



Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012

No. 155, 2012

**An Act to change the law relating to securities
issued by the Commonwealth and beneficial
interests in such securities, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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*i Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012
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**An Act to change the law relating to securities
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interests in such securities, and for related purposes**

[Assented to 17 November 2012]

The Parliament of Australia enacts:

Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012 No.
155, 2012 1

1 Short title

This Act may be cited as the *Commonwealth Government Securities Legislation Amendment (Retail Trading) Act 2012*.

2 Commencement

This Act commences on the day after this Act receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Retail trade in Commonwealth Government securities

Commonwealth Inscribed Stock Act 1911

1 Subsection 3(1)

Insert:

depository interest means a beneficial interest in stock issued by a depository nominee (as a depository nominee).

2 Subsection 3(1)

Insert:

depository interest registry operator means a person who has been engaged by a depository nominee to make payments:

- (a) on behalf of the depository nominee; and
- (b) to holders of depository interests issued by the depository nominee; and
- (c) on account of those interests.

3 Subsection 3(1)

Insert:

depository nominee means a person who, with the agreement of the Commonwealth, issues to someone else one or more beneficial interests in stock the person:

- (a) owns legally; or
- (b) would own beneficially, apart from the issue of those interests; or
- (c) has a beneficial interest in.

4 Section 6

Repeal the section.

5 After section 13

Insert:

13AA Payment of principal and interest on stock and related amounts connected with depository interests

The Consolidated Revenue Fund is appropriated to the extent necessary for the payment of:

- (a) principal secured by stock; and
- (b) interest on that principal; and
- (c) amounts that are to be paid by the Commonwealth to depository nominees or depository interest registry operators for payment by or on behalf of the depository nominees to holders of depository interests, on account of either or both of:
 - (i) principal secured by stock in which the depository interests are beneficial interests; and
 - (ii) interest on that principal.

6 Section 13A (heading)

Repeal the heading, substitute:

13A Costs and expenses relating to issue, sale and management of stock and depository interests

7 At the end of section 13A

Add:

- ; and
- (c) the costs and expenses incurred by the Commonwealth that relate directly or indirectly to the issue, management or transfer of depository interests, including but not limited to:
 - (i) fees charged by depository nominees or depository interest register operators; and
 - (ii) clearing and settlement facility fees; and
- (d) the costs and expenses incurred by the Commonwealth in relation to the making of payments by the Commonwealth described in paragraph 13AA(c), including but not limited to clearing and settlement facility fees.

7A At the end of Part II

Add:

13C Arrangements etc. relating to stock and depository interests

On behalf of the Commonwealth, the Treasurer may enter into, vary, administer or otherwise give effect to a contract, agreement or arrangement relating, directly or indirectly, to one or more of the following:

- (a) the issue, management or transfer of stock or depository interests;
- (b) the trading of stock or depository interests on a financial market;
- (c) services relating to one or more of the following:
 - (i) a registry that relates to stock or depository interests;
 - (ii) a clearing and settlement facility;
 - (iii) depository nominees.

Corporations Act 2001

8 Subsection 700(1)

After “paragraph (e)”, insert “or (f)”.

9 Section 761A

Insert:

CGS depository interest means a depository interest, as defined in the *Commonwealth Inscribed Stock Act 1911*, that can be transferred through a licensed CS facility.

10 Section 761A (at the end of subparagraph (e)(ii) of the definition of security)

Add “or”.

11 Section 761A (after paragraph (e) of the definition of security)

Insert:

- (f) a CGS depository interest;

12 Paragraph 949A(2)(c)

Repeal the paragraph, substitute:

- (c) if the advice relates to the acquisition, or possible acquisition, of a particular financial product—the client should:
 - (i) if the product is not a CGS depository interest—obtain a Product Disclosure Statement (see Division 2 of Part 7.9) relating to the product and consider the Statement before making any decision about whether to acquire the product; or
 - (ii) if the product is a CGS depository interest—obtain each information statement (see Division 5C of Part 7.9) for the class of CGS depository interests that includes the product and consider the statement before making any decision about whether to acquire the product.

13 Subsection 1010A(1)

After “5B”, insert “, 5C”.

14 After Division 5B of Part 7.9

Insert:

Division 5C—Information about CGS depository interests

1020AG Jurisdictional scope of Division

- (1) Section 1020AI applies only in relation to recommendations received in this jurisdiction.
- (2) The regulations may make provision dealing with the jurisdictional scope of some or all of the other provisions of this Division. The other provisions of this Division have effect subject to any such regulations.

1020AH Definitions

In this Division:

CGS depository interest information website means a website that is prescribed by the regulations for the purposes of this definition.

information statement for a class of CGS depository interests means a document that:

- (a) contains a statement that the document is an information statement for that class for the purposes of this Division; and
- (b) contains information about all CGS depository interests of that class (whether or not it also contains information about CGS depository interests of another class); and
- (c) is prepared by the Commonwealth; and
- (d) is published on the CGS depository interest information website.

regulated person, in relation to a CGS depository interest, means:

- (a) an issuer of the CGS depository interest; or
- (b) any financial services licensee; or
- (c) any authorised representative of a financial services licensee; or
- (d) any person who is not required to hold an Australian financial services licence because the person is covered by:
 - (i) paragraph 911A(2)(j); or
 - (ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or
 - (iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l); or
- (e) any person who is required to hold an Australian financial services licence but who does not hold such a licence.

1020AI Requirement to give information statements for CGS depository interest if recommending acquisition of interest

- (1) A regulated person must give a person (the *client*) each information statement for a class of CGS depository interests if:
 - (a) the regulated person provides financial product advice to the client that consists of, or includes, a recommendation that the client acquire a CGS depository interest of that class; and
 - (b) the financial product advice is provided to the client as a retail client; and
 - (c) the financial product advice is personal advice to the client.

Each information statement must be given at or before the time when the regulated person provides the advice and must be given in accordance with this Division.

Note: If the recommendation is to acquire CGS depository interests of a class for which there is an information statement and that is a subset of a wider class of CGS depository interests for which there is another information statement, the regulated person must give the client both information statements.

(2) However, the regulated person does not have to give the client an information statement for a class of CGS depository interests if:

- the client has already received that statement; or
- the regulated person reasonably believes that the client has received that statement.

Strict liability offence of failing to give statement

(3) A regulated person commits an offence if:

- the regulated person is required by this section to give another person an information statement for a class of CGS depository interests; and
- the regulated person does not give the other person, in accordance with section 1020AK, that statement by the time the regulated person is required to do so.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

(4) An offence based on subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

Ordinary offence of failing to give statement

(5) A regulated person commits an offence if:

- the regulated person is required by this section to give another person an information statement for a class of CGS depository interests; and
- the regulated person does not give the other person, in accordance with section 1020AK, that statement by the time the regulated person is required to do so.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2).

Defence for authorised representative

(6) In any proceedings against an authorised representative of a financial services licensee for an offence based on subsection (3) or (5), it is a defence if:

- (a) the licensee had provided the representative with information or instructions about the giving of information statements for a class of CGS depository interests; and
- (b) the representative's failure to give an information statement for that class occurred because the representative was acting in reliance on that information or those instructions; and
- (c) the representative's reliance on that information or those instructions was reasonable.

Note: A defendant bears an evidential burden in relation to the matters in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

Offence of failing to ensure authorised representative gives statement

(7) A financial services licensee commits an offence if the licensee does not take reasonable steps to ensure that an authorised representative of the licensee complies with the representative's obligations under this section to give each information statement for a class of CGS depository interests as and when required by this section.

1020AJ Information statement given must be up to date

A regulated person must not, in purported compliance with this Division, give a person at a time a document that:

- (a) purports to be an information statement for a class of CGS depository interests; and
- (b) is not an information statement for that class published at that time on the CGS depository interest information website.

Note: Failure to comply with this section is an offence (see subsection 1311(1)).

1020AK How an information statement is to be given

(1) An information statement for a class of CGS depository interests:

- (a) must be:

- (i) given to a person, or the person's agent, personally; or
- (ii) sent to the person, or the person's agent, at an address (including an electronic address) or fax number nominated by the person or the agent; and

- (b) may be printed or be in electronic form.

- (2) For the purposes of this section, the information statement is sent to a person at an address if, and only if:
 - (a) the information statement is sent to the address; and
 - (b) either:
 - (i) the envelope or other container in which the information statement is sent; or
 - (ii) the message that accompanies the information statement;

- (3) The information statement may be given or sent to the person's agent only if the agent is not acting as the person's agent in one of the following capacities:
 - (a) a financial services licensee;
 - (b) an authorised representative of a financial services licensee;
 - (c) a person who is not required to hold an Australian financial services licence because the person is covered by:
 - (i) paragraph 911A(2)(j); or
 - (ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or
 - (iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l);
 - (d) a person who is required to hold an Australian financial services licence but who does not hold such a licence;
 - (e) an employee, director or other representative of a person referred to in paragraph (a), (b), (c) or (d).

- (4) The regulations may provide for other ways of giving an information statement for a class of CGS depository interests.
- (5) The regulations may specify requirements as to the manner in which an information statement for a class of CGS depository interests may be given to a person. The giving of the information statement is not effective unless those requirements are satisfied.

1020AL Civil action for loss or damage

(1) A person (the *client*) who suffers loss or damage for a reason described in column 1 of an item of the table may recover the amount of the loss or damage by action begun against a person indicated in column 2 of that item within 6 years after the loss or damage was suffered.

| Recovery of amount of loss or damage | |
|--|---|
| Column 1 Reason for loss or damage | Column 2 Person amount may be recovered from |
| 1 The client was not given an information statement for a class of CGS depository interests as and when required by this Division | The person required to give the statement or, if that person was an authorised representative of a financial services licensee, each such licensee responsible for the person's conduct (see subsection (2)) |
| 2 The client was given at a time, in purported compliance with this Division, a document that: <ul style="list-style-type: none"> (a) purported to be an information statement for a class of CGS depository interests; and (b) was not an information statement for that class that was published at that time on the CGS depository interest information website | Each person who: <ul style="list-style-type: none"> (a) directly or indirectly caused or contributed to the giving of the document; and (b) did not take reasonable steps to ensure that the document given would be an information statement published at that time on the CGS depository interest information website |

(2) A financial services licensee is responsible for the conduct of an authorised representative of the licensee for the purposes of item 1 of the table in subsection (1), and the authorised representative is not liable under that item, if:

- (a) the authorised representative is not an authorised representative of any other financial services licensee; or
- (b) the licensee is responsible (alone or jointly and severally with other financial services licensees) for the authorised representative's conduct under section 917C, disregarding sections 917D and 917F.

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

Other orders

(4) The court dealing with an action under subsection (1) may, in addition to awarding loss or damage under that subsection and if it thinks it necessary in order to do justice between the parties:

- (a) make an order declaring void a contract entered into by the client referred to in that subsection for or relating to a financial product or a financial service; and
- (b) if it makes an order under paragraph (a)—make such other order or orders as it thinks are necessary or desirable because of that order.

(5) Without limiting paragraph (4)(b), the orders that may be made under that paragraph include (but are not limited to) an order for the return of money paid by a person, and/or an order for payment of an amount of interest specified in, or calculated in accordance with, the order.

15 After paragraph 1073A(1)(d)

Insert:

(da) a CGS depository interest;

16 Subsection 1073E(1) (note)

Omit “(d)”, substitute “(da)”.

17 Schedule 3 (after table item 300AD)

Insert:

| | | |
|-------|----------------------|---|
| 300AE | Subsection 1020AI(3) | 50 penalty units. |
| 300AF | Subsection 1020AI(5) | 100 penalty units or imprisonment for 2 years, or both. |
| 300AG | Subsection 1020AI(7) | 200 penalty units or imprisonment for 5 years, or both. |
| 300AH | Section 1020AJ | 100 penalty units or imprisonment for 2 years, or both. |

Schedule 2—Minor amendments

Commonwealth Inscribed Stock Act 1911

1 Section 51JA (heading)

Repeal the heading, substitute:

51JA Delegation by Treasurer

2 Subsection 51JA(1)

Omit “section 3A”, substitute “sections 3A, 13C, 14, 27, 29 and 55”.

3 Saving of delegations

The amendment of subsection 51JA(1) of the *Commonwealth Inscribed Stock Act 1911* made by this Schedule does not affect the validity of a delegation in force under that subsection immediately before the commencement of the amendment.

4 Section 51K

Repeal the section.

5 Transitional provision for delegations under section 51K

(1) This item applies to a delegation that:

- (a) was in force under section 51K of the *Commonwealth Inscribed Stock Act 1911* immediately before the repeal of that section by this Schedule; and
- (b) delegated the Treasurer’s power under section 14 or 29 of that Act to:
 - (i) an SES employee in the Department; or
 - (ii) an APS employee who holds or performs the duties of an Executive Level 2, or equivalent, position in the Department; or
 - (iii) a person appointed as a staff member of the Reserve Bank Service under section 67 of the *Reserve Bank Act 1959* who occupies an office or position at an equivalent

level to that of an SES employee, or an Executive Level 2, in the Department.

(2) The delegation has effect after the repeal as if the delegation had been made under subsection 51JA(1) of the *Commonwealth Inscribed Stock Act 1911* as amended by this Schedule.

6 Subsection 52B(1)

Repeal the subsection.

7 Subsection 52B(2)

Omit “(2)”.

8 Subsection 52B(3)

Repeal the subsection.

9 Section 57B

Repeal the section.

*[Minister’s second reading speech made in—
House of Representatives on 27 June 2012
Senate on 13 September 2012]*