



# Corporations Legislation Amendment Act 1994

**No. 104 of 1994**

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# Corporations Legislation Amendment Act 1994

No. 104 of 1994

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## An Act to amend laws relating to corporations and securities, and for related purposes

[Assented to 5 July 1994]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Corporations Legislation Amendment Act 1994*.

#### Commencement

2.(1) Parts 1, 2 and 3 and Schedules 5 and 9 commence on the day on which this Act receives the Royal Assent.

Note: Part 2 refers to the Schedules. Schedules 5 and 9 commence under this subsection. Schedule 6 commences under subsection (2). The amendments made by the other Schedules commence under subsections (3), (4) and (5).

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(2) Schedule 6 commences immediately after all the other provisions of this Act, and all the provisions of the *Corporate Law Reform Act 1994*, have commenced.

(3) The items, and paragraphs of items, of Schedules 1 and 3 commence on a day or days to be fixed by Proclamation.

(4) Subject to subsection (5), the items, and paragraphs of items, of Schedules 2, 4, 7 and 8 commence on a day or days to be fixed by Proclamation.

(5) If an item, or a paragraph of an item, referred to in subsection (4) does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

**Meaning of “AAT Act”, “ASC Act”, “Corporations Act” and “Corporations Law”**

3. In this Act:

“AAT Act” means the *Administrative Appeals Tribunal Act 1975*<sup>1</sup>;

“ASC Act” means the *Australian Securities Commission Act 1989*<sup>2</sup>;

“Corporations Act” means the *Corporations Act 1989*<sup>3</sup>;

“Corporations Law” means the Corporations Law set out in section 82 of the Corporations Act.

**PART 2—THE SCHEDULES**

**Schedule 1—Amendments of Corporations Act and Corporations Law relating to civil jurisdiction of lower courts**

4.(1) Schedule 1 makes amendments of the Corporations Act, and of the Corporations Law, relating to the conferral of civil jurisdiction on lower courts.

(2) The amendments of the Corporations Act are in Part 1 of Schedule 1.

(3) The amendments of the Corporations Law are in Part 2 of Schedule 1.

**Schedule 2—Amendments of Corporations Law relating to Clearing House Subregister System**

5. Schedule 2 makes amendments of the Corporations Law relating to the Clearing House Subregister System.

**Schedule 3—Amendments of Corporations Law relating to financial institutions**

6. Schedule 3 makes amendments of the Corporations Law relating to the application of the Corporations Law to financial institutions.

**Schedule 4—Amendments of ASC Act and Corporations Law relating to Corporations and Securities Panel**

7.(1) Schedule 4 makes amendments of the ASC Act, and of the Corporations Law, relating to the Corporations and Securities Panel.

(2) The amendments of the ASC Act are in Part 1 of Schedule 4.

(3) The amendments of the Corporations Law are in Part 2 of Schedule 4.

**Schedule 5—Amendments of AAT Act, ASC Act and Corporations Law relating to review of decisions**

8.(1) Schedule 5 makes amendments of the AAT Act, the ASC Act and of the Corporations Law, relating to the review of decisions.

(2) The amendment of the AAT Act is in Part 1 of Schedule 5.

(3) The amendment of the ASC Act is in Part 2 of Schedule 5.

(4) The amendments of the Corporations Law are in Part 3 of Schedule 5.

**Schedule 6—Amendments of ASC Act and Corporations Law introducing penalty units**

9.(1) Schedule 6 makes amendments of the ASC Act, and of the Corporations Law, relating to the introduction of a system of penalty units applying to offences.

(2) The amendments of the ASC Act are in Part 1 of Schedule 6.

(3) The amendments of the Corporations Law are in Part 2 of Schedule 6.

**Schedule 7—Amendments of Corporations Act and Corporations Law relating to unclaimed property**

10.(1) Schedule 7 makes amendments of the Corporations Act, and of the Corporations Law, relating to unclaimed property.

(2) The amendment of the Corporations Act is in Part 1 of Schedule 7.

(3) The amendments of the Corporations Law are in Part 2 of Schedule 7.

**Schedule 8—Miscellaneous amendments of Corporations Law**

11. Schedule 8 makes miscellaneous amendments of the Corporations Law.

**Schedule 9—Amendments of ASC Act and Corporations Law relating to application of changes**

12.(1) Schedule 9 makes amendments of the ASC Act, and of the Corporations Law, relating to the application of the other amendments of the ASC Act and the Corporations Law made by this Act.

(2) The amendment of the ASC Act is in Part 1 of Schedule 9.

(3) The amendments of the Corporations Law are in Part 2 of Schedule 9.

### **PART 3—APPLICATION AND SAVING PROVISIONS RELATING TO AMENDMENTS OF CORPORATIONS ACT**

#### *Division 1—Amendments relating to civil jurisdiction of lower courts*

##### **Interpretation**

13. In this Division:

“**jurisdiction amendments**” means the amendments of the Corporations Act made by Part 1 of Schedule 1;

“**jurisdiction commencement**” means the commencement of the jurisdiction amendments.

##### **Application of jurisdiction amendments—general**

14. The jurisdiction amendments apply to proceedings commenced, or recommenced, after the jurisdiction commencement, whether the cause of action arose before or after that commencement.

##### **Effect of decision that court did not have jurisdiction**

15.(1) This section applies if:

- (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of the Capital Territory were commenced in a court (the “**first court**”) other than the Court; and
- (b) the first court, or another court on appeal from a decision of the first court, decided before the jurisdiction commencement that the first court did not have jurisdiction in respect of the matter; and
- (c) the decision that the first court did not have jurisdiction still stands at the jurisdiction commencement; and
- (d) the first court would have had jurisdiction in respect of the matter if the jurisdiction amendments had commenced before the cause of action arose.

(2) The validity of the decision that the first court did not have jurisdiction is not affected by the jurisdiction amendments.

(3) That decision does not affect a recommencement of the proceedings after the jurisdiction commencement.

##### **Effect of absence of decision that court did not have jurisdiction**

16.(1) This section applies if:

- (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of the Capital Territory were commenced in a court (the “**first court**”) other than the Court; and

(b) either:

- (i) no court expressly decided, before the jurisdiction commencement, whether the first court had jurisdiction in respect of the matter; or
- (ii) a decision of the first court, or of another court on appeal from a decision of the first court, that the first court did have jurisdiction in respect of the matter still stands at the jurisdiction commencement.

(2) For the purposes of any consideration by a court, after the jurisdiction commencement, of whether the first court had jurisdiction in respect of the matter, the first court is taken to have had jurisdiction in respect of the matter if it would have had that jurisdiction if the jurisdiction amendments had commenced before the cause of action arose.

***Division 2—Amendments relating to unclaimed property***

**Saving provision relating to repeal of section 71**

17. Despite the repeal of section 71 of the Corporations Act by item 1 of Schedule 7, the Companies Unclaimed Money Account continues in existence, and that section continues to apply to it, until all the money in the Account has been dealt with in accordance with subsection 1404(1) of the Corporations Law of each jurisdiction.

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**SCHEDULE 1**

Section 4

**AMENDMENTS OF CORPORATIONS ACT AND CORPORATIONS  
LAW RELATING TO CIVIL JURISDICTION OF LOWER COURTS**

**PART 1—AMENDMENTS OF CORPORATIONS ACT**

**1. Paragraph 49(1)(a):**

Omit “matters other than criminal matters (in this Division called ‘civil matters)’”, substitute “civil matters”.

**2. Subsection 50(1):**

Insert:

“ ‘**civil matter**’ means a matter other than a criminal matter;  
‘**Corporations Law**’ has the extended meaning given by subsection (2);  
‘**lower court**’ means a court of a State or Territory that is not a superior court;  
‘**superior court**’ means the Federal Court of Australia, the Supreme Court of a State or Territory, the Family Court or a State Family Court;  
‘**superior court matter**’ means a civil matter that the Corporations Law clearly intends (for example, by use of the expression ‘the Court’) to be dealt with only by a superior court.”.

**3. After section 51A:**

Insert:

**Jurisdiction of lower courts**

“51B.(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the lower courts of each State and the Capital Territory with respect to civil matters, other than superior court matters, arising under the Corporations Law of the Capital Territory.

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

- (a) is subject to the court’s general jurisdictional limits, so far as they relate to the amounts, or the value of property, with which the court may deal; but
- (b) is not subject to the court’s other jurisdictional limits.”.

**4. Subsection 52(3):**

Omit “the Supreme Court”, substitute “a court (not being a State Family Court)”.

**5. Paragraphs 53A(2)(a), (b) and (c):**

Omit “the Supreme Court”, substitute “another court”.

**SCHEDULE 1—continued**

**6. Subsection 53A(2):**

Omit “that Supreme Court”, substitute “that other court”.

**7. After section 53A:**

Insert:

**Transfer of proceedings in lower courts**

“53AA.(1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory in a lower court (the ‘**first court**’) having jurisdiction under section 51B.

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

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

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

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

- (a) to deal with the proceeding or application itself; or
- (b) to transfer the proceeding or application to some other court (which could be the first court).

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

“(7) In this section:

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

**8. Section 53B:**

(a) Omit “or 53A”, substitute “, 53A or 53AA”.

(b) Add at the end:

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

**SCHEDULE 1—continued**

**9. Section 53C:**

Omit “or 53A”, substitute “, 53A or 53AA”.

**10. Section 53D:**

Omit “or 53A”, substitute “, 53A or 53AA”.

**11. Subsection 54(3) (paragraph (c) of the definition of “relevant jurisdiction”):**

Omit “the Supreme Court”, substitute “a court”.

**12. Subsection 54(3) (paragraph (d) of the definition of “relevant jurisdiction”):**

Omit “the Supreme Court of a State, or a State Family Court,”, substitute “a court of a State”.

**13. Section 55:**

Omit “, the Judges of those courts”.

**14. Subsection 56(2):**

(a) Omit “the Supreme Court”, substitute “a court”.

(b) Omit “that Court” (wherever occurring), substitute “it”.

**15. Subsection 59(1):**

(a) Omit “the Supreme Court”, substitute “a court”.

(b) Omit “that Court” (wherever occurring), substitute “that court”.

**16. Paragraph 59(2)(a):**

Omit “or a State Family Court”, substitute “, a State Family Court or a particular lower court of the Capital Territory or of a State”.

**17. Subsection 59(2):**

Omit “or that State Family Court”, substitute “, that State Family Court or that lower court”.

**18. After subsection 61(1):**

Insert:

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

**19. Subsections 61(2) and (3):**

(a) Omit “the Supreme Court”, substitute “a court”.

(b) Omit “that Court”, substitute “that court”.

**SCHEDULE 1—continued**

**PART 2—AMENDMENTS OF CORPORATIONS LAW**

**20. Section 9 (definitions of “court” and “Court”):**

Omit the definitions, substitute:

“ ‘**court**’ has the meaning given by section 58AA;

‘**Court**’ has the meaning given by section 58AA;”.

**21. After section 58A:**

Insert:

**Meaning of “court” and “Court”**

“58AA.(1) Subject to subsection (3), in this Law:

‘**court**’ means any court when exercising the jurisdiction of this jurisdiction;  
‘**Court**’ means any of the following courts when exercising the jurisdiction of this jurisdiction:

- (a) the Federal Court;
- (b) the Supreme Court of this or any other jurisdiction;
- (c) the Family Court of Australia;
- (d) a court to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

“(2) Except where there is a clear expression of a contrary intention (for example, by use of the expression ‘the Court’), proceedings in relation to a matter under this Law may, subject to the Acts mentioned in subsection (3), be brought in any court.

“(3) The jurisdiction that courts have in relation to matters under this Law is dealt with in Part 9 of each of the following:

- (a) the *Corporations Act 1989*;
- (b) the *Corporations (New South Wales) Act 1990* of New South Wales;
- (c) the *Corporations (Victoria) Act 1990* of Victoria;
- (d) the *Corporations (Queensland) Act 1990* of Queensland;
- (e) the *Corporations (Western Australia) Act 1990* of Western Australia;
- (f) the *Corporations (South Australia) Act, 1990* of South Australia;
- (g) the *Corporations (Tasmania) Act 1990* of Tasmania;
- (h) the *Corporations (Northern Territory) Act 1990* of the Northern Territory.

“(4) The matters dealt with in those Parts of those Acts include the applicability of limits on the jurisdictional competence of courts.”.

**22. Paragraphs 203(5)(a) and (b):**

Omit “by action in any court of competent jurisdiction”.

**SCHEDULE 1—continued**

**23. Section 206RA:**

Omit “a court of competent jurisdiction”, substitute “the Court”.

**24. Subsection 419A(7):**

Omit “the Court”, substitute “a court”.

**25. Subsection 443B(8):**

Omit “the Court”, substitute “a court”.

**26. Subsection 588FF(1):**

(a) Omit “the Court” (first occurring), substitute “a court”.

(b) Omit “Court” (second occurring), substitute “court”.

**27. Paragraphs 588FF(1)(c) and (d):**

Omit “Court’s”, substitute “court’s”.

**28. Subsections 588FG(1) and (2):**

Omit “The Court”, substitute “A court”.

**29. Subsection 588FH(2):**

Omit “, by proceedings in a court of competent jurisdiction,”.

**30. Subsection 588FH(3):**

Omit “the Court”, substitute “a court”.

**31. Subsection 588FI(2):**

Omit “The Court”, substitute “A court”.

**32. Subsection 588M(2):**

Omit “, by proceedings in a court of competent jurisdiction,”.

**33. Subsection 588M(3):**

Omit “by proceedings in a court of competent jurisdiction,”.

**34. Subsection 588W(1):**

Omit “, by proceedings in a court of competent jurisdiction,”.

**35. Subsection 1274(11):**

Omit “the Court or any court of summary jurisdiction”, substitute “a court”.

**36. Subsection 1317HD(1):**

Omit “, by proceedings in a court of competent jurisdiction,”.

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**SCHEDULE 1**—continued

**37. Section 1360:**

Omit “in a court of competent jurisdiction”.

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**SCHEDULE 2**

Section 5

**AMENDMENTS OF CORPORATIONS LAW RELATING TO  
CLEARING HOUSE SUBREGISTER SYSTEM**

**1. Section 9:**

Insert:

“**SCH certificate cancellation provisions**’ means the provisions of the SCH business rules that deal with:

- (a) brokers cancelling certificates or other documents of title to quoted securities or quoted rights; and
- (b) matters incidental to brokers cancelling such certificates or documents;

‘**SCH subregister**’ means a subregister of quoted securities or quoted rights maintained by the SCH under the SCH business rules;”.

**2. Subsection 210(2):**

Omit “The”, substitute “Subject to subsection (3A), the”.

**3. Subsection 210(3):**

Omit “A”, substitute “Subject to subsection (3A), a”.

**4. After subsection 210(3):**

Insert:

“(3A) If a company’s register includes the numbers of certificates evidencing the holdings of its members, nothing in subsection (2) or (3) requires:

- (a) a person to be allowed to see those numbers when inspecting the register; or
- (b) a copy of the register, or a part of it, sent to a person to contain those numbers.”.

**5. After section 642:**

Insert in Division 1 of Part 6.3:

**Quoted securities—SCH business rules may specify mode of acceptance**

“642A.(1) If:

- (a) an offer relates wholly or partly to shares that are quoted securities; and
- (b) the SCH business rules require that an acceptance of the offer, so far as it relates to those shares, must be made in a particular way;

an acceptance of the offer, so far as it relates to those shares, is effective if, and only if, it is made in that way.

**SCHEDULE 2—continued**

“(2) Subsection (1) has effect despite any requirements specified in the offer.”.

**6. Subsection 650(3):**

Omit “written”.

**7. After subsection 650(3):**

Insert:

“(3A) A notice under subsection (3):

- (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
- (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.”.

**8. Subparagraph 658(a)(i):**

Omit “written”.

**9. Subparagraph 658(a)(ii):**

Omit the subparagraph, substitute:

“(ii) returning any consideration received by the offeree; and”.

**10. Paragraph 658(b):**

Omit the paragraph, substitute:

- “(b) if the offeree withdraws the acceptance of the offer under paragraph (a), the offeror must, before the end of 14 days after the withdrawal day (as defined in subsection (4)):
- (i) take such action (if any) as the SCH business rules require in relation to any of the shares to which the acceptance relates that are entered on an SCH subregister; and
  - (ii) return any documents that were sent by the offeree to the offeror with the acceptance of the offer.”.

**11. Section 658:**

Add at the end:

“(2) A notice under subparagraph (1)(a)(i):

- (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
- (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.



**SCHEDULE 2—continued**

“(3) The reference in subparagraph (1)(a)(ii) to returning consideration includes, in the case of consideration that consists of securities, a reference to:

- (a) if the securities are entered on an SCH subregister—taking such action as the SCH business rules require in relation to the return of the securities; or
- (b) otherwise—providing the offeree with any documents of transfer necessary to effect the return of securities.

“(4) For the purposes of paragraph (1)(b), the **withdrawal day** is:

- (a) if the offeree does the things referred to in paragraph (1)(a) on the same day—that day; or
- (b) if the offeree does those things on different days—the last of those days.”.

**12. Subsection 701(7):**

Omit “written”.

**13. After subsection 701(7):**

Insert:

“(7A) A notice under subsection (7):

- (a) if it relates to shares that are entered on an SCH subregister—must be in an electronic form approved by the SCH business rules for the purposes of this Part; or
- (b) if it relates to shares that are not entered on an SCH subregister—must be in writing.”.

**14. Section 779F:**

Repeal the section, substitute:

**SCH business rules have effect as contract**

“779F.(1) The SCH business rules have effect, by force of this section, as a contract under seal:

- (a) between the SCH and each issuer; and
- (b) between the SCH and each SCH participant; and
- (c) between each issuer and each SCH participant; and
- (d) between an SCH participant and each other SCH participant;

under which each of the persons mentioned in paragraphs (a) to (d) agrees to observe and perform the provisions of the SCH business rules as in force for the time being to the extent, and in the manner, provided by the SCH business rules.

**SCHEDULE 2—continued**

“(2) In this section:

‘**issuer**’ means an issuing body, within the meaning of Division 3 of Part 7.13, in relation to quoted securities or quoted rights.”.

**15. Subsection 920(1) (definition of “claim”):**

After “7” insert “, 7A”.

**16. Subsection 927(2):**

After “959(3)” insert “, 961E(3)”.

**17. Subsection 932(2):**

After “7” insert “, 7A”.

**18. Paragraph 932(3)(a):**

Omit “or 7”, substitute “, 7 or 7A”.

**19. After section 961B:**

Insert:

*“Division 7A—Contraventions of SCH certificate cancellation provisions*

**Interpretation**

“961C. In this Division:

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

‘**dealer**’ means a member of a participating exchange.

**Claim in respect of contravention of SCH certificate cancellation provisions**

“961D.(1) Subject to this section, a person who suffers pecuniary loss in respect of a contravention, by a dealer, of the SCH certificate cancellation provisions may make a claim in respect of the loss.

“(2) The loss must not be a loss in respect of an unauthorised execution (within the meaning of section 956) in respect of which the person has made, or is entitled to make, a claim under Division 7.

“(3) The person must not have been involved in the contravention.

“(4) The following paragraphs must be satisfied in relation to the dealer:

(a) the dealer was a member of a participating exchange on the day of the contravention; and

**SCHEDULE 2—continued**

(b) either:

- (i) the dealer was carrying on a securities business in this jurisdiction on that day (whether on his, her or its own account or in partnership); or
- (ii) if the dealer 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 dealer carried on in a jurisdiction before that day was carried on in this jurisdiction.

**How and when claim may be made**

“961E.(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 dealer’s contravention of the SCH certificate cancellation provisions.

“(2) For the purposes of subsection (1), a notice under subsection (4) applies to a claim if the claim is in respect of a contravention of the SCH certificate cancellation provisions, 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 contraventions of the SCH certificate cancellation provisions, by the named dealer, during a period (the ‘**applicable period**’) specified in the notice in accordance with subsection (5) must be served on SEGC before the day (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

**SCHEDULE 2—continued**

(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).

**How claim is to be satisfied**

“961F.(1) Subject to section 961H, SEGC must allow a claim if the Board is satisfied that the claimant is entitled to make the claim.

“(2) If SEGC allows the claim, it must pay to the claimant the amount that, when the claim is allowed, is the actual pecuniary loss suffered by the claimant because of the contravention in respect of which the claim was made.

“(3) For the purposes of subsection (2), the actual pecuniary loss suffered by the claimant does not include any loss in respect of an unauthorised execution (within the meaning of section 956) in respect of which the claimant has made, or is entitled to make, a claim under Division 7.

**Discretionary further compensation**

“961G.(1) If:

(a) SEGC allows a claim; and

(b) the Board is satisfied that the payment of money to the claimant under section 961F will not adequately compensate the claimant for a pecuniary or other gain that the claimant did not make, but might have made, were it not for the contravention in respect of which the claim was made;

the Board may determine in writing that the claimant should be paid in respect of that gain a specified amount that the Board considers to be fair and reasonable in all the circumstances.

“(2) If a determination is made under subsection (1), SEGC must pay the claimant the specified amount.

**Preventing double recovery**

“961H. If:

(a) section 961D of the Corporations Law of another jurisdiction permits a person to make a claim in respect of a loss; and

(b) SEGC allows the claim;

**SCHEDULE 2—continued**

SEGC must not allow a claim that section 961D of the Corporations Law of this jurisdiction permits the person to make in respect of that loss.”.

**20. Subsection 977(7) (definition of “cash settlement provision”):**

After “960” insert “or 961F”.

**21. After subsection 980(2):**

Insert:

“(2A) Where SEGC allows a claim made under Division 7A in respect of a contravention of the SCH certificate cancellation provisions, SEGC is subrogated to all the claimant’s rights and remedies in relation to the contravention.”.

**22. Subsection 980(5):**

After “7” insert “, 7A”.

**23. Subsection 983(2) (definition of “claim”):**

After “7” insert “, 7A”.

**24. Subsection 983A(6) (definition of “claims Division”):**

After “7” insert “, 7A”.

**25. Section 1089:**

Add at the end:

“(4) If:

- (a) a certificate of title to shares, debentures or prescribed interests is cancelled under the SCH certificate cancellation provisions; and
- (b) having regard to those provisions, the certificate should not have been cancelled;

this section applies to the certificate as though it were destroyed on its cancellation.”.

**26. Section 1097B:**

- (a) Omit all the words from and including “purposes of”, substitute “purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.”.

(b) Add at the end:

“(2) If the SCH business rules provide that marketable securities or marketable rights that:

**SCHEDULE 2—continued**

(a) are approved, by a securities exchange, to be listed for quotation on a stock market of a securities exchange, but that are not yet so listed; and

(b) have been issued;

are to be taken to be quoted securities or quoted rights for a specified period, then, for the purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.

“(3) These are the provisions:

(a) the definitions of ‘proper SCH transfer’, ‘SCH certificate cancellation provisions’, ‘SCH-regulated transfer’ and ‘SCH subregister’ in section 9; and

(b) section 642A and the provisions of Parts 7.2A and 7.13, and of any regulations made for the purposes of those Parts.”.

**27. Subsection 1109C(1):**

Omit “the securities”, substitute “the way in which the securities may be transferred”.

**28. Subsection 1109C(2):**

Omit “the rights or the marketable securities to which they relate”, substitute “the way in which the rights may be transferred”.

**29. After section 1109M:**

Insert in Subdivision C of Division 3 of Part 7.13:

**Determination of who holds quoted securities for the purposes of a meeting**

“1109N.(1) This section applies to a meeting of:

(a) the holders of securities of a body corporate, provided some or all of the securities are quoted securities; or

(b) the holders of a class of securities of a body corporate, provided some or all of the securities in that class are quoted securities.

“(2) The convener of the meeting may determine that:

(a) if paragraph (1)(a) applies—all the securities of the body corporate that are quoted securities at a specified time before the meeting; or

(b) if paragraph (1)(b) applies—all the securities of the body corporate in the relevant class that are quoted securities at a specified time before the meeting;

are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.

**SCHEDULE 2—continued**

“(3) The specified time must not be more than 48 hours before the meeting.

“(4) Subject to subsection (3), the specified time must satisfy any applicable requirements of the SCH business rules.

“(5) The determination must be made in accordance with any applicable requirements of the SCH business rules as to the way in which it must be made.

“(6) The determination must be made before notice of the meeting is given.

“(7) Particulars of the determination must be included in the notice of the meeting, but a failure to do so does not invalidate the determination.

“(8) The determination has effect accordingly despite anything in:

- (a) this Law or the regulations; and
- (b) any other laws (written or unwritten) that apply to the meeting; and
- (c) any documents (for example, the body corporate’s constitution or any relevant trust deed) that apply to the meeting.

**Determination of who holds quoted securities for the purposes of conferring security benefits**

“1109P.(1) If the SCH business rules include provisions relating to the determination, for the purposes of conferring security benefits, of who holds or is taken to hold quoted securities at a particular time, those provisions have effect accordingly despite anything in:

- (a) this Law or the regulations; and
- (b) any other laws (written or unwritten) that apply to the conferral; and
- (c) any documents (for example, the body corporate’s constitution or any relevant trust deed) that apply to the conferral.

“(2) For the purposes of this section, **conferring a security benefit** means:

- (a) paying or transferring money or property to a person because the person holds or held a security; or
- (b) issuing securities to a person because the person holds or held a security; or
- (c) conferring a right on a person because the person holds or held a security.”.

**30. After section 1112A:**

Insert in Division 3 of Part 7.13:

**SCHEDULE 2—continued**

**Offences: contravention by broker of the SCH certificate cancellation provisions relating to use of cancellation stamps**

“1112B. A broker must not, intentionally or recklessly, contravene the SCH certificate cancellation provisions by affixing, or failing to affix, a cancellation stamp to a certificate or other document of title to quoted securities or quoted rights.

**Civil liability: contravention by broker of the SCH certificate cancellation provisions**

“1112C.(1) A person who suffers loss or damage because of conduct of a broker that was engaged in in contravention of the SCH certificate cancellation provisions may, unless the person was involved in the contravention, recover the amount of the loss or damage by action against the broker, whether or not the broker has been convicted of an offence in respect of the contravention.

“(2) An action under subsection (1) must be begun within 6 years after the day on which the cause of action arose.

“(3) This section does not affect a liability that a person has under any other law.

“(4) For the purposes of section 1310B, an action under subsection (1) is taken to be a proceeding in respect of loss or damage arising out of a contravention of this Law.

**Issuer protected from civil liability for broker’s contravention of SCH certificate cancellation provisions**

“1112D. If:

- (a) a broker contravenes the SCH certificate cancellation provisions in relation to particular quoted securities or quoted rights; and
- (b) the issuing body in relation to the securities or rights is not involved in the contravention;

the issuing body is not liable to an action or other proceeding for damages in relation to the broker’s contravention.”.

**31. Schedule 3:**

Before “**Subsection 1114(8)**” insert:

“**Section 1112B:**

Penalty: \$2,500 or imprisonment for 6 months, or both.”.



**SCHEDULE 3**

Section 6

**AMENDMENTS OF CORPORATIONS LAW RELATING TO  
FINANCIAL INSTITUTIONS**

**1. Section 9 (paragraph (b) of the definition of “public company”):**

After “other than a” insert “financial institution or a”.

**2. Section 9 (paragraph (a) of the definition of  
“public corporation”):**

After the paragraph, insert:

“(aa) a financial institution; or”.

**3. Section 9 (definition of “registrable Australian body”):**

After “include a” insert “financial institution or a”.

**4. Section 9 (definition of “corporation”):**

Omit the definition, substitute:

“‘**corporation**’ has the meaning given by section 57A;”.

**5. Section 9:**

Insert:

“‘**AFIC Codes**’ has the meaning given by section 111AZB;

‘**building society**’ has the meaning given by subsection 111AZA(2);

‘**building society special services provider**’ has the meaning given by subsection 111AZD(2);

‘**credit union**’ has the meaning given by subsection 111AZA(3);

‘**credit union special services provider**’ has the meaning given by subsection 111AZD(3);

‘**financial institution**’ has the meaning given by subsection 111AZA(1);

‘**Financial Institutions Codes**’ has the meaning given by section 111AZC;

‘**special services provider**’ has the meaning given by subsection 111AZD(1);

‘**withdrawable share**’ has the meaning given by section 111AZE;”.

**6. After section 57:**

Insert:

**Meaning of “corporation”**

“57A.(1) Subject to this section, in this Law, ‘**corporation**’ includes:

(a) any body corporate, whether incorporated in this jurisdiction or elsewhere; and

(b) a company; and

**SCHEDULE 3—continued**

- (c) a recognised company; and
- (d) an unincorporated body that:
  - (i) is formed outside this jurisdiction; and
  - (ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and
  - (iii) does not have its head office or principal place of business in this jurisdiction.

“(2) Neither of the following is a **corporation**:

- (a) an exempt public authority;
- (b) a corporation sole.

“(3) A financial institution (as defined in section 111AZA):

- (a) is a **corporation** for the purposes of Parts 7.11 and 7.12; but
- (b) is not a corporation for the purposes of the other provisions of this Law.

“(4) An exempt body in relation to this jurisdiction (as defined in section 66A) is not a **corporation**.”.

**7. Paragraphs 66A(1)(b), (c) and (d):**

Omit the paragraphs, substitute:

- “(b) a co-operative within the meaning of the Co-operatives Act 1992 of New South Wales or a foreign co-operative within the meaning of that Act registered under Division 3 of Part 2 of that Act;
- (c) a friendly society within the meaning of the Friendly Societies Act 1989 of New South Wales;
- (d) a registrable body or recognised company in respect of which an exemption from compliance with subsection 61(1) of the Co-operation Act 1923 of New South Wales is in force;”.

**8. Paragraph 66A(2A)(b):**

Omit the paragraph.

**9. Paragraph 66A(2A)(c):**

Omit the paragraph, substitute:

- “(c) a society within the meaning of the *Co-operation Act 1981* of Victoria and a foreign society registered under Part XI of that Act;”.

**10. Paragraph 66A(2)(b):**

After “Queensland” insert “that is not a financial institution”.

**SCHEDULE 3—continued**

- 11. Paragraph 66A(2)(f):**  
Omit the paragraph.
- 12. Subsection 66A(3):**  
After “body corporate” insert “, other than a financial institution,”.
- 13. Paragraph 66A(4)(a):**  
After “Western Australia” insert “that is not a financial institution”.
- 14. Paragraph 66A(4)(b):**  
Omit the paragraph, substitute:  
“(b) The WA Teachers Financial Society Limited;”.
- 15. Paragraph 66A(5)(b):**
  - (a) After “society” insert “, other than a financial institution,”.
  - (b) Omit “the *Building Societies Act 1876*,”.
- 16. Paragraph 66A(6)(a):**  
After “Northern Territory” insert “that is not a financial institution”.
- 17. Paragraph 66A(6)(b):**  
Omit the paragraph.
- 18. Paragraph 66A(7)(a):**  
After “Capital Territory” insert “that is not a financial institution”.
- 19. Subsection 69A(1):**  
Omit the subsection, substitute:  
“(1) The following are exempt securities in relation to New South Wales:
  - (a) securities of a body registered as a co-operative under the Co-operatives Act 1992 of New South Wales;
  - (b) securities of a society, association or union registered under the Co-operation Act 1923 of New South Wales.”.
- 20. Paragraph 69A(4)(a):**  
Omit the paragraph, substitute:  
“(a) securities of a society registered under the *Starr-Bowkett Societies Act 1975* of South Australia;”.
- 21. Paragraph 69A(4)(b):**  
Omit the paragraph.

**SCHEDULE 3—continued**

**22. Paragraph 69A(5)(a):**

After “Northern Territory” insert “that is not a financial institution”.

**23. Paragraph 69A(5)(b):**

Omit the paragraph.

**24. Before Part 1.3:**

Insert:

**“PART 1.2B—FINANCIAL INSTITUTIONS**

*“Division 1—Object of Part*

**Object of Part**

“111AY. The object of this Part is:

- (a) to define ‘financial institution’ and other key expressions relevant to financial institutions (this is done in Division 2); and
- (b) to list some other key expressions used in this Law and indicate whether or not they cover financial institutions (this is done in Division 3).

*Division 2—Definitions*

**Terms defined in Division**

“111AZ. This Division contains definitions of the following terms:

- (a) financial institution, building society and credit union (section 111AZA);
- (b) AFIC Codes (section 111AZB);
- (c) Financial Institutions Codes (section 111AZC);
- (d) special services provider, building society special services provider and credit union special services provider (section 111AZD);
- (e) withdrawable share (section 111AZE).

**Financial institution, building society and credit union**

“111AZA.(1) A **financial institution** is a body, or an entity within the meaning of Part 3.6, that:

- (a) is a financial institution for the purposes of any of the Financial Institutions Codes; and
- (b) is not excluded by the regulations.

**SCHEDULE 3—continued**

“(2) A **building society** is a financial institution that is a building society for the purposes of any of the Financial Institutions Codes.

“(3) A **credit union** is a financial institution that is a credit union for the purposes of any of the Financial Institutions Codes.

**AFIC Codes**

“111AZB. The **AFIC Codes** are:

- (a) the AFIC (NSW) Code of New South Wales;
- (b) the AFIC (Victoria) Code of Victoria;
- (c) the AFIC (Queensland) Code of Queensland;
- (d) the AFIC (Western Australia) Code of Western Australia;
- (e) the AFIC (South Australia) Code of South Australia;
- (f) the AFIC (Tasmania) Code of Tasmania;
- (g) the AFIC (ACT) Code of the Capital Territory;
- (h) the AFIC (NT) Code of the Northern Territory.

**Financial Institutions Codes**

“111AZC. The **Financial Institutions Codes** are:

- (a) the Financial Institutions (NSW) Code of New South Wales;
- (b) the Financial Institutions (Victoria) Code of Victoria;
- (c) the Financial Institutions (Queensland) Code of Queensland;
- (d) the Financial Institutions (Western Australia) Code of Western Australia;
- (e) the Financial Institutions (South Australia) Code of South Australia;
- (f) the Financial Institutions (Tasmania) Code of Tasmania;
- (g) the Financial Institutions (ACT) Code of the Capital Territory;
- (h) the Financial Institutions (NT) Code of the Northern Territory.

**Special services providers**

“111AZD.(1) A **special services provider** is a body, or an entity within the meaning of Part 3.6, that:

- (a) is a special services provider for the purposes of any of the AFIC Codes; and
- (b) is not excluded by the regulations.

“(2) A **building society special services provider** is a special services provider that provides to building societies services of a kind described in all or any of subparagraphs 36(2)(b)(i), (ii), (iii), (iv) and (v) of any of the AFIC Codes.

**SCHEDULE 3—continued**

“(3) A **credit union special services provider** is a special services provider that provides to credit unions services of a kind described in all or any of subparagraphs 36(2)(b)(i), (ii), (iii), (iv) and (v) of any of the AFIC Codes.

**Withdrawable share**

“111AZE. A **withdrawable share** is a share:

- (a) in a society, within the meaning of one of the Financial Institutions Codes; and
- (b) that is, for the purposes of that Code, a withdrawable share in relation to that society.

*Division 3—Whether certain expressions cover financial institutions*

**Key expressions in this Law—do they cover financial institutions?**

“111AZF.(1) Provisions of this Law apply variously, and contain references, to:

- (a) bodies;
- (b) bodies corporate;
- (c) companies, recognised companies and foreign companies;
- (d) corporations;
- (e) persons;
- (f) registrable Australian bodies, registrable local bodies and registrable bodies.

“(2) The following table deals with the extent to which the expressions listed in subsection (1) cover financial institutions.

**SCHEDULE 3—continued**

<b>Item</b>	<b>Expression</b>	<b>Defined in</b>	<b>Does it cover financial institutions?</b>
1	<b>body</b>	section 9	Yes.
2	<b>body corporate</b>	section 9	Yes.
3.1	<b>company</b>	section 9	Financial institutions are not companies for the general purposes of this Law because they are not incorporated under the Corporations Law of this jurisdiction. Also, they are not covered by any of the paragraphs of the definition that extend the meaning of 'company' for limited purposes, except for paragraph (d). Under that paragraph, financial institutions may be companies for the purposes of Chapter 6.
3.2	<b>recognised company</b>	section 9	No. Financial institutions are not recognised companies because they are not companies for the general purposes of the Corporations Law of any other jurisdiction.
3.3	<b>foreign company</b>	section 9	No. Financial institutions are not foreign companies because they are not formed or incorporated in an external Territory or outside Australia.
4	<b>corporation</b>	section 57A	Because of subsection 57A(3), financial institutions are not corporations, except for the purposes of Parts 7.11 and 7.12. The application of those Parts to financial institutions is subject to the exceptions in sections 1015A and 1083A.
5	<b>person</b>	section 85A	Yes.
6.1	<b>registrable Australian body</b>	section 9	No. Financial institutions are not registrable Australian bodies because they are expressly excluded from the definition.
6.2	<b>registrable local body</b>	section 9	No. Financial institutions are not registrable local bodies because they are not registrable Australian bodies.
6.3	<b>registrable body</b>	section 9	No. Financial institutions are not registrable bodies because they are not: <ul style="list-style-type: none"> <li>• registrable Australian bodies; or</li> <li>• foreign companies.</li> </ul>

**SCHEDULE 3—continued**

**Other expressions**

“111AZG. The list of expressions in subsection 111AZF(1) is not exhaustive. If another expression is used in a provision (for example, ‘entity’), the provision, and any relevant definitions, should be considered in determining whether the expression covers a financial institution.

**Examples of how this Law applies to financial institutions**

“111AZH. Some examples of how this Law applies to financial institutions are set out below.

*EXAMPLE 1*

A financial institution proposes to issue an invitation to subscribe for securities. Because the financial institution is a corporation for the purposes of Part 7.12, it must comply with Division 2 of Part 7.12 (except to the extent exempted under section 1083A). That Division covers the obligation to lodge and, in certain circumstances, register, a prospectus before issuing an invitation to subscribe for securities. Because the financial institution is also a corporation for the purposes of Part 7.11, criminal liability under section 996 or civil liability under section 1006 may (subject to the exemptions under section 1015A) follow if the institution issues a prospectus that includes a material statement that is false or misleading.

*EXAMPLE 2*

A director of a financial institution who is interested in a contract fails to declare the interest to the board. Because the financial institution is not a corporation for the purposes of Part 3.2, the director’s conduct will not be regulated by section 232. However, the director’s conduct as an officer of the financial institution may be taken into account under other provisions of Part 3.2, such as section 229. The question of whether the failure to declare the interest is an offence is dealt with in the relevant Financial Institutions Code.

*EXAMPLE 3*

A financial institution proposes to carry on an investment advice business. The financial institution is a person and so is prohibited by section 781 from carrying on the investment advice business unless the institution holds a licence granted under section 784, or is an exempt investment adviser as defined in section 68.

**Division only explanatory**

“111AZI. This Division is intended to explain the effect of other provisions of this Law. If a provision of this Division is inconsistent with a provision of this Law that is outside this Division, the provision outside this Division prevails.”

**25. After section 1015:**

Insert in Part 7.11:



**SCHEDULE 3—continued**

***“Division 5—Exemptions***

**Financial institutions—exemptions**

“1015A.(1) Except as provided in the regulations, nothing in the other provisions of this Part applies in relation to:

- (a) the issue, by a financial institution, of withdrawable shares; or
- (b) deposit taking by a financial institution; or
- (c) other things done by a financial institution in the ordinary course of its banking business; or
- (d) the provision, by a special services provider, of services of a kind described in subparagraph 36(2)(b)(i), (ii), (iii), (iv) or (v) of any of the AFIC Codes; or
- (e) the issue of shares:
  - (i) to a building society by a building society special services provider; or
  - (ii) to a credit union by a credit union special services provider.

“(2) In this section:

‘**banking business**’, in relation to a financial institution, means that part of the institution’s business that is substantially similar to the banking businesses of Australian banks.”.

**26. After subsection 1047(2):**

Insert:

“(2AA) A financial institution that:

- (a) is incorporated under a law of this jurisdiction; and
- (b) issues debentures (whether in this jurisdiction or elsewhere);

must keep in Australia a register of holders of those debentures.”.

**27. After section 1083:**

Insert:

**Financial institutions—exemptions**

“1083A.(1) Except as provided in the regulations, nothing in the other provisions of this Part applies in relation to:

- (a) the issue, by a financial institution, of withdrawable shares; or
- (b) deposit taking by a financial institution; or
- (c) other things done by a financial institution in the ordinary course of its banking business; or
- (d) the provision, by a special services provider, of services of a kind described in subparagraph 36(2)(b)(i), (ii), (iii), (iv) or (v) of any of the AFIC Codes; or

**SCHEDULE 3—continued**

- (e) the issue of shares:
  - (i) to a building society by a building society special services provider; or
  - (ii) to a credit union by a credit union special services provider.

“(2) In this section:

**‘banking business’**, in relation to a financial institution, means that part of the institution’s business that is substantially similar to the banking businesses of Australian banks.”.

**28. Subsection 1097(1) (paragraph (a) of the definition of “eligible body”):**

After the paragraph, insert:

“(aa) a financial institution that:

- (i) is incorporated, formed or established in this jurisdiction; and
- (ii) is included in the official list of a securities exchange; or”.

**29. Section 1301:**

After “corporation” (wherever occurring) insert “or financial institution”.

**30. Subsection 1302(7):**

Add at the end “or a financial institution”.

**31. Subsections 1306(3) and (4):**

After “corporation” (wherever occurring), insert “or financial institution”.



**SCHEDULE 4**

Section 7

**AMENDMENTS OF ASC ACT AND CORPORATIONS LAW  
RELATING TO CORPORATIONS AND SECURITIES PANEL**

**PART 1—AMENDMENTS OF ASC ACT**

**1. Subsection 5(1) (definition of “witness”):**

Omit the definition, substitute:

“**witness**’:

- (a) in relation to a hearing before the Commission, means a person appearing at the hearing to give evidence; or
- (b) in relation to an inquiry before the Panel, means a person appearing at the inquiry to give evidence;”.

**2. Subsection 184(4):**

- (a) Omit “a hearing” (wherever occurring), substitute “an inquiry”.
- (b) Omit “the hearing” (wherever occurring), substitute “the inquiry”.

**3. Paragraphs 185(1)(a) and (b):**

Omit the paragraphs, substitute:

- “(a) the member must disclose the interest to the President and to the parties involved in the matter; and
- (b) except with the President’s consent, the member must not take part in the performance or exercise of the Panel’s functions or powers in relation to the matter.”.

**4. After subsection 185(1):**

Insert:

“(1A) The President must not, under paragraph (1)(b), consent to a member taking part in the performance or exercise of the Panel’s functions or powers in relation to a matter unless the President believes, on reasonable grounds, that the member’s interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter.”.

**5. Paragraphs 185(2)(a) and (b):**

Omit the paragraphs, substitute:

- “(a) the President must revoke the direction given under subsection 184(2) in relation to the matter unless the President believes, on reasonable grounds, that the member’s interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter; or

**SCHEDULE 4—continued**

- (b) if the President is not required to revoke that direction under paragraph (a), the President must cause the member's interest to be disclosed to the parties involved in the matter.”.

**6. Heading to Division 3 of Part 10:**

Omit “*Hearings before*”, substitute “*Inquiries by*”.

**7. Subsection 187(1):**

Omit the subsection, substitute:

“(1) In this Division:

‘**inquiry**’ means an inquiry held by the Panel and, in section 190, includes a part of such an inquiry.”.

**8. Sections 188 and 189:**

Repeal the sections, substitute:

**Power to hold inquiries**

“188.(1) The Panel may hold inquiries for the purposes of the performance or exercise of any of its functions and powers.

“(2) The President may convene an inquiry to be held at a place and time he or she determines.

**Who may be present at inquiry**

“189.(1) An inquiry is to take place in private, unless the Panel directs that the inquiry, or a part of it, is to take place in public.

“(2) A person must not be present at an inquiry, or a part of an inquiry, that takes place in private unless the person is:

(a) a member; or

(b) a member of the Commission, or a staff member, approved by the Panel; or

(c) entitled to be present under a direction given by the Panel.

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

**9. Subsection 190(1):**

(a) Omit “at a hearing”, substitute “during an inquiry”.

(b) Omit “evidence given before”, substitute “submissions or evidence made or given to”.

**10. Paragraph 190(2)(a):**

(a) Omit “evidence that has been or may be given”, substitute “submissions or evidence made or given, or that may be made or given”.

(b) Omit “hearing”, substitute “inquiry”.

**SCHEDULE 4—continued**

**11. Section 191:**

Repeal the section, substitute:

**How information or evidence is given to Panel**

“191.(1) Generally, information or evidence is to be given to the Panel for the purposes of an inquiry by lodging with the Panel, in accordance with the requirements (if any) of the regulations, a written submission containing the information or evidence.

“(2) A person may, however, appear before the Panel and give evidence at the inquiry if:

- (a) the person is required by summons under section 192 to do so; or
- (b) the Panel decides, in its discretion, to allow the person to do so.”.

**12. Paragraph 192(1)(a):**

Omit “a hearing”, substitute “an inquiry”.

**13. Subsection 192(2):**

- (a) Omit “a hearing”, substitute “an inquiry”.
- (b) Omit “the hearing” (wherever occurring), substitute “the inquiry”.

**14. Subsection 192(4):**

- (a) Omit “a hearing”, substitute “an inquiry”.
- (b) Omit “the hearing” (wherever occurring), substitute “the inquiry”.

**15. Subsection 192(5):**

Omit the subsection.

**16. Subsection 192(6):**

Omit “a hearing”, substitute “an inquiry”.

**17. Section 193:**

Repeal the section, substitute:

**Who presides at inquiry**

“193.(1) The President is to preside at all inquiries at which he or she is present.

“(2) If the President is not present at an inquiry, the Deputy President is to preside.

**Quorum and determination of questions at inquiry**

“193A.(1) At an inquiry, 2 members form a quorum.

**SCHEDULE 4—continued**

“(2) Questions arising at an inquiry are to be determined by a majority of the votes of the members present at the inquiry.

“(3) The member presiding at an inquiry has a deliberative vote but not a casting vote.”.

**18. Subsections 194(1), (2) and (3):**

Omit “a hearing”, substitute “an inquiry”.

**19. Subsection 194(4):**

Omit the subsection, substitute:

“(4) A person who appears at an inquiry is entitled to have another person present to assist the person and a person who so assists is entitled to address the Panel.”.

**20. Section 195:**

Repeal the section, substitute:

**Procedure at inquiry**

“195.(1) An inquiry is to be conducted in accordance with (in order of priority):

- (a) the requirements of this Division; and
- (b) the requirements of the regulations; and
- (c) the requirements of the Panel.

“(2) Without limiting the generality of paragraph (1)(b), the regulations may deal with:

- (a) the making of submissions or the giving of evidence to or at an inquiry; and
- (b) the right (if any) to appear, or be represented, at an inquiry; and
- (c) the matters to be taken into account by the Panel when making a decision in the course of an inquiry.

“(3) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act and the Regulations made under it, apply to an inquiry.”.

**21. Subsection 196(1):**

- (a) Omit “or at a person’s request”.
- (b) Omit “a hearing”, substitute “an inquiry”.

**22. Subsections 196(3) and (4):**

Omit “hearing”, substitute “inquiry”.

**23. Subsection 197(1):**

Omit “a hearing”, substitute “an inquiry”.

**SCHEDULE 4—continued**

**24. Subsection 197(2):**

Omit the subsection.

**25. Subsection 197(3):**

Omit “a hearing” (wherever occurring), substitute “an inquiry”.

**26. Subsection 199(1):**

Omit the subsection, substitute:

“(1) A person must not:

(a) in a written submission given to the Panel for the purposes of an inquiry; or

(b) while appearing before the Panel at an inquiry;

give information or evidence that is false or misleading in a material particular.

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

**27. Subsection 199(2):**

After “giving the” insert “information or”.

**28. Paragraph 200(1)(b):**

Omit “a hearing”, substitute “an inquiry”.

**29. Subsection 201(1):**

Omit “hearing” (wherever occurring), substitute “inquiry”.

**30. After section 201:**

Insert in Part 10:

**Undertakings to the Panel**

“201A.(1) During an inquiry, the Panel may accept a written undertaking from a person affected, or likely to be affected, by the inquiry about a matter relevant to the inquiry.

“(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Panel.

“(3) If the Panel considers that the person has breached any of the terms of the undertaking, the Panel may apply to the Court for an order under subsection (4).

“(4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:

(a) an order directing the person to comply with that term of the undertaking;

**SCHEDULE 4—continued**

- (b) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (c) any other order that the Court considers appropriate.”.

**PART 2—AMENDMENTS OF CORPORATIONS LAW**

**31. Paragraph 731(d):**

After “company have” insert “reasonable and”.

**32. Section 732:**

Add at the end:

“(2) Paragraph (1)(d) may be satisfied because of:

- (a) actions of the person acquiring, or proposing to acquire, the substantial interest; or
- (b) actions of the directors of the company, including actions that caused the acquisition not to proceed, or that contributed to it not proceeding.”.

**33. Subsection 733(5):**

Omit “appear at a hearing before the Panel and to make submissions and give evidence to”, substitute “make submissions to an inquiry conducted by”.

**34. Subsection 734(6):**

Omit “appear at a hearing before the Panel and to make submissions and give evidence to”, substitute “make submissions to an inquiry conducted by”.

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**SCHEDULE 5**

Section 8

**AMENDMENTS OF AAT ACT, ASC ACT AND CORPORATIONS  
LAW RELATING TO REVIEW OF DECISIONS**

**PART 1—AMENDMENT OF AAT ACT**

**1. Paragraphs 27A(2)(d) and (e):**

Omit the paragraphs, substitute:

“(d) a decision under the Corporations Law of a State or an internal Territory to which section 1317B of that Law applies; or

(e) a decision under the ASC Law of a State or an internal Territory to which section 244 of that Law applies.”.

**PART 2—AMENDMENT OF ASC ACT**

**2. After section 244:**

Insert:

**Notice of reviewable decision and review rights**

“244A.(1) This section applies if the Commission makes a decision to which subsection 244(2) applies.

“(2) Subject to subsection (3), the Commission must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:

(a) of the making of the decision; and

(b) of the person’s right to have the decision reviewed by the Administrative Appeals Tribunal.

“(3) Subsection (2) does not require the Commission to give notice to a person affected by the decision, or to the persons in a class of persons affected by the decision, if the Commission determines that giving notice to the person or persons is not warranted, having regard to:

(a) the cost of giving notice to the person or persons; and

(b) the way in which the interests of the person or persons are affected by the decision.

“(4) A failure to comply with this section does not affect the validity of the decision.

“(5) The fact that a person has not been given notice of the decision because of a determination under subsection (3) constitutes special circumstances for the purposes of subsection 29(6) of the *Administrative Appeals Tribunal Act 1975*.”.

**SCHEDULE 5—continued**

**PART 3—AMENDMENTS OF CORPORATIONS LAW**

**3. Section 1317C:**

Add at the end:

“; or (h) a decision to make a determination under subsection 1317D(3).”.

**4. After section 1317C:**

Insert in Part 9.4A:

**Notice of reviewable decision and review rights**

“1317D.(1) This section applies if the Minister, the Commission or the Companies Auditors and Liquidators Disciplinary Board (the ‘**decision maker**’) makes a decision to which section 1317B applies.

“(2) Subject to subsection (3), the decision maker must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:

- (a) of the making of the decision; and
- (b) of the person’s right to have the decision reviewed by the Tribunal.

“(3) Subsection (2) does not require the decision maker to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if the decision maker determines that giving notice to the person or persons is not warranted, having regard to:

- (a) the cost of giving notice to the person or persons; and
- (b) the way in which the interests of the person or persons are affected by the decision.

“(4) A failure to comply with this section does not affect the validity of the decision.

“(5) The fact that a person has not been given notice of the decision because of a determination under subsection (3) constitutes special circumstances for the purposes of subsection 29(6) of the *Administrative Appeals Tribunal Act 1975*.”.

**SCHEDULE 6**

**AMENDMENTS OF ASC ACT AND CORPORATIONS LAW  
INTRODUCING PENALTY UNITS**

**PART 1—AMENDMENTS OF ASC ACT**

**1. Subsection 5(1):**

Insert:

“ ‘penalty unit’ means \$100;”.

**2. Amend the Act in accordance with the following table:**

<b>Amendment number</b>	<b>Provision to be amended</b>	<b>Omit</b>	<b>Substitute</b>
1	Subsection 63(4)	“\$500”	“5 penalty units”
2	Subsections 22(2) and 25(2), section 26, subsections 47(2), 56(3), 63(3), 64(2), 69(3) and 189(2), section 198 and subsections 199(1), 216(7), 219(4) and 220(1) and (2)	“\$1,000”	“10 penalty units”
3	Subsections 65(2) and 75(5)	“\$2,500”	“25 penalty units”
4	Subsections 63(2), 66(1) and (2), 91(3), 125(3), 127A(1) and 200(1) and (2)	“\$5,000”	“50 penalty units”
5	Subsections 63(1), 64(1), 65(1) and 127(4E) and (4F)	“\$10,000”	“100 penalty units”
6	Subsection 67(1) and section 128	“\$20,000”	“200 penalty units”

**SCHEDULE 6—continued**

**PART 2—AMENDMENTS OF CORPORATIONS LAW**

**3. Section 9:**

Insert:

“ ‘penalty unit’ means \$100;”.

**4. Amend the Corporations Law in accordance with the following table:**

<b>Amendment number</b>	<b>Provision to be amended</b>	<b>Omit (wherever occurring)</b>	<b>Substitute</b>
1	Subsections 206AAE(5), 206AAE(6), 206SD(4) and 206SE(2)	“\$2,500”	“25 penalty units”
2	Subsection 206DB (6)	“\$5,000”	“50 penalty units”
3	Subsection 1311(5)	“\$500”	“5 penalty units”
4	Subsection 1314(5)	“\$50”	“half a penalty unit”
5	Subsection 1317EA(3)	“\$200,000”	“2,000 penalty units”
6	Schedule 3	“\$500” “\$1,000” “\$2,500” “\$5,000” “\$10,000” “\$20,000” “\$200,000”	“5 penalty units” “10 penalty units” “25 penalty units” “50 penalty units” “100 penalty units” “200 penalty units” “2,000 penalty units”

**SCHEDULE 7**

Section 10

**AMENDMENTS OF CORPORATIONS ACT AND CORPORATIONS  
LAW RELATING TO UNCLAIMED PROPERTY**

**PART 1—AMENDMENT OF CORPORATIONS ACT**

**1. Section 71:**

Repeal the section.

**PART 2—AMENDMENTS OF CORPORATIONS LAW**

**2. Section 9:**

Insert:

“ **‘unclaimed money account’** means an account that:

- (a) the Commission maintains under section 63J of the *Audit Act 1901*;  
and
- (b) is maintained for the sole purpose of containing money that is unclaimed property;

Note: An unclaimed money account is an example of an account for which section 141 of the *Australian Securities Commission Act 1989* provides. That section relates to money the Commission receives or holds on trust.

**‘unclaimed property’** means (except in section 702):

- (a) property paid or transferred to the Commission under a provision of this Law that provides for property to be transferred, or for the Court to direct that property be transferred, to the Commission to be dealt with under Part 9.7; or
- (b) any other property that a provision of this Law provides for the Commission to deal with under Part 9.7; or
- (c) property that vests in the Commission under section 1404; or
- (d) an accretion to, or substitution for, property that is unclaimed property because of any other application or applications of this definition; or
- (e) without limiting paragraph (d), money paid, or required to be paid, under paragraph 1339(2)(b) into an unclaimed money account;

but does not include income that the Minister has applied under subsection 1339(3);”.

**3. Subsections 414(15), 544(1), (2) and (3) and 702(5), (6), (8), (9) and (10), section 1340, subsections 1341(3), (4) and (5) and sections 1342 and 1343:**

Omit “Minister” (wherever occurring), substitute “Commission”.

**SCHEDULE 7—continued**

**4. Subsection 577(4):**

Omit “pay the remainder (if any) of the moneys to the Minister to be dealt with”, substitute “deal with the rest (if any)”.

**5. Section 1337:**

Repeal the section.

**6. Section 1339:**

Repeal the section, substitute:

**Commission to deal with unclaimed property**

“1339.(1) The Commission holds unclaimed property on trust in accordance with, and for the purposes of, this Part.

Note: Division 2 of Part 8 of the *Australian Securities Commission Act 1989* contains provisions about property that the Commission receives or holds on trust.

“(2) If property becomes unclaimed property, the Commission must:

- (a) in the case of money—pay it into an unclaimed money account; or
- (b) otherwise—sell or dispose of the property as it thinks fit and pay the proceeds into an unclaimed money account.

This subsection does not apply to unclaimed property so far as the property consists of an investment made as permitted by subsection 142(2) of the *Australian Securities Commission Act 1989*.

“(3) The Minister may apply as mentioned in subsection 135(1) of the *Australian Securities Commission Act 1989* income derived from investing, as permitted by subsection 142(2) of that Act, money that is unclaimed property.

Note: Subsection 135(1) of the *Australian Securities Commission Act 1989* provides for how the Commission may apply its own money.

“(4) If income is applied under subsection (3), a person is not liable to another person in respect of the income merely because the other person is entitled to money in an unclaimed money account.”.

**7. Subsections 1341(1) and (2):**

Omit the subsections, substitute:

“(1) If money is not paid out of an unclaimed money account in accordance with this section or subsection 1339(3) within 6 years after it was originally paid into such an account under subsection 1339(2), it must be paid into the Consolidated Revenue Fund.

“(2) If:

- (a) a person claims to be entitled to money paid into an unclaimed money account under subsection 1339(2); and

**SCHEDULE 7—continued**

(b) the Commission is satisfied that the person is entitled to the money;  
the Commission must:

(c) unless paragraph (d) applies—pay the money to the person out of the relevant unclaimed money account; or

(d) if the money has been paid into the Consolidated Revenue Fund under subsection (1)—pay an equivalent amount to the person out of money appropriated by the Parliament for the purpose.’’

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**SCHEDULE 8**

Section 11

**MISCELLANEOUS AMENDMENTS OF CORPORATIONS LAW**

**1. Section 9 (definition of “unauthorised stock market”):**

Omit “is neither a stock market of a securities exchange nor an exempt stock market”, substitute:

“is not:

- (a) a stock market of a securities exchange; or
- (b) a section 770A stock market; or
- (c) an exempt stock market;”.

**2. Section 9 (definition of “clients’ segregated account”):**

Omit the definition, substitute:

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

- (a) the person maintains, whether in Australia or elsewhere, with:
  - (i) an Australian bank; or
  - (ii) an approved foreign bank in relation to the person; and
- (b) is maintained for the sole purpose of containing money deposited by the person into the account under section 1209 or a corresponding previous law;”.

**3. Section 9:**

(a) Insert:

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

(b) Insert:

“ ‘**section 770A stock market**’ means a stock market in relation to which an approval under section 770A is in force;”.

**4. Subsection 102A(3):**

After “770,” insert “770A,”.

**5. Subsection 120(2):**

Omit “(3)”, substitute “(2)”.

**6. Section 122:**

Repeal the section, substitute:



**SCHEDULE 8—continued**

**Evidentiary certificates**

“122. A certificate under the Commission’s common seal stating that a specified body corporate has been registered under Division 1 of Part 2.2 of the Corporations Law of this or another jurisdiction is conclusive evidence that:

- (a) all requirements of that Law in respect of:
  - (i) registration of the body corporate as a company under that Division; and
  - (ii) matters preceding or incidental to the registration; have been complied with; and
- (b) the body corporate is duly registered as a company under that Division; and
- (c) the day of commencement of the registration is the day (if any) specified as such in the certificate.”.

**7. Section 149:**

Repeal the section, substitute:

**Evidentiary certificates**

“149. A certificate under the Commission’s common seal stating that a specified body corporate has been registered under Division 3 or Division 4 of Part 2.2 of the Corporations Law of this or another jurisdiction is conclusive evidence that:

- (a) all the requirements of that Law in respect of:
  - (i) registration of the body corporate as a company under that Division; and
  - (ii) matters preceding or incidental to the registration; have been complied with; and
- (b) the body corporate is duly registered as a company under that Division; and
- (c) the day of commencement of the registration is the day (if any) specified as such in the certificate.”.

**8. Paragraphs 167(1)(a), (b) and (c):**

Add at the end “and”.

**9. Subsection 167(1):**

Add at the end:

“; and (f) a limited company that is a mining company may convert to a no liability company If all the shares in the company are fully paid up.”.

**SCHEDULE 8—continued**

**10. Subsection 272(4):**

- (a) Omit “subsection (3)”, substitute “subsection 272(3) of the Corporations Law of this or another jurisdiction”.
- (b) Omit “this Division”, substitute “Division 2 of Part 3.5 of that Law”.

**11. Subsection 382(2):**

Omit the subsection, substitute:

“(2) Subject to subsection 382A(1), the Commission must not approve a change of name of a company under subsection (1) of this section unless the proposed new name is reserved in respect of the company under section 375.”.

**12. After section 382:**

Insert:

**Change of name to registration number**

“382A.(1) Subsection 382(2) does not apply if the proposed new name consists only of the following:

- (a) first, the expression ‘Australian Company Number’;
- (b) next, the company’s registration number;
- (c) next, the expression or expressions (if any) that section 368 requires to be included in the company’s name.

“(2) If a company changes its name under section 382 to a name of the kind referred to in subsection (1) of this section, the Commission must:

- (a) register the new name in respect of the company; and
- (b) then cancel the registration, in respect of the company, of the name by which the company was registered before it changed its name.”.

**13. Heading to Part 7.2:**

Add at the end “**AND STOCK MARKETS**”.

**14. After section 770:**

Insert:

**Approval of special stock markets for unquoted prescribed interests**

“770A.(1) The management company in relation to unquoted prescribed interests may apply to the Commission in writing for approval by the Minister of a stock market on which the interests (whether or not they remain unquoted) may be traded by means of an electronic trading facility.

**SCHEDULE 8—continued**

“(2) Subject to section 102A, the Minister may, by writing, approve the stock market if, and only if, the Minister is satisfied that:

- (a) the management company’s business rules make satisfactory provision for the fair and orderly conduct of the stock market; and
- (b) those business rules make satisfactory provision for a person or partnership (the ‘**supervisor**’) who or that, having regard to the regulations, is independent and appropriately qualified, to monitor compliance, in relation to the stock market, with the business rules; and
- (c) the management company has made or will make, and will maintain, satisfactory arrangements (including, for example, insurance) for meeting liabilities of the management company that arise in the course of conducting the stock market; and
- (d) the stock market will not be used except for trading the prescribed interests (whether or not they remain unquoted) by means of the electronic trading facility; and
- (e) there is an approved deed (for the purposes of Division 5 of Part 7.12) in relation to the interests.

“(3) The approval is subject to:

- (a) the conditions (if any) specified in the instrument of approval; and
- (b) a condition that the management company will comply with the requirements (if any) of the regulations for the lodging of documents containing information relating to the prescribed interests; and
- (c) a condition that the supervisor must, if the supervisor becomes aware of a contravention of the management company’s business rules, notify the Commission of the contravention within 7 days of becoming aware of it; and
- (d) a condition that the supervisor must properly perform the duties that the supervisor has under the management company’s business rules.

“(4) The Minister may, by writing, revoke the approval if:

- (a) the Minister is no longer satisfied as mentioned in subsection (2); or
- (b) the Minister is satisfied that a condition mentioned in subsection (3) has been contravened; or
- (c) the Minister is otherwise satisfied that the approval should be revoked.

“(5) In this section:

‘**unquoted**’, in relation to prescribed interests, means the interests are not included in any class of securities that are quoted on a stock market of a securities exchange.

**SCHEDULE 8—continued**

**Section 770A stock markets—separate markets exist in relation to different kinds of prescribed interests**

“770B.(1) For the purposes of subsections 770A(1) and (2), separate stock markets exist in relation to different kinds of prescribed interests even though:

- (a) the stock markets are conducted by the same body corporate; and
- (b) the same business rules of the body corporate apply to the conduct of the stock markets.

“(2) For the purposes of subsection (1):

- (a) unless paragraph (b) applies, the prescribed interests to which a particular deed relates constitute a kind of prescribed interests; but
- (b) if a particular deed relates to a number of different undertakings in relation to prescribed interests—the prescribed interests to which the deed relates are taken to be divided into a number of kinds, with each kind consisting of the prescribed interests to which a particular one of those undertakings relates.

**Section 770A stock markets—regulations may make additional provision**

“770C. The regulations may make provision, in relation to section 770A stock markets, for matters of a kind dealt with in sections 774 to 779 (inclusive) and section 1114.”.

**15. Section 772:**

After “770(2)” insert “, 770A(2)”.

**16. Paragraph 896(b):**

Omit the paragraph, substitute:

- “(b) contributions that members pay to the securities exchange under section 902;
- (ba) money paid into the fidelity fund under section 904;”.

**17. Paragraph 930(e):**

Omit the paragraph, substitute:

- “(e) money paid into the Fund under section 938 or 940;”.

**18. After subsection 1113(1):**

Insert:

“(1A) In this section:

‘**securities**’ includes marketable securities, and marketable rights, within the meaning of Division 3.”.

**SCHEDULE 8—continued**

**19. After subsection 1113(6):**

Insert:

“(6A) Subsection (6) applies in relation to Division 3 as if the forms in Schedule 2 were provisions of that Division.”.

**20. After subsection 1127(1):**

Insert:

“(1A) A person must not contravene a condition specified in a declaration in force under this section.

“(1B) If a person has contravened a condition specified in a declaration in force under this section, the Court may, on the Commission’s application, order the person to comply with the condition.”.

**21. Subsection 1154(1):**

Omit “a corporation that is”.

**22. After subsection 1209(4):**

Insert:

“(4A) A clients’ segregated account of a futures broker must be designated as a clients’ segregated account, unless it is maintained outside Australia and the law in force in the place where it is maintained requires it to be designated in some other way.

“(4B) If:

- (a) a clients’ segregated account of a futures broker is required by subsection (4A) to be designated as a clients’ segregated account; and
- (b) the account is designated in a way that complies substantially, but not completely, with that requirement;

subsection (4A) is taken to be complied with in relation to the account.”.

**23. Paragraph 1209(5)(b):**

Omit “the client”, substitute “clients only”.

**24. Subparagraph 1209(5)(d)(iii):**

Omit the subparagraph, substitute:

“(iii) on deposit at interest with:

(A) an Australian bank; or

(B) an approved foreign bank in relation to the broker;”.

**25. Subsection 1209(5):**

Omit “subsection (11)”, substitute “subsection (10)”.

**SCHEDULE 8—continued**

**26. After subsection 1209(5):**

Insert:

“(5A) If, under subsection (5), a broker (the ‘**paying broker**’) withdraws money from a clients’ segregated account and pays it to another broker (the ‘**receiving broker**’):

- (a) the paying broker must ensure that the receiving broker is notified, at the same time as the payment is made or as close to that time as is practicable, of the fact that the money has been withdrawn from a clients’ segregated account of the paying broker and should be paid into a clients’ segregated account of the receiving broker; and
- (b) on or before the next day after the receiving broker receives the payment, the receiving broker must pay the money into a clients’ segregated account of the receiving broker.

“(5B) A notification under paragraph (5A)(a) may be in writing or in an electronic or other form and may convey its message by express words, or by a code or some other means understood by the brokers concerned.”.

**27. Subsection 1209(8):**

Omit the subsection, substitute:

“(8) A futures broker must not invest an amount pursuant to paragraph (5)(d) by depositing it with a person for that person to invest unless:

- (a) the broker:
  - (i) has informed the person that the amount has been withdrawn from a clients’ segregated account of the broker and is money to which clients of the broker are entitled; and
  - (ii) has obtained from the person a written statement that is signed by the person, sets out the amount and acknowledges that the broker has informed the person as mentioned in subparagraph (i);or
- (b) the investment is made by the broker paying the amount into an account maintained with the person in relation to which the following conditions are satisfied:
  - (i) the account is maintained for the sole purpose of having amounts invested in it pursuant to paragraph (5)(d);
  - (ii) the broker has informed the person that amounts paid into the account will be amounts withdrawn from a clients’ segregated account of the broker and will be moneys to which clients of the broker are entitled;

**SCHEDULE 8—continued**

- (iii) the broker has obtained from the person a written statement signed by the person that acknowledges that the broker has informed the person as mentioned in subparagraph (ii).”.

**28. Section 1209:**

Add at the end:

“(19) A futures broker must not pay an amount into a clients’ segregated account of the broker except as required or authorised by this section or the regulations.”.

**29. Subsection 1336A(2):**

After “Law,” insert “or but for this Law and relevant repeals,”.

**30. Section 1336A:**

Add at the end:

“(3) If, before 1 January 1991, a specified proceeding under a law of this jurisdiction was begun by or against an authority of this jurisdiction, the proceeding may be continued by or against the Commission.

“(4) If, but for this Law, or but for this Law and relevant repeals, a specified proceeding under a law of this jurisdiction could have been begun by or against an authority of this jurisdiction, the proceeding may be begun by or against the Commission.

“(5) In this section:

‘**authority of this jurisdiction**’ includes:

- (a) an officer of this jurisdiction; and
- (b) an officer of an authority of this jurisdiction;

‘**relevant repeal**’ means:

- (a) the repeal of the *National Companies and Securities Commission Act 1979*; or
- (b) the repeal of a law of this jurisdiction corresponding to a provision of that Act;

‘**specified**’ means specified in an application order.”.

**31. Schedule 3:**

Omit:

“**Section 126:**

Penalty: \$500 for each day during all or part of which the contravention continues.”.

**SCHEDULE 9**

Section 12

**AMENDMENTS OF ASC ACT AND CORPORATIONS LAW  
RELATING TO APPLICATION OF CHANGES**

**PART 1—AMENDMENT OF ASC ACT**

**1. After section 262:**

Insert:

**“PART 17—COMMENCEMENT AND APPLICATION OF  
CERTAIN AMENDMENTS OF THE ASC LAW**

***“Division 1—Preliminary***

**Meaning of “ASC Law”**

“263. In this Part:

‘ASC Law’ means the provisions of the *Australian Securities Commission Act 1989* as they have effect as the ASC Law of this jurisdiction.

**Meaning of “amendment of the ASC Law”**

“264. In this Part, a reference to an amendment of the ASC Law, or of a provision of the ASC Law, is a reference to a change to the ASC Law, or to that provision, that results from an amendment of the *Australian Securities Commission Act 1989*.

***“Division 2—Amendments made by the Corporations Legislation  
Amendment Act 1994***

**Meaning of “Amending Act”**

“265. In this Division:

‘Amending Act’ means the *Corporations Legislation Amendment Act 1994*.

**Schedule 4—application of amendments made by Part 1  
of the Schedule**

“266. The amendments of the ASC Law made by Part 1 of Schedule 4 to the Amending Act apply to inquiries begun after the commencement of those amendments.

**Schedule 5—application of amendments made by Part 2  
of the Schedule**

“267. The amendments of the ASC Law made by Part 2 of Schedule 5 to the Amending Act apply to decisions made after the commencement of those amendments.”.



**SCHEDULE 9—continued**

**PART 2—AMENDMENTS OF CORPORATIONS LAW**

**2. After section 1362:**

Insert in Part 9.11:

***“Division 1A—Preliminary***

**Meaning of “amendment of this Law”**

“1362A. In this Part, a reference to an amendment of this Law, or of a provision of this Law, is a reference to a change to this Law, or to that provision, that results from an amendment of the Corporations Law set out in section 82 of the *Corporations Act 1989*.”.

**3. After Division 6 of Part 9.11:**

Insert:

***“Division 7—Amendments made by the Corporations Legislation Amendment Act 1994***

**Meaning of “Amending Act”**

“1399. In this Division:

‘**Amending Act**’ means the *Corporations Legislation Amendment Act 1994*.

**Schedule 1—application of amendments made by Part 2 of the Schedule**

“1400. The amendments of this Law made by Part 2 of Schedule 1 to the Amending Act apply to proceedings commenced or recommenced after the commencement of those amendments, whether the cause of action arose before or after that commencement.

**Schedule 3—application of amendments**

*Law continues to apply to registered charges*

“1401.(1) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, a charge on property of a financial institution was registered under Part 3.5 of this Law, this Law continues to apply after that commencement in relation to the charge as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

*Institutions cease to be registered under Division 1 of Part 4.1*

“(2) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, a financial institution was registered under Division 1 of Part 4.1 of this Law, or under a corresponding previous law, the institution ceases to be so registered by force of this subsection on the commencement of that item.

**SCHEDULE 9—continued**

*But institutions taken to be registered bodies for the purposes of section 433*

“(3) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, section 433 of this Law applied to a financial institution, then, for the purposes of that section as it applies after that commencement, the institution is taken to continue to be a registered body (within the meaning of that section) despite:

- (a) the amendment of this Law made by that item; and
- (b) subsection (2) of this section.

*Law continues to apply to approved compromises and arrangements*

“(4) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, an approval under subsection 411(6) of this law was in force in respect of a compromise or arrangement between a financial institution and its creditors or members, or a class of its creditors or members, (whether or not other Part 5.1 bodies are involved in the compromise or arrangement) this Law continues to apply after that commencement in relation to the compromise or arrangement as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

*Law continues to apply to winding up already commenced*

“(5) If:

- (a) the winding up of a financial institution under Chapter 5 of this Law (pursuant to Part 5.7) commenced before the commencement of item 3 of Schedule 3 to the Amending Act; and
- (b) the winding up was still in progress immediately before that commencement;

this Law continues to apply after that commencement in relation to the winding up of the financial institution as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

*Law continues to apply to controller of property*

“(6) If, immediately before the commencement of item 4 of Schedule 3 to the Amending Act:

- (a) there was a controller of property of a financial institution; and
- (b) the control day began before that commencement;

this Law (including Part 5.2 and section 1379) continues to apply in relation to the controller and the institution as if the amendments of this Law made by that item, and by item 6 of that Schedule, had not been made.

**SCHEDULE 9—continued**

*Division 5 of Part 5.7B continues to apply to debts already incurred*

“(7) Division 5 of Part 5.7B of this Law applies, after the commencement of item 4 of Schedule 3 to the Amending Act, to a debt incurred before that commencement by a company that is a subsidiary of a financial institution as if the amendments of this Law made by that item, and by item 6 of that Schedule, had not been made.

*Parts 7.11 and 7.12 do not apply to issues under disclosure statements already registered*

“(8) If, after the commencement of item 4 of Schedule 3 to the Amending Act, a financial institution may, under Division 6 of Part 5 of any of the Financial Institutions Codes, issue securities pursuant to a disclosure statement registered under that Division before that commencement, then, despite the amendments of this Law made by that item, and by item 6 of that Schedule, Parts 7.11 and 7.12 of this Law do not apply to the issue of securities pursuant to the disclosure statement.

**Schedule 4—application of amendments made by Part 2 of the Schedule**

“1402. The amendments of this Law made by Part 2 of Schedule 4 to the Amending Act apply to inquiries begun after the commencement of those amendments.

**Schedule 5—application of amendments made by Part 3 of the Schedule**

“1403. The amendments of this Law made by Part 3 of Schedule 5 to the Amending Act apply to decisions made after the commencement of those amendments.

**Schedule 7—transitional provisions relating to unclaimed property**

“1404.(1) As soon as practicable after the relevant commencement, the money in the Account that was paid into it under this Law must be paid into an unclaimed money account.

“(2) For the purposes of subsections 1341(1) and (2) as in force after the relevant commencement, money that was paid into an unclaimed money account under subsection (1) of this section is taken to have been paid into that account under subsection 1339(2) on the day when it was paid to the credit of the Account under section 1339 as in force before the relevant commencement.

“(3) The Minister must pay into an unclaimed money account money that, immediately before the relevant commencement:

**SCHEDULE 9—continued**

- (a) he or she held; and
- (b) was unclaimed property as defined by section 1337 as then in force.

“(4) If, immediately before the relevant commencement, the Minister:

- (a) held property (other than money) that was unclaimed property as defined by section 1337 as then in force; and
- (b) had not yet sold or disposed of the property under section 1339 as then in force;

the property vests in the Commission, because of this subsection, at the relevant commencement.

“(5) Where:

- (a) immediately before the relevant commencement, a transfer provision, as then in force, required or permitted a person to pay money or transfer property to the Minister; and
- (b) as at the time immediately after the relevant commencement:
  - (i) the person has not yet so paid the money or transferred the property; or
  - (ii) the person has so paid the money or transferred the property but the payment or transfer has not yet taken effect;

then:

- (c) if the transfer provision is an order of the Court under paragraph 544(2)(c)—the order has effect after the relevant commencement as if it directed the person to pay the money to the Commission instead of to the Minister; or
- (d) if the transfer provision is subsection 577(4)—the Commission must instead deal with the money under Part 9.7 as in force after the relevant commencement; or
- (e) otherwise—the person must, or may, as the case may be, instead pay the money or transfer the property to the Commission in accordance with the transfer provision as in force after the relevant commencement;

unless subparagraph (b)(ii) of this subsection applies and the payment or transfer takes effect after the relevant commencement.

“(6) Where, before the relevant commencement, a person transferred property to the Minister under a transfer provision as then in force but the transfer only takes effect after the relevant commencement:

- (a) if the property is money—the Minister must pay it into an unclaimed money account; or
- (b) otherwise—the property vests in the Commission, because of this subsection, immediately after the transfer takes effect.

**SCHEDULE 9—continued**

“(7) Subsection 544(3), as in force before the relevant commencement, continues to apply in relation to a payment to the Minister made under section 544 as so in force.

“(8) Subsection 702(5), as in force after the relevant commencement, applies in relation to a calendar year ending at or after the relevant commencement.

“(9) Subsections 702(8), (9) and (10), as in force after the relevant commencement:

- (a) apply in relation to a register given, or required to be given, whether before, at or after the relevant commencement, to the Minister or to the Commission; and
- (b) so apply as if a register given, or required to be given, to the Minister had been given, or required to be given, to the Commission.

“(10) Subsections 1341(2) and (3), as in force before the relevant commencement, continue to apply in relation to a claim made under subsection 1341(2) as so in force. They so apply as if the second reference in subsection 1341(2), as so in force, to the Account were a reference to the unclaimed money account into which the money to which the claim relates has been paid.

“(11) Subsection 1341(4) or (5), as in force before the relevant commencement, continues to apply in relation to money that was paid, or money an amount equivalent to which was paid, as the case may be, as directed by the Minister.

“(12) Section 1342, as in force before the relevant commencement, continues to apply in relation to the powers that the Minister had:

- (a) under Part 9.7 as so in force; or
- (b) in relation to unclaimed property as defined by section 1337 as so in force.

“(13) In this section:

**‘relevant commencement’** means the commencement of item 3 of Schedule 7 to the Amending Act;

**‘transfer’** includes pay;

**‘transfer provision’** means any of the following:

- (a) subsection 414(15);
- (b) subsection 544(1);
- (c) an order of the Court made under paragraph 544(2)(c);
- (d) subsection 577(4);
- (e) subsection 702(6);

*Corporations Legislation Amendment No. 104, 1994*

**SCHEDULE 9—continued**

(f) section 1343.

**Schedule 8—application and commencement of amendments**

“1405. The amendments of section 1336A of this Law made by items 29 and 30 of Schedule 8 to the Amending Act are taken to have commenced on 1 January 1991.”.

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**NOTES**

*Administrative Appeals Tribunal Act 1975*

1. No. 91, 1975, as amended. For previous amendments, see Nos. 37, 60, 89, 91, 157, 162, 163 and 209, 1976; Nos. 30, 57, 58 and 111, 1977; Nos. 65 and 109, 1978; Nos. 19 and 143, 1979; No. 110, 1980; Nos. 19 and 61, 1981; Nos. 26 and 80, 1982; No. 91, 1983; Nos. 63 and 72, 1984; Nos. 65 and 193, 1985; No. 48, 1986; No. 109 and 120, 1988; Nos. 157, 1989; No. 111, 1990; Nos. 122 and 136, 1991; Nos. 94 and 165, 1992; and No. 31, 1993.

*Australian Securities Commission Act 1989*

2. No. 90, 1989, as amended. For previous amendments, see Nos. 41 and 110, 1990; Nos. 110, 122 and 188, 1991; Nos. 27, 94 and 210, 1992; and No. 31, 1994.

*Corporations Act 1989*

3. No. 109, 1989, as amended. For previous amendments, see No. 110, 1990; Nos. 110, 200 and 201, 1991; Nos. 27 and 210, 1992; Nos. 32 and 82, 1993; and No. 31, 1994.

**NOTE ABOUT SECTION HEADINGS**

1. The following table changes some section headings in the Corporations Law and sets out when the changes commence.

<b>Item</b>	<b>Heading to</b>	<b>Change</b>	<b>Commencement</b>
1	Section 544	Omit the heading, substitute “ <b>Unclaimed money to be paid to Commission</b> ”.	Same as item 3 of Schedule 7 to this Act.

*Corporations Legislation Amendment No. 104, 1994*

NOTE ABOUT SECTION HEADINGS—continued

**TABLE—continued**

2	Section 588FF	Omit “ <b>Court</b> ”, substitute “ <b>Courts</b> ”.	Same as item 26 of Schedule 1 to this Act.
3	Section 1097B	Omit the heading, substitute “ <b>SCH business rules may extend meaning of quoted securities or quoted rights</b> ”.	Same as item 26 of Schedule 2 to this Act.
4	Section 1336A	Omit the heading, substitute “ <b>Certain proceedings to be proceedings by or against Commission</b> ”.	Same as item 29 of Schedule 8 to this Act.
5	Sections 1340 and 1342	Omit “ <b>Minister</b> ”, substitute “ <b>Commission</b> ”.	Same as item 3 of Schedule 7 to this Act.
6	Section 1341	Omit “ <b>Account</b> ”, substitute “ <b>unclaimed money account</b> ”.	Same as item 3 of Schedule 7 to this Act.

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**INDEX OF ASC ACT AND CORPORATIONS LAW  
AMENDMENTS MADE BY THIS ACT**

**PART 1—ASC ACT AMENDMENTS**

Schedules 4, 5, 6 and 9 to this Act amend the ASC Act. This part of the index lists the Schedule items that amend existing sections of the ASC Act and that insert new sections into the ASC Act. New sections are marked with an asterisk.

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25	Item 2 of Schedule 6
26	Item 2 of Schedule 6
47	Item 2 of Schedule 6
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185	Items 3 to 5 of Schedule 4
187	Item 7 of Schedule 4
* 188 and 189	Item 8 of Schedule 4 and item 2 of Schedule 6
190	Items 9 and 10 of Schedule 4
* 191	Item 11 of Schedule 4
192	Items 12 to 16 of Schedule 4
* 193 and 193A	Item 17 of Schedule 4
194	Items 18 and 19 of Schedule 4
* 195	Item 20 of Schedule 4
196	Items 21 and 22 of Schedule 4
197	Items 23 to 25 of Schedule 4



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199	Items 26 and 27 of Schedule 4 and item 2 of Schedule 6
200	Item 28 of Schedule 4 and item 2 of Schedule 6
201	Item 29 of Schedule 4
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220	Item 2 of Schedule 6
* 244A	Item 2 of Schedule 5
* 263 to 267	Item 1 of Schedule 9

**PART 2—CORPORATIONS LAW AMENDMENTS**

Schedules 1 to 9 to this Act amend the Corporations Law. This part of the index lists the Schedule items that amend existing sections of the Corporations Law and that insert new sections into the Corporations Law. New sections are marked with an asterisk.

<b>Corporations Law section</b>	<b>Amended/inserted by</b>
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* 58AA	Item 21 of Schedule 1
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* 1362A	Item 2 of Schedule 9
* 1399 to 1405	Item 3 of Schedule 9
Schedule 3	Item 31 of Schedule 2, item 4 of Schedule 6 and item 31 of Schedule 8

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*[Minister's second reading speech made in—  
House of Representatives on 8 June 1994  
Senate on 27 June 1994]*