



Corporations and Financial Sector Legislation Amendment Act 2013

No. 59, 2013

**An Act to amend the law relating to corporations
and the financial sector, and for other purposes**

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

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Amendments		3
Part 1—Payment systems and netting		3
	<i>Payment Systems and Netting Act 1998</i>	3
Part 2—Review of licences		6
	<i>Corporations Act 2001</i>	6
Part 3—International business regulators		8
	<i>Australian Securities and Investments Commission Act 2001</i>	8
	<i>Mutual Assistance in Business Regulation Act 1992</i>	9
Part 4—Reporting on ASIC’s information gathering powers		11
	<i>Australian Securities and Investments Commission Act 2001</i>	11
Part 5—Disclosure of information by the Reserve Bank		12
	<i>Reserve Bank Act 1959</i>	12
Part 6—Consequential amendments relating to derivative trade repositories		14
	<i>Carbon Credits (Carbon Farming Initiative) Act 2011</i>	14
	<i>Clean Energy Regulator Act 2011</i>	14
	<i>Corporations Act 2001</i>	15
Part 7—Other amendments		16
	<i>Corporations Act 2001</i>	16



Corporations and Financial Sector Legislation Amendment Act 2013

No. 59, 2013

An Act to amend the law relating to corporations and the financial sector, and for other purposes

[Assented to 21 June 2013]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Corporations and Financial Sector
Legislation Amendment Act 2013*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	21 June 2013
2. Schedule 1	The 28th day after this Act receives the Royal Assent.	19 July 2013

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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—Amendments

Part 1—Payment systems and netting

Payment Systems and Netting Act 1998

1 After paragraph 16(1)(c)

Insert:

- (ca) any security given, in accordance with the contract, in respect of obligations of a party to the contract may be enforced in accordance with the contract;
- (cb) rights and obligations of a party to the contract may be transferred in accordance with the contract;
- (cc) without limiting paragraph (cb):
 - (i) property (including property over which security has been given) of a party to the contract may be transferred or otherwise dealt with in accordance with the contract; and
 - (ii) property (including property over which security has been given) of another person on whose behalf a party to the contract is acting may, with that other person's prior written consent, be transferred or otherwise dealt with in accordance with the contract;

2 Paragraph 16(1)(d)

Omit “paragraph (c) applies”, substitute “paragraphs (c), (ca), (cb) and (cc) apply”.

3 After subparagraph 16(1)(d)(i)

Insert:

- (ia) any disposal of rights or property that may be transferred in accordance with the contract; or

4 Subparagraphs 16(1)(d)(ii) and (iii)

After “those rights”, insert “or that property”.

5 After paragraph 16(2)(f)

Insert:

Schedule 1 Amendments

Part 1 Payment systems and netting

- (fa) any security given by the party, in accordance with the contract, in respect of obligations of a party to the contract may be enforced in accordance with the contract;
- (fb) rights and obligations of the party may be transferred in accordance with the contract;
- (fc) without limiting paragraph (fb):
 - (i) property (including property over which security has been given) of the party may be transferred or otherwise dealt with in accordance with the contract; and
 - (ii) property (including property over which security has been given) of another person on whose behalf the party is acting may, with that other person's prior written consent, be transferred or otherwise dealt with in accordance with the contract;

6 At the end of paragraph 16(2)(g) (before the note)

Add:

- ; (iv) the enforcement of a security in accordance with the contract;
- (v) a transfer of, or dealing with, rights, obligations or property in accordance with the contract.

7 At the end of section 16 (after the note)

Add:

- (4) A reference in this section to things done, or that may be done, in accordance with a contract is taken to include things done, or that may be done, in accordance with any security given in accordance with the contract.

8 Application of amendments

- (1) In this item:
start time means the commencement of this Part.
- (2) The amendments made by this Part apply in relation to market netting contracts entered into after the start time, or that are in existence immediately before the start time.
- (3) The amendments made by this Part do not apply in relation to an external administration that commenced before the start time.

- (4) The amendments made by this Part apply in relation to the enforcement of a security after the start time, even if the security was given before the start time.
- (5) The amendments made by this Part apply in relation to a transfer of, or dealing with, rights, obligations or property after the start time, even if those rights, obligations or property arose or were acquired before the start time.
- (6) The amendments made by items 2, 3 and 4 do not apply to disposals of rights or property, or the creation or operation of encumbrances or interests, before the start time.
- (7) This item has effect subject to item 9.

9 Amended provisions do not have effect to extent they result in an acquisition of property

- (1) In this item:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.
just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.
- (2) This item applies if, because of an amendment made by this Part, the operation of a provision of the *Payment Systems and Netting Act 1998* would (but for this item) result in an acquisition of property otherwise than on just terms.
- (3) That provision of the *Payment Systems and Netting Act 1998* does not apply to the extent that its operation would otherwise so result in that acquisition of property.

Part 2—Review of licences

Corporations Act 2001

10 Section 794C (heading)

Repeal the heading, substitute:

794C ASIC assessment of licensee's compliance

11 Subsection 794C(2)

Repeal the subsection, substitute:

- (2) If the market licensee is prescribed by the regulations for the purpose of this subsection, ASIC must, in respect of the obligation in paragraph 792A(c), do such an assessment at least once a year.

12 Section 823C (heading)

Repeal the heading, substitute:

823C ASIC assessment of licensee's compliance

13 Subsection 823C(2)

Repeal the subsection, substitute:

- (2) If the CS facility licensee is prescribed by the regulations for the purpose of this subsection, ASIC must, in respect of the obligation in paragraph 821A(c), do such an assessment at least once a year.

14 Section 823CA (heading)

Repeal the heading, substitute:

823CA Reserve Bank assessment of licensee's compliance

15 Subsection 823CA(1)

Repeal the subsection, substitute:

- (1) The Reserve Bank of Australia (the *Reserve Bank*) may do an assessment of how well a CS facility licensee is complying with its obligation under paragraph 821A(aa). In doing the assessment, the

Reserve Bank may take account of any information and reports that it thinks appropriate, including information and reports from an overseas regulatory authority.

- (1A) If the CS facility licensee is prescribed by the regulations for the purpose of this subsection, the Reserve Bank must do such an assessment at least once a year.

Part 3—International business regulators

Australian Securities and Investments Commission Act 2001

16 Subsection 5(1)

Insert:

foreign business law means:

- (a) a law of a foreign country that regulates, or relates to the regulation of, business or persons engaged in business; or
- (b) a law, or rules or regulations (however described), that an international business regulator administers or enforces.

17 Subsection 5(1)

Insert:

international business regulator means a body that satisfies the following conditions:

- (a) the body has functions relating to the regulation, in 2 or more countries, of business, or persons engaged in business;
- (b) those functions are conferred on the body by:
 - (i) a law or laws in force in those countries; or
 - (ii) a treaty, or other international agreement, to which those countries are parties; or
 - (iii) without limiting subparagraphs (i) and (ii)—a parliament or other body established by or under a treaty, or other international agreement, to which those countries are parties.

18 After paragraph 127(4)(ca)

Insert:

- (cb) will enable or assist an international business regulator to perform its functions or exercise its powers; or

19 Subsection 127(4)

Omit “the agency, government, foreign body or disciplinary body”, substitute “the agency, government, officer or body”.

20 Subparagraphs 127(4B)(a)(ia) and (4FA)(b)(iii)

Omit “the business law of a foreign country”, substitute “a foreign business law”.

21 Subparagraph 243(a)(ii)

Repeal the subparagraph, substitute:

- (ii) the operation of the corporations legislation (other than the excluded provisions); or
- (iii) the operation of any other law of the Commonwealth, or any law of a State or Territory, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); or
- (iv) the operation of any foreign business law, or of any other law of a foreign country, that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and

Mutual Assistance in Business Regulation Act 1992

22 Subsection 3(1) (definition of *foreign business law*)

Repeal the definition, substitute:

foreign business law means:

- (a) a business law of a foreign country; or
- (b) a law, or rules or regulations (however described), that an international business regulator administers or enforces.

23 Subsection 3(1) (at the end of the definition of *foreign regulator*)

Add:

; or (d) an international business regulator.

24 Subsection 3(1)

Insert:

international business regulator means a body that satisfies the following conditions:

Schedule 1 Amendments

Part 3 International business regulators

- (a) the body has functions relating to the regulation, in 2 or more countries, of business, or persons engaged in business;
- (b) those functions are conferred on the body by:
 - (i) a law or laws in force in those countries; or
 - (ii) a treaty, or other international agreement, to which those countries are parties; or
 - (iii) without limiting subparagraphs (i) and (ii)—a parliament or other body established by or under a treaty, or other international agreement, to which those countries are parties.

Part 4—Reporting on ASIC's information gathering powers

Australian Securities and Investments Commission Act 2001

25 At the end of subsection 136(2)

Add:

- ; (k) information required to be included in the report by regulations under subsection (2A).

26 After subsection 136(2)

Insert:

- (2A) The regulations may require a report under subsection (1) to include prescribed information relating to the exercise, by ASIC, members of ASIC, or staff members, of prescribed information gathering powers. For this purpose, *information gathering powers* includes (but is not limited to) powers to require:
- (a) the provision of information (however described, including by answering questions or giving evidence); or
 - (b) the production of documents; or
 - (c) the provision of assistance.

Note: The information gathering powers that are prescribed may be powers conferred by this Act, or by other laws.

Part 5—Disclosure of information by the Reserve Bank

Reserve Bank Act 1959

27 Subsection 79A(1) (paragraph (e) of the definition of officer)

After “employment” (wherever occurring), insert “or engagement”.

28 At the end of paragraph 79A(4)(b)

Add “or”.

29 After paragraph 79A(4)(b)

Insert:

- (c) any other person or body (including a foreign person or body) prescribed by the regulations;

30 Subsection 79A(4)

Omit all the words from and including “if the person” to and including “its powers”, substitute “if the first person is satisfied that disclosure of the information, or the production of the document, will assist that agency or bank, or that other person or body, to perform its functions or exercise its powers”.

31 After subsection 79A(4)

Insert:

- (5) Subsection (2) does not prohibit a person from disclosing protected information or producing a protected document to a person or body (including a foreign person or body) if the disclosure or production to that person or body is approved in writing by the Governor.
- (5A) An approval under subsection (5) is not a legislative instrument.
- (5B) The Governor may, in writing, delegate to the Deputy Governor, or an Assistant Governor of the Reserve Bank, the power to give approvals under subsection (5).

32 After subsection 79A(7)

Insert:

- (7A) If a person discloses information or produces a document under this section to another person, the first person may, by notice in writing given to the other person at the time of the disclosure or production, impose conditions to be complied with in relation to the information disclosed or the document produced.
- (7B) A notice under subsection (7A) is not a legislative instrument.
- (7C) A person commits an offence if the person fails to comply with a condition imposed under subsection (7A).

Penalty: Imprisonment for 2 years.

Part 6—Consequential amendments relating to derivative trade repositories

Carbon Credits (Carbon Farming Initiative) Act 2011

33 Subparagraph 277(1)(a)(ii)

After “Australian CS facility licence”, insert “or an Australian derivative trade repository licence, or that operates a prescribed derivative trade repository”.

34 After paragraph 277(9)(a)

Insert:

(aa) *Australian derivative trade repository licence*;

35 At the end of subsection 277(9)

Add:

; (e) *prescribed derivative trade repository*.

Clean Energy Regulator Act 2011

36 Subparagraph 50(1)(a)(ii)

After “Australian CS facility licence”, insert “or an Australian derivative trade repository licence, or that operates a prescribed derivative trade repository”.

37 After paragraph 50(8)(a)

Insert:

(aa) *Australian derivative trade repository licence*;

38 At the end of subsection 50(8)

Add:

; (e) *prescribed derivative trade repository*.

Corporations Act 2001

39 Section 9

Insert:

prescribed derivative trade repository, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

Part 7—Other amendments

Corporations Act 2001

40 Section 1317DA

Repeal the section, substitute:

1317DA Definitions

In this Act:

corporation/scheme civil penalty provision means a provision specified in column 1 of any of the following items of the table in subsection 1317E(1):

- (a) items 1 to 13;
- (b) item 46.

financial services civil penalty provision means a provision specified in column 1 of any of the following items of the table in subsection 1317E(1):

- (a) item 14;
- (b) items 23 to 45.

41 Subsection 1317E(1)

Repeal the subsection, substitute:

- (1) If a Court is satisfied that a person has contravened a civil penalty provision, it must make a declaration of contravention. The provisions specified in column 1 of the following table are ***civil penalty provisions***.

Civil penalty provisions		
Item	Column 1 provisions that are civil penalty provisions	Column 2 brief description of what the provisions are about
1	subsections 180(1), 181(1) and (2), 182(1) and (2) and 183(1) and (2)	officers' duties
2	subsections 188(1) and (2)	responsibilities of secretaries etc. for

Civil penalty provisions		
Item	Column 1 provisions that are civil penalty provisions	Column 2 brief description of what the provisions are about
		corporate contraventions
3	subsection 209(2)	related parties rules
4	subsections 254L(2), 256D(3), 259F(2) and 260D(2)	share capital transactions
5	subsection 344(1)	requirements for financial reports
6	subsection 588G(2)	insolvent trading
7	subsection 601FC(5)	duties of responsible entity
8	subsection 601FD(3)	duties of officers of responsible entity
9	subsection 601FE(3)	duties of employees of responsible entity
10	subsection 601FG(2)	acquisition of interest in scheme by responsible entity
11	subsection 601JD(3)	duties of members
12	subsection 601UAA(2)	duties of officers of licensed trustee company
13	subsection 601UAB(2)	duties of employees of licensed trustee company
14	subsections 674(2), 674(2A), 675(2) and 675(2A)	continuous disclosure
15	subsection 798H(1)	complying with market integrity rules
16	section 901E	complying with derivative transaction rules
17	section 903D	complying with derivative trade repository rules
18	subsections 961K(1) and (2)	financial services licensee responsible for breach of certain best interests duties
19	section 961L	financial services licensee to ensure compliance with certain best interests duties
20	subsection 961Q(1)	authorised representative responsible for breach of certain best interests duties
21	section 962P	charging ongoing fee after termination

Schedule 1 Amendments
Part 7 Other amendments

Civil penalty provisions		
Item	Column 1 provisions that are civil penalty provisions	Column 2 brief description of what the provisions are about
		of ongoing fee arrangement
22	subsection 962S(1)	fee recipient must give fee disclosure statement
23	subsections 963E(1) and (2)	financial services licensee responsible for breach of ban on conflicted remuneration
24	section 963F	financial services licensee must ensure representatives do not accept conflicted remuneration
25	subsection 963G(1)	authorised representative must not accept conflicted remuneration
26	section 963J	employer must not pay employees conflicted remuneration
27	section 963K	financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative
28	subsection 964A(1)	platform operator must not accept volume-based shelf-space fees
29	subsections 964D(1) and (2)	financial services licensee responsible for breach of asset-based fees on borrowed amounts
30	subsection 964E(1)	authorised representative must not charge asset-based fees on borrowed amounts
31	section 965	anti-avoidance of Part 7.7A provisions
32	subsection 985E(1)	issuing or increasing limit of margin lending facility without having made assessment etc.
33	subsection 985H(1)	failure to assess a margin lending facility as unsuitable
34	subsection 985J(1)	failure to give assessment to retail client if requested before issue of facility or increase in limit
35	subsection 985J(2)	failure to give assessment to retail

Civil penalty provisions		
Item	Column 1 provisions that are civil penalty provisions	Column 2 brief description of what the provisions are about
		client if requested after issue of facility or increase in limit
36	subsection 985J(4)	demanding payment to give assessment to retail client
37	subsection 985K(1)	issuing or increasing limit of margin lending facility if unsuitable
38	section 985L	making issue of margin lending facility conditional on retail client agreeing to receive communications through agent
39	subsection 985M(1)	failure to notify of margin call where there is no agent
40	subsection 985M(2)	failure to notify of margin call where there is an agent
41	section 1041A	market manipulation
42	subsection 1041B(1)	false trading and market rigging—creating a false or misleading appearance of active trading etc.
43	subsection 1041C(1)	false trading and market rigging—artificially maintaining etc. market price
44	section 1041D	dissemination of information about illegal transactions
45	subsections 1043A(1) and (2)	insider trading
46	subclause 29(6) of Schedule 4	disclosure for proposed demutualisation
	Note 1:	Once a declaration has been made ASIC can then seek a pecuniary penalty order (section 1317G) or (in the case of a corporation/scheme civil penalty provision) a disqualification order (section 206C).
	Note 2:	The descriptions of matters in column 2 are indicative only.

*[Minister's second reading speech made in—
House of Representatives on 20 March 2013
Senate on 17 June 2013]*

(83/13)

20 *Corporations and Financial Sector Legislation Amendment Act 2013* No. 59, 2013