

2000

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**TREASURY LEGISLATION AMENDMENT
(APPLICATION OF CRIMINAL CODE) BILL 2000**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Financial Services and Regulation,
the Hon Joe Hockey, MP)

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TREASURY LEGISLATION AMENDMENT (APPLICATION OF THE CRIMINAL CODE) ACT 2000

GENERAL OUTLINE

The purpose of this bill is to make consequential amendments to certain offence provisions in legislation administered by the Treasurer to reflect the application of the *Criminal Code Act 1995*.

The Criminal Code Act 1995

The *Criminal Code Act 1995* (the Code) is a Commonwealth Act which will alter the way in which criminal offence provisions are interpreted, including offences contained in legislation for which the Treasury portfolio is responsible. While the Code was passed in 1995, it commenced to apply to new offences from 1 January 1997, and all new offences are now drafted according to the requirements of the Code. Staggered implementation was considered necessary in relation to existing offences to provide departments with sufficient time to assess the effect of the Code on their offence provisions, and to make any amendments necessary to their legislation. The Code is scheduled to apply to pre-existing offences from 15 December 2001.

If legislation containing offence provisions is not amended to have regard to the Code, the Code may alter the interpretation of existing offence provisions.

The Code contains subjective, fault-based principles of criminal responsibility. The defendant's guilt will depend on what he or she thought or intended at the time of the offence, rather than what a 'reasonable person' would have thought or intended in the defendant's circumstances. The changes to be brought about by the Code reflect the view that proof of a 'guilty mind' is generally necessary before a person can be found guilty of an offence.

The most significant effect of the Code is that it clarifies the traditional distinction between the *actus reus* (the physical act, now referred to as the 'physical element') and the *mens rea* (what the defendant thought or intended, now referred to as the 'fault element') and sets out this distinction in the Code.

The prosecution bears the onus of proving each of the physical elements. The physical elements provided in the Code are the conduct, the circumstance in which it occurs, and the result of the conduct. Each offence must contain at least one of these physical elements, but any combination of physical elements may be present in an offence provision. For every physical element of an offence, the prosecution must also prove a corresponding fault element. The Code does not prevent an offence from specifying an alternative fault element, but the Code indicates that the default fault element will apply in the absence of a specified fault element. The Code establishes four default fault elements: intention, knowledge, recklessness and negligence. The Code provides that for conduct, the default fault element is intention. For circumstance or result, the default fault element is recklessness.

Amendments Arising from this Bill

The Treasury Legislation (Application of Criminal Code) Bill 2000 makes amendments to the *Financial Sector Shareholdings Act 1998*, *Foreign Acquisitions and Takeovers Act 1975*, *Insurance Act 1973*, *Insurance Acquisitions and Takeovers Act 1991*, *Life Insurance Act 1995*, *Prices Surveillance Act 1983*, *Productivity Commission Act 1998*, *Retirement Savings Accounts Act 1997*,

the *Superannuation Industry (Supervision) Act 1993*, the *Productivity Commission Act 1998*, and aspects of the *Trade Practices Act 1974* which do not require consultation with the States.

Amendments arise from:

- Specifying the physical elements of an offence and corresponding fault elements (where these fault elements vary from those specified by the Code);
- Specifying that an offence is one of strict or absolute liability; and

Converting penalties expressed as dollar amounts to penalty units.

In addition, the Bill makes a number of amendments to the Corporations Law made necessary by changes included in the *Corporate Law Economic Reform Program Act 1999*.

It is proposed to introduce a second bill in the Spring Sittings to make consequential amendments to taxation laws, the Corporations Law, the *Australian Securities and Investments Commission Act 1989*, and aspects of the *Trade Practices Act 1974* which require consultation with the States, reflecting the application of the Criminal Code to these acts

FINANCIAL IMPACT STATEMENT

As the bill makes consequential amendments to the criminal law there is no financial impact.

NOTES ON INDIVIDUAL CLAUSES

Clause 1 – Short title

This clause provides the short title by which the Act may be cited.

Clause 2 - Commencement

Subclause (1) provides that Items 1 to 4 (inclusive) of Schedule 1 (which relate to the *Financial Sector Shareholdings Act 1998*) and all of Schedule 2 (which relates to the Corporations Law) commence on the day the Act receives the Royal Assent.

Subclause (2) provides that if Section 9A of the *Superannuation Industry (Supervision) Act 1993* commences before the day this Act receives the Royal Assent, items 171 and 172 of Schedule 1 commence on the day this Act receives the Royal Assent. Section 9A of the *Superannuation Industry (Supervision) Act 1993* relates to the application of the criminal code.

Subclause (3) provides that if Section 9A of the *Superannuation Industry (Supervision) Act 1993* has not commenced before the day this Act receives the Royal Assent, then items 171 and 172 of Schedule 1 do not commence until immediately after the commencement of Section 9A of the *Superannuation Industry (Supervision) Act 1993*.

Subclause (4) provides that the remaining items in Schedule 1 commence on Act on the day specified in subsection 2.2(2) of the *Criminal Code*. This is 15 December 2001.

Clause 3 – Schedule(s)

This clause makes it clear that any Act specified in the Schedules is amended or repealed as set out in the relevant Schedule, and the Schedules may also contain other provisions.

SCHEDULE 1 – AMENDMENT OF ACTS

Financial Sector Shareholdings Act 1999

Item 1 – Paragraph 24(3)(b)

This item inserts the words “intentionally or” into paragraph 24(3)(b). A definition of recklessness is being inserted into section 24 (see item 2) such that the definition of recklessness in section 5.4 of the *Criminal Code* will not apply to subsection 24(3). Subsection 5.4(4) of the *Criminal Code* provides that proof of intention will satisfy the fault element, if recklessness is a fault element for a physical element of an offence. Given that subsection 5.4(4) will not apply in relation to subsection 24(3), it is necessary to make specific reference to intention as a fault element in paragraph 24(3)(b).

Item 2 – New subsections 24(4) and (5)

This item inserts new subsections 24(4) and (5), which define when a person is taken to be reckless for the purposes of the offence in subsection 24(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 24(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 3 – Paragraph 26(4)(b)

This item inserts the words “intentionally or” into paragraph 26(4)(b). A definition of recklessness is being inserted into section 26 (see item 4) such that the definition of recklessness in section 5.4 of the *Criminal Code* will not apply to subsection 26(4). Subsection 5.4(4) of the *Criminal Code* provides that proof of intention will satisfy the fault element, if recklessness is a fault element for a physical element of an offence. Given that subsection 5.4(4) will not apply in relation to subsection 26(4), it is necessary to make specific reference to intention as a fault element in paragraph 26(4)(b).

Item 4 – New subsections 26(4A) and (4B)

This item inserts new subsections 26(4A) and (4B), which define when a person is taken to be reckless for the purposes of the offence in subsection 26(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 26(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Foreign Acquisitions and Takeovers Act 1975

Item 5 – Subsection 25(1C)

Subsection 25(1C) of *Foreign Acquisitions and Takeovers Act 1975* (FATA) is being repealed and replaced. For ease of comprehension the replacement provision is split into two subsections – 25(1C) and 25(1D). The substance of the offence remains the same but the physical elements of the offence are clarified so that contravention of a condition in the advice given to a person or corporation forms a physical element of result rather than part of the physical element of conduct. Both subsections 25(1C) and 25(1D) replace the references to “conditions” in the current subsection

25(1C) with references to “condition” thereby clarifying the original intention of the offence that the offence has been committed where a person has contravened any one of the conditions in the advice.

The current subsection 25(1C)(c) proscribes maximum fines of \$50,000 for natural persons and \$250,000 for corporations. These fines are converted into penalty units consistent with the current policy of the *Crimes Act 1914*. At the time of amendment one penalty unit is equal to \$110. The specific reference to penalties for corporations is retained because the specific wording of the original subsection provides that “a person or corporation” may commit the offence. The *Crimes Act 1914* penalty unit provisions do not require specific reference to corporations because they provide that 5 times the maximum number of penalty units applicable to a natural person is the maximum penalty that may be imposed on a body corporate. However to rely on this formula in the amended provision rather than restate the terms of the original penalty in penalty units could lead to an interpretation that parliament had a contrary intention to that in the original penalty provision. The reason that a different approach has been taken in clauses 2-4 below (the penalty provisions of which do not specifically refer to the maximum penalty units applicable where a body corporate commits the offence) is because the original sections being amended by clauses 2-4 provide that “a person” (rather than “a person or a corporation”) commits the offence and they rely on internal definitions in the sections or on the *Crimes Act 1914* to achieve the result that “person” includes a body corporate as well as a natural person.

Item 6 – Subsection 26(2)

The offence in subsection 26(2) of *FATA* currently provides that the maximum pecuniary penalty which a court may impose is \$50,000 for natural persons and \$250,000 for corporations. This is converted to 500 penalty units which will be the maximum penalty for a natural person. At time of amendment, one penalty unit is equal to \$110 for a natural person. The reference to a fine not exceeding \$250,000 for corporations is deleted in reliance on the provisions in subsection 4B(3) of the *CA* which allows for corporations to be fined a sum up to 5 times the maximum pecuniary penalty applied to natural persons without requiring any reference to corporations in the subsection.

Item 7 – Subsection 26(2)

The offence in subsection 26A(2) of *FATA* is amended in exactly the same form as Clause 6.

Item 8 – Subsection 26A(2)

The offence in subsection 30(4) of *FATA* is amended in exactly the same form as Clause 6.

Item 9 – Subsection 30(4)

Section 32 of *FATA* is being repealed in order to be consistent with the policy of the *Criminal Code*, namely that the prosecution should prove all elements of an offence especially where knowledge is one of the elements. Section 32 provides a defence to a section 30 or 31 (*FATA*) prosecution. Previously, section 32 placed the legal burden on the defendant to prove a lack of knowledge of a fact necessary to constitute the offence. Amending section 32 to replace the legal burden with the lighter evidentiary burden would still have been contrary to the policy of the *Criminal Code* that the prosecution be required to prove all the elements of an offence. Hence, the best available option was to repeal section 32 in its entirety.

Item 10 – Subsection 36(2)

Subsection 36(2) of *FATA* is being repealed and replaced with two subsections for ease of comprehension.

New subsection 36(2) restates the offence currently set out in subsection 36(2), while the current penalty of \$2,000 is converted to 20 penalty units for a natural person. New subsection 36(2A) is designed to make it clear that there is a defence to the offence in subsection 36(2).

An explanatory note is being inserted after subsection 36(2A). The note indicates that there is an evidential burden on a defendant to prove the defence contained in subsection 36(2A). The nature of the defence (that the person has complied with the notice to the extent which the person is capable of complying) is consistent with *Criminal Code* policy that the prosecution prove the elements of an offence because the extent of the defendant's capacity to comply with the notice is a matter which is peculiarly within the knowledge of the defendant.

Insurance Act 1973

Item 11 – New subsection 21(4)

This item adds a new subsection 21(4) specifying that the offences in subsections 21(1), (2) and (3) are offences of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 12 – New subsection 31(3G)

This item inserts a new subsection 31(3G) specifying that the offence in subsection 31(3F) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 13 – Subsection 34A(10)

This item inserts a note after subsection 34A(10) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 14 – New subsections 34A(10A) and (10B)

This item inserts new subsections 34A(10A) and (10B), which define when a body corporate is taken to be reckless for the purposes of the offence in subsection 34A(10). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 34A(10) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 15 – New subsection 37(7)

This item adds a new subsection 37(7) specifying that the offence in subsection 37(6) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability, and the evidential burden on a defendant in relation to the matters in paragraphs 37(6)(a) and (b).

Item 16 – New subsection 40(6)

This item adds a new subsection 40(6) specifying that the offence in subsection 40(5) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability, and the evidential burden on a defendant in relation to the matters in subsection 40(5).

Item 17 – New subsection 44(10)

This item adds a new subsection 44(10) specifying that the offence in subsection 44(9) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 18 – New subsection 48(2)

This item adds a new subsection 48(2) specifying that the offence in subsection 48(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 19 – New subsection 48A(9A)

This item inserts a new subsection 48A(9A) specifying that the offence in subsection 48A(9) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 20 – New subsection 49F(11A)

This item inserts a new subsection 49F(11A) specifying that the offence in subsection 49F(11) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 21 – New subsection 49J(10)

This item adds a new subsection 49J(10) specifying that the offence in subsection 49J(9) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 22 – New subsection 49N(2)

This item adds a new subsection 49N(2) specifying that the offence in subsection 49N(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 23 – New subsection 51(8)

This item adds a new subsection 51(8) specifying that the offence in subsection 51(7) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 24 – New subsection 62(10A)

This item inserts a new subsection 62(10A) specifying that the offences in subsections 62(9) and (10) are offences of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability, and the evidential burden on a defendant in relation to the matter in paragraph 62(10)(a).

Item 25 – New subsection 113(1A)

This item inserts a new subsection 113(1A) specifying that the offence in subsection 113(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 26 – New subsection 117A(4A)

This item inserts a new subsection 117A(4A) specifying that the offences in subsections 117A(3) and (4) are offences of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 27 – Subsection 117A(5)

This item adds a note after subsection 117A(5) drawing attention to the legal burden on a defendant in relation to the matters in subsection 117A(5).

Item 28 – Subsection 128(1)

This item deletes the word “knowingly” from subsection 128(1), to make the provision consistent with the principles of the *Criminal Code*.

Insurance Acquisitions and Takeovers Act 1991

Item 29 – New subsection 76(10)

This item inserts a new subsection 76(10), which provides that Part 2.5 of the *Criminal Code*, dealing with corporate criminal responsibility, does not apply in relation to an offence against the Act. Section 76 of the Act, which also contains provisions dealing with criminal responsibility of bodies corporate, will continue to apply.

Life Insurance Act 1995

Items 30 and 31 – New subsections 16E(1A) and (7A)

These items insert new subsections 16E(1A) and (7A) specifying that the offences in subsections 16E(1) and (7) are offences of strict liability. The items also insert notes after the respective subsections drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 32 – New subsection 16L(5)

This item adds a new subsection 16L(5) specifying that the offence in subsection 16L(4) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 33 – New subsection 16M(4)

This item adds a new subsection 16M(4) specifying that the offence in subsection 16M(3) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 34 – New subsection 16Q(5)

This item adds a new subsection 16Q(5) specifying that the offence in subsection 16Q(4) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 35 – New subsection 16R(7)

This item adds a new subsection 16R(7) specifying that the offence in subsection 16R(6) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 36 – New subsection 16S(4)

This item adds a new subsection 16S(4) specifying that the offence in subsection 16S(3) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 37 – New subsection 16U(5)

This item adds a new subsection 16U(5) specifying that the offence in subsection 16U(4) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 38 – New subsection 16V(8)

This item adds a new subsection 16V(8) specifying that the offence in subsection 16V(7) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 39 – New subsection 16W(4)

This item adds a new subsection 16W(4) specifying that the offence in subsection 16W(3) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the

provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 40 – New subsection 28(2)

This item adds a new subsection 28(2) specifying that the offence in subsection 28(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 41 – Subsection 147(1)

This item adds a note after subsection 147(1) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 42 – New subsections 147(1A) and (1B)

This item inserts new subsections 147(1A) and (1B), which define when a person is taken to be reckless for the purposes of the offence in subsection 147(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 147(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Items 43 and 44 – Subsection 147(3)

These items respectively renumber the existing note after subsection 147(3) as ‘Note 1’, and insert a second note drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 45 – Subsection 150(10)

This item inserts a note after subsection 150(10) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 46 – New subsections 150(10A) and (10B)

This item inserts new subsections 150(10A) and (10B), which define when a person is taken to be reckless for the purposes of the offence in subsection 150(10). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 150(10) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 47 – New subsection 151(6)

This item adds a new subsection 151(6) specifying that the offence in subsection 151(5) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 48 – New subsection 180(5)

This item adds a new subsection 180(5) specifying that the offence in subsection 180(4) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the

provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Items 49, 50 and 51 – Subsections 216(2), (5) and (9)

These items insert notes after subsections 216(2), (5) and (9) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 52 – New subsections 216(9A) and (9B)

This item inserts new subsections 216(9A) and (9B), which define when a person is taken to be reckless for the purposes of the offences in subsections 216(2), (5) or (9). The subsections add to the definition of recklessness in the *Criminal Code*. The offences in subsections 216(2), (5) or (9) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offences.

Items 53 and 54 – New subsections 230F(1A) and (3A)

These items insert new subsections 230F(1A) and (3A) specifying that the offences in subsections 230F(1) and (3) are offences of strict liability. The items also insert notes after the respective subsections drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 55 – New subsections 245(2), (3) and (3A)

This item repeals the existing subsections 245(2) and (3) and replaces them with new subsections. The practical effect of the new subsections is to split up the various elements of existing subsection 245(2).

New subsection 245(2) provides that a disqualified person must not be the director, principal executive officer or the appointed actuary of a company registered under the Act. New subsection 245(3) provides that a disqualified person must not act as the director, principal executive officer or the appointed actuary of a company registered under the Act.

The reason for separating these elements is that the offence in new subsection 245(2) constitutes a ‘state of affairs’ as that expression is used in the *Criminal Code*, which can relate only to the conduct element of an offence, whereas the offence in new subsection 245(3) contains both a conduct element (new paragraph 245(3)(a)), and a circumstance element (new paragraph 245(3)(b)).

New subsection 245(3A) makes clear that paragraph 245(3)(b) is the circumstance in which the conduct described in paragraph 245(3)(a) occurs, for the purposes of the *Criminal Code*.

The item also inserts notes after subsections 245(2) and (3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility, and to provisions of the *Crimes Act* in relation to fines.

Item 56 – Subsection 245(4)

This item adds a note after subsection 245(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 57 – New subsections 245(4A) and (4B)

This item inserts new subsections 245(4A) and (4B), which define when a company is taken to be reckless for the purposes of the offence in subsection 245(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 245(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 58 – Subsection 245(5)

This item inserts a note after subsection 245(5) drawing attention to the legal burden on a defendant in relation to the matter in the subsection.

Item 59 – Subsection 250(8)

This item amends subsection 250(8) to remove references to sections 5, 7, 7A and subsection 86(1) of the *Crimes Act 1914*, which are being repealed, as the matters they relate to are covered by provisions of the *Criminal Code*.

Item 60 – New subsection 250(9)

This item adds a new subsection 250(9), which provides that Part 2.5 of the *Criminal Code*, dealing with corporate criminal responsibility, does not apply in relation to an offence against the Act. Section 250 of the Act, which also contains provisions dealing with criminal responsibility of bodies corporate, will continue to apply.

Prices Surveillance Act 1983

Clause 61 – Subsection 22(1)

The offence in subsection 22(1) of the *Prices Surveillance Act 1983* currently imposes a penalty of \$10 000. This will be converted to a penalty of 100 penalty units, in order to enable reliance on the provisions of the *Crimes Act 1914*, which provides rules for interpreting criminal offence penalties. At the time of this amendment, one penalty unit is equal to \$110 for a natural person.

Clause 62 – Subsection 22(1)

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914*, and to the general principles of criminal responsibility in Chapter 2 of the *Criminal Code*. This ensures that the offence in subsection 22(1) of the *Prices Surveillance Act 1983* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 63 – Subsection 22(2)

An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection 22(1) in subsection 22(2) of the *Prices Surveillance Act 1983* is being inserted. This ensures that the defence in subsection 22(2) will not be interpreted as placing a legal burden of proof on a defendant.

Clause 64 – Subsection 22(3)

An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection 22(1) in subsection 22(3) is being inserted. This ensures that the defence in subsection 22(3) will not be interpreted as placing a legal burden of proof on a defendant.

Clause 65 - Subsection 24(1)

The penalty of \$10 000 in subsection 24(1) is being replaced with a penalty of 100 penalty units, in order to achieve consistency with the provisions of the *Crimes Act 1914*, which provides rules for interpreting criminal offence penalties. At the time of this amendment, one penalty unit is equal to \$110 for a natural person.

Clause 66 – Subsection 24(1)

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914*, and to the general principles of criminal responsibility in Chapter 2 of the Criminal Code. This ensures that the offence in subsection 24(1) of the *Prices Surveillance Act 1983* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 67 – New subsection 32(2)

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914*, and to the general principles of criminal responsibility in Chapter 2 of the Criminal Code. This ensures that the offence in subsection 22(2) of the *Prices Surveillance Act 1983* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 68 – Subsection (32(2A))

An explanatory note stating that the defendant bears an evidential burden of proving the defence of reasonable excuse in subsection 32(2A) of the *Prices Surveillance Act 1983* is being inserted. This ensures that the subsection 32(2A) defence to the offence in subsection 32(2) of the *Prices Surveillance Act 1983* will not be interpreted as placing a higher, legal burden of proof on a defendant.

Clause 69 – Paragraph 35(b)

This clause omits the defence to the offence in section 35 of the *Prices Surveillance Act 1983* in paragraph 35(b), but Clause 71 reinstates the defence in a new subsection 35(2).

Clause 70 – Section 35

The penalty of \$1000 is being replaced with a penalty of 10 penalty units in order to achieve consistency with the provisions of the *Crimes Act 1914*, which provides rules for interpreting criminal offence penalties. At the time of this amendment, one penalty unit is equal to \$110 for a natural person.

Clause 71 – Section 35

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914* and to the general principles of criminal responsibility in Chapter 2 of the Criminal Code. This ensures that the offence in section 35 of the *Prices*

Surveillance Act 1983 is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

The current defence of reasonable excuse to the offence in section 35 of the *Prices Surveillance Act 1983* will now appear in subsection 35(2). An explanatory note stating that the defendant bears an evidential burden of proving the defence of reasonable excuse is being inserted after the defence. This ensures that the defence in subsection 35(2) will not be interpreted as placing a higher, legal burden of proof on a defendant.

Clause 72 - Subsection 36(1)

The penalty of \$1000 in subsection 36(1) of the *Prices Surveillance Act 1983* is being replaced with a penalty of 10 penalty units in order to achieve consistency with the provisions of the *Crimes Act 1914*, which provides rules for interpreting criminal offence penalties. At the time of this amendment, one penalty unit is equal to \$110 for a natural person.

Clause 73 – Subsection 36(1)

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914*, and to the general principles of criminal responsibility in Chapter 2 of the Criminal Code. This ensures that the offence in subsection 36(1) of the *Prices Surveillance Act 1983* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 74 – Section 36

An explanatory note stating that the defendant bears an evidential burden of proving the defence of reasonable excuse in subsections 36(2) and 36(3) to the offence in subsection 36(1) of the *Prices Surveillance Act 1983* is being inserted. This ensures that the defence in subsection 36(1) will not be interpreted as placing a higher, legal burden of proof on a defendant.

Clause 75 – Subsection 43(1)

This Clause removes the defence in subsection 43(1) to the offence in section 43 of the *Prices Surveillance Act 1983*, but Clause 78 reinstates the defence in the new subsection 43(1A).

Clause 76 – Subsection 43(1)

The penalty of \$1000 in subsection 43(1) of the *Prices Surveillance Act 1983* is being replaced with a penalty of 10 penalty units in order to achieve consistency with the provisions of the *Crimes Act 1914*, which provides rules for interpreting criminal offence penalties. At the time of this amendment, one penalty unit is equal to \$110 for a natural person.

Clause 77 – Subsection 43(1)

The amendment inserts two explanatory notes referring to the principles of interpretation of criminal penalties in the *Crimes Act 1914*, and to the general principles of criminal responsibility in Chapter 2 of the Criminal Code. This ensures that the offence in subsection 43(1) of the *Prices Surveillance Act 1983* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 78 – New subsection 43(1A)

The current defence to subsection 43(1) is recreated in subsection 43(1A) of the *Prices Surveillance Act 1983*. An explanatory note stating that the defendant bears an evidential burden of proving the defence in subsection 43(1A) is being inserted. This ensures that the defence in subsection 43(1A) will not be interpreted as placing a higher, legal burden of proof on a defendant.

Productivity Commission Act 1998

Clauses 79 and 80 – Sections 46, 47 and 48

An explanatory note referring to the general principles of criminal responsibility in Chapter 2 of the Criminal Code is being inserted at the end of sections 46, 47 and 48. This ensures that the offences in sections 46, 47 and 48 of the *Productivity Commission Act 1998* are interpreted in accordance with these principles. The existing explanatory note referring to the general principles of interpretation of criminal offence provisions in the *Crimes Act 1914* is retained.

Clause 81 – Paragraph 49(2)(b)

The defence to the offence in section 49 in paragraph 49(2)(a) of the *Productivity Commission Act 1998* is removed but is re-instated by Clause 83 in a new subsection 49(3).

Clauses 82 and 83 – Section 49

An explanatory note referring to the general principles of criminal responsibility in Chapter 2 of the Criminal Code is being inserted at the end of section 49 of the *Productivity Commission Act 1998*. This ensures that the offence in section 49 of the *Productivity Commission Act 1998* is interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

The current defence to the offence in paragraph 49(1)(b) of the *Productivity Commission Act 1998* is recreated in subsection 49(3). An explanatory note stating that the defendant bears an evidential burden in relation to the defence to the offence paragraph 49(1)(b) of the *Productivity Commission Act 1998* is being inserted. This ensures that the defence in subsection 49(3) will not be interpreted as placing a higher, legal burden of proof on a defendant.

Clauses 84 and 85 - Sections 50, 52 and 53

An explanatory note referring to the general principles of criminal responsibility in Chapter 2 of the Criminal Code is being inserted. This ensures that the offences in sections 50, 52 and 53 of the *Productivity Commission Act 1998* are interpreted in accordance with these principles. It also ensures that the relevant law applicable to the offence is readily identifiable.

Clause 86 New subsection 59(8)

An explanatory note stating that Part 2.5 of the Criminal Code does not apply in relation to the offence in section 59 is being inserted. This is to ensure that the provisions of Part 2.5 of the Code, dealing with corporate criminal responsibility, do not override the provisions relating to corporate criminal responsibility set out in section 59.

Retirement Savings Accounts Act 1997

Items 87 and 88 – New subsections 34(3A) and (5A)

These items insert new subsections 34(3A) and (5A) specifying that the offences in subsections 34(3) and (5) are offences of strict liability. The items also insert notes after the respective subsections drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability. A note is also inserted after subsection 34(3A) drawing attention to the evidential burden on a defendant in relation to the matter in paragraph 34(1)(b).

Item 89 – New subsection 35(3)

This item adds a new subsection 35(3) specifying that the offence in subsection 35(2) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 90 – Subsection 39(2)

This item adds a note after subsection 39(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 91 – New subsections 39(2A) and (2B)

This item inserts new subsections 39(2A) and (2B), which define when a person is taken to be reckless for the purposes of the offence in subsection 39(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 39(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 92 – New subsection 40(1A)

This item inserts a new subsection 40(1A) specifying that the offence in subsection 40(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 93 – Subsection 41(4)

This item repeals the existing offence in subsection 41(4) and replaces it with a new provision, which more clearly identifies the elements of the offence, and makes the provision consistent with the principles of the *Criminal Code*.

Item 94 – New subsection 42(2)

This item adds a new subsection 42(2) specifying that the offence in subsection 42(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 95 – Subsection 44(2)

This item adds a note after subsection 44(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 96 – New subsections 44(2A) and (2B)

This item inserts new subsections 44(2A) and (2B), which define when a person is taken to be reckless for the purposes of the offence in subsection 44(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 44(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 97 – Subsection 47(3)

This item adds a note after subsection 47(3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 98 – New subsections 47(4) and (5)

This item adds new subsections 47(4) and (5), which define when a person is taken to be reckless for the purposes of the offence in subsection 47(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 47(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 99 – Subsection 48(2)

This item adds a note after subsection 48(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 100 – New subsections 48(3) and (4)

This item adds new subsections 48(3) and (4), which define when a person is taken to be reckless for the purposes of the offence in subsection 48(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 48(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 101 – Subsection 49(2)

This item adds a note after subsection 49(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 102 – New subsections 49(3) and (4)

This item adds new subsections 49(3) and (4), which define when a person is taken to be reckless for the purposes of the offence in subsection 49(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 49(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 103 – Subsection 50(4)

This item adds a note after subsection 50(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 104 – New subsections 50(5) and (6)

This item adds new subsections 50(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 50(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 50(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 105 – Subsection 51(1)

This item adds a note after subsection 51(1) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 106 – New subsections 51(1A) and (1B)

This item inserts new subsections 51(1A) and (1B), which define when a person is taken to be reckless for the purposes of the offence in subsection 51(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 51(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 107 – Subsection 52(3)

This item adds a note after subsection 52(3) drawing attention to the evidential burden on a defendant in relation to the matter in the subsection.

Item 108 – Subsection 52(6)

This item adds a note after subsection 52(6) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 109 – New subsection 52(6A)

This item inserts new subsection 52(6A), which defines when a person is taken to be reckless for the purposes of the offence in subsection 52(6). The subsection adds to the definition of recklessness in the *Criminal Code*. The offence in subsection 52(6) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsection is necessary to fully reflect the meaning of the existing offence.

Item 110 – Subsection 52(8)

This item adds a note after subsection 52(8) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 111 – New subsections 52(9) and (10)

This item adds new subsections 52(9) and (10), which define when a person is taken to be reckless for the purposes of the offence in subsection 52(8). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 52(8) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 112 – Subsection 53(1)

This item adds a note after subsection 53(1) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 113 – New subsections 53(1A) and (1B)

This item inserts new subsections 53(1A) and (1B), which define when a person is taken to be reckless for the purposes of the offence in subsection 53(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 53(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Items 114 and 115 – Subsection 54(1) and new subsection 54(1A)

These items replace existing subsection 54(1) with two new subsections, the effect of which is to more clearly identify the defence to a contravention of subsection 54(1), by placing the defence in a separate subsection, new subsection 54(1A).

Item 116 – Subsection 54(4)

This item adds notes after subsection 54(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility, and the evidential burden on a defendant in relation to the matter in subsections 54(1A), (2) and (3).

Item 117 – New subsections 54(5) and (6)

This item adds new subsections 54(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 54(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 54(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 118 – Subsection 55(2)

This item adds a note after subsection 55(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 119 – New subsections 55(3) and (4)

This item adds new subsections 55(3) and (4), which define when a person is taken to be reckless for the purposes of the offence in subsection 55(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 55(2) may be contravened by a

failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 120 – Section 60

This item replaces section 60 to make the offence in the section consistent with the principles of the *Criminal Code*, including the addition of a note drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 121 – Subsection 61(4)

This item adds a note after subsection 61(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 122 – New subsections 61(5) and (6)

This item adds new subsections 61(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 61(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 61(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 123 – Subsection 62(5)

This item adds a note after subsection 62(5) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 124 – New subsections 62(6) and (7)

This item adds new subsections 62(6) and (7), which define when a person is taken to be reckless for the purposes of the offence in subsection 62(5). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 62(5) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 125 – Subsection 64(3)

This item adds a note after subsection 64(3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 126 – New subsections 64(4) and (5)

This item adds new subsections 64(4) and (5), which define when a person is taken to be reckless for the purposes of the offence in subsection 64(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 64(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 127 – Subsection 65(2)

This item adds a note after subsection 65(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 128 – New subsection 65(2A)

This item inserts new subsection 65(2A), which defines when a person is taken to be reckless for the purposes of the offence in subsection 65(2). The subsection adds to the definition of recklessness in the *Criminal Code*. The offence in subsection 65(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsection is necessary to fully reflect the meaning of the existing offence.

Item 129 – Subsection 65(5)

This item adds a note after subsection 65(5) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 130 – New subsections 65(6) and (7)

This item adds new subsections 65(6) and (7), which define when a person is taken to be reckless for the purposes of the offence in subsection 65(5). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 65(5) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 131 – Paragraph 66(5)(c)

This item removes the word “knowingly” from paragraph 66(5)(c) to make the provision consistent with the principles of the *Criminal Code*.

Items 132 and 133 – Subsections 66(5) and (9)

These items respectively add notes after subsections 66(5) and (9) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 134 – New subsections 66(10) and (11)

This item adds new subsections 66(10) and (11), which define when a person is taken to be reckless for the purposes of the offence in subsection 66(9). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 66(9) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Items 135 and 136 – Section 75

These items respectively remove the words “intentionally or recklessly” from section 75 to make the provision consistent with the principles of the *Criminal Code*, and add a note after the section drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Items 137 and 138 – Subsection 77(1)

These items respectively remove the words “intentionally or recklessly” from subsection 77(1) to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Item 139 – New subsection 77(3)

This item adds a new subsection 77(3) specifying that the offence in subsection 77(2) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 140 – New subsection 96(4)

This item adds a new subsection 96(4) specifying that the offence in subsection 96(3) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Items 141 and 142 – Subsection 108(3)

These items respectively remove the word “knowingly” from subsection 108(3) to make the provision consistent with the principles of the *Criminal Code*, and insert notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility, and the evidential burden on a defendant in relation to the matter in subsection 108(2).

Item 143 – Subsection 112(2)

This item adds a note after subsection 112(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 144 – New subsections 112(3) and (4)

This item adds new subsections 112(3) and (4), which define when a person is taken to be reckless for the purposes of the offence in subsection 112(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 112(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 145 – Section 115

This item replaces existing section 115 with 3 new subsections. New subsection 115(1) recasts the offence in existing section 115 to make it consistent with the principles of the *Criminal Code*, including the addition of a note drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

New subsections 115(2) and (3) define when a person is taken to be reckless for the purposes of the offence in subsection 115(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 115(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the offence.

Item 146 – Subsection 118(4)

This item adds a note after subsection 118(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 147 – New subsections 118(5) and (6)

This item adds new subsections 118(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 118(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 118(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 148 – Subsection 133(3)

This item adds a note after subsection 133(3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 149 – New subsections 133(4) and (5)

This item adds new subsections 133(4) and (5), which define when a person is taken to be reckless for the purposes of the offence in subsection 133(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 133(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 150 – Subsection 136(4)

This item adds a note after subsection 136(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 151 – New subsections 136(4A) and (4B)

This item inserts new subsections 136(4A) and (4B), which define when a person is taken to be reckless for the purposes of the offence in subsection 136(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 136(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 152 – Subsection 137(6)

This item adds a note after subsection 137(6) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 153 – New subsections 137(7) and (8)

This item adds new subsections 137(7) and (8), which define when a person is taken to be reckless for the purposes of the offence in subsection 137(6). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 137(6) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the

more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 154 – Subsection 138(4)

This item adds a note after subsection 138(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 155 – New subsections 138(5) and (6)

This item adds new subsections 138(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 138(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 138(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 156 – New subsection 151(1A)

This item inserts a new subsection 151(1A) specifying that the offence in subsection 151(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 157 – Section 154

This item replaces existing section 154 with two new subsections, which more clearly set out the elements of the offence, and makes the section consistent with the principles of the *Criminal Code*. The item also adds notes drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 158 – Subsection 161(14)

This item adds a note after subsection 161(14) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 159 – New subsections 161(15) and (16)

This item adds new subsections 161(15) and (16), which define when a person is taken to be reckless for the purposes of the offence in subsection 161(14). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 161(14) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 160 – Subsection 162(4)

This item adds a note after subsection 162(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 161 – New subsections 162(5) and (6)

This item adds new subsections 162(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 162(4). The subsections add to the definition of

recklessness in the *Criminal Code*. The offence in subsection 162(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 162 – New subsection 176(1A)

This item inserts a new subsection 176(1A) specifying that the offence in subsection 176(1) is an offence of strict liability. The item also inserts notes after the subsection drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Items 163 and 164 – New subsections 182(5A) and (8A)

These items insert new subsections 182(5A) and (8A) specifying that the offences in subsections 182(5) and (8) are offences of strict liability. The items also insert notes after the respective subsections drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and strict liability.

Item 165 – Subsection 183(3)

This item adds a note after subsection 183(3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 166 – New subsections 183(3A) and (3B)

This item inserts new subsections 183(3A) and (3B), which define when a person is taken to be reckless for the purposes of the offence in subsection 183(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 183(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 167 – Paragraph 185(11)(b)

This item amends paragraph 185(11)(b) to remove references to sections 5, 7, 7A and subsection 86(1) of the *Crimes Act 1914*, which are being repealed, as the matters they relate to are covered by provisions of the *Criminal Code*.

Item 168 – New subsection 185(12)

This item adds a new subsection 185(12), which provides that Part 2.5 of the *Criminal Code*, dealing with corporate criminal responsibility, does not apply in relation to an offence against the Act. Section 185 of the Act, which also contains provisions dealing with criminal responsibility of bodies corporate, will continue to apply.

Item 169 – Subsection 193(6)

This item adds a note after subsection 193(6) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 170 – New subsections 193(6A) and (6B)

This item inserts new subsections 193(6A) and (6B), which define when a person is taken to be reckless for the purposes of the offence in subsection 193(6). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 193(6) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Superannuation Industry (Supervision) Act 1993

Item 171 – Section 9A

This item amends section 9A, the effect of which is to remove subsection 9A(2). That subsection sets out a number of offence provisions in the Act to which the *Criminal Code* does not yet apply. With the passage of this Bill Chapter 2 the *Criminal Code* (except Part 2.5) will be applied to all offences against the Act.

Item 172 – Repeal of section 17

This item repeals section 17, dealing with persons involved in contraventions of the Act. This section is no longer required as Part 2.4 of the *Criminal Code* deals with these matters.

Item 173 – Subsection 34(2)

This item adds a note after subsection 34(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 174 – New subsections 34(2A) and (2B)

This item inserts new subsections 34(2A) and (2B), which define when a person is taken to be reckless for the purposes of the offence in subsection 34(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 34(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Items 175 and 176 – Subsection 68(1)

These items respectively remove the words “intentionally or recklessly” from subsection 68(1), to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Item 177 – Subsection 101(2)

This item adds a note after subsection 101(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 178 – New subsections 101(2A) and (2B)

This item inserts new subsections 101(2A) and (2B), which define when a person is taken to be reckless for the purposes of the offence in subsection 101(2). The subsections add to the definition

of recklessness in the *Criminal Code*. The offence in subsection 101(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 179 – Subsection 102(4)

This item adds a note after subsection 102(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 180 – New subsections 102(5) and (6)

This item adds new subsections 102(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 102(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 102(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 181 – Paragraph 129(3B)(c)

This item removes the word “knowingly” from paragraph 129(3B)(c) to make the provision consistent with the principles of the *Criminal Code*.

Item 182 – Subsection 129(7)

This item adds a note after subsection 129(7) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 183 – New subsections 129(8) and (9)

This item adds new subsections 129(8) and (9), which define when a person is taken to be reckless for the purposes of the offence in subsection 129(7). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 129(7) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 184 – Paragraph 130(2B)(c)

This item removes the word “knowingly” from paragraph 130(2B)(c) to make the provision consistent with the principles of the *Criminal Code*.

Item 185 – Subsection 130(6)

This item adds a note after subsection 130(6) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 186 – New subsections 130(6A) and (6B)

This item inserts new subsections 130(6A) and (6B), which define when a person is taken to be reckless for the purposes of the offence in subsection 130(6). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 130(6) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the

more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 187 – Subsection 141(2)

This item adds a note after subsection 141(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 188 – New subsections 141(2A) and (2B)

This item inserts new subsections 141(2A) and (2B), which define when a person is taken to be reckless for the purposes of the offence in subsection 141(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 141(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 189 – Subsection 142(3)

This item adds a note after subsection 142(3) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 190 – New subsections 142(3A) and (3B)

This item inserts new subsections 142(3A) and (3B), which define when a person is taken to be reckless for the purposes of the offence in subsection 142(3). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 142(3) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 191 – Subsection 152(2)

This item replaces existing subsection 152(2) with new subsections 152(2) and (2A). The effect of the amendments is to make the offence in subsection 152(2) consistent with the principles of the *Criminal Code*, and to more clearly set out the defence in subsection 152(2A), including the addition of a note drawing attention to the evidential burden on a defendant in relation to the matter in the subsection 152(2A).

Items 192 and 193 – Subsection 152(3)

These items respectively remove the words “intentionally or recklessly” from subsection 152(3), to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Items 194 and 195 – Subsection 153(1)

These items respectively remove the words “intentionally or recklessly” from subsection 153(1), to make the provision consistent with the principles of the *Criminal Code*, and add notes after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility, and the evidential burden on a defendant in relation to the matter in paragraphs 153(1)(a) to (d).

Item 196 – Subsection 153(2)

This item adds notes after subsection 153(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility and the evidential burden on a defendant in relation to the matter in paragraphs 153(2)(a) and (b).

Item 197 – New subsections 153(2A) and (2B)

This item inserts new subsections 153(2A) and (2B), which define when a trustee is taken to be reckless for the purposes of the offence in subsection 153(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 153(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Items 198 and 199 – Subsection 157(1)

These items respectively remove the words “intentionally or recklessly” from subsection 157(1), to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Item 200 – Subsection 157(5)

This item adds a note after subsection 157(5) drawing attention to the evidential burden on a defendant in relation to the matter in subsections 157(1) to (5).

Items 201 and 202 – Subsection 157A(2)

These items respectively remove the words “intentionally or recklessly” from subsection 157A(2), to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Item 203 – Subsection 158(1)

This item add a note after subsection 158(1) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 204 – New subsections 158(1A) and (1B)

This item inserts new subsections 158(1A) and (1B), which define when a trustee is taken to be reckless for the purposes of the offence in subsection 158(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 158(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 205 – Subsection 158(3)

This item adds a note after subsection 158(3) drawing attention to the evidential burden on a defendant in relation to the matter in subsections 158(1) to (3).

Items 206 and 207 – Section 161

These items respectively remove the words “intentionally or recklessly” from section 161, to make the provision consistent with the principles of the *Criminal Code*, and add a note after the section drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Items 208 and 209 – Subsection 163 (1)

These items respectively remove the words “intentionally or recklessly” from subsection 163(1), to make the provision consistent with the principles of the *Criminal Code*, and add notes after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility, and the evidential burden on a defendant in relation to the matter in paragraphs 163(1)(a) and (b).

Item 210 – Section 167

This item replaces section 167 to make the offence in the section consistent with the principles of the *Criminal Code*, including the addition of a note drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Items 211 and 212 – Subsection 184(1)

These items respectively remove the words “intentionally or recklessly” from subsection 184(1), to make the provision consistent with the principles of the *Criminal Code*, and add a note after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility.

Item 213 – Subsection 202(1)

This item replaces the existing subsection 202(1) with a new subsection, the effect of which is to remove the words “knowingly, intentionally or recklessly” in former paragraph 202(1)(a). This makes the provision consistent with the principles of the *Criminal Code*.

Items 214 and 215 – Subsection 278(3)

These items respectively remove the word “knowingly” from subsection 278(3), to make the provision consistent with the principles of the *Criminal Code*, and add notes after the subsection drawing attention to the provisions of *Criminal Code* relating to general principles of criminal responsibility, and the evidential burden on a defendant in relation to the matter in paragraphs 278(2)(a), (b) and (c).

Item 216 – Subsection 282(2)

This item adds a note after subsection 282(2) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 217 – New subsections 282(3) and (4)

This item adds new subsections 282(3) and (4), which define when a person is taken to be reckless for the purposes of the offence in subsection 282(2). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 282(2) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the

more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 218 – Section 285

This item replaces the existing section 285 with a new provision. New subsection 285(1) restates the existing offence, with the removal of the words “without reasonable excuse”, to make the provision consistent with the principles of the *Criminal Code*. New subsections 285(2) and (3) define when a person is taken to be reckless for the purposes of the offence in subsection 285(1). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 285(1) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 219 – Subsection 288(4)

This item adds a note after subsection 288(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 220 – New subsections 288(5) and (6)

This item adds new subsections 288(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 288(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 288(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 221 – Section 306

This item replaces existing section 306 with a new provision which more clearly sets out the elements of the offence, and makes the section consistent with the principles of the *Criminal Code*. The item also adds notes drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 222 – Subsection 313(12)

This item adds a note after subsection 313(12) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 223 – New subsections 313(13) and (14)

This item adds new subsections 313(13) and (14), which define when a person is taken to be reckless for the purposes of the offence in subsection 313(12). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 313(12) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 224 – Subsection 314(4)

This item adds a note after subsection 314(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 225 – New subsections 314(5) and (6)

This item adds new subsections 314(5) and (6), which define when a person is taken to be reckless for the purposes of the offence in subsection 314(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 314(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 226 – Paragraph 338(11)(b)

This item amends paragraph 338(11)(b) to remove references to sections 5, 7, 7A and subsection 86(1) of the *Crimes Act 1914*, which are being repealed, as the matters they relate to are covered by provisions of the *Criminal Code*.

Item 227 – New subsection 338(12)

This item adds a new subsection 338(12), which provides that Part 2.5 of the *Criminal Code*, dealing with corporate criminal responsibility, does not apply in relation to an offence against the Act. Section 338 of the Act, which also contains provisions dealing with criminal responsibility of bodies corporate, will continue to apply.

Item 228 – Subsection 357(5)

This item adds a note after subsection 357(5) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 229 – New subsections 357(5A) and (5B)

This item inserts new subsections 357(5A) and (5B), which define when an existing management company is taken to be reckless for the purposes of the offence in subsection 357(5). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 357(5) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 230 – Subsection 359(5)

This item adds a note after subsection 359(5) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 231 – New subsections 359(6) and (7)

This item adds new subsections 359(6) and (7), which define when an existing trustee is taken to be reckless for the purposes of the offence in subsection 359(5). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 359(5) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 232 – Subsection 361(7)

This item adds a note after subsection 361(7) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 233 – New subsections 361(7A) and (7B)

This item inserts new subsections 361(7A) and (7B), which define when a former trustee is taken to be reckless for the purposes of the offence in subsection 361(7). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 361(7) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 234 – Subsection 363(6)

This item adds a note after subsection 363(6) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 235 – New subsections 363(6A) and (6B)

This item inserts new subsections 363(6A) and (6B), which define when an existing trustee is taken to be reckless for the purposes of the offence in subsection 363(6). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 363(6) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 236 – Subsection 364(4)

This item adds a note after subsection 364(4) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 237 – New subsections 364(5) and (6)

This item adds new subsections 364(5) and (6), which define when an existing management company is taken to be reckless for the purposes of the offence in subsection 364(4). The subsections add to the definition of recklessness in the *Criminal Code*. The offence in subsection 364(4) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Item 238 – Subsection 366(8)

This item adds a note after subsection 366(8) drawing attention to the provisions of the *Criminal Code* relating to general principles of criminal responsibility.

Item 239 – New subsections 366(9) and (10)

This item adds new subsections 366(9) and (10), which define when a former trustee is taken to be reckless for the purposes of the offence in subsection 366(8). The subsections add to the definition

of recklessness in the *Criminal Code*. The offence in subsection 366(8) may be contravened by a failure to act (ie. an omission). The definition of recklessness under the *Criminal Code* reflects the more usual situation that the prosecution must prove intention with respect to omissions. The addition of the new subsections is necessary to fully reflect the meaning of the existing offence.

Trade Practices Act 1974

The consumer protection provisions of the *Trade Practices Act 1974* (the TPA) have been mirrored in State and Territory fair trading legislation. The following amendments to those provisions of the TPA attempt to give effect to the requirements of the *Criminal Code Act 1995* (the Code), yet retain the substantive effect of the existing provisions, in order to maintain the harmonised scheme of national consumer protection laws.

The TPA currently provides that a criminal prosecution may be brought against a party that contravenes Division 1 or Division 1A of Part V of the TPA. An individual may also bring a civil action against a party that contravenes a provision within Divisions 1 or 1A of Part V of the TPA. A new Part (Part VC) will be inserted into the TPA. This will divide this present civil and criminal regime between the current Part V and the new Part VC respectively. Part V will retain the core contraventions which give rise to civil actions (and a small number of pre-existing criminal provisions). The new Part VC will establish a separate criminal consumer protection regime within the TPA, which will replicate the provisions currently within Division 1 and 1A of Part V of the Act but which gives effect to the Code. Statutory and judicial interpretation of the sections within Division 1 and 1A of Part V indicate that many of the provisions operate as provisions of strict liability but there are some provisions which require proof of a fault or mental element. In accordance with the requirements of the Code, the new Part VC seeks to maintain the current statutory and judicial interpretation which applies to the consumer protection provisions in Part V, but re-drafts the provisions to clearly identify any fault elements applicable to each offence. The amendments also clearly identify any defences applicable to those offences, and prescribe a maximum penalty for contravention of each offence. The penalties are described in penalty units and at the time of this amendment, one penalty unit is equal to \$110 for a natural person.

The Bill also makes consequential amendments to Part VI of the TPA to ensure harmonisation with the Code. Part VC of the TPA is to be read in conjunction with all other provisions of the TPA.

Item 240 – Subsection 5(1)

Subsection 5(1) of the TPA provides, in defined circumstances, for the extraterritorial operation of Parts IV, IVA, portions of Part V, and VB. Subsection 5(1) is amended to provide that extraterritorial operation extends to Part VC, thereby maintaining the extra-territorial application that has previously existed in relation to criminal contraventions of Part V. A note is being inserted to alter the heading of this section to reflect this change.

Items 241 to 245 – Section 6

The Commonwealth may only regulate in relation to specific subject matter if the subject matter falls within a head of constitutional power. Generally the TPA's operation is predicated in reliance on the corporations power. Section 6 of the TPA extends the operation of specific Parts of the TPA to individuals, where it is possible to rely on heads of constitutional power other than the corporations power in placitum 51(xx) of the Commonwealth Constitution, such as the trade and commerce power, the postal, telegraphic and telephonic services power, and the territories power. Paragraphs 6(2)(a), (b), 6(3)(a) and subsections 6(3) and (4) are amended by items 241 to 245 to

ensure that the provisions of Part VC have extended operation in reliance on those alternative heads of constitutional power.

Item 246 – New subsection (6)

The offences in Part VC prohibit corporations from engaging in particular conduct. This is in reliance on the corporations power in placitum 51(xx) of the Commonwealth Constitution. The exception is section 75AZH, which applies to individuals because the provision relies on an alternative head of constitutional power (the external affairs power in placitum 51(xxix) of the Constitution). As the provisions generally relate to corporations, the maximum penalty applicable to each offence is expressed as the penalty which relates to corporations (that is, 2,000 penalty units). However, section 6 enables the offences in Part VC to be extended to individuals and unincorporated entities by virtue of reliance on alternative heads of constitutional power. Section 6 is being amended to insert a separate subsection, so that where an individual or unincorporated body is convicted of an offence against a provision of Part VC which applies by virtue of the extended operation provided by section 6, the appropriate penalty is a maximum of 400 penalty units.

Item 247 – Subsection 26(1)

Subsection 26(1) of the TPA empowers the Australian Competition and Consumer Commission (the ACCC) to delegate any of its functions and powers under Parts IVA, V and VI and any of its powers under Part XII that relate to those Parts, to a staff member of the Australian Securities and Investments Commission (the ASIC). Subsection 26(1) is amended to enable the ACCC to delegate its functions and powers under Part VC as well.

Item 248 – Repeal of subsection 56(3)

Section 56 prohibits a corporation from engaging in a practice referred to as bait advertising. Subsection 56(3) contains a defence to a criminal prosecution under Part VI. As a new regime of criminal offences is being transferred to Part VC, which will include a criminal offence in relation to bait advertising, the defence in subsection 56(3) is repealed.

Item 249 - Section 65AA

It is proposed that section 65AA of the Trade Practices Act be consequentially amended to include reference to proposed new provision section 75AZC(1)(i). Because of requirements in the Criminal Code Act 1995 relating to characterisation of offences, provisions of Part V of the Trade Practices Act 1974 are being replicated as criminal offences in Part VC. Currently Part V contains a series of prohibited acts rather than criminal offences. Proposed new provision section 75AZC is a replication of section 53 and therefore needs to be included in the consequential amendments.

Item 250 Section 65AB

It is proposed that section 65AB of the Trade Practices Act be consequentially amended to include reference to proposed new provision clause 75AZC(1)(i). Because of requirements in the Criminal Code Act 1995 relating to characterisation of offences, provisions of Part V of the Trade Practices Act 1974 are being replicated as criminal offences in Part VC. Currently Part V contains a series of prohibited acts rather than criminal offences. Proposed new provision section 75AZC is a replication of section 53 and therefore needs to be included in the consequential amendments.

Item 251 – Section 65AC

It is proposed that section 65AC of the Trade Practices Act be consequentially amended to include reference to proposed new provision section 75AZC(1)(i). Because of requirements in the Criminal

Code Act 1995 relating to characterisation of offences, provisions of Part V of the Trade Practices Act 1974 are being replicated as criminal offences in Part VC. Currently Part V contains a series of prohibited acts rather than criminal offences. Proposed new provision section 75AZC is a replication of section 53 and therefore needs to be included in the consequential amendments.

Item 252 – Subsection 65AD(1)

It is proposed that subsection 65AD(1) of the Trade Practices Act be consequentially amended to include reference to new provision 75AZC(1)(i). Because of requirements in the Criminal Code Act 1995 relating to characterisation of offences, provisions of Part V of the Trade Practices Act 1974 are being replicated as criminal offences in Part VC. Currently Part V contains a series of prohibited acts rather than criminal offences. Proposed new provision section 75AZC is a replication of section 53 and therefore needs to be included in the consequential amendments.

Item 253 – Paragraph 65AN(1)(a)

It is proposed that subsection 65AN(1)(a) of the Trade Practices Act be consequentially amended to include reference to new provision section 75 AZC(1)(i). Because of requirements in the Criminal Code Act 1995, provisions of Part V of the Trade Practices Act 1974 are being replicated as criminal offences in Part VC. Currently Part V contains a series of prohibited acts rather than criminal offences. Proposed new provision section 75AZC is a replication of section 53 and therefore needs to be included in the consequential amendments.

Item 254 – New subsection 65F(10)

Where a company supplies goods outside of Australia, and the company either voluntarily undertakes a recall of those goods, or is required by the Minister under subsection 65F(1) to undertake a compulsory product recall of those goods, subsection 65F(7) requires that the company must give notice in writing of the details of the recall to the person to whom the goods were supplied. Subsection 65F(9) creates a criminal offence if the supplier does not comply with subsection 65F(8) and provide a copy of that notice to the Minister within 10 days after providing the notice to another person as required. This criminal offence will not be transferred to Part VC. Subsection 65F(9) is a strict liability offence. Explanatory notes are being inserted at the end of subsection 65F(9), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 65F(9) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Item 255 – New subsections 65Q(9) and (9A)

Section 65Q enables the Minister or authorised officer to obtain information, documents and evidence in relation to goods of a particular kind which are intended to be used or are of a kind likely to be used by a consumer, and which will or may cause injury to any person. The section contains three criminal offences which will not be transferred to Part VC.

Item 255 amends subsection 65Q(9), which currently indicates that a person who refuses or fails to comply with a notice under section 65Q to the extent that the person is capable of complying with it is guilty of an offence. This provision is being repealed and restated as three subsections. Subsection 65Q(9) rephrases the offence. Subsection 65Q(9A) provides a defence (“if the person complies with the notice to the extent to which the person is capable of complying with it”) in relation to the offence. An explanatory note stating that the defendant bears the evidential burden of proving the defence is being inserted, which will ensure that the defence in subsection 65Q(9A) will not be interpreted as placing a higher, legal burden of proof on the defendant. Subsection

65Q(9B) indicates that the offence is one of strict liability. Explanatory notes are being inserted at the end of subsection 65F(9B), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 65F(9) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Item 255 also repeals subsection 65Q(9A), which currently provides that a person is guilty of an offence if the person acts in purported compliance with a notice and yet furnishes information or gives evidence that, to the person's knowledge is false or misleading in a material particular. Subsection 65Q(9C) restates the offence, separating out the provision to give effect to the fault element of "does so knowing that the information or evidence is false or misleading in a material particular".

The offence contained in subsection 65Q(10) will not be amended, because the effect of the Code will be to imply the correct fault element.

Item 256 – New subsection 65R(3)

Section 65R requires a person undertaking a voluntary product recall because the goods will or may cause injury to any person to give notice in writing to the Minister within two days after undertaking the recall. Subsection 65R(2) makes it an offence to contravene this requirement. Subsection 65R(3) provides that this is an offence of strict liability. Explanatory notes are being inserted at the end of subsection 65R(3), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 65R(2) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Item 257 – New Part VC

Item 257 inserts new Part VC (sections 75AZA to 75AZU).

Part VC - Offences

Division 1 - Application of Part

Section 75AZA Part does not apply to financial services

Section 75AZA replicates the provision in section 51AF. Section 51AF indicates that Part V does not apply to the supply, or possible supply, of services that are financial services. This is because the ASIC was given the function of enforcing provisions dealing with misleading and deceptive conduct in relation to financial services under the *Australian Securities and Investments Commission Act 1989*. An explanatory note stating that the defendant bears the evidential burden of proving the matters in section 75AZA is being inserted.

Division 2 - Offences relating to unfair practices

Section 75AZB Interpretation

Section 75AZB replicates section 51A of the TPA for the purposes of Part VC. This is an interpretational provision to be used when prosecuting for an offence against Part VC. The section reverses the onus of proof in relation to representations about future matters. It provides that where corporations make representations about future matters, they will be interpreted by the Courts as being misleading unless the defendant is able to produce evidence to show that the representations were made on reasonable grounds.

Section 75AZC False or misleading representations

Section 75AZC creates a criminal offence of strict liability which replicates the contravention provision in section 53 of the TPA. Section 53 has been interpreted by the Courts as being a provision of strict liability which prohibits the making of false or misleading statements in a series of circumstances defined within the provision. Explanatory notes are being inserted at the end of subsection 75AZC(2), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in section 75AZC is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZD False representations and other misleading and deceptive conduct in relation to land

Section 75AZD creates criminal offences which replicate the contravention provision in section 53A of the TPA. Section 53A sets norms of conduct for the selling and granting of interests in land and the promotion of the sale or grant of interests in land.

Subsection 75AZD(1) is regarded as a provision of strict liability, and replicates paragraphs 53A(1)(a) and (b) of the TPA. Case law suggests that subsection 75AZD(2) which replicates paragraph 53A(1)(c) and which relates to offering gifts, prizes and other free items is not regarded as a provision of strict liability. A default fault element of intention will apply to the “conduct” of offering gifts, prizes or other free items as identified in paragraph 75AZD(2)(a). The circumstances identified in paragraph 75AZD(2)(c) provide for the fault element of “intention”, as section 53A and case law appear to indicate that a prosecution would be required to prove intention by the defendant of not providing the gifts, prizes or other free items in question, or not providing them as offered.

Conduct which involves physical force, undue harassment and coercion as set out in subsection 75AZD(3) should require proof of intention as the fault element. The remainder of subsection 75AZD(3) is however a provision of strict liability.

Where strict liability applies, explanatory notes are being inserted which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZE Misleading conduct in relation to employment

Section 75AZE creates a criminal offence which replicates the contravention provision in section 53B of the TPA, which prohibits conduct that would mislead persons about employment that may be or is offered. Section 53B of the TPA is similar in nature to section 53 of the TPA which has been interpreted by the Courts as being a provision of strict liability. Explanatory notes are being inserted after subsection 75AZE(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZF Cash price to be stated in certain circumstances

Section 75AZF creates a criminal offence which replicates the contravention provision in section 53C of the TPA, which regulates representations about the price of goods. Section 53C of the TPA is similar in nature to section 53 of the TPA, which has been interpreted by the Courts as being a provision of strict liability. Explanatory notes are being inserted after subsection 75AZF(3) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition

of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Subsection 75AZF(2) provides for a defence (“if the corporation also specifies the cash price for the goods or services”). An explanatory note is being inserted to clarify that the defendant bears an evidential burden, not a higher, legal burden, in proving the defence.

Section 75AZG Offering gifts and prizes

Section 75AZG creates a criminal offence which replicates the contravention provision in section 54 of the TPA, which provides that when a corporation promotes goods or services, gifts or prizes must not be offered as part of the promotion if the corporation does not intend to provide them as offered or at all.

Case law suggests that only paragraph 75AZG(1)(b) may in part be regarded as a provision of strict liability. Explanatory notes are being inserted after subsection 75AZG(3) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that paragraph 75AZG(1)(b) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 54 and case law appear to indicate that a prosecution would be required to prove an intention by the defendant of not providing the gifts, prizes or other free items in question, or not providing them as offered rather than recklessness. The circumstances identified in paragraph 75AZG(1)(c) provide for the fault element of “intention” to apply to the conduct element identified in paragraph 75AZG(1)(a).

Section 75AZH Misleading conduct to which Industrial Property Convention applies

Section 75AZH creates a criminal offence which replicates the contravention provision in section 55 of the TPA, which prohibits misleading conduct to which the Paris Convention for the Protection of Industrial Property applies. Section 55 of the TPA is similar in nature to section 53 of the TPA, which has been interpreted by the Courts as being a provision of strict liability. Explanatory notes are being inserted after subsection 75ZF(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable. As the offence relies on the external affairs power for its Constitutional validity, it is not limited in its application to corporations. The maximum penalty which may be imposed for an offence by a person is 400 penalty units; where the offence is by a corporation, the maximum penalty which can be imposed will be 2000 penalty units, by virtue of subsection 4B(3) of the *Crimes Act 1914*.

Section 75AZI Certain misleading conduct in relation to services

Section 75AZI creates a criminal offence which replicates the contravention provision in section 55A of the TPA, which prohibits misleading conduct in relation to services. Section 55A is similar in nature to section 53 of the TPA, which has been interpreted by the Courts as being a provision of strict liability. Explanatory notes are being inserted after subsection 75ZI(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZJ Bait advertising

Section 75AZJ creates a criminal offence which replicates the contravention provision in section 56 of the TPA, which places a prohibition on a practice referred to as bait advertising. Section 56 of the TPA was amended in 1986 to remove a specific element of intent from the provision. As a consequence, the provision has been interpreted as one of strict liability. Explanatory notes are being inserted after subsection 75AZJ(3) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable. Subsection 75AZJ(4) provides a defence to the conduct prohibited by the section. An explanatory note is being inserted to clarify that the defendant bears a legal burden, not a lower, evidential burden, in proving the defence.

Section 75AZK Referral selling

Section 75AZK creates a criminal offence which replicates the contravention provision in section 57 of the TPA, which prohibits a practice referred to as referral selling. Cases which have considered the operation of the referral selling provision under the TPA have not required the prosecutors to establish a mental element. As a consequence, the provision is regarded as one of strict liability. Explanatory notes are being inserted after subsection 75AZK(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZL Accepting payment without intending or being able to supply as ordered

Subsection 75AZL(1) creates a criminal offence which replicates the contravention provision in paragraph 58(a) of the TPA, which prohibits a corporation from accepting payment for goods or services where the corporation does not intend to supply the goods or services, or intends to supply materially different goods or services. There is an express requirement currently in section 58 of the TPA that the corporation must intend to not supply the goods or services, or to supply goods or services materially different. Strict liability only applies to paragraph 75AZL(1)(a). Explanatory notes are being inserted after subsection 75AZL(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable. A fault element is required for the conduct specified in paragraph 75AZL(1)(b).

Subsection 75AZL(3) creates a criminal offence which replicates the contravention provision in paragraph 58(b) of the TPA, which prohibits a corporation from accepting payment for goods or services if there are reasonable grounds, of which the corporation is aware or ought reasonably to be aware, for believing that the corporation will not be able to supply the goods within a specified or reasonable period. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted after subsection 75AZL(4) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZM Misleading representations about certain business activities

Section 75AZM creates two criminal offences which replicate the contravention provision in section 59 of the TPA, which prohibits false and misleading representations about business activities generally, and more specifically, business activities conducted from home. Section 59 of the TPA is similar in nature to section 53 of the TPA, which has been interpreted by the Courts as being a provision of strict liability. Explanatory notes are being inserted after subsection 75AZM(3) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZN Harassment and coercion

Section 75AZN creates a criminal offence which replicates the contravention provision in section 60 of the TPA, which prohibits a corporation from using physical force, undue harassment or coercion in connection with the supply, possible supply and sale of goods. Strict liability applies to paragraph 75AZN(1)(b) only, as it is believed that the Courts would interpret the wording of paragraph 75AZN(1)(a) as requiring proof of intention. Explanatory notes are being inserted after subsection 75AZN(2) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZO Pyramid selling

Section 75AZO creates three criminal offences which replicate the contravention provisions in subsections 61(1), (2) and (2A) of the TPA respectively, which prohibit a corporation from engaging in a pyramid selling scheme. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted after subsection 75AZO(4) which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the relevant provisions are interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZP Unsolicited credit and debit cards

Subsection 75AZP(1) creates a criminal offence which replicates the contravention provision in subsection 63A(1) of the TPA. The current defence contained within paragraphs 63A(1)(a) and (b) is being replicated in subsection 75AZP(3). An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection (1) in subsection 75AZP(3) of the TPA is being inserted, which ensures that the defence in subsection (2) will not be interpreted as placing a higher, legal burden of proof on the defendant. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted at the end of subsection 75AZP(4), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZP(1) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Subsection (5) creates a criminal offence which replicates the contravention provision in subsection 63A(2A). The current defence in subsection 63A(2A) is being replicated within subsection 75AZP(6). An explanatory note stating that the defendant bears the evidential burden of proving

the defence to subsection (5) in subsection 75AZP(6) of the TPA is being inserted, which ensures that the defence in subsection (2) will not be interpreted as placing a higher, legal burden of proof on the defendant. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted at the end of subsection 75AZP(7), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZP(5) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable. Subsection 75AZP(8) indicates that the meanings of the terms article, credit card, debit card and prescribed card have the same respective meanings as in those used in the civil contravention provision in section 63A.

Section 75AZQ Assertion of right to payment for unsolicited goods or services or for making an entry in a directory

Subsection 75AZQ(1) creates a criminal offence which replicates the civil contravention provisions in subsections 64(1) and (2A). The current defences in subsections 64(1) and (2A) are being replicated in subsection 75AZQ(2). An explanatory note stating that the defendant bears the legal burden of proving the defence to subsection 75AZQ(1) in subsection 75AZQ(2) is being inserted, which ensures that the defence in subsection 75AZQ(2) will not be interpreted as placing a lower, evidential burden of proof on a defendant. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted at the end of subsection 75AZQ(3), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZQ(1) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Subsection 75AZQ(4) creates a criminal offence which replicates the civil contravention provision in subsection 64(3). The current defence in subsection 64(3) is being replicated in subsection 75AZQ(5). An explanatory note stating that the defendant bears the legal burden of proving the defence to subsection 75AZQ(4) in subsection 75AZQ(5) is being inserted. This ensures that the defence in subsection 75AZQ(5) will not be interpreted as placing a lower, evidential burden of proof on a defendant. Case law has not interpreted this provision as requiring proof of a fault element, and consequently the provision is regarded as one of strict liability. Explanatory notes are being inserted at the end of subsection 75AZQ(6), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZQ(4) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Subsections 75AZQ(7), (8), (9) and (10) replicate subsections 64(4), (5), (6) and (7) respectively in relation to the criminal offences. It is not necessary to replicate subsection 64(9), as the offences now contain a note indicating the relevant burden of proof. Subsection 75AZQ(11) indicates that the meaning of the terms “directory” and “making” have the same respective meanings as in the civil contravention provision in section 64.

Section 75AZR Application of provisions of Division to prescribed information providers

This provision replicates section 65A in relation to sections 75AZC, 75AZD, 75AZH, 75AZI and 75AZM. An explanatory note stating that the defendant bears the evidential burden of proving the matters in section 75AZR is being inserted.

Division 3 - Offences relating to product safety and product information

As noted above, not all of the offences relating to product safety and product information have been moved into Division 3. Those offences which were previously offences on their face will remain in Part V (refer to subsections 65F(9), 65Q(9), (9A) and (10), and 65R(2)).

The offences in Division 3 protect the community from exposure to unsafe goods, and consequently there are very strong policy grounds for these provisions being offences of strict liability.

Section 75AZS Product safety standards and unsafe goods

Subsection 75AZS(1) creates a criminal offence of strict liability which replicates the contravention provision in subsection 65C(1), which prohibits the supply of goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind that do not comply with a relevant consumer product safety standard, or if there is in force a notice declaring the goods to be unsafe or imposing a permanent ban on the goods. Explanatory notes are being inserted at the end of subsection 75AZS(2), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZS(1) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Subsection 75AZS(3) creates a criminal offence of strict liability which replicates the contravention provision which exists in subsection 65C(3), which prohibits a corporation from exporting goods where those goods are prohibited from supply in Australia. The current defence contained within subsection 65C(3) (“unless the Minister has approved by notice in writing the export of those goods”) is removed from the offence and replicated in subsection 75AZS(4). An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection (3) in subsection 75AZS(4) is being inserted, which ensures that the defence in subsection (4) will not be interpreted as placing a higher, legal burden of proof on the defendant. Explanatory notes are being inserted at the end of subsection 75AZS(5), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZS(3) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable.

Section 75AZT Product information standards

Subsection 75AZT(1) creates a criminal offence of strict liability which replicates the contravention provision in subsection 65D(1) of the TPA, which prohibits a corporation from supplying goods that are intended to be used, or are of a kind likely to be used, by a consumer if the goods are of a kind that do not comply with a relevant consumer product information standard. The defence in subsection 65D(1) (“unless the corporation has complied with that standard in relation to those goods”) is removed from the offence and is replicated in subsection 75AZT(2). An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection (1) in subsection 75AZT(2) is being inserted, which ensures that the defence in subsection (2) will not be interpreted as placing a higher, legal burden of proof on the defendant. Explanatory notes are being inserted at the end of subsection 75AZT(3), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offence in subsection 75AZT(1) is interpreted in accordance with these principles, and that the relevant law applicable to the offence is readily identifiable. A further defence to the offence in subsection 75AZT(1) is found in subsection 75AZT(4) (subsection (1) does not apply to goods that are intended to be used outside Australia). An explanatory note stating that the defendant bears the evidential burden of proving the defence to subsection (1) in subsection 75AZT(4) is being inserted, which ensures that the defence in subsection (4) will not be interpreted

as placing a higher, legal burden of proof on the defendant. Subsections 75AZT(5) to (7) replicate the provisions contained in subsections 65D(4) to (6). Subsection 65D(7) is not replicated in this new provision because it does not relate to criminal offences.

Section 75AZU Compliance with product recall notice

Subsection 75AZU(1) creates a criminal offence which replicates the contravention provision in paragraph 65G(a). Subsection 65G(a) creates an obligation on a corporation to comply with a notice published by the Minister under subsection 65F(1) ordering specific action to be taken by the corporation in relation goods that are intended to be used or are of a kind likely to be used by a consumer. Subsection 75AZU(2) creates a criminal offence which replicates the contravention provision which exists in paragraph 65G(b). Strict liability applies to both offences. Explanatory notes are being inserted at the end of subsection 75AZU(3), which refer to the general principles of criminal responsibility in Chapter 2 of the Code, and the definition of strict liability in section 6.1 of the Code. This ensures that the offences in subsections 75AZU(1) and (2) are interpreted in accordance with these principles, and that the relevant law applicable to the offences is readily identifiable.

Item 258 – Subsection 75B(1)

Subsection 75B(1) is an interpretation provision which identifies the ways in which a person can be involved in the commission of a contravention of a provision of Part IV, IVA, IVB or V. The provision is amended to extend its application to the provisions of Part VC.

Item 259 – Paragraph 78(a)

Prior to this Bill, subsection 79(1) created criminal offences in relation to the provisions contained in Part V, with the exception of a number of regulatory offences in Division 1A of Part V, which were offences on their face and not due to the operation of subsection 79(1). Part V itself did not create offences for the provisions in Division 1 of Part V, or for the majority of the provisions in Division 1A of Part V. Part VC now contains provisions which are criminal offences on their face. Consequently, criminal liability will no longer lie for breach of the provisions contained in Part V. The exceptions are those regulatory offences which remain in Division 1A of Part V. Paragraph 78(a) is amended to ensure that criminal proceedings do not lie against a person by reason only that the person has contravened a provision of Part V, with the exception of those regulatory offences.

Item 260 – Subsection 79(1)

Subsection 79(1) is repealed, and replaced with a new subsection 79(1). This new subsection 79(1) creates ancillary liability where a party contravenes a provision of Part VC, and a note is inserted to alter the heading to refer to Part VC instead of Part V. As each offence now states the level of penalty on its face, subsection 79(1) no longer states the level of penalty applying to natural persons or bodies corporate.

Two new subsections (subsections 79(1A) and (1B)) are being inserted, the effect of which is to provide that the provisions of the Code dealing with aiding, abetting, counselling and procuring (subsections 11.2(2) to (5) of the Code), and conspiracy (subsections 11.2(2) to (5) of the Code), apply to new paragraphs 79(1)(a) and (d) respectively in the same way that they apply to the offences in subsections 11.2(1) and 11.5(1) respectively. This should ensure that the Courts do not interpret paragraphs 79(1)(a) and (d) as having a meaning contrary to the equivalent provisions in the Code, and enables those paragraphs to remain in the TPA for purposes of harmonisation with national consumer protection laws.

Item 261 – Subsection 79(2)

Subsection 79(2) provides that where a person is convicted of two or more offences of the same or of a substantially same nature which occurred at or about the same time, the Federal Court is not entitled to impose fines that in aggregate exceed the maximum fine that would be applicable in respect of one offence by that person. Subsection 79(2) is amended to refer to Part VC, not Part V, as the relevant offences are now located in Part VC.

Items 262 and 263 – Subsection 79(3)

Paragraph 79(3)(a) ensures that where a person is convicted of an offence, and one or more fines have previously been imposed on the person by the Federal Court for one or more offences of the same or a substantially same nature which occurred at or about the same time, the Federal Court is not entitled to impose fines that in aggregate exceed the maximum fine that would be applicable in respect of one offence by that person. Paragraph 79(3)(a) is amended to refer to Part VC, not Part V, as the relevant offences are now located in Part VC. Subsection 79(3) is also amended to remove the reference to an offence under subsection 79(1), as it is the provisions of Part VC themselves which now create individual offences.

Item 264 – Subsection 79(4)

Subsection 79(4) enables the Federal Court, in criminal proceedings brought under section 79, to grant an injunction under section 80, or to make a disclosure or corrective advertising order under section 80A. Subsection 79(4) is amended to ensure that these remedies are available in criminal proceedings for contravention of a provision of Part VC, as the relevant offences are now located in Part VC.

Item 265 – Subsection 79(5)

Section 5 of the *Crimes Act 1914* relates to attempting to commit an offence, section 7 relates to aiding or abetting the commission of an offence, and section 7A relates to inciting to, urging, aiding or encouraging the commission of an offence. Subsection 79(5) of the TPA is amended to provide that those provisions of the *Crimes Act 1914* do not apply in relation to an offence against a provision of Part VC. Subsection 79(5) is also amended to provide that section 11.1 of the Code does not apply in relation to an offence against Part VC. Section 11.1 of the Code deals with attempt, which was never previously an offence under subsection 79(1) of the TPA.

Item 266 – Subsection 79(6)

Subsection 79(6) provides that a prosecution for an offence against a provision of Part V other section 52, 65Q or 65R or subsection 65F(9) may be commenced within three years of the commission of the offence. Subsection 79(6) is amended to remove the reference to subsection 79(1) and to insert a reference to Part VC, ensuring this period will continue to apply for prosecution of criminal offences under Part VC.

Item 267 – Subsection 79A(1)

Subsection 79A(1) enables the Federal Court to exercise its powers to ensure the fines are enforced and recovered where a fine has been imposed on a person for an offence against section 65Q, 65R, 79 or 155 or subsection 65F(9) or 87A(5), and the party has defaulted in payment of the fine. Subsection 79A(1) is amended to remove the reference to section 79 and to insert a reference to “a provision of Part VC”. This will ensure that this provision operates in relation to provisions previously covered by the provision, such as the regulatory offences which will continue to exist in Part V, as well as the new offences in Part VC.

Item 268 – Paragraph 89(1)(a)

Paragraph 80(1)(a) empowers the Federal Court to order an injunction where the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute a contravention of a provision of Part IV, IVA, IVB or V. The provision is amended to extend this power to a contravention of provision of Part VC.

Item 269 – Subsection 80A(1)

Subsection 80A(1) is amended to enable the Federal Court to make an order to disclose information or to publish an advertisement, upon application by the ACCC or the Minister. The provision is amended to extend this power in relation to conduct in contravention of Part VC as well as Parts IVB or V.

Items 270 and 271 - Section 83

Section 83 enables a finding of fact made by the court in one set of proceedings to be prima facie evidence of that fact in subsequent proceedings. Items 270 and 271 both amend section 83, to extend the application of the provision to offences committed under Part VC.

Items 272 and 273 - Section 84

Section 84 widens the common law principles relating to agency. The section attributes the state of mind of a director, servant or agent of the corporation acting in the scope of his or her actual or apparent authority to the corporation, and attributes the conduct of directors, agents and servants of corporations to their principal. Item 272 amends subsection 84(1), and item 273 amends subsection 84(3), to extend the application of the provision to Part VC.

Item 274 – New subsection 84(6)

A new subsection is being inserted at the end of section 84, to provide that Part 2.5 of the Code, which deals with corporate criminal responsibility, does not apply in relation to an offence against a provision of Part VC. This will make it clear to the Courts that the provisions of section 84 provide the basis for corporate criminal responsibility in relation to Part VC of the TPA.

Items 275 and 276 – Section 85

Subsection 85(1) is amended to ensure that the three defences established in paragraphs 85(1)(a), (b) and (c) are available for a prosecution in relation to a contravention of the offences in Part VC. An explanatory note stating that the defendant bears the legal burden of proving the defences in subsection 85(1) is being inserted. This ensures that, in accordance with the requirements of section 13.4 of the Code, those defences will not be interpreted as placing a lower, evidential burden of proof on the defendant.

Item 277 – New subsection 85(1AA)

A new subsection is to be inserted into section 85. Subsection 85(1AA) provides that the defence in paragraph 85(1)(a) (“that the contravention in respect of which the proceeding was instituted was due to reasonable mistake”) is to be interpreted as having the same effect in relation to a contravention of a provision of Part VC as section 9.2 (the defence of mistake of fact in relation to a strict liability offence) of the Code has in relation to offences of strict liability. This should ensure that the Courts do not interpret paragraph 85(1)(a) as having a meaning contrary to the equivalent provision in the Code, and enables the defence to remain in the TPA for purposes of harmonisation with national consumer protection laws.

Items 278 and 279 – Subsection 85(3)

Subsection 85(3) establishes a defence in relation to a contravention of a provision of Part V committed by the publication of an advertisement. As this provision previously had application to criminal and civil proceedings, it is amended to refer to a contravention of a provision of Part V or VC. An explanatory note stating that the defendant bears the legal burden of proving the defence in subsection 85(3) is being inserted at the end of subsection 85(3). This ensures that the defence in subsection 85(3) will not be interpreted as placing a lower, evidential burden of proof on the defendant, and is in accordance with the requirements of section 13.4 of the Code.

Items 280 and 281 Subsection 85(4)

Subsection 85(4) establishes a defence in relation to a contravention committed by the supplying of goods that did not comply with a consumer product safety standard or a consumer product information standard. As this provision previously had application to criminal and civil proceedings, it is being amended to refer to a contravention of a provision of Part V or VC. An explanatory note stating that the defendant bears the legal burden of proving the defence in subsection 85(4) is being inserted at the end of subsection 85(4). This ensures that the defence in subsection 85(4) will not be interpreted as placing a lower, evidential burden of proof on the defendant, and is in accordance with the requirements of section 13.4 of the Code.

Items 282 to 287 – Section 87

Subsection 87(1) confers wide powers on the Federal Court to make remedial orders in relation to loss or damage arising from conduct engaged in contravention of a provision of Part IV, IVA, IVB or V, in proceedings instituted under, or for an offence against, Part VI. Subsection 87(1) is amended by items 282 and 283 to extend the Court's powers to make remedial orders in relation to loss or damage arising from conduct engaged in in contravention of a provision of Part VC. Item 284 amends subsection 87(1A) and item 286 amends subsection 87(1B) to extend the application of those provisions to incorporate Part VC. Item 285 removes a reference to section 79 and inserts a reference to Part VC, to ensure that the provision has application to criminal offence proceedings previously covered by section 79. Item 287 amends subsection 87(1C) to extend the application of the provision to Part VC.

Items 288 to 290 – Section 87A

Section 87A empowers the Federal Court to make orders to preserve assets pending determination of proceedings brought under Part IVA, V or VI. Item 288 updates the reference in paragraph 87A(1)(a) to criminal offence proceedings in relation to Part VC. Item 289 extends the application of paragraph 87A(1)(b) to Part VC in recognition that an injunction under section 80 will now also be available in relation to a contravention of a provision of Part VC. Paragraph 87A(1)(d) refers to applications for an order under subsection 87(1A) or under subsection 87(1B) in relation to a contravention of a provision of Part IVA or V. Paragraph 87A(1)(d) is amended by item 290 to extend to a contravention of a provision of Part VC.

SCHEDULE 2 – Amendment of the Corporations Law

The *Corporate Law Economic Reform Program Act 1999* (CLERP Act) revised the location and format of the criminal consequences for contraventions of civil penalty provisions by omitting them from Part 9.4B and then making amendments to individual civil penalty provisions.

The following amendments relate to civil penalty provisions that had both civil and criminal consequences attached to their contravention prior to the commencement of the CLERP Act. The amendments make provision for the criminal consequences of contraventions of civil penalty provisions in Chapter 5C (Managed Investment Schemes) by specifying appropriate fault elements and penalties that were not contained in the CLERP Act. These amendments restore as closely as possible the position prior to commencement of the CLERP Act while meeting the requirements of the *Criminal Code Act 1995* (the Criminal Code).

An additional amendment in item 1 remedies a difficulty with the provisions requiring registration of managed investment schemes that arose because of changes made by the CLERP Act.

Item 1 – Subsection 601ED(2)

This item substitutes subsection 601ED(2). The new subsection 601ED(2) restores the effect of this provision prior to its amendment by the CLERP Act.

Currently, this subsection provides that a managed investment scheme does not have to be registered if all the issues of interests in the scheme that have been made did not need disclosure to investors under Part 6D.2. However, as Part 6D.2 only applies to securities and the definition of ‘securities’ for Chapter 6D in subsection 92(3) does not include interests in an unregistered managed investment scheme, the current subsection 601ED(2) would always apply to all the interests in an unregistered scheme.

The new subsection 601ED(2) overcomes this difficulty by treating the interests in the unregistered scheme as interests in a registered scheme for the purpose of determining whether their issue was exempt under Part 6D.2. As interests in a registered scheme are within the definition of ‘security’ for Chapter 6D, the amendment ensures that schemes are only exempt from registration where all the issues of interests were within the specific exemptions from disclosure contained in Part 6D.2.

Item 2 – Subsection 601FC(1)(note)

This item repeals the note to subsection 601FC(1) which refers to Part 9.4B as providing for the criminal consequences of contraventions of civil penalty provisions and section 1317DA. This reference is no longer relevant following the CLERP Act which omitted section 1317DA and repealed and substituted Part 9.4B which now no longer provides for the criminal consequences of contraventions of civil penalty provisions.

Item 3 – Subsection 601FC(3)

This item omits the reference in subsection 601FC(3) to section 232 which is no longer relevant following the CLERP Act and substitutes references to sections 180, 181, 182, 183 and 184. Prior to the CLERP Act section 232 dealt with duties and liabilities of officers of corporations. Sections 180, 181, 182 and 183 now deal with the civil obligations of directors and officers. Section 184 now provides for criminal offences related to directors and officers. Subsection 601FC(3) was not amended by the CLERP Act to take account of these changes.

As paragraph 601FC(1)(c) provides that where there is a conflict between the interests of members of a scheme and the interests of a responsible entity, the responsible entity must give priority to the

members interests, it is necessary to exempt the officers and employees of the responsible entity from sections 180, 181, 182, 183 or 184 in these circumstances.

Item 4 – New subsections 601FC(5), (6), (7) and (8)

This item inserts subsections 601FC(5), (6), (7) and (8). The new subsection (5) provides that a responsible entity that contravenes subsection (1) or any person involved in a responsible entity's contravention of subsection (1), contravenes subsection (5). It inserts a note referring to the definition of 'involved' in section 79 and indicating that the subsection is a civil penalty provision. Item 16 (below) gives effect to this subsection by inserting it in the list of civil penalty provisions in subsection 1317E(1).

The new subsection (6), together with the insertion by item 18 of a relevant penalty in Schedule 3, makes it an offence for a person to be intentionally or recklessly involved in a responsible entity's contravention of subsection (1). Due to the definition of 'involved' in section 79, it is not an offence for the responsible entity to breach subsection (1). Rather, the offence attaches to people, such as officers and employees of the responsible entity, who are involved in the contravention.

Subsections (7) and (8) modify the application of the definition of the fault element of recklessness contained in the Criminal Code so that it applies to physical elements of conduct which involve omissions. It extends recklessness to omissions where the person is aware of a substantial risk that an omission exists, or will exist, and that, having regard to the circumstances known to him or her, it is unjustifiable for the person to take that risk. Although the modification is a variation from the general principle of criminal responsibility in Chapter 2 of the Criminal Code, such a modification is acceptable within existing individual provisions of this nature for the purposes of ensuring compliance with the Criminal Code.

Item 5 – Subsection 601FD(1)(note)

This item amends subsection 601FD(1) in the same manner as item 2 amends subsection 601FC(1).

Item 6 – Subsection 601FD(2)

This item amends subsection 601FD(2) in the same manner as item 3 amends subsection 601FC(3).

Item 7 – New subsections 601FD(3), (4), (5) and (6)

This item inserts subsections 601FD(3), (4), (5) and (6). The new subsection (3) provides that a person who contravenes or is involved in a contravention of subsection (1) contravenes subsection (3). It inserts a note referring to the definition of 'involved' in section 79 and indicating that the subsection is a civil penalty provision. Item 16 (below) gives effect to this subsection by inserting it in the list of civil penalty provisions in subsection 1317E(1).

The new subsection (4), together with the insertion by item 18 of a relevant penalty in Schedule 3, makes it an offence for a person to intentionally or recklessly contravene, or be involved in a contravention, of subsection (1).

Subsections (5) and (6) modify the application of the definition of the fault element of recklessness contained in the Criminal Code so that it applies to physical elements of conduct which involve omissions. It extends recklessness to omissions where the person is aware of a substantial risk that an omission exists, or will exist, and that, having regard to the circumstances known to him or her, it is unjustifiable for the person to take that risk. Although the modification is a variation from the general principle of criminal responsibility in Chapter 2 of the Criminal Code, such a modification

is acceptable within existing individual provisions of this nature for the purposes of ensuring compliance with the Criminal Code.

Item 8 – Subsection 601FE(1)(note)

This amends subsection 601FE(1) in the same manner that item 2 amends subsection 601FC(1).

Item 9 – Subsection 601FE(2)

This item amends subsection 601FE(2) in the same manner as item 3 amends subsection 601FC(3).

Item 10 – New subsections 601FE(3) and (4)

This item inserts subsections 601FE(3) and (4). The new subsection (3) provides that a person who contravenes or is involved in a contravention of subsection (1) contravenes subsection (3). It inserts a note referring to the definition of ‘involved’ in section 79 and indicating that the subsection is a civil penalty provision. Item 16 (below) gives effect to this subsection by inserting it in the list of civil penalty provisions in subsection 1317E(1).

The new subsection (4), together with the insertion by item 18 of a relevant penalty in Schedule 3, makes it an offence for a person to intentionally contravene or be involved in a contravention of subsection (1).

Items 11 and 12 – Subsection 601FG(1)(notes 1 and 2)

These items repeal the second note to subsection 601FG(1) for the same reasons that item 2 amends subsection 601FC(1).

Item 13 – New subsections 601FG(2) and (3)

This item inserts subsections 601FG(2) and (3). The new subsection (2) provides that a responsible entity that contravenes subsection (1) or any person involved in a responsible entity’s contravention of subsection (1), contravenes subsection (2). It inserts a note referring to the definition of ‘involved’ in section 79 and indicating that the subsection is a civil penalty provision. Item 16 (below) gives effect to this subsection by inserting it in the list of civil penalty provisions in subsection 1317E(1). Due to the definition of ‘involved’ in section 79, it is not an offence for the responsible entity to contravene subsection (1). Rather the offence attaches to people, such as officers and employees of the responsible entity, who are involved in the contravention.

The new subsection (3), together with the insertion by item 19 of a relevant penalty in Schedule 3, makes it an offence for a person to intentionally be involved in a responsible entity’s contravention of subsection 601FG(1).

Item 14 – Subsection 601JD(1)(note)

This item amends subsection 601JD(1) in the same manner that item 2 amends subsection 601FC(1).

Item 15 – New subsections 601JD(3), (4), (5) and (6)

This item inserts subsections 601JD(3), (4), (5) and (6). The new subsection (3) provides that a person who contravenes or is involved in a contravention of subsection (1) contravenes subsection (3). It inserts a note referring to the definition of ‘involved’ in section 79 and indicating that the

subsection is a civil penalty provision. Item 16 (below) gives effect to this subsection by inserting it in the list of civil penalty provisions in subsection 1317E(1).

The new subsection (4), together with the insertion by item 19 of a relevant penalty in Schedule 3, makes it an offence for a person to intentionally or recklessly contravene or be involved in a contravention of subsection (1).

Subsections (5) and (6) modify the application of the definition of the fault element of recklessness contained in the Criminal Code so that it applies to physical elements of conduct which involve omissions. It extends recklessness to omissions where the person is aware of a substantial risk that an omission exists, or will exist, and that, having regard to the circumstances known to him or her, it is unjustifiable for the person to take that risk. Although the modification is a variation from the general principle of criminal responsibility in Chapter 2 of the Criminal Code, such a modification is acceptable within existing individual provisions of this nature for the purposes of ensuring compliance with the Criminal Code.

Item 16 – Paragraphs 1317E(1)(f) to (j)(inclusive)

This item substitutes paragraphs 1317E(1)(f) to (j) (inclusive). Inserting references to subsections 601FC(5), 601FD(3), 601FE(3), 601FG(2) and 601JD(3) into subsection 1317E(1) has the effect of creating them as civil penalty provisions so that contraventions of them are subject to Part 9.4B.

Item 17 – Schedule 3

This item substitutes the item in Schedule 3 relating to section 184. Currently the number of penalty units as inserted by the CLERP Act for section 184 is 200, this number should be 2000, consistent with the penalty for contraventions of former section 232 (the corresponding pre-CLERP Act provision).

Items 18 and 19 – Schedule 3

These items insert references to subsections 601FC(6), 601FD(4), 601FE(4), 601FG(3) and 601JD(4) into Schedule 3. They provide for the penalties for criminal offences in relation to these subsections. The penalty of 2000 penalty units or imprisonment for 5 years, or both is the same as that which formerly applied under section 1317FA(1).

Item 20 – Schedule 3

This item omits the reference to subsection 1317FA(1) from Schedule 3. Subsection 1317FA(1) was omitted by the CLERP Act but a consequential amendment to Schedule 3 was not made.