41 Annual return by PDF**

- (1) A PDF must, within 4 months after the end of each financial year, give the Board a written return that includes the following information:
  - (a) the name, address, occupation, qualifications and experience of each relevant officer of the PDF;
  - (b) for each person or partnership (if any) whom or that the PDF has engaged to supply (otherwise than as an officer of the PDF) investment management services to the PDF:

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- (i) the name and address of the person or partnership; and
  - (ii) in the case of a natural person—the person’s occupation, qualifications and experience; and
  - (iii) the name, address, occupation, qualifications and experience of each natural person who is supplying such services to the PDF:
    - (A) if the first-mentioned person is a natural person—as an employee of the first-mentioned person; or
    - (B) if the first-mentioned person is a body corporate—as an officer of the body; or
    - (C) in the case of a partnership—as a member or employee of the partnership or as an officer of a body corporate that is such a member;
  - (c) full particulars of the investments (other than unregulated investments) held by the PDF at the end of the financial year;
  - (d) full particulars of the making and disposal of investments (other than unregulated investments) by the PDF during the financial year;
  - (da) for each of the PDF’s investee companies (within the meaning of Division 1 of Part 4), the proportion of the investee company’s issued share capital held by the PDF at the end of the financial year;
  - (db) the amounts of all profits, gains or losses the PDF made during the financial year from each such investee company;
  - (dc) the amounts of all unregulated investments held by the PDF at the end of the financial year;
  - (dd) the amounts of all profits, gains or losses the PDF made during the financial year from unregulated investments;
  - (e) the PDF’s approved investment plan;
  - (f) full particulars of the capital raised by the PDF during the financial year;
  - (g) the PDF’s issued share capital and paid-up share capital;
  - (h) the address of the registered office of the PDF;
  - (i) the name and address of, and number of shares in the PDF held by:
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- (i) if there are not more than 10 shareholders in the PDF—each of those shareholders; or
  - (ii) if there are more than 10 shareholders in the PDF—each of the 10 of those shareholders who hold the greatest number of shares in the PDF;
  - (ia) full particulars of the dividends the PDF paid to the shareholders in the PDF during the financial year;
  - (j) any other information that a determination in force under subsection (3) requires the return to include.
- (2) Information about a matter that a return must include because of paragraph (1)(a), (b), (e), (g), (h) or (i) is information about that matter as at the time when the return is given to the Board.
- (3) The Board may, for the purposes of paragraph (1)(j), determine, by legislative instrument signed by the Chairperson pursuant to a resolution of the Board, that specified information is to be included in returns.
- (5) If a PDF became a PDF during a financial year, a return need not include any information about its operations before it became a PDF.

#### **42 PDF to notify Board of events affecting information previously given**

- (1) As soon as practicable, and in any event within 30 days, after a PDF knows of an event referred to in subsection (2), the PDF must give the Board a written notice setting out particulars of the event and, in the case of an event referred to in paragraph (2)(a), (d) or (g), the additional particulars referred to in subsection (3).
- (2) These are the events:
- (a) a person becoming a relevant officer of the PDF;
  - (b) a change in the name or address of a relevant officer of the PDF;
  - (c) a person ceasing to be a relevant officer of the PDF;

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- (d) the PDF engaging a person or partnership to supply (otherwise than as an officer of the PDF) investment management services to the PDF;
  - (e) a change in the name or address of a person or partnership so engaged;
  - (f) the end of such an engagement;
  - (g) a natural person beginning to supply such services to the PDF:
    - (i) as an employee of a natural person who is so engaged; or
    - (ii) as an officer of a body corporate that is so engaged; or
    - (iii) as a member or employee of a partnership that is so engaged, or as an officer of a body corporate that is such a member;
  - (h) a change in the name or address of a natural person who supplies such services as mentioned in paragraph (g);
  - (i) a natural person ceasing to supply such services as so mentioned;
  - (j) a change in the PDF's issued or paid-up share capital;
  - (k) a change in the address of the PDF's registered office;
  - (l) a change in the PDF's constitution so that it no longer satisfied the PDF constitution requirement.
  - (m) any other information that the PDF gave to the Board in connection with its registration application, or otherwise under this Act, ceasing to be correct, or being discovered to be incorrect;
  - (n) a significant change affecting a matter to which such information relates.
- (3) These are the additional particulars:
- (a) in the case of an event referred to in paragraph (2)(a) or (g)—the person's name, address, occupation, qualifications and experience;
  - (b) in the case of an event referred to in paragraph (2)(d):
    - (i) the name and address of the person or partnership; and

- (ii) in the case of a natural person—the person’s occupation, qualifications and experience.

#### **43 Board may require certain persons to provide information or produce documents**

- (1) The Board may, for the purposes of this Act, require a PDF, or a present or former officer or investment manager of a PDF:
  - (a) to provide the Board with information relating to the PDF or to any of the PDF’s past or present investments; or
  - (b) to produce to the Board documents that so relate.
- (1A) The Board may, for the purposes of this Act, require a resident investment vehicle, a venture capital entity or a present or former officer or investment manager of a resident investment vehicle or a venture capital entity:
  - (a) to provide the Board with information relating to the resident investment vehicle or the venture capital entity; or
  - (b) to produce to the Board documents that so relate.
- (2) A requirement must be made by notice in writing given to the person of whom it is made.
- (3) A requirement must specify a reasonable period within which it must be complied with.
- (4) A person must, within the specified period, comply with a requirement made of the person.

#### **44 Board may request persons to provide information or produce documents**

The Board may, for the purposes of this Act, request a person to provide the Board with information, or to produce to the Board a document, relating to a PDF or to past or present investments of a PDF.

## **Part 6—Revocation of registration declarations**

### **45 Automatic revocation if PDF is not an eligible corporation**

A PDF's registration declaration is revoked, by force of this section, if at any time the PDF is not an eligible corporation.

### **46 Revocation on application by PDF**

- (1) A PDF may apply in writing to the Board to have its registration declaration revoked.
- (2) The PDF must notify each of its shareholders, in writing, that it has made the application.
- (3) The Board must revoke the registration declaration as soon as practicable after receiving the application.

### **47 Revocation at discretion of Board**

- (1) Subject to this section, the Board may revoke a PDF's registration declaration if:
  - (a) the Board is satisfied that a provision of this Act has been contravened by, or in relation to, the PDF; or
  - (b) the Board is no longer satisfied that the PDF's constitution satisfies the PDF constitution requirements; or
  - (c) the Board is satisfied that a provision of the PDF's constitution that prohibits as mentioned in subsection 4(3) has been contravened; or
  - (d) the Board is satisfied that a condition of the PDF's registration has been contravened by, or in relation to, the PDF.
- (2) As soon as practicable after revoking a company's registration declaration, the Board must give the company a notice that advises

of the revocation and sets out the Board's reasons for deciding to revoke the declaration.

- (3) The Board must not revoke a registration declaration unless the Board:
  - (a) by notice in writing given to the PDF, allows the PDF at least 14 days after the notice is given in which to make written submissions to the Board about the matters specified in the notice that, in the opinion of the Board, may constitute grounds for revoking the declaration; and
  - (b) considers any such submissions.
- (4) The reference in subsection (1) to a provision of this Act includes a reference to section 136.1, 137.1 or 137.2 of the *Criminal Code*, in so far as that section relates to this Act.

#### **48 Board to publish notice of revocations in the *Gazette***

- (1) As soon as practicable after the Board becomes aware that a company's registration declaration has been revoked by force of section 45, the Board must cause to be published in the *Gazette* a notice that states the company's name and advises that the company is no longer a PDF.
- (2) As soon as practicable after the Board revokes a company's registration declaration under section 46 or 47, the Board must cause to be published in the *Gazette* a notice that states the company's name and advises that the company is no longer a PDF because its registration declaration was revoked on a specified day.
- (3) A failure to comply with subsection (1) or (2) in relation to the revocation of a registration declaration does not affect the validity of the revocation.

#### **49 Company to notify its shareholders if it ceases to be a PDF**

As soon as practicable after a company knows that it has ceased to be a PDF, the company must notify each of its shareholders, in writing, of that fact.

## Part 7—Offences relating to PDFs

### 51 Offences—failure to comply with directions or requirements

- (1) A person who contravenes subsection 36(3) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (2) A person who contravenes subsection 43(4) commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.
- (3) Subsection (1) or (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the *Criminal Code*.



## **Part 7A—Investments by venture capital entities**

### **52A Registration of venture capital entities**

- (1) A venture capital entity may apply to the Board for registration under this Part.
- (2) An application must be given to the Board within 30 days after the venture capital entity makes its first investment in venture capital equity.
- (3) An application must be in writing, and must include the following information:
  - (a) the entity's current residency status;
  - (b) details of the entity's tax exempt status in its country of residence;
  - (c) details of the facts that qualify the entity as a foreign superannuation fund;
  - (d) the address of the entity's registered office;
  - (e) the name and address of the first resident investment vehicle in which it has invested or proposes to invest and the industry in which it operates;
  - (f) the amount of the investment and the date on which it was or is to be made;
  - (g) the total value of the assets of the resident investment vehicle (worked out as mentioned in subsection 118-510(3) of the *Income Tax Assessment Act 1997*) before the investment;
  - (h) details of other investments that do not constitute venture capital equity the entity holds in the resident investment vehicle;
  - (i) if the entity is the general partner or managing partner of a limited partnership referred to in subparagraph 118-515(2)(b)(ii) of the *Income Tax Assessment Act 1997*—details of the partner's interests in the assets of the partnership.

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- (4) The Board must decide to register the entity under this Part if the Board is satisfied that the information has been provided.
- (5) If the Board registers an applicant under this Part, the Board must notify the applicant within 45 days of the application being made.

### **52B Period within which application must be decided**

- (1) Subject to this section, the Board must decide an application for registration under this Part within 45 days after receiving it.
- (2) If the Board thinks that it will take longer to decide the application, the Board may extend, by up to 45 days, the period for deciding it.
- (3) An extension must be made by written notice given to the applicant within 45 days after the Board receives the application.
- (4) If the Board makes an extension, the Board must decide the application within the extended period.

### **52C Annual return by venture capital entities**

- (1) A registered venture capital entity must, within 3 months after the end of each financial year (30 June), give the Board a written return that includes the following information:
  - (a) the entity's current residency status;
  - (b) details of the entity's tax exempt status in its country of residence;
  - (c) details of the facts that qualify it as a foreign superannuation fund;
  - (d) details of:
    - (i) investments the entity made during that year in resident investment vehicles; and
    - (ii) investments in resident investment vehicles that the entity disposed of during that year; and
    - (iii) investments the entity holds at the end of that year in resident investment vehicles;
  - (e) the industries in which those vehicles operate;

- (f) if the entity is the general partner or managing partner of a limited partnership referred to in subparagraph 118-515(2)(b)(ii) of the *Income Tax Assessment Act 1997*—details of the partner’s interests in the assets of the partnership.
- (2) Information about a matter that a return must include because of paragraph (1)(a) or (b) is information about that matter as at the time when the return is given to the Board.

**52D Revocation at discretion of Board**

- (1) Subject to this section, the Board may revoke an entity’s registration under this Part if the Board is satisfied that the entity has failed to comply with section 52C.
- (2) As soon as practicable after revoking an entity’s registration under this Part, the Board must give the entity a notice that advises of the revocation and sets out the Board’s reasons for deciding to revoke.
- (3) The Board must not revoke a registration unless the Board:
  - (a) by notice in writing given to the entity, allows the entity at least 14 days after the notice is given in which to make written submissions to the Board about the matters specified in the notice that, in the opinion of the Board, may constitute grounds for the revocation; and
  - (b) considers any such submissions.

## Part 8—Review of decisions

### 53 Notification of certain decisions

- (1) This section applies to a reviewable decision of a kind referred to in paragraph (c), (d), (e) or (f) of the definition of *reviewable decision* in subsection 4(1).
- (2) As soon as practicable after making the decision, the Board must give the person affected by the decision a written notice advising the person of the decision and of the Board's reasons for making it.
- (3) A failure to comply with subsection (2) in relation to a reviewable decision does not affect the validity of the decision.

### 54 Notification of right to seek internal review

- (1) A notice that is given to the person affected by a reviewable decision and advises that person of the decision must include a statement to the effect that the person may, under section 55, request the Board to reconsider the decision.
- (2) For the purposes of subsection (1), a notice under subsection 33(2), 34(1), 35(1) or 36(1) giving a person a direction is taken to be a notice advising the person of the decision to give the direction.
- (3) A failure to comply with subsection (1) in relation to a reviewable decision does not affect the validity of the decision.

### 55 Internal review of decisions

- (1) The person affected by a reviewable decision may, if dissatisfied with the decision, by notice in writing given to the Board, request the Board to reconsider the decision.
- (2) The request must not be made more than 21 days, or such longer period as the Board approves, after the person receives from the Board a notice advising of the decision.

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- (3) For the purposes of subsection (2), if the decision is to give a direction under subsection 33(2), 34(1), 35(1) or 36(1), the notice by which the direction is given is taken to be a notice advising of the decision.
- (4) The request must set out the person's reasons for making it.
- (5) On receipt of the request, the Board must reconsider the decision and may confirm or revoke it, or vary it in such manner as the Board thinks fit.
- (6) If the Board does not confirm, vary or revoke the decision before the end of the period of 60 days after the day on which the Board receives the request, the Board is taken, at the end of that period, to have confirmed the decision.
- (7) As soon as practicable after the Board confirms, varies or revokes the decision, the Board must give the person a written notice that:
  - (a) advises of the confirmation, variation or revocation of the decision; and
  - (b) except in a case to which subsection (6) applies—advises of the Board's reasons for confirming, varying or revoking the decision; and
  - (c) in the case of a confirmation or variation of the decision—advises the person that the person may apply to the Administrative Review Tribunal under the *Administrative Review Tribunal Act 2024* for review of the decision as confirmed or varied.
- (8) A failure to comply with subsection (7) in relation to the confirmation, variation or revocation of the decision does not affect the validity of the confirmation, variation or revocation.
- (9) For the purposes of subsections (5), (6), (7) and (8) and section 56, if the Board revokes a decision and replaces it with another decision, the Board is taken to vary the first-mentioned decision and not to revoke it, and the other decision is taken to be the first-mentioned decision as varied.

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**56 Review of decisions by Administrative Review Tribunal**

- (1) Application may be made to the Administrative Review Tribunal for review of a reviewable decision of the Board that has been confirmed or varied under section 55.
- (2) An application may only be made by the person affected by the decision.

## **Part 10—Miscellaneous**

### **70 Board to provide information about PDFs on request**

- (1) A person may, by writing, request the Board:
  - (a) to provide the person with a list of all PDFs; or
  - (b) to advise the person whether a specified company is a PDF.
- (2) The Board must comply with a request as soon as practicable after receiving it.

### **71 Secrecy**

- (1) A person to whom this section applies must not, either directly or indirectly:
  - (a) make a record of protected information or a copy of a protected document; or
  - (b) communicate to a person any protected information concerning another person; or
  - (c) produce to a person a protected document that includes information concerning another person;unless the record or copy is made, the information is communicated, or the document is produced, as the case may be:
  - (d) under or for the purposes of this Act or the *Venture Capital Act 2002*; or
  - (e) in the performance of the person's functions or duties, as a person to whom this section applies, under or in relation to this Act.

Penalty: Imprisonment for 2 years.

- (2) Subsection (1) does not prohibit a person to whom this section applies from communicating protected information, or producing a protected document, to:
  - (a) the Commissioner of Taxation; or

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- (b) a court or tribunal in connection with proceedings under this Act or a tax law.
- (3) If protected information is communicated, or a protected document is produced, under paragraph (2)(a) to the Commissioner of Taxation, the information, or the information contained in the document, is taken, for the purposes of Division 355 in Schedule 1 to the *Taxation Administration Act 1953*, to be protected information within the meaning of that Act.
- (4) A person to whom this section applies is not required:
- (a) to communicate any protected information to a court or tribunal; or
  - (b) to produce a protected document in a court or tribunal; except when it is necessary to do so for the purpose of carrying into effect the provisions of this Act or of a tax law.
- (5) In this section:

***court or tribunal*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***person to whom this section applies*** means a person who is or has been:

- (a) a member of the Board; or
- (b) a member of a committee; or
- (c) a member of the staff assisting the Board or a committee (see section 25 of the *Industry Research and Development Act 1986*); or
- (d) a consultant assisting the Board or a committee (see section 25 of the *Industry Research and Development Act 1986*); or
- (e) a member of the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or



- (f) a member of the staff assisting the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or
- (g) a consultant to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*), who was engaged under this Act before that commencement.

**produce** includes permit access to.

**protected document** means:

- (a) a document supplied in confidence to the Board in relation to a matter covered by this Act or the *Venture Capital Act 2002*; or
- (aa) a document supplied in confidence to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or
- (b) a document:
  - (i) that contains information the disclosure of which may reasonably be expected to affect a person adversely in respect of the lawful business, commercial or financial affairs of the person; and
  - (ii) that is obtained or made by a person to whom this section applies in the course of, or because of, the person's functions or duties as such a person.

**protected information** means:

- (a) information supplied in confidence to the Board in relation to a matter covered by this Act or the *Venture Capital Act 2002*; or
- (aa) information supplied in confidence to the former Venture Capital Registration Board that was established by this Act (as in force before the commencement of Schedule 12 to the *Tax Laws Amendment (2007 Measures No. 5) Act 2007*); or

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(b) information:

- (i) the disclosure of which may reasonably be expected to affect a person adversely in respect of the lawful business, commercial or financial affairs of the person; and
- (ii) that is obtained by a person to whom this section applies in the course of, or because of, the person's functions or duties as such a person.

**tax law** means an Act of which the Commissioner of Taxation has the general administration and includes the *Venture Capital Act 2002*.

**76 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Pooled Development Funds Act 1992	100, 1992	30 June 1992	30 June 1992 (s 2)	
Pooled Development Funds Amendment Act 1994	102, 1994	30 June 1994	1 July 1994	ss. 3, 5, 11, 14, 15 and 17
Industry, Science and Technology Legislation Amendment Act 1994	108, 1994	12 July 1994	s 20 and 22: 12 July 1994 (s 2(1))	s 20
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 ( <i>see</i> s. 2 and <i>Gazette</i> 1995, No. GN24)	—
Income Tax (Consequential Amendments) Act 1997	39, 1997	17 Apr 1997	1 July 1997	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (items 128–130): 1 July 1998 (s 2(2))	—
Company Law Review Act 1998	61, 1998	29 June 1998	Sch 4 (items 26–38): 1 July 1998 (s 2(2), (4) and gaz 1998, No S317) Sch 5 (items 37, 38): 1 July 1998 (s 2(5))	—
<b>as amended by</b>				
Taxation Laws Amendment (Company Law Review) Act 1998	63, 1998	29 June 1998	Sch 7: 1 July 1998 (s 2(1))	—
Managed Investments Act 1998	62, 1998	29 June 1998	Sch 2 (item 184): 1 July 1998 (s 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 734): 5 Dec 1999 (s 2(1), (2))	—
New Business Tax System (Capital Gains Tax) Act 1999	165, 1999	10 Dec 1999	Sch 3 (items 5–18): 10 Dec 1999 (s 2(1))	Sch 3 (item 18)
Pooled Development Funds Amendment Act 2000	64, 2000	22 June 2000	22 June 2000	Sch. 1 (item 27)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 317, 318, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Corporations (Repeals, Consequential and Transitional) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 425–431): 15 July 2001 (s 2(1), (3))	s 4–14
Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Act 2001	140, 2001	1 Oct 2001	2 Oct 2001	s. 4
Taxation Laws Amendment (Venture Capital) Act 2002	136, 2002	19 Dec 2002	Sch 4 (items 3–11): Royal Assent	—
Industry, Tourism and Resources Legislation Amendment Act 2003	21, 2003	11 Apr 2003	Sch 1 (items 15, 16): 12 Apr 2003	Sch. 1 (item 16)
Superannuation Legislation Amendment (Simplification) Act 2007	15, 2007	15 Mar 2007	Sch 1 (items 274, 275, 406(1)–(3)): 15 Mar 2007 (s 2(1) item 2)	Sch 1 (item 406(1)–(3))

*Pooled Development Funds Act 1992*

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Compilation date: 14/10/2024

## Endnotes

### Endnote 3—Legislation history

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<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Tax Laws Amendment (2007 Measures No. 2) Act 2007	78, 2007	21 June 2007	Sch 8 (items 157–165, 215–217, 348, 349): Royal Assent	—
Tax Laws Amendment (2007 Measures No. 5) Act 2007	164, 2007	25 Sept 2007	Sch 12 (items 53–65, 279–287); 27 Sept 2007 (s 2(1) item 9)	Sch 12 (items 279–287)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 12 (items 1–8): 10 Dec 2008	Sch. 12 (item 8)
Financial Sector Legislation Amendment (Enhancing Supervision and Enforcement) Act 2009	75, 2009	27 Aug 2009	Sch 1 (item 218): 27 Feb 2010	—
Tax Laws Amendment (Confidentiality of Taxpayer Information) Act 2010	145, 2010	16 Dec 2010	Sch 2 (item 61): 17 Dec 2010	—
Personal Liability for Corporate Fault Reform Act 2012	180, 2012	10 Dec 2012	Sch 6 (items 24–26) and Sch 7: 11 Dec 2012	Sch 7
Statute Law Revision Act 2013	103, 2013	29 June 2013	Sch 3 (items 128–131, 343): Royal Assent	Sch. 3 (item 343)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 230): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (item 367): 21 Oct 2016 (s 2(1) item 1)	—



## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Industry Research and Development Amendment (Innovation and Science Australia) Act 2016	63, 2016	20 Oct 2016	Sch 1 (item 47): 20 Oct 2016 (s 2(1) item 1)	—
Corporations Amendment (Asia Region Funds Passport) Act 2018	61, 2018	29 June 2018	Sch 2A (item 10): 18 Sept 2018 (s 2(1) item 2)	—
Industry Research and Development Amendment (Industry Innovation and Science Australia) Act 2021	101, 2021	10 Sept 2021	Sch 1 (item 4): 11 Sept 2021 (s 2(1) item 1)	—
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024	39, 2024	31 May 2024	Sch 11 (items 77–79): 14 Oct 2024 (s 2(1) item 2)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 1</b>	
s. 3.....	rs. No. 64, 2000
s. 4.....	am. No. 102, 1994; No. 5, 1995; Nos. 48 and 61, 1998; No. 165, 1999; No. 64, 2000; No. 55, 2001; No. 136, 2002; Nos. 78 and 164, 2007; No. 144, 2008; No. 75, 2009; No 63, 2016; No 101, 2021
s. 4A.....	ad. No. 64, 2000
	am. No. 21, 2003; No. 15, 2007
s. 4B.....	ad. No. 140, 2001
Part 2 heading.....	rs. No. 78, 2007
	rep. No. 164, 2007
Part 2.....	rep. No. 164, 2007
s. 5.....	rs. No. 78, 2007
	rep. No. 164, 2007
s. 6.....	am. No. 165, 1999; No. 136, 2002; No. 78, 2007
	rep. No. 164, 2007
ss. 7–9.....	rep. No. 164, 2007
<b>Part 3</b>	
s. 11.....	am. No. 61, 1998; No. 78, 2007; No. 103, 2013
s. 14.....	am. No. 39, 1997; No. 61, 1998; No. 64, 2000
s. 18.....	am. No. 61, 1998; No. 64, 2000
<b>Part 4</b>	
<b>Division 1</b>	
s. 19.....	am. No. 64, 2000
s. 20.....	am. No. 64, 2000
ss. 20A, 20B.....	ad. No. 64, 2000
ss. 21, 22.....	am. No. 64, 2000
s. 24.....	am. Nos. 102 and 108, 1994; No. 55, 2001
s. 25.....	am. No. 102, 1994; No. 64, 2000

## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
s. 26.....	rep. No. 102, 1994
s. 27A.....	ad. No. 64, 2000
s. 28.....	am. No. 102, 1994; No. 140, 2001
s. 28A.....	ad. No. 64, 2000
<b>Division 2</b>	
s. 29.....	am. No. 64, 2000
s. 30.....	am No 62, 1998; No 55, 2001; No 61, 2018
s. 31.....	am. No. 102, 1994; No. 48, 1998; No. 64, 2000; No. 55, 2001; No. 144, 2008
s. 32.....	am. No. 102, 1994
s. 32A.....	ad. No. 64, 2000
<b>Part 5</b>	
s. 41.....	am. No. 61, 1998; No. 64, 2000; No. 103, 2013
s. 42.....	am. No. 61, 1998; No. 140, 2001
s. 43.....	am. No. 165, 1999
<b>Part 6</b>	
s. 47.....	am. No. 102, 1994; No. 61, 1998; No. 64, 2000; No. 137, 2000
s. 49.....	am. No. 140, 2001
<b>Part 7</b>	
s. 50.....	am. No. 102, 1994; No. 64, 2000; No. 140, 2001 rep. No. 180, 2012
s. 51.....	am. No. 140, 2001; No. 180, 2012; No 4, 2016; No 61, 2016
s. 52.....	am. No. 165, 1999 rep. No. 137, 2000
<b>Part 7A</b>	
Part 7A.....	ad. No. 165, 1999
ss. 52A–52D .....	ad. No. 165, 1999
<b>Part 8</b>	
s. 55.....	am No 39, 2024
s. 56.....	am No 39, 2024
Part 9.....	rep. No. 164, 2007

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
ss. 57–67 .....	rep. No. 164, 2007
s. 68.....	am. No. 146, 1999
	rep. No. 164, 2007
s. 69.....	rep. No. 164, 2007
<b>Part 10</b>	
s. 71.....	am. No. 136, 2002; No. 164, 2007; No. 145, 2010
ss. 72–74 .....	am. No. 165, 1999; No. 136, 2002; No. 78, 2007
	rep. No. 164, 2007
s. 75.....	am. No. 165, 1999
	rep. No. 164, 2007

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