# Corporations Act 2001

**No. 50, 2001**

## Compilation No. 95

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This compilation is in 6 volumes

| | |
|---|---|
| **Volume 1:** | **sections 1–260E** |
| Volume 2: | sections 283AA–601DJ |
| Volume 3: | sections 601EA–742 |
| Volume 4: | sections 760A–993D |
| Volume 5: | sections 1010A–1369A |
| Volume 6: | sections 1370–1662 |
| | Schedules |
| | Endnotes |

Each volume has its own contents

**This compilation includes commenced amendments made by Act No. 122, 2018 and Act No. 10, 2019**

Prepared by the Office of Parliamentary Counsel, Canberra

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# About this compilation

### This compilation

This is a compilation of the *Corporations Act 2001* that shows the text of the law as amended and in force on 1 July 2019 (the ***compilation date***).

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

### Uncommenced amendments

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

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

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

### Editorial changes

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

### Modifications

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

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# An Act to make provision in relation to corporations and financial products and services, and for other purposes

# Chapter 1—Introductory

## Part 1.1—Preliminary

### 1 Short title

This Act may be cited as the *Corporations Act 2001*.

### 2 Commencement

This Act commences on a day to be fixed by Proclamation.

### 3 Constitutional basis for this Act

(1) The operation of this Act in the referring States is based on:
  (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51(xxxvii)); and
  (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Act relates because those matters are referred to it by the Parliaments of the referring States under paragraph 51(xxxvii) of the Constitution.

Note: The State referrals fully supplement the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

(2) The operation of this Act in the Northern Territory and the Capital Territory is based on:



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(a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of those Territories; and
(b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution.

Despite subsection 22(3) of the *Acts Interpretation Act 1901*, this Act as applying in those territories is a law of the Commonwealth.

(3) The operation of this Act outside Australia is based on:
(a) the legislative power the Commonwealth Parliament has under paragraph 51(xxix) of the Constitution; and
(b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution; and
(c) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of those Territories.

(4) The operation of this Act in a State that is not a referring State is based on:
(a) the legislative powers that the Commonwealth Parliament has under section 51 (other than paragraph 51(xxxvii)) and section 122 of the Constitution; and
(b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Act relates because those matters are referred to it by the Parliaments of the referring States under paragraph 51(xxxvii) of the Constitution.

## 4 Referring States

*Reference of matters by State Parliament to Commonwealth Parliament*

(1) A State is a ***referring State*** if the Parliament of the State has referred the matters covered by subsections (4) and (5) to the Parliament of the Commonwealth for the purposes of paragraph 51(xxxvii) of the Constitution:



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(a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51(xxxvii) of the Constitution); and

(b) if and to the extent to which the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsections (6) and (7).

(2) A State is a ***referring State*** even if the State reference Act includes a provision to the effect that nothing in the State reference Act is intended to enable the making of laws pursuant to the amendment reference with the sole or main underlying purpose or object of regulating industrial relations matters even if, but for that provision in the State reference Act, the law would be a law with respect to a matter referred to the Parliament of the Commonwealth by the amendment reference.

(3) A State is a ***referring State*** even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (4) and (5) is to terminate in particular circumstances.

*Reference covering initial Corporations Act and ASIC Act*

(4) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in the initial Corporations Act and the initial ASIC Act.

*Reference covering amendments of this Act and ASIC Act*

(5) This subsection covers the matters of the formation of corporations, corporate regulation and the regulation of financial products and services to the extent of the making of laws with respect to those matters by making express amendments of this Act or the ASIC Act.



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*Effect of termination of reference*

(6) A State ceases to be a ***referring State*** if the State's initial reference terminates.

(7) A State ceases to be a ***referring State*** if:
  (a) the State's amendment reference terminates; and
  (b) subsection (8) does not apply to the termination.

(8) A State does not cease to be a ***referring State*** because of the termination of its amendment reference if:
  (a) the termination is effected by the Governor of that State fixing a day by proclamation as the day on which the reference terminates; and
  (b) the day fixed is no earlier than the first day after the end of the period of 6 months beginning on the day on which the proclamation is published; and
  (c) that State's amendment reference, and the amendment reference of every other State, terminates on the same day.

*Definitions*

(9) In this section:

***amendment reference*** of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (5).

***express amendment*** of this Act or the ASIC Act means the direct amendment of the text of this Act or the ASIC Act (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by Commonwealth Acts, but does not include the enactment by a Commonwealth Act of a provision that has, or will have, substantive effect otherwise than as part of the text of this Act or the ASIC Act.

***initial ASIC Act*** means the ASIC Act as originally enacted.

***initial Corporations Act*** means this Act as originally enacted.



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***initial reference*** of a State means the reference by the Parliament of the State to the Parliament of the Commonwealth of the matters covered by subsection (4).

***referred provisions*** means:

(a) the initial Corporations Act; and

(b) the initial ASIC Act;

to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

***State reference Act*** for a State is the law under which the initial reference and the amendment reference are given.

## 5 General territorial application of Act

*Geographical coverage of "this jurisdiction"*

(1) Section 9 defines ***this jurisdiction*** as the area that includes:

(a) each referring State (including its coastal sea); and

(b) the Capital Territory (including the coastal sea of the Jervis Bay Territory); and

(c) the Northern Territory (including its coastal sea); and

(d) also, for the purposes of the application of a provision of Chapter 7 or an associated provision (see subsection (10))—any external Territory in which the provision applies because of subsection (9) (but only to the extent provided for in that subsection).

(2) Throughout this Act, ***this jurisdiction*** therefore consists of:

(a) either:

(i) the whole of Australia (if all the States are referring States); or

(ii) Australia (other than any State that is not a referring State) if one or more States are not referring States; and

(b) also, when used in or in relation to a provision of Chapter 7 or an associated provision (see subsection (10))—any external Territory in which the provision applies because of



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subsection (9) (but only to the extent provided for in that subsection).

*Operation in this jurisdiction*

(3) Each provision of this Act applies in this jurisdiction.

*Operation outside this jurisdiction*

(4) Subject to subsection (8), each provision of this Act also applies, according to its tenor, in relation to acts and omissions outside this jurisdiction.

*Residence, place of formation etc.*

(7) Each provision of this Act applies according to its tenor to:
  (a) natural persons whether:
    (i) resident in this jurisdiction or not; and
    (ii) resident in Australia or not; and
    (iii) Australian citizens or not; and
  (b) all bodies corporate and unincorporated bodies whether:
    (i) formed or carrying on business in this jurisdiction or not; and
    (ii) formed or carrying on business in Australia or not.

Note: Paragraph (b)—many of the provisions in this Act apply only in relation to companies (that is, to companies that are registered under this Act).

*Operation in non-referring States*

(8) This Act does not apply to an act or omission in a State that is not a referring State to the extent to which that application would be beyond the legislative powers of the Parliament (including powers it has under paragraphs 51(xxxvii) and (xxxix) of the Constitution).



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*Expanded application of provisions of Chapter 7 and associated provisions*

(9) The regulations may provide that, in specified circumstances, a specified external Territory is included in ***this jurisdiction*** for the purposes of a specified provision of Chapter 7 (the ***applicable provision***). If the regulations do so:

(a) the applicable provision applies in that external Territory in those circumstances; and

(b) the associated provisions (see subsection (10)) in relation to the applicable provision apply in that external Territory in relation to the applicable provision as so applying.

*Meaning of **associated provisions***

(10) For the purposes of this section, the ***associated provisions*** in relation to a provision of Chapter 7 are:

(a) the provisions of Chapters 1, 9 (including the provisions of Division 2 of Part 9.4 that create offences and of Part 9.4B that allow for pecuniary penalty orders) and 10 as they apply or have effect in relation to, or for the purposes of, the provision; and

(b) any regulations or other instruments (including any that create offences or allow for pecuniary penalty orders) made under this Act for the purposes of any of the provisions covered by paragraph (a); and

(c) if regulations made for the purposes of subsection (9) have been made in relation to the provision—any other provisions of this Act, or any regulations or other instruments made under this Act (including any that create offences or allow for pecuniary penalty orders), specified in those regulations.

## 5A Application to the Crown

(1) To avoid doubt, a reference in this section to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.



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(2) Chapter 5 (except Part 5.8) binds the Crown in right of the Commonwealth, of each of the States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(3) Chapters 6, 6A, 6B, 6C and 6D:
   (a) bind the Crown in right of the Commonwealth; and
   (b) do not bind the Crown in right of any State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

(4) A provision of Chapter 5D, 6CA or 7 only binds the Crown in a particular capacity in circumstances (if any) specified in the regulations.

(5) Nothing in this Act makes the Crown in any right liable to a pecuniary penalty or to be prosecuted for an offence.

## 5B ASIC has general administration of this Act

Subject to the ASIC Act, ASIC has the general administration of this Act.

## 5C Application of the *Acts Interpretation Act 1901*

(1) Until the date of commencement of section 4 of the *Legislative Instruments (Transitional and Consequential Amendments) Act 2003* (the ***Legislative Instruments commencement day***), the *Acts Interpretation Act 1901* as in force on 1 November 2000 applies to this Act.

(2) On and after the Legislative Instruments commencement day, the *Acts Interpretation Act 1901* as in force on that day applies to this Act.

(3) Amendments of the *Acts Interpretation Act 1901* made after the Legislative Instruments commencement day do not apply to this Act.



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# Part 1.1A—Interaction between Corporations legislation and State and Territory laws

## 5D Coverage of Part

(1) This Part applies only to laws of a State or Territory that is in this jurisdiction.

(2) This Part applies only to the following Corporations legislation:
  (a) this Act (including the regulations made under this Act); and
  (b) Part 3 of the ASIC Act; and
  (c) regulations made under the ASIC Act for the purposes of Part 3 of that Act.

Note: This Part does not apply in relation to the trustee company provisions: see section 601RAE.

(3) This Part does not apply to Part 3 of the ASIC Act, or regulations made under that Act for the purposes of Part 3 of that Act, to the extent to which they operate in relation to a contravention of Division 2 of Part 2 of that Act.

## 5E Concurrent operation intended

(1) The Corporations legislation is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(2) Without limiting subsection (1), the Corporations legislation is not intended to exclude or limit the concurrent operation of a law of a State or Territory that:
  (a) imposes additional obligations or liabilities (whether criminal or civil) on:
    (i) a director or other officer of a company or other corporation; or
    (ii) a company or other body; or
  (b) confers additional powers on:



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(i) a director or other officer of a company or other corporation; or
(ii) a company or other body; or

(c) provides for the formation of a body corporate; or

(d) imposes additional limits on the interests a person may hold or acquire in a company or other body; or

(e) prevents a person from:
(i) being a director of; or
(ii) being involved in the management or control of;
a company or other body; or

(f) requires a company:
(i) to have a constitution; or
(ii) to have particular rules in its constitution.

Note: Paragraph (a)—this includes imposing additional reporting obligations on a company or other body.

(3) Without limiting subsection (2), a reference in that subsection to a law of a State or Territory imposing obligations or liabilities, or conferring powers, includes a reference to a law of a State or Territory imposing obligations or liabilities, or conferring powers, by reference to the State or Territory in which a company is taken to be registered.

(4) This section does not apply to the law of the State or Territory if there is a direct inconsistency between the Corporations legislation and that law.

Note: Section 5G prevents direct inconsistencies arising in some cases by limiting the operation of the Corporations legislation.

(5) If:
(a) an act or omission of a person is both an offence against the Corporations legislation and an offence under the law of a State or Territory; and
(b) the person is convicted of either of those offences;
the person is not liable to be convicted of the other of those offences.



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## 5F Corporations legislation does not apply to matters declared by State or Territory law to be an excluded matter

(1) Subsection (2) applies if a provision of a law of a State or Territory declares a matter to be an excluded matter for the purposes of this section in relation to:
  (a) the whole of the Corporations legislation; or
  (b) a specified provision of the Corporations legislation; or
  (c) the Corporations legislation other than a specified provision; or
  (d) the Corporations legislation otherwise than to a specified extent.

(2) By force of this subsection:
  (a) none of the provisions of the Corporations legislation (other than this section) applies in the State or Territory in relation to the matter if the declaration is one to which paragraph (1)(a) applies; and
  (b) the specified provision of the Corporations legislation does not apply in the State or Territory in relation to the matter if the declaration is one to which paragraph (1)(b) applies; and
  (c) the provisions of the Corporations legislation (other than this section and the specified provisions) do not apply in the State or Territory in relation to the matter if the declaration is one to which paragraph (1)(c) applies; and
  (d) the provisions of the Corporations legislation (other than this section and otherwise than to the specified extent) do not apply in the State or Territory in relation to the matter if the declaration is one to which paragraph (1)(d) applies.

(3) Subsection (2) does not apply to the declaration to the extent to which the regulations provide that that subsection does not apply to that declaration.

(4) By force of this subsection, if:
  (a) the Corporations Law, ASC Law or ASIC Law of a State or Territory; or



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(b) a provision of that Law;

did not apply to a matter immediately before this Act commenced because a provision of a law of the State or Territory provided that that Law, or that provision, did not apply to the matter, the Corporations legislation, or the provision of the Corporations legislation that corresponds to that provision of that Law, does not apply in the State or Territory to the matter until that law of the State or Territory is omitted or repealed.

(5) Subsection (4) does not apply to the application of the provisions of the Corporations legislation to the matter to the extent to which the regulations provide that that subsection does not apply to the matter.

(6) In this section:

***matter*** includes act, omission, body, person or thing.

## 5G Avoiding direct inconsistency arising between the Corporations legislation and State and Territory laws

*Section overrides other provisions of the Corporations legislation*

(1) This section has effect despite anything else in the Corporations legislation.

*Section does not deal with provisions capable of concurrent operation*

(2) This section does not apply to a provision of a law of a State or Territory that is capable of concurrent operation with the Corporations legislation.

Note: This kind of provision is dealt with by section 5E.

*When this section applies to a provision of a State or Territory law*

(3) This section applies to the interaction between:

(a) a provision of a law of a State or Territory (the ***State provision***); and



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(b) a provision of the Corporations legislation (the ***Commonwealth provision***);

only if the State provision meets the conditions set out in the following table:

**Conditions to be met before section applies** [operative]

| Item | Kind of provision | Conditions to be met |
|---|---|---|
| 1 | a pre-commencement (commenced) provision | (a) the State provision operated, immediately before this Act commenced, despite the provision of:<br>(i) the Corporations Law of the State or Territory (as in force at that time); or<br>(ii) the ASC or ASIC Law of the State or Territory (as in force at that time);<br>that corresponds to the Commonwealth provision; and<br>(b) the State provision is not declared to be one that this section does not apply to (either generally or specifically in relation to the Commonwealth provision) by:<br>(i) regulations made under this Act; or<br>(ii) a law of the State or Territory. |
| 2 | a pre-commencement (enacted) provision | (a) the State provision would have operated, immediately before this Act commenced, despite the provision of:<br>(i) the Corporations Law of the State or Territory (as in force at that time); or<br>(ii) the ASC or ASIC Law of the State or Territory (as in force at that time);<br>that corresponds to the Commonwealth provision if the State provision had commenced before the commencement of this Act; and<br>(b) the State provision is not declared to be one that this section does not apply to (either generally or specifically in relation to the Commonwealth provision) by:<br>(i) regulations made under this Act; or |



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## Section 5G

| **Conditions to be met before section applies** | | [operative] |
|---|---|---|
| **Item** | **Kind of provision** | **Conditions to be met** |
| | | (ii) a law of the State or Territory. |
| 3 | a post-commencement provision | the State provision is declared by a law of the State or Territory to be a Corporations legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision) |
| 4 | a provision that is materially amended on or after this Act commenced if the amendment was enacted before this Act commenced | (a) the State provision as amended would have operated, immediately before this Act commenced, despite the provision of:<br>(i) the Corporations Law of the State or Territory (as in force at that time); or<br>(ii) the ASC or ASIC Law of the State or Territory (as in force at that time);<br>that corresponds to the Commonwealth provision if the amendment had commenced before the commencement of this Act; and<br>(b) the State provision is not declared to be one that this section does not apply to (either generally or specifically in relation to the Commonwealth provision) by:<br>(i) regulations made under this Act; or<br>(ii) a law of the State or Territory. |
| 5 | a provision that is materially amended on or after this Act commenced if the amendment is enacted on or after this Act commenced | the State provision as amended is declared by a law of the State or Territory to be a Corporations legislation displacement provision for the purposes of this section (either generally or specifically in relation to the Commonwealth provision) |

Note 1: Item 1—subsection (12) tells you when a provision is a pre-commencement (commenced) provision.

Note 2: Item 1 paragraph (a)—For example, a State or Territory provision enacted after the commencement of the Corporations Law might not have operated despite the Corporations Law if it was not expressly provided that the provision was to operate despite a specified



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provision, or despite any provision, of the Corporations Law (see, for example, section 5 of the Corporations (New South Wales) Act 1990).

Note 3: Item 2—subsection (13) tells you when a provision is a pre-commencement (enacted) provision.

Note 4: Item 3—subsection (14) tells you when a provision is a post-commencement provision.

Note 5: Subsections (15) to (17) tell you when a provision is materially amended after commencement.

*State and Territory laws specifically authorising or requiring act or thing to be done*

(4) A provision of the Corporations legislation does not:
  (a) prohibit the doing of an act; or
  (b) impose a liability (whether civil or criminal) for doing an act;

if a provision of a law of a State or Territory specifically authorises or requires the doing of that act.

*Instructions given to directors under State and Territory laws*

(5) If a provision of a law of a State or Territory specifically:
  (a) authorises a person to give instructions to the directors or other officers of a company or body; or
  (b) requires the directors of a company or body to:
    (i) comply with instructions given by a person; or
    (ii) have regard to matters communicated to the company or body by a person; or
  (c) provides that a company or body is subject to the control or direction of a person;

a provision of the Corporations legislation does not:
  (d) prevent the person from giving an instruction to the directors or exercising control or direction over the company or body; or
  (e) without limiting subsection (4):
    (i) prohibit a director from complying with the instruction or direction; or



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(ii) impose a liability (whether civil or criminal) on a director for complying with the instruction or direction.

The person is not taken to be a director of a company or body for the purposes of the Corporations legislation merely because the directors of the company or body are accustomed to act in accordance with the person's instructions.

*Use of names authorised by State and Territory laws*

(6) The provisions of Part 2B.6 and Part 5B.3 of this Act do not:

(a) prohibit a company or other body from using a name if the use of the name is expressly provided for, or authorised by, a provision of a law of a State or Territory; or

(b) require a company or other body to use a word as part of its name if the company or body is expressly authorised not to use that word by a provision of a law of a State or Territory.

*Meetings held in accordance with requirements of State and Territory laws*

(7) The provisions of Chapter 2G of this Act do not apply to the calling or conduct of a meeting of a company to the extent to which the meeting is called or conducted in accordance with a provision of a law of a State or Territory. Any resolutions passed at the meeting are as valid as if the meeting had been called and conducted in accordance with this Act.

*External administration under State and Territory laws*

(8) The provisions of Chapter 5 of this Act do not apply to a scheme of arrangement, receivership, winding up or other external administration of a company to the extent to which the scheme, receivership, winding up or administration is carried out in accordance with a provision of a law of a State or Territory.

*State and Territory laws dealing with company constitutions*

(9) If a provision of a law of a State or Territory provides that a provision is included, or taken to be included, in a company's



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constitution, the provision is included in the company's constitution even though the procedures and other requirements of this Act are not complied with in relation to the provision.

(10) If a provision of a law of a State or Territory provides that additional requirements must be met for an alteration of a company's constitution to take effect, the alteration does not take effect unless those requirements are met.

*Other cases*

(11) A provision of the Corporations legislation does not operate in a State or Territory to the extent necessary to ensure that no inconsistency arises between:

(a) the provision of the Corporations legislation; and

(b) a provision of a law of the State or Territory that would, but for this subsection, be inconsistent with the provision of the Corporations legislation.

Note 1: A provision of the State or Territory law is not covered by this subsection if one of the earlier subsections in this section applies to the provision: if one of those subsections applies there would be no potential inconsistency to be dealt with by this subsection.

Note 2: The operation of the provision of the State or Territory law will be supported by section 5E to the extent to which it can operate concurrently with the provision of the Corporations legislation.

*Pre-commencement (commenced) provision*

(12) A provision of a law of a State or Territory is a ***pre-commencement (commenced) provision*** if it:

(a) is enacted, and comes into force, before the commencement of this Act; and

(b) is not a provision that has been materially amended after commencement (see subsections (15) to (17)).

*Pre-commencement (enacted) provision*

(13) A provision of a law of a State or Territory is a ***pre-commencement (enacted) provision*** if it:



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(a) is enacted before, but comes into force on or after, the commencement of this Act; and
(b) is not a provision that has been materially amended after commencement (see subsections (15) to (17)).

*Post-commencement provision*

(14) A provision of a law of a State or Territory is a ***post-commencement provision*** if it:
(a) is enacted, and comes into force, on or after the commencement of this Act; and
(b) is not a provision that has been materially amended after commencement (see subsections (15) to (17)).

*Provision materially amended after commencement*

(15) A provision of a law of a State or Territory is ***materially amended after commencement*** if:
(a) an amendment of the provision commences on or after the commencement of this Act; and
(b) neither subsection (16) nor subsection (17) applies to the amendment.

(16) A provision of a law of a State or Territory is not ***materially amended after commencement*** under subsection (15) if the amendment merely:
(a) changes:
(i) a reference to the Corporations Law or the ASC or ASIC Law, or the Corporations Law or the ASC or ASIC Law of a State or Territory, to a reference to the Corporations Act or the ASIC Act; or
(ii) a reference to a provision of the Corporations Law or the ASC or ASIC Law, or the Corporations Law or ASC or ASIC Law of a State or Territory, to a reference to a provision of the Corporations Act or the ASIC Act; or
(iii) a penalty for a contravention of a provision of a law of a State or Territory; or



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(iv) a reference to a particular person or body to a reference to another person or body; or

(b) adds a condition that must be met before a right is conferred, an obligation imposed or a power conferred; or

(c) adds criteria to be taken into account before a power is exercised; or

(d) amends the provision in way declared by the regulations to not constitute a material amendment for the purposes of this subsection.

(17) A provision of a law of a State or Territory is not ***materially amended after commencement*** under subsection (15) if:

(a) the provision as amended would be inconsistent with a provision of the Corporations legislation but for this section; and

(b) the amendment would not materially reduce the range of persons, acts and circumstances to which the provision of the Corporations legislation applies if this section applied to the provision of the State or Territory law as amended.

## 5H Registration of body as company on basis of State or Territory law

(1) A body is taken to be registered under this Act as a company of a particular type under section 118 if a law of a State or Territory in this jurisdiction:

(a) provides that the body is a deemed registration company for the purposes of this section; and

(b) specifies:

(i) the day on which the body is to be taken to be registered (the ***registration day***) or the manner in which that day is to be fixed; and

(ii) the type of company the body is to be registered as under this Act;

(iii) the company's proposed name (unless the ACN is to be used in its name);

and subsections (2) and (3) are satisfied.



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## Section 5H

(2) A notice setting out the following details must be lodged before the registration day:

(a) the name and address of each person who is to be a member on registration;

(b) the present given and family name, all former given and family names and the date and place of birth of each person who is to be a director on registration;

(c) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary;

(d) the address of each person who is to be a director or company secretary on registration;

(e) the address of the company's proposed registered office;

(f) for a public company—the proposed opening hours of its registered office (if they are not the standard opening hours);

(g) the address of the company's proposed principal place of business (if it is not the address of the proposed registered office);

(h) for a company limited by shares or an unlimited company—the following:

(i) the number and class of shares each member agrees in writing to take up;

(ii) the amount (if any) each member agrees in writing to pay for each share;

(iii) if that amount is not to be paid in full on registration—the amount (if any) each member agrees in writing to be unpaid on each share;

(i) for a public company that is limited by shares or is an unlimited company, if shares will be issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application;

(j) for a company limited by guarantee—the proposed amount of the guarantee that each member agrees to in writing.



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(3) If the company:
  (a) is to be a public company; and
  (b) is to have a constitution on registration;
a copy of the constitution must be lodged before the registration day.

(4) On the registration day, the body is taken:
  (a) to be registered as a company under this Act; and
  (b) to be registered in the State or Territory referred to in subsection (1).

(5) The regulations may modify the operation of this Act to facilitate the registration of the company.

(6) Without limiting subsection (5), the regulations may make provision in relation to:
  (a) the share capital of the company on registration; and
  (b) the issue of a certificate of registration on the basis of the company's registration.

## 5I Regulations may modify operation of the Corporations legislation to deal with interaction between that legislation and State and Territory laws

(1) The regulations may modify the operation of the Corporations legislation so that:
  (a) provisions of the Corporations legislation do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
  (b) no inconsistency arises between the operation of a provision of the Corporations legislation and the operation of a provision of a State or Territory law specified in the regulations.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of the Corporations legislation:
  (a) does not apply to:



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(i) a person specified in the regulations; or
(ii) a body specified in the regulations; or
(iii) circumstances specified in the regulations; or
(iv) a person or body specified in the regulations in the circumstances specified in the regulations; or

(b) does not prohibit an act to the extent to which the prohibition would otherwise give rise to an inconsistency with the State or Territory law; or

(c) does not require a person to do an act to the extent to which the requirement would otherwise give rise to an inconsistency with the State or Territory law; or

(d) does not authorise a person to do an act to the extent to which the conferral of that authority on the person would otherwise give rise to an inconsistency with the State or Territory law; or

(e) does not impose an obligation on a person to the extent to which complying with that obligation would require the person to not comply with an obligation imposed on the person under the State or Territory law; or

(f) authorises a person to do something for the purposes of the Corporations legislation that the person:
(i) is authorised to do under the State or Territory law; and
(ii) would not otherwise be authorised to do under the Corporations legislation; or

(g) will be taken to be satisfied if the State or Territory law is satisfied.

(3) In this section:

***matter*** includes act, omission, body, person or thing.



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# Part 1.2—Interpretation

## Division 1—General

### 6 Effect of this Part

(1) The provisions of this Part have effect for the purposes of this Act, except so far as the contrary intention appears in this Act.

(2) This Part applies for the purposes of:
  (a) Part 5.7; and
  (b) Chapter 5 as applying by virtue of Part 5.7; and
  (c) Part 9.2;
as if a reference in this Part to a person or to a body corporate included a reference to a Part 5.7 body.

(4) Where, because of Part 11.2, provisions of this Act, as in force at a particular time, continue to apply:
  (a) in relation to someone or something; or
  (b) for particular purposes;
then, for the purposes of those provisions as so applying:
  (c) this Part as in force at that time continues to have effect; and
  (d) this Part as in force at a later time does not have effect.

### 7 Location of other interpretation provisions

(1) Most of the interpretation provisions for this Act are in this Part.

(2) However, interpretation provisions relevant only to Chapter 7 are to be found at the beginning of that Chapter.

(3) Also, interpretation provisions relevant to a particular Part, Division or Subdivision may be found at the beginning of that Part, Division or Subdivision.



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(4) Occasionally, an individual section contains its own interpretation provisions, not necessarily at the beginning.

## 9 Dictionary

Unless the contrary intention appears:

***2-part simple corporate bonds prospectus*** has the meaning given by section 713B.

***AASB*** means the Australian Accounting Standards Board.

***ABN*** (short for "Australian Business Number") has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999*.

***Aboriginal and Torres Strait Islander corporation*** means a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

***accounting standard*** means:

(a) an instrument in force under section 334; or

(b) a provision of such an instrument as it so has effect.

***ACN*** (short for "Australian Company Number") is the number given by ASIC to a company on registration (see sections 118 and 601BD).

***acquire***, in relation to financial products, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***act*** includes thing.

***administration***, in relation to a company, has the meaning given by section 435C.

***administrator***:

(a) in relation to a body corporate but not in relation to a deed of company arrangement:



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(i) means an administrator of the body or entity appointed under Part 5.3A; and

(iii) if 2 or more persons are appointed under that Part as administrators of the body or entity—has a meaning affected by paragraph 451A(2)(b); or

(b) in relation to a deed of company arrangement:

(i) means an administrator of the deed appointed under Part 5.3A; and

(ii) if 2 or more persons are appointed under that Part as administrators of the deed—has a meaning affected by paragraph 451B(2)(b).

***admit to quotation***: financial products are ***admitted to quotation*** on a market if the market operator has given unconditional permission for quotation of the financial products on the market.

***affairs***, in relation to a body corporate, has, in the provisions referred to in section 53, a meaning affected by that section.

***affidavit*** includes affirmation.

***agency*** means an agency, authority, body or person.

***aggregated turnover*** has the same meaning as in the *Income Tax Assessment Act 1997.*

***AGM*** means an annual general meeting of a company that section 250N requires to be held.

***agreement***, in Chapter 6 or 7, means a relevant agreement.

***amount*** includes a nil amount and zero.

***ancillary offence***, in relation to another offence, means an offence against:

(a) section 5, 6, 7 or 7A of the *Crimes Act 1914*; or

(b) subsection 86(1) of that Act by virtue of paragraph 86(1)(a) of that Act;

being an offence that is related to that other offence.



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***annual transparency report*** has the meaning given by subsection 332A(2).

***annual turnover***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***application facility***, in relation to a CSF offer, has the meaning given by subsection 738ZA(3).

***approved stock exchange*** has the same meaning as in the *Income Tax Assessment Act 1997.*

***APRA*** means the Australian Prudential Regulation Authority.

***arbitrage transaction*** means a purchase or sale of financial products effected in the ordinary course of trading on a financial market together with an offsetting sale or purchase of those financial products effected at the same time, or at as nearly the same time as practicable, in the ordinary course of trading on another financial market for the purpose of obtaining a profit from the difference between the prices of those financial products in the 2 financial markets.

***ARBN*** (short for "Australian Registered Body Number") is the number given by ASIC to a registrable body on registration under Part 5B.2.

***arrangement***, in Part 5.1, includes a reorganisation of the share capital of a body corporate by the consolidation of shares of different classes, by the division of shares into shares of different classes, or by both of those methods.

***ARSN*** (short for "Australian Registered Scheme Number") is the number given by ASIC to a registered scheme on registration (see section 601EB).

***ASIC*** means the Australian Securities and Investments Commission.



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***ASIC Act*** means the *Australian Securities and Investments Commission Act 2001* and includes the regulations made under that Act.

***ASIC database*** means so much of the national companies database kept by ASIC as consists of:

(a) some or all of a register kept by ASIC under this Act; or

(b) information set out in a document lodged under this Act;

but does not include ASIC's document imaging system.

***assets***, in relation to a financial services licensee, means all the licensee's assets (whether or not used in connection with the licensee's Australian financial services licence).

***associate*** has the meaning given by sections 10 to 17.

***associated entity*** has the meaning given by section 50AAA.

***AUASB*** means the Auditing and Assurance Standards Board.

***audit*** means an audit conducted for the purposes of this Act and includes a review of a financial report for a financial year or a half-year conducted for the purposes of this Act.

***audit activity***: see the definition of ***engage in audit activity***.

***audit company*** means a company that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

***audit-critical employee***, in relation to a company, or the responsible entity for a registered scheme, that is the audited body for an audit, means a person who:

(a) is an employee of the company or of the responsible entity for the registered scheme; and

(b) is able, because of the position in which the person is employed, to exercise significant influence over:

(i) a material aspect of the contents of the financial report being audited; or

(ii) the conduct or efficacy of the audit.



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***audited body***, in relation to an audit of a company or registered scheme, means the company or registered scheme in relation to which the audit is, or is to be, conducted.

***audit firm*** means a firm that consents to be appointed, or is appointed, as auditor of a company or registered scheme.

***auditing standard*** means:

(a) a standard in force under section 336; or

(b) a provision of such a standard as it so has effect.

***auditor independence requirements of this Act*** means the requirements of Divisions 3, 4 and 5 of Part 2M.4.

***Australia***, when used in a geographical sense, does not include an external Territory.

Note: Paragraph 17(a) of the *Acts Interpretation Act 1901* would otherwise provide that ***Australia*** included the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands.

***Australian ADI*** means:

(a) an ADI (authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; and

(b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution.

***Australian bank*** means an Australian ADI that is permitted under section 66 of the *Banking Act 1959* to assume or use:

(a) the word bank, banker or banking; or

(b) any other word (whether or not in English) that is of like import to a word referred to in paragraph (a).

***Australian carbon credit unit*** has the same meaning as in the *Carbon Credits (Carbon Farming Initiative) Act 2011*.

***Australian court*** means a federal court or a court of a State or Territory.

***Australian CS facility licence***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.



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

***Australian financial services licence***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***Australian law*** means a law of the Commonwealth or of a State or Territory.

***Australian market licence***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***Australian member***: a person is an ***Australian member*** of a notified foreign passport fund if:

(a) the person holds an interest in the fund that was acquired in this jurisdiction; or

(b) the person is ordinarily resident in this jurisdiction and holds an interest in the fund.

***Australian passport fund*** means a managed investment scheme:

(a) that is registered under section 601EB as a registered scheme and also registered as an Australian passport fund under Part 8A.3; and

(b) that is not deregistered as a registered scheme and an Australian passport fund under Division 2 of Part 5C.10, or deregistered as an Australian passport fund under Division 1 of Part 8A.7.

***Australian register*** of a foreign company means a branch register of members kept under section 601CM.

***authorised audit company*** means a company registered under Part 9.2A.

***bank*** or ***banker*** includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.



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***banking corporation*** means a body corporate that carries on, as its sole or principal business, the business of banking (other than State banking not extending beyond the limits of the State concerned).

***base prospectus*** has the meaning given by subsection 713C(1).

***base salary*** has the meaning specified in regulations made for the purposes of this definition.

***begin***, in relation to a winding up, has the meaning given by Division 1A of Part 5.6.

***benchmark administrator licence*** means a licence granted under section 908BC.

***benchmark administrator licensee*** means a person who holds a benchmark administrator licence.

***benefit***:

(a) means any benefit, whether by way of payment of cash or otherwise; and

(b) when used in Division 2 of Part 2D.2 (sections 200 to 200J)—has the meaning given by section 200AB.

***benefit derived and detriment avoided***:

(a) because of an offence—has the meaning given by section 1311D; and

(b) because of a contravention of a civil penalty provision—has the meaning given by section 1317GAD.

***bid class*** of securities for a takeover bid is the class of securities to which the securities being bid for belong.

***bidder*** for a takeover bid means the person who makes or proposes to make, or each of the people who make or propose to make, the offers under the bid (whether personally or by an agent or nominee).

Note: A person who announces a bid on behalf of another person is not making the bid, the other person is making the bid.



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***bidder's statement*** means a bidder's statement under sections 636 and 637 as supplemented.

***bid period***:

(a) for an off-market bid—starts when the bidder's statement is given to the target and ends:

(i) 1 month later if no offers are made under the bid; or

(ii) at the end of the offer period; and

(b) for a market bid—starts when the bid is announced to the relevant financial market and ends at the end of the offer period.

***Board***, when used in Part 9.2, means the Companies Auditors Disciplinary Board.

***board limit*** means a limit described in section 201N.

***board limit resolution*** means a resolution described in paragraph 201P(1)(a).

***body*** means a body corporate or an unincorporated body and includes, for example, a society or association.

***body corporate***:

(a) includes a body corporate that is being wound up or has been dissolved; and

(b) in this Chapter (except section 66A) and section 206E includes an unincorporated registrable body.

***body regulated by APRA*** has the meaning given by subsection 3(2) of the *Australian Prudential Regulation Authority Act 1998*.

***books*** includes:

(a) a register; and

(b) any other record of information; and

(c) financial reports or financial records, however compiled, recorded or stored; and

(d) a document;



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but does not include an index or recording made under Subdivision D of Division 5 of Part 6.5.

***borrower***, in relation to a debenture, means the body that is or will be liable to repay money under the debenture.

***business affairs***, in relation to an entity, has a meaning affected by sections 53AA, 53AB, 53AC and 53AD.

***business day*** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place concerned.

***Business Names Register*** means the Register established and maintained under section 22 of the *Business Names Registration Act 2011*.

***buy-back*** by a company means the acquisition by the company of shares in itself.

***buy-back agreement*** by a company means an agreement by the company to buy back its own shares (whether the agreement is conditional or not).

***Capital Territory*** means the Australian Capital Territory and the Jervis Bay Territory.

***carry on*** has a meaning affected by Division 3.

***cash management trust interest*** means an interest that:

(a) is an interest in a registered scheme or a notified foreign passport fund; and

(b) relates to an undertaking of the kind commonly known as a cash management trust.

***cause*** includes procure.

***certified*** means:

(a) in relation to a copy of, or extract from, a document—certified by a statement in writing to be a true copy of, or extract from, the document; or



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(b) in relation to a translation of a document—certified by a statement in writing to be a correct translation of the document into English.

***Chapter 5 body corporate*** means a body corporate:

(a) that is being wound up; or

(b) in respect of property of which a receiver, or a receiver and manager, has been appointed (whether or not by a court) and is acting; or

(c) that is under administration; or

(d) that has executed a deed of company arrangement that has not yet terminated; or

(e) that has entered into a compromise or arrangement with another person the administration of which has not been concluded.

***charge*** means a charge created in any way and includes a mortgage and an agreement to give or execute a charge or mortgage, whether on demand or otherwise.

***chargeable matter*** has the same meaning as in the *Corporations (Fees) Act 2001*.

***chargee*** means the holder of a charge and includes a person in whose favour a charge is to be given or executed, whether on demand or otherwise, under an agreement.

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

***circulating security interest*** has the meaning given by section 51C.

***civil matter*** means a matter other than a criminal matter.

***civil penalty order*** means any of the following:

(a) a declaration of contravention under section 1317E;

(b) a pecuniary penalty order under section 1317G;



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(baa) a relinquishment order under section 1317GAB;
(ba) a refund order under section 1317GA;
(c) a compensation order under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE;
(d) an order under section 206C disqualifying a person from managing corporations.

***civil penalty provision*** has the meaning given in subsection 1317E(3).

***class*** has:
(b) in relation to shares or interests in a managed investment scheme—a meaning affected by section 57; and
(c) when used in relation to securities for the purposes of Chapter 6, 6A or 6C—a meaning affected by subsection 605(2).

***clearing and settlement facility***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***close associate*** of a director means:
(a) a relative of the director; or
(b) a relative of a spouse of the director.

***closed***, in relation to a CSF offer, has the meaning given by subsection 738N(3).

***closely related party*** of a member of the key management personnel for an entity means:
(a) a spouse or child of the member; or
(b) a child of the member's spouse; or
(c) a dependant of the member or of the member's spouse; or
(d) anyone else who is one of the member's family and may be expected to influence the member, or be influenced by the member, in the member's dealings with the entity; or
(e) a company the member controls; or
(f) a person prescribed by the regulations for the purposes of this paragraph.



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***coastal sea***:

(a) in relation to Australia—means:

(i) the territorial sea of Australia; and

(ii) the sea on the landward side of the territorial sea of Australia and not within the limits of a State or internal Territory;

and includes the airspace over, and the sea-bed and subsoil beneath, any such sea; and

(b) in relation to a State or Territory—means so much of the coastal sea of Australia as is within the area described in Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* under the heading that refers to that State or Territory.

***commence***, in relation to a winding up, has the meaning given by Division 1A of Part 5.6.

***commencement***, in relation to an accounting standard, means:

(a) in the case of an accounting standard as originally in effect—the time when the accounting standard took effect; or

(b) in the case of an accounting standard as varied by a particular provision of an instrument made under section 334—the time when that provision took effect.

***Commission delegate*** has the same meaning as in the ASIC Act.

***Commonwealth authority*** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act.

***communication facility***, in relation to a CSF offer, has the meaning given by subsection 738ZA(5).

***company*** means a company registered under this Act and:

(c) in Parts 5.7B and 5.8 (except sections 595 and 596), includes a Part 5.7 body; and

(d) in Part 5B.1, includes an unincorporated registrable body.



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***company limited by guarantee*** means a company formed on the principle of having the liability of its members limited to the respective amounts that the members undertake to contribute to the property of the company if it is wound up.

***company limited by shares*** means a company formed on the principle of having the liability of its members limited to the amount (if any) unpaid on the shares respectively held by them.

***compelled financial benchmark rules*** means rules made under section 908CD.

***complete***, in relation to a CSF offer, has the meaning given by subsection 738N(7).

***condition***, in relation to a licence, means a condition or restriction to which the licence is subject, or will be subject, as the case requires.

***connected entity***, in relation to a corporation, means:

(a) a body corporate that is, or has been, related to the corporation; or

(b) an entity that is, or has been, connected (as defined by section 64B) with the corporation.

***consolidated entity*** means a company, registered scheme or disclosing entity together with all the entities it is required by the accounting standards to include in consolidated financial statements.

***constitution*** means (depending on the context):

(a) a company's constitution, which (where relevant) includes rules and consequential amendments that are part of the company's constitution because of the *Life Insurance Act 1995*; or

(b) a managed investment scheme's constitution; or

(c) in relation to any other kind of body:

(i) the body's charter or memorandum; or



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(ii) any instrument or law (other than this Act) constituting, or defining the constitution of, the body or governing the activities of the body or its members.

Note 1: The *Life Insurance Act 1995* has rules about how benefit fund rules become part of a company's constitution. They override this Act. See Subdivision 2 of Division 4 of Part 2A of that Act.

Note 2: The constituent document (as defined in the Passport Rules for this jurisdiction) for a notified foreign passport fund is taken under section 1213E to be the constitution of the fund as a managed investment scheme.

***continuous disclosure notice*** means:

(a) a document used to notify a market operator of information relating to a body under provisions of the market's listing rules referred to in subsection 674(1); or

(b) a document under section 675 lodged in relation to the body.

***continuously quoted securities*** are securities that:

(a) are in a class of securities that were quoted ED securities at all times in the 3 months before the date of the prospectus or Product Disclosure Statement; and

(b) are securities of an entity in relation to which the following subparagraphs are satisfied during the shorter of the period during which the class of securities were quoted, and the period of 12 months before the date of the prospectus or Product Disclosure Statement:

(i) no exemption under section 111AS or 111AT, or modification under section 111AV, covered the entity, or any person as director or auditor of the entity;

(ii) no exemption under paragraph 741(1)(a), or declaration under paragraph 741(1)(b), relating to a provision that is a disclosing entity provision for the purposes of Division 4 of Part 1.2A covered the entity, or any person as director or auditor of the entity;

(iii) no order under section 340, 340A, 341 or 341A covered the entity, or any person as director or auditor of the entity;



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and, for these purposes, securities are not in different classes merely because of a temporary difference in the dividend, or distribution rights, attaching to the securities or because different amounts have been paid up on the securities.

***contravene***, in relation to a civil penalty provision, has a meaning affected by subsection 1317E(4).

***contribution plan*** means a plan in respect of which the following conditions are met:

(a) regular deductions are made from the wages or salary of an employee or director (the ***contributor***) to acquire financial products that are offered for issue or sale to the contributor under an eligible employee share scheme;

(b) the deductions are authorised by the contributor in a form which is included in, or accompanies, the disclosure document or the Product Disclosure Statement for the scheme;

(c) before acquiring the financial products under the scheme, the deductions are held on trust in an account with an Australian ADI that is kept solely for that purpose;

(d) the contributor may elect to discontinue the deductions at any time;

(e) if the contributor so elects, the amount of the deductions standing, at that time, to the credit of the account for the contributor, and any interest on that amount, is repaid to the contributor;

(f) the scheme does not involve the offer to the contributor of a loan or similar financial assistance for the purpose of, or in connection with, the acquisition of the financial products that are offered under the scheme.

***contributory*** means:

(a) in relation to a company (other than a no liability company):

(i) a person liable as a member or past member to contribute to the property of the company if it is wound up; and



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(ii) for a company with share capital—a holder of fully paid shares in the company; and

(iii) before the final determination of the persons who are contributories because of subparagraphs (i) and (ii)—a person alleged to be such a contributory; and

(b) in relation to a Part 5.7 body:

(i) a person who is a contributory by virtue of section 586; and

(ii) before the final determination of the persons who are contributories by virtue of that section—a person alleged to be such a contributory; and

(c) in relation to a no liability company—subject to subsection 254M(2), a member of the company.

***control*** has the meaning given by section 50AA.

***control day***, in relation to a controller of property of a corporation, means:

(a) unless paragraph (b) applies:

(i) in the case of a receiver, or receiver and manager, of that property—the day when the receiver, or receiver and manager, was appointed; or

(ii) in the case of any other person who is in possession, or has control, of that property for the purpose of enforcing a security interest—the day when the person entered into possession, or took control, of property of the corporation for the purpose of enforcing that security interest; or

(b) if the controller became a controller of property of the corporation:

(i) to act with an existing controller of such property; or

(ii) in place of a controller of such property who has died or ceased to be a controller of such property;

the day that is, because of any other application or applications of this definition, the control day in relation to the controller referred to in subparagraph (i) or (ii).



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***controller***, in relation to property of a corporation, means:

(a) a receiver, or receiver and manager, of that property; or

(b) anyone else who (whether or not as agent for the corporation) is in possession, or has control, of that property for the purpose of enforcing a security interest;

and has a meaning affected by paragraph 434F(b) (which deals with 2 or more persons appointed as controllers).

***convertible note*** has the same meaning as in Division 3A of Part III of the *Income Tax Assessment Act 1936*.

***convertible securities***: securities are convertible into another class of securities if the holder may have the other class of securities issued to them by the exercise of rights attached to those securities. An option may be a convertible security even if it is non-renounceable.

***corporation*** has the meaning given by section 57A.

***corporation/scheme civil penalty provision*** has the meaning given by subsection 1317E(3).

***Corporations legislation*** means:

(a) this Act; and

(b) the ASIC Act; and

(c) rules of court made by the Federal Court, the Supreme Court of the Capital Territory, or the Family Court, because of a provision of this Act; and

(d) rules of court applied by the Supreme Court, or a State Family Court, of a State, or by the Supreme Court of the Northern Territory when exercising jurisdiction conferred by Division 1 of Part 9.6A (including jurisdiction conferred by virtue of any previous application or applications of this paragraph).

***court*** has the meaning given by section 58AA.

***Court*** has the meaning given by section 58AA.



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***court of summary jurisdiction*** means any justice or justices of the peace or other magistrate sitting as a court for the making of summary orders or the summary punishment of offences:

(a) under a law of the Commonwealth or of a State or Territory; or

(b) by virtue of his or her commission or their commissions.

***creditors' voluntary winding up*** means a winding up under Part 5.5, other than a members' voluntary winding up.

***CSF*** is short for crowd-sourced funding.

Note: Crowd-sourced funding is dealt with in Part 6D.3A.

***CSF audit threshold*** means:

(a) unless paragraph (b) applies—$3 million; or

(b) any amount prescribed by the regulations for the purposes of this paragraph.

***CSF intermediary*** has the meaning given by section 738C.

***CSF offer*** has the meaning given by section 738B.

***CSF offer document***, in relation to a CSF offer, has the meaning given by subsection 738J(1).

***CSF shareholder***, of a proprietary company, means an entity that holds one or more securities of the company due to being issued with the securities pursuant to a CSF offer by the company.

***current market bid price*** for securities covered by a market bid is the price specified in the announcement of the bid as increased or decreased during the offer period.

***custodial or depository service*** that a person provides has the meaning given by section 766E.

***daily newspaper*** means a newspaper that is ordinarily published on each day that is a business day in the place where the newspaper is published, whether or not the newspaper is ordinarily published on other days.



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***date*** of a takeover bid is:

(a) for an off-market bid—the date on which offers are first made under the bid; or

(b) for a market bid—the date on which the bid is announced to the relevant financial market.

***deal***:

(a) in relation to a futures contract—has the meaning given by Division 4; and

(b) in relation to securities—subject to subsection 93(4), means (whether as principal or agent) acquire, dispose of, subscribe for or underwrite the securities, or make or offer to make, or induce or attempt to induce a person to make or to offer to make, an agreement:

(i) for or with respect to acquiring, disposing of, subscribing for or underwriting the securities; or

(ii) the purpose or purported purpose of which is to secure a profit or gain to a person who acquires, disposes of, subscribes for or underwrites the securities or to any of the parties to the agreement in relation to the securities.

***dealing***, in relation to financial products, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***debenture*** of a body means a chose in action that includes an undertaking by the body to repay as a debt money deposited with or lent to the body. The chose in action may (but need not) include a security interest over property of the body to secure repayment of the money. However, a debenture does not include:

(a) an undertaking to repay money deposited with or lent to the body by a person if:

(i) the person deposits or lends the money in the ordinary course of a business carried on by the person; and

(ii) the body receives the money in the ordinary course of carrying on a business that neither comprises nor forms part of a business of borrowing money and providing finance; or



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(b) an undertaking by an Australian ADI to repay money deposited with it, or lent to it, in the ordinary course of its banking business; or

Note: This paragraph has an extended meaning in relation to Chapter 8 (see subsection 1200A(2)).

(c) an undertaking to pay money under:
  (i) a cheque; or
  (ii) an order for the payment of money; or
  (iii) a bill of exchange; or

(e) an undertaking by a body corporate to pay money to a related body corporate; or

(f) an undertaking to repay money that is prescribed by the regulations.

For the purposes of this definition, if a chose in action that includes an undertaking by a body to pay money as a debt is offered as consideration for the acquisition of securities under an off-market takeover bid, or is issued under a compromise or arrangement under Part 5.1, the undertaking is taken to be an undertaking to repay as a debt money deposited with or lent to the body.

***decision period***, for a secured party in relation to a security interest in property (including PPSA retention of title property) of a company under administration, means the period beginning on the day when:

(a) if notice of the appointment of the administrator must be given to the secured party under subsection 450A(3)—such notice is so given; or

(b) otherwise—the administration begins;

and ending at the end of the thirteenth business day after that day.

***declaration of indemnities***, in relation to an administrator of a company under administration, means a written declaration:

(a) stating whether the administrator has, to any extent, been indemnified (otherwise than under section 443D), in relation to that administration, for:



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(i) any debts for which the administrator is, or may become, liable under Subdivision A of Division 9 of Part 5.3A; or

(ii) any debts for which the administrator is, or may become, liable under a remittance provision as defined in section 443BA; or

(iii) the remuneration to which he or she is entitled under section 60-5 of Schedule 2 (external administrator's remuneration); and

(b) if so, stating:

(i) the identity of each indemnifier; and

(ii) the extent and nature of each indemnity.

***declaration of relevant relationships*** has the meaning given by section 60.

***deductible gift recipient*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***deed*** includes a document having the effect of a deed.

***deed of company arrangement*** means a deed of company arrangement executed under Part 5.3A or such a deed as varied and in force from time to time.

***defeating condition*** for a takeover bid means a condition that:

(a) will, in circumstances referred to in the condition, result in the rescission of, or entitle the bidder to rescind, a takeover contract; or

(b) prevents a binding takeover contract from resulting from an acceptance of the offer unless or until the condition is fulfilled.

***defect***, in relation to a statutory demand, includes:

(a) an irregularity; and

(b) a misstatement of an amount or total; and

(c) a misdescription of a debt or other matter; and

(d) a misdescription of a person or entity.



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***defective***, in relation to a CSF offer document, has the meaning given by subsection 738U(1).

***deregistered*** means:

(a) in relation to a company—deregistered under Chapter 5A; and

(b) in relation to any other body corporate—deregistered in a way that results in the body corporate ceasing to exist.

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

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

***derivative transaction rules***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***director*** of a company or other body means:

(a) a person who:

(i) is appointed to the position of a director; or

(ii) is appointed to the position of an alternate director and is acting in that capacity;

regardless of the name that is given to their position; and

(b) unless the contrary intention appears, a person who is not validly appointed as a director if:

(i) they act in the position of a director; or

(ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.

Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.

Note: Paragraph (b)—Contrary intention—Examples of provisions for which a person referred to in paragraph (b) would not be included in the term "director" are:



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- section 249C (power to call meetings of a company's members)
- subsection 251A(3) (signing minutes of meetings)
- section 205B (notice to ASIC of change of address).

***disclosing entity*** has the meaning given by section 111AC.

***disclosure document*** for an offer of securities means:

(a) a prospectus for the offer; or
(b) a profile statement for the offer; or
(c) an offer information statement for the offer.

***dishonest*** means dishonest according to the standards of ordinary people.

***dispose*** has a meaning affected by the following paragraphs:

(a) when used in relation to financial products in a provision outside Chapter 7, otherwise than in a situation to which paragraph (b) applies, ***dispose*** has the same meaning as it has in Chapter 7;
(b) for the purposes of Chapter 6, a person who has a relevant interest in securities ***disposes*** of the securities if, and only if, they cease to have a relevant interest in the securities.

***domestic corporation*** means a corporation that is incorporated or formed in Australia or an external Territory.

***ED securities*** has the meaning given by section 111AD.

***eligible applicant***, in relation to a corporation, means:

(a) ASIC; or
(b) a liquidator or provisional liquidator of the corporation; or
(c) an administrator of the corporation; or
(d) an administrator of a deed of company arrangement executed by the corporation; or
(e) a person authorised in writing by ASIC to make:
    (i) applications under the Division of Part 5.9 in which the expression occurs; or



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(ii) such an application in relation to the corporation.

***eligible CSF company*** has the meaning given by section 738H.

***eligible employee creditor***, in relation to a company, means a creditor whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraph 556(1)(e), (g) or (h) or section 560 or 561.

***eligible employee share scheme*** means an employee share scheme for a body corporate in respect of which the following conditions are met:

(a) the scheme is offered only to employees or directors mentioned in paragraph (a) of the definition of ***employee share scheme***;

(b) the financial products that are offered under the scheme are offered:

(i) under a disclosure document or Product Disclosure Statement; or

(ii) without disclosure under Part 6D.2 in accordance with subsection 708(12);

(c) the financial products which may be acquired under the scheme are the following:

(i) fully paid ordinary shares;

(ii) options, offered for no more than nominal consideration, for the issue or transfer of fully paid ordinary shares;

(iii) units in fully paid ordinary shares.

***eligible international emissions unit*** has the same meaning as in the *Australian National Registry of Emissions Units Act 2011*.

***eligible money market dealer*** means a body corporate in respect of which a declaration is in force under section 65.

***eligible recipient*** has the meaning given by section 1317AAC.



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***eligible whistleblower*** has the meaning given by section 1317AAA.

***emoluments*** means the amount or value of any money, consideration or benefit given, directly or indirectly, to a director of a body corporate in connection with the management of affairs of the body or of any holding company or subsidiary of the body, whether as a director or otherwise, but does not include amounts in payment or reimbursement of out-of-pocket expenses incurred for the benefit of the body.

***employee entitlements contribution order*** has the meaning given by subsection 588ZA(1).

***employee share scheme*** for a company means a scheme under which shares (or units in shares or options to acquire unissued shares) in the company or a holding company may be acquired:

(a) by, or for the benefit of:
  (i) employees of the company, or of a related body corporate; or
  (ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; or

(b) by a corporation all of whose members are:
  (i) employees of the company, or of a related body corporate; or
  (ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate.

***employee share scheme buy-back*** means a buy-back under a scheme that:

(a) has as its purpose the acquisition of shares in a company by, or on behalf of:
  (i) employees of the company, or of a related body corporate; or



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(ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and

(b) has been approved by the company in general meeting.

***enforce***, in relation to a security interest in property of a company under administration, includes:

(a) appoint a receiver of property of the company under a power contained in an instrument relating to the security interest; or

(b) obtain an order for the appointment of a receiver of such property for the purpose of enforcing the security interest; or

(c) enter into possession, or assume control, of such property for that purpose; or

(d) appoint a person so to enter into possession or assume control (whether as agent for the secured party or for the company); or

(e) exercise, in relation to property including PPSA retention of title property, as the secured party or as a receiver or person so appointed, a right, power or remedy existing because of the security interest, arising:

(i) under an agreement or instrument relating to the security interest; or

(ii) in the case of a PPSA security interest—under an agreement or instrument relating to a transaction or dealing giving rise to the security interest; or

(iii) under a written or unwritten law; or

(iv) in any other way.

***enforcement process***, in relation to property, means:

(a) execution against that property; or

(b) any other enforcement process in relation to that property that involves a court or a sheriff.

***engage in audit activity***: an individual auditor, audit firm or audit company ***engages in audit activity*** in relation to an audited body for an audit if the individual auditor, audit firm or audit company:



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(a) consents to be appointed as auditor of the audited body for a financial year; or
(b) acts as the auditor of the audited body for a financial year; or
(c) prepares a report in relation to the audited body that is required by this Act to be prepared by:
  (i) a registered company auditor; or
  (ii) an auditor of the audited body in relation to a financial year or half-year.

***engage in conduct*** means:
(a) do an act; or
(b) omit to perform an act.

***enter into***: a person who:
(a) enters into, or becomes a party to, a relevant agreement in relation to voting shares or other securities; or
(b) exercises an option to have voting shares or other securities issued or granted;

is taken to enter into a transaction in relation to the shares or securities.

***entitlements*** of an employee of a company has the meaning given by subsections 596AA(2) and (3).

***entity***: for the purposes of Chapters 2E and 8A an ***entity*** is any of the following:
(a) a body corporate;
(b) a partnership;
(c) an unincorporated body;
(d) an individual;
(e) for a trust that has only 1 trustee—the trustee;
(f) for a trust that has more than 1 trustee—the trustees together.

Otherwise, ***entity*** has the meaning given by section 64A.

***equal access scheme*** has the meaning given by subsections 257B(2) and (3).



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

***ESS interest*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***event*** includes any happening, circumstance or state of affairs.

***examinable affairs***, in relation to a corporation means:

(a) the promotion, formation, management, administration or winding up of the corporation; or

(b) any other affairs of the corporation (including anything that is included in the corporation's affairs because of section 53); or

(c) the business affairs of a connected entity of the corporation, in so far as they are, or appear to be, relevant to the corporation or to anything that is included in the corporation's examinable affairs because of paragraph (a) or (b).

***examinable assets and liabilities***, in relation to an entity, means all of the following:

(a) the entity's property and assets:

(i) whether present or future; and

(ii) whether held alone or jointly with any other person or persons; and

(iii) whether or not held as agent, bailee or trustee;

(b) the entity's liabilities:

(i) whether present or future; and

(ii) whether actual or contingent; and

(iii) whether owed alone or jointly with any other person or persons; and

(iv) whether or not owed as trustee.

***examinable operations***, in relation to an entity, means all of the following:

(a) the entity's business, trading, transactions and dealings:



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(i) whether alone or jointly with any other entity or entities; and
(ii) whether or not as agent, bailee or trustee;
(b) the entity's profits, income and receipts;
(c) the entity's losses, outgoings and expenditure.

***excluded security*** means:
(a) where:
(i) there is attached to a share or debenture a right to participate in a retirement village scheme; and
(ii) each of the other rights, and each interest (if any), attached to the share or debenture is a right or interest that is merely incidental to the right referred to in subparagraph (i);
the share or debenture or a unit in the share or debenture; or
(b) an interest in a managed investment scheme constituted by a right to participate in a retirement village scheme.

***exempt body*** has the meaning given by section 66A.

***exempt foreign company*** means a foreign company of a kind referred to in subsection 601CK(8), whether or not Division 2 of Part 5B.2 applies to it.

***exempt public authority*** means a body corporate that is incorporated within Australia or an external Territory and is:
(a) a public authority; or
(b) an instrumentality or agency of the Crown in right of the Commonwealth, in right of a State or in right of a Territory.

***expectation***:
(a) a person has an ***expectation*** that a managed investment scheme will become an Australian passport fund only as set out in section 1216B; and
(b) a person has an ***expectation*** that a fund will become a notified foreign passport fund only as set out in section 1216G.



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***expert***, in relation to a matter, means a person whose profession or reputation gives authority to a statement made by him or her in relation to that matter.

***extend***, in relation to a period:

(a) includes further extend; and

(b) has a meaning affected by section 70.

***extract of particulars*** for a company, registered scheme or notified foreign passport fund means a statement given by ASIC that contains either or both of the following:

(a) some or all of the particulars in relation to the company, scheme or fund that are recorded in a register that ASIC maintains, or ensures is maintained, under subsection 1214(1) or 1274(1);

(b) a requirement to provide a particular under section 346B.

***extraordinary resolution***, in relation to a registered scheme, means a resolution:

(a) of which notice as set out in paragraph 252J(c) has been given; and

(b) that has been passed by at least 50% of the total votes that may be cast by members entitled to vote on the resolution (including members who are not present in person or by proxy).

***Family Court*** means the Family Court of Australia.

***Federal Court*** means the Federal Court of Australia.

***financial benchmark*** has the meaning given by section 908AB.

***financial benchmark data*** means:

(a) information obtained to generate or administer a financial benchmark; or

(b) information (including statistical data) that is created or derived from information referred to in paragraph (a).



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***financial benchmark rules*** means rules made under section 908CA.

***financial benefit*** (when used in Chapter 2E) has a meaning that is affected by section 229.

***financial corporation*** means a financial corporation within the meaning of paragraph 51(20) of the Constitution.

***financial market***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***financial product***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***financial records*** includes:

(a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and

(b) documents of prime entry; and

(c) working papers and other documents needed to explain:

(i) the methods by which financial statements are made up; and

(ii) adjustments to be made in preparing financial statements.

***financial report*** means an annual financial report or a half-year financial report prepared under Chapter 2M.

Note: Section 295 deals with the contents of annual financial reports and section 302 deals with the contents of half-year financial reports.

***financial reporting requirements*** for a financial report means the requirements imposed under:

(a) section 296 or 297 if the financial report is an annual financial report; or

(b) section 304 or 305 if the financial report is a half-year financial report.

***financial service***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.



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***financial services business***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***financial services civil penalty provision*** has the meaning given by subsection 1317E(3).

***financial services licensee***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***financial statements*** means annual financial statements under section 295 or half-year financial statements under section 303.

***financial year***, when used in a provision outside Schedule 2, has the following meaning:

(a) for a company, registered scheme or disclosing entity (other than a notified foreign passport fund)—the meaning given by section 323D;

(b) for a notified foreign passport fund—the meaning given by section 323DAA.

***find***, in the case of a reference to a court finding a person guilty of an offence, has a meaning affected by section 73A.

***firm***, in relation to an administrator or liquidator, means:

(a) if the administrator or liquidator is a partner or employee of a partnership (the ***partnership firm***) that provides advice or other services in relation to Chapter 5 bodies corporate—the partnership firm; or

(b) if the administrator or liquidator is an officer or employee of a body corporate (the ***body corporate firm***) that provides advice or other services in relation to Chapter 5 bodies corporate—the body corporate firm.

***floating charge*** includes a charge that conferred a floating security at the time of its creation but has since become a fixed or specific charge.

***for***, in relation to a fee or tax, includes in respect of.



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***foreign company*** means:

(a) a body corporate that is incorporated in an external Territory, or outside Australia and the external Territories, and is not:

(i) a corporation sole; or

(ii) an exempt public authority; or

(b) an unincorporated body that:

(i) is formed in an external Territory or outside Australia and the external Territories; and

(ii) under the law of its place of formation, may sue or be sued, or may hold property in the name of its secretary or of an officer of the body duly appointed for that purpose; and

(iii) does not have its head office or principal place of business in Australia.

***foreign holder*** of securities means a holder of the securities whose address, as shown in the register in which details of their holding is recorded, is a place outside Australia and the external Territories.

***foreign law*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***foreign passport fund*** means a passport fund the home economy for which is not Australia.

***foreign passport fund product***, when used in a provision outside Chapter 7, has the same meaning as in Chapter 7.

***franchise*** means an arrangement under which a person earns profits or income by exploiting a right, conferred by the owner of the right, to use a trade mark or design or other intellectual property or the goodwill attached to it in connection with the supply of goods or services. An arrangement is not a franchise if the person engages the owner of the right, or an associate of the owner, to exploit the right on the person's behalf.

***Full Court***, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court.



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***fully paid share*** means a share on which no amount remains unpaid.

***function*** includes a duty.

***fund property*** of a notified foreign passport fund means:

(a) contributions of money or money's worth to the fund; and

(b) money that forms part of the fund property under provisions of this Act or the ASIC Act; and

(c) money borrowed or raised by the operator of the fund for the purposes of the fund; and

(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and

(e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).

Note: Paragraph (a)—if what a member contributes to a fund is rights over property, the rights in the property that the member retains do not form part of the fund property.

***Gazette notice*** means a notice published in the *Gazette*.

***general CSF risk warning*** has the meaning given by subsection 738ZA(2).

***general law*** means the principles and rules of the common law and equity.

***group executives*** for a consolidated entity means:

(a) the directors of the companies or bodies within the consolidated entity; and

(b) the secretaries of the companies or bodies within the consolidated entity; and

(c) the senior managers of any corporation within the consolidated entity; and

(d) the partners, and senior managers, of any partnership within the consolidated entity; and



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(e) the trustees, and senior managers, of any trusts within the consolidated entity; and
(f) the senior managers of any joint venture within the consolidated entity.

***guarantor***, in relation to a debenture, means a body that has guaranteed, or has agreed to guarantee, the repayment of any money deposited or lent to the borrower under the debenture.

***guilty***, in the case of a reference to a court finding a person guilty of an offence, has a meaning affected by section 73A.

***half-year*** has the meaning given by subsection 323D(5).

***have***, in relation to information, includes be in possession of the information.

***highest outside purchase price*** for a takeover bid is the highest amount paid or payable by the bidder for a security in the bid class under a purchase made outside the bid and during the bid period.

***hold***, in relation to a person, in relation to a document that is, or purports to be, a copy of a licence, means have in the person's possession.

***holding company***, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

***home economy***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***home regulator***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***host economy***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***hosting arrangement***, in relation to a CSF offer, has the meaning given by subsection 738L(2).



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***host regulator***, for a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***immediate family member*** for a person means:

(a) the person's spouse; or

(b) a person who is wholly or partly dependent on the person for financial support.

***in Australia*** has the meaning given by section 102C.

***included***, in relation to an official list, has the meaning given by section 75.

***income year*** has the same meaning as in the *Income Tax Assessment Act 1997*.

***incorporated in Australia***, in relation to a body corporate, includes incorporated by or under a law of:

(a) the Commonwealth; or

(b) a State; or

(c) an internal Territory.

***incorporation***:

(a) of a company—means the company's first registration under this Act; and

(b) of any other incorporated body—means the body's incorporation by or under a law (other than this Act).

***individual auditor*** means an individual who consents to be appointed, or is appointed, as auditor of a company or registered scheme.

***individual fine formula*** means the formula set out in subsection 1311B(3).

***industrial instrument*** means:

(a) a contract of employment; or

(b) a law, award, determination or agreement relating to terms or conditions of employment.



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***information*** includes complaint.

***injury compensation*** means compensation payable under any law relating to workers compensation.

***Insolvency Practice Rules*** means the rules made by the Minister under section 105-1 of Schedule 2.

***insolvent*** has the meaning given by subsection 95A(2).

***insolvent transaction*** has the meaning given by section 588FC.

***insolvent under administration*** means:

(a) a person who, under the *Bankruptcy Act 1966* or the law of an external Territory, is a bankrupt in respect of a bankruptcy from which the person has not been discharged; or

(b) a person who, under the law of an external Territory or the law of a foreign country, has the status of an undischarged bankrupt; or

(c) a person any of whose property is subject to control under:

  (i) section 50 or Division 2 of Part X of the *Bankruptcy Act 1966*; or

  (ii) a corresponding provision of the law of an external Territory or the law of a foreign country; or

(d) a person who has executed a personal insolvency agreement under:

  (i) Part X of the *Bankruptcy Act 1966*; or

  (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country;

  where the terms of the agreement have not been fully complied with; or

(e) a person who is a party (as a debtor) to a debt agreement under:

  (i) Part IX of the *Bankruptcy Act 1966*; or

  (ii) the corresponding provisions of the law of an external Territory or the law of a foreign country.



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***interest*** in a managed investment scheme (including a notified foreign passport fund) means a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).

***investment*** in a company, disclosing entity or other body means:

(a) a share in the company, disclosing entity or body; or

(b) a debenture of the company, disclosing entity or body; or

(c) a legal or equitable interest in:

(i) a share in the company, disclosing entity or body; or

(ii) a debenture of the company, disclosing entity or body; or

(d) an option to acquire (whether by way of issue or transfer) an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or

(e) an option to dispose of an investment in the company, disclosing entity or body covered by paragraph (a), (b) or (c); or

(f) an interest a person holds under an arrangement that is a derivative if:

(i) the consideration to be provided under the arrangement; or

(ii) the value of the arrangement;

is ultimately determined, derived from or varies by reference to an investment in the company, disclosing entity or body covered by paragraph (a), (b), (c), (d) or (e).

To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is not ultimately determined, derived from or varies by reference to an investment in the company merely because the investment is taken into account in determining the value of the index.

***investment*** in a notified foreign passport fund means:

(a) an interest in the fund; or

(b) a legal or equitable interest in an interest in the fund; or



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(c) an option to acquire (whether by way of issue or transfer) an investment in the fund covered by paragraph (a) or (b); or

(d) an option to dispose of an investment in the fund covered by paragraph (a) or (b); or

(e) an interest a person holds under an arrangement that is a derivative if:

(i) the consideration to be provided under the arrangement; or

(ii) the value of the arrangement;

is ultimately determined, derived from or varies by reference to an investment in the fund covered by paragraph (a), (b), (c) or (d); or

(f) an investment in the operator of the fund.

To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is taken not to be ultimately determined, derived from or vary by reference to an investment in the fund merely because the investment is taken into account in determining the value of the index.

***investment*** in a registered scheme means:

(a) an interest in the scheme; or

(b) a legal or equitable interest in an interest in the scheme; or

(c) an option to acquire (whether by way of issue or transfer) an investment in the scheme covered by paragraph (a) or (b); or

(d) an option to dispose of an investment in the scheme covered by paragraph (a) or (b); or

(e) an interest a person holds under an arrangement that is a derivative if:

(i) the consideration to be provided under the arrangement; or

(ii) the value of the arrangement;

is ultimately determined, derived from or varies by reference to an investment in the scheme covered by paragraph (a), (b), (c) or (d); or

(f) an investment in the responsible entity of the scheme.



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To avoid doubt, the consideration to be provided under, or the value of, an arrangement in relation to an index is taken not to be ultimately determined, derived from or vary by reference to an investment in the scheme merely because the investment is taken into account in determining the value of the index.

***investment contract*** means any contract, scheme or arrangement that, in substance and irrespective of its form, involves the investment of money in or under such circumstances that the investor acquires or may acquire an interest in, or right in respect of, property, whether in this jurisdiction or elsewhere, that, under, or in accordance with, the terms of investment will, or may at the option of the investor, be used or employed in common with any other interest in, or right in respect of, property, whether in this jurisdiction or elsewhere, acquired in or under like circumstances.

***involved***, in relation to a contravention, has the meaning given by section 79.

***issue*** includes:

(a) in relation to interests in a managed investment scheme—make available; and

(b) otherwise—circulate, distribute and disseminate.

Note: When ***issue*** is used in Chapter 7 in relation to a financial product it has a meaning affected by section 761E.

***Judge*** means a judge of the Court.

***judgment*** means a judgment, decree or order, whether final or interlocutory.

***key management personnel*** for an entity has the same meaning as in the accounting standards.

***large proprietary company*** has the meaning given by subsection 45A(3).

***law*** of a State or Territory means a law of, or in force in, the State or Territory.



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Note: This definition does not affect the meaning of ***law*** when used otherwise than in a phrase such as "law of a State or Territory". Examples of such a use is in the phrase "any provision of any law" in section 100A and the phrase "law of the Commonwealth" in section 156.

***lawyer*** means a duly qualified legal practitioner and, in relation to a person, means such a practitioner acting for the person.

***lead auditor*** has the meaning given by section 324AF.

***lease*** does not include a lease of goods that gives rise to a PPSA security interest in the goods.

Note: An interest that arises under a lease of goods that in substance secures the payment or performance of an obligation, or that arises under a PPS lease within the meaning of the *Personal Property Securities Act 2009*, may be a PPSA security interest (see sections 12 and 13 of that Act and the definition of ***PPSA security interest*** in section 51 of this Act).

***leave of absence*** means long service leave, extended leave, recreation leave, annual leave, sick leave or any other form of leave of absence from employment.

***licensed trustee company*** has the meaning given by Chapter 5D.

***limited company*** means:

(a) a company limited by shares; or
(b) a company limited by guarantee; or
(c) a company limited both by shares and guarantee;

but does not include a no liability company.

***linked***: the incurring of a debt and a contravention of subsection 596AC(1), (2), (3) or (4) are ***linked*** if they are linked under subsection 596AC(10).

***liquidator***:

(a) has a meaning affected by paragraph 530(b) (which deals with 2 or more persons appointed as liquidators); and
(b) in Chapter 7, includes a provisional liquidator.



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***listed***: a company, managed investment scheme or other body is ***listed*** if it is included in the official list of a prescribed financial market operated in this jurisdiction.

***listed corporation*** means a body corporate that is included in an official list of a prescribed financial market.

***listed disclosing entity*** has the meaning given by subsection 111AL(1).

***listing market***, in relation to a listed disclosing entity, has the meaning given by subsection 111AE(1), (1A) or (1B).

***listing rules*** of a financial market, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***local agent***, in relation to a foreign company, means a person who is a local agent of the foreign company by virtue of subsection 601CG(5).

***lodge*** means lodge with ASIC in this jurisdiction.

***lower court*** means a court of a State or Territory that is not a superior court.

***machine-copy***, in relation to a document, means a copy made of the document by any machine in which, or process by which, an image of the contents of the document is reproduced.

***made***, in relation to a CSF offer, has the meaning given by subsection 738N(1).

***managed investment product***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***managed investment scheme*** means:

(a) a scheme that has the following features:

(i) people contribute money or money's worth as consideration to acquire rights (***interests***) to benefits produced by the scheme (whether the rights are actual,



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prospective or contingent and whether they are enforceable or not);

(ii) any of the contributions are to be pooled, or used in a common enterprise, to produce financial benefits, or benefits consisting of rights or interests in property, for the people (the ***members***) who hold interests in the scheme (whether as contributors to the scheme or as people who have acquired interests from holders);

(iii) the members do not have day-to-day control over the operation of the scheme (whether or not they have the right to be consulted or to give directions); or

(b) a time-sharing scheme;

but does not include the following:

(c) a partnership that has more than 20 members but does not need to be incorporated or formed under an Australian law because of regulations made for the purposes of subsection 115(2);

(d) a body corporate (other than a body corporate that operates as a time sharing scheme);

(e) a scheme in which all the members are bodies corporate that are related to each other and to the body corporate that promotes the scheme;

(f) a franchise;

(g) a statutory fund maintained under the *Life Insurance Act 1995*;

(h) a regulated superannuation fund, an approved deposit fund, a pooled superannuation trust, or a public sector superannuation scheme, within the meaning of the *Superannuation Industry (Supervision) Act 1993*;

(i) a scheme operated by an Australian ADI in the ordinary course of its banking business;

(j) the issue of debentures or convertible notes by a body corporate;

(k) a barter scheme under which each participant may obtain goods or services from another participant for consideration that is wholly or substantially in kind rather than in cash;



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(l) a retirement village scheme operating within or outside Australia:
  (i) under which the participants, or a majority of them, are provided, or are to be provided, with residential accommodation within a retirement village (whether or not the entitlement of a participant to be provided with accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is, or is to be, provided); and
  (ii) which is not a time-sharing scheme;

(m) a scheme that is operated by a co-operative company registered under Part VI of the *Companies (Co-operative) Act 1943* of Western Australia or under a previous law of Western Australia that corresponds to that Part;

(ma) a contribution plan;

(mb) the provision of a crowd-funding service (as defined in section 766F);

(n) a scheme of a kind declared by the regulations not to be a managed investment scheme.

Note 1: Paragraph (c)—A partnership with less than 20 members will usually not require registration because of paragraph 601ED(1)(a) and under section 115 a partnership with more than 20 members can only operate if covered by regulations made for the purposes of subsection 115(2).

Note 2: Paragraphs (c) and (i) have an extended meaning in relation to Chapter 8 (see subsection 1200A(3)).

Note 3: Under section 1213E, a notified foreign passport fund is to be treated as a managed investment scheme for the purposes of this Act.

***manager*** has a meaning affected by section 90.

***managerial or executive office*** has the meaning given by section 200AA.

***managing controller***, in relation to property of a corporation, means:

(a) a receiver and manager of that property; or



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(b) any other controller of that property who has functions or powers in connection with managing the corporation;

and has a meaning affected by paragraph 434G(b) (which deals with 2 or more persons appointed as managing controllers).

***marketable securities*** means debentures, stocks, shares or bonds of any Government, of any local government authority or of any body corporate, association or society, and includes any right or option in respect of shares in any body corporate and any interest in a managed investment scheme.

***market bid*** means a takeover bid made under Chapter 6 as a market bid (see section 616).

***market integrity rules***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***market traded option*** means an option declared by an operator of a prescribed financial market to be a market traded option.

***maximum subscription amount***, in relation to a CSF offer, has the meaning given by subsection 738L(7).

***MCI*** (short for mutual capital instrument) has the meaning given by section 167AD.

***MCI amendment resolution*** has the meaning given by section 167AI.

***MCI mutual entity*** has the meaning given by section 167AC.

***member***:

(a) in relation to a managed investment scheme—means a person who holds an interest in the scheme; or

(e) in relation to a company—a person who is a member under section 231.

***members' voluntary winding up*** means a winding up under Part 5.5 where a declaration has been made and lodged pursuant to section 494.



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***Memorandum of Cooperation***, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***minerals*** means minerals in any form, whether solid, liquefied or gaseous and whether organic or inorganic.

***minimum holding buy-back*** means a buy-back of all of a holder's shares in a listed corporation if the shares are less than a marketable parcel within the meaning of the rules of the relevant financial market.

***minimum subscription amount***, in relation to a CSF offer, has the meaning given by subsection 738L(8).

***mining purposes*** means any or all of the following purposes:

(a) prospecting for ores, metals or minerals;
(b) obtaining, by any mode or method, ores, metals or minerals;
(c) the sale or other disposal of ores, metals, minerals or other products of mining;
(d) the carrying on of any business or activity necessary for, or incidental to, any of the foregoing purposes;

whether in Australia or elsewhere, but does not include quarrying operations for the sole purpose of obtaining stone for building, roadmaking or similar purposes.

***misconduct*** includes fraud, negligence, default, breach of trust and breach of duty.

***modifications*** includes additions, omissions and substitutions.

***money*** includes a payment order.

***mutual entity*** has the meaning given by section 51M.

***national newspaper*** means a daily newspaper that circulates generally in each State and each internal Territory.

***NCSC*** means the National Companies and Securities Commission.



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***necessary transfer documents*** for the transfer of securities to a person means the documents that are sufficient to enable the person to become the holder of the securities.

***negative***, in relation to a document, means a transparent negative photograph used, or intended to be used, as a medium for reproducing the contents of the document, and includes a transparent photograph made from surface contact with the original negative photograph.

***negative solvency resolution*** means a resolution by the directors of a company that, in their opinion, there are not reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

***negotiable instrument***, in relation to a body corporate, means:

(a) a bill of exchange, promissory note, cheque or other negotiable instrument; or

(b) an indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument; or

(c) a letter of credit;

of, or purporting to be issued or signed by or on behalf of, the body.

***no liability company*** means a company that is registered as, or converts to, a no liability company under this Act.

Note 1: A no liability company can be registered under section 118 or 601BD. A company can convert to a no liability company under Part 2B.7.

Note 2: A no liability company must have solely mining purposes and have no contractual right to recover unpaid calls (see subsection 112(2)).

***non-audit services provider*** for an auditor conducting an audit means a person who:

(a) is not a professional member of the audit team conducting the audit of the audited body; and

(b) is either:



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(i) if the auditor is an individual auditor—an employee of the individual auditor (or of an entity acting for, or on behalf of, the individual auditor); or
(ii) if the auditor is an audit firm—a member of the audit firm or senior manager of the audit firm (or of an entity acting for, or on behalf of, the audit firm); or
(iii) if the auditor is an audit company—a director of the audit company or a senior manager of the audit company (or of an entity acting for, or on behalf of, the audit company); and

(c) provides, or has provided, services (other than services related to the conduct of an audit) to the audited body.

***non-shareholder mutual member*** of an MCI mutual entity means a person who is a member of the entity otherwise than as a holder of a share (whether or not the person also holds one or more shares in the entity).

***non-voting share***, in relation to a body corporate, means an issued share in the body that is not a voting share in the body.

***notice*** includes a circular and an advertisement.

***notified foreign passport fund***: see section 1213C.

***of***, in relation to financial products, means, in the case of interests in a managed investment scheme, made available by.

***offence*** means an offence against a law of the Commonwealth or a State or Territory.

***offence based on*** a particular provision of this Act means, unless a contrary intention appears:

(a) if that provision creates an offence—an offence against that provision, or an offence against section 1314 that relates to that provision; or
(b) if section 1311 creates an offence relating to that provision—an offence against section 1311 or 1314 that relates to that provision; or



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(c) if another provision creates an offence relating to that provision—an offence against that other provision or section 1314 that relates to that other provision.

***offer information statement*** means an offer information statement that is lodged with ASIC.

***offer of simple corporate bonds*** has the meaning given by section 713A.

***offer period*** for a takeover bid is the period for which offers under the bid remain open.

***offer platform***, in relation to a CSF offer, has the meaning given by subsection 738L(6).

***offer-specific prospectus***, in relation to an offer of simple corporate bonds, has the meaning given by subsection 713D(1).

***officer*** of a corporation means:

(a) a director or secretary of the corporation; or

(b) a person:

(i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(ii) who has the capacity to affect significantly the corporation's financial standing; or

(iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or

(c) a receiver, or receiver and manager, of the property of the corporation; or

(d) an administrator of the corporation; or

(e) an administrator of a deed of company arrangement executed by the corporation; or



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(f) a liquidator of the corporation; or
(g) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

Note: Section 201B contains rules about who is a director of a corporation.

***officer*** of an entity that is neither an individual nor a corporation means:
(a) a partner in the partnership if the entity is a partnership; or
(b) an office holder of the unincorporated association if the entity is an unincorporated association; or
(c) a person:
  (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the entity; or
  (ii) who has the capacity to affect significantly the entity's financial standing.

***officer of the Commonwealth*** has the same meaning as in paragraph 75(v) of the Constitution.

***off-market bid*** means a takeover bid made under Chapter 6 as an off-market bid (see section 616).

***old Corporations Law***, in relation to a State or Territory, has the same meaning as it has in Part 10.1.

***old Division 11 of Part 11.2 transitionals*** means the following:
(a) the provisions of Division 11 of Part 11.2 of the old Corporations Law of each State or Territory in this jurisdiction, to the extent they continue to have effect because of section 1408 of this Act; and
(b) if regulations for the purposes of subsection 1408(3) deal with a matter or matters dealt with in those provisions—the regulations that so deal with the matter or matters.



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***old Division 12 of Part 11.2 transitionals*** means the following:

(a) the provisions of Division 12 of Part 11.2 of the old Corporations Law of each State or Territory in this jurisdiction, to the extent they continue to have effect because of section 1408 of this Act; and

(b) if regulations for the purposes of subsection 1408(3) deal with a matter or matters dealt with in those provisions—the regulations that so deal with the matter or matters.

***on***, in relation to a financial market, includes at or by means of.

***on behalf of*** includes on the instructions of.

***on-market***: a transaction of any kind is an on-market transaction if it is effected on a prescribed financial market and is:

(a) an on-market transaction as defined in the rules governing the operation of the market; or

(b) if those rules do not define on-market transactions—effected in the ordinary course of trading on the market.

***on-market buy-back*** means a buy-back by a listed corporation on a prescribed financial market in the ordinary course of trading on that market.

***open***, in relation to a CSF offer, has the meaning given by subsection 738N(2).

***operated in this jurisdiction***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***operating rules***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***operator***, of a passport fund, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***outside this jurisdiction*** has a meaning affected by subsection 102B(2).



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***outstanding property***, in relation to a body corporate that has been dissolved or deregistered, means outstanding property (other than unpaid capital, whether called or uncalled) that was vested in the body, to which it was entitled, or over which it had a disposing power, when it was dissolved or deregistered, but that neither the body nor its liquidator got in, realised on or otherwise disposed of or dealt with.

***paid parental leave employer*** has the meaning given by subsection 600AA(2).

***Panel*** means the Takeovers Panel.

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

***Part 5.1 body*** means:

(a) a company; or

(b) a registrable body that is registered under Division 1 or 2 of Part 5B.2.

***Part 5.7 body*** means:

(a) a registrable body that is a registrable Australian body and:

(i) is registered under Division 1 of Part 5B.2; or

(ii) is not registered under that Division but carries on business in this jurisdiction and outside its place of origin; or

(b) a registrable body that is a foreign company and:

(i) is registered under Division 2 of Part 5B.2; or

(ii) is not registered under that Division but carries on business in Australia; or

(c) a partnership, association or other body (whether a body corporate or not) that consists of more than 5 members and that is not a registrable body;

but does not include an Aboriginal and Torres Strait Islander corporation.



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Note: The winding up of Aboriginal and Torres Strait Islander corporations is dealt with in Part 11-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

***Part 7.7A civil penalty provision*** means any of the following provisions:

(a) subsections 961K(1) and (2) (financial services licensee responsible for breach of certain best interests duties);

(b) section 961L (financial services licensee to ensure compliance with certain best interests duties);

(c) subsection 961Q(1) (authorised representative responsible for breach of certain best interests duties);

(d) section 962P (charging ongoing fee after termination of ongoing fee arrangement);

(e) subsection 962S(1) (fee recipient must give fee disclosure statement);

(f) subsections 963E(1) and (2) (financial services licensee must not accept conflicted remuneration);

(g) section 963F (financial services licensee must ensure representatives do not accept conflicted remuneration);

(h) subsection 963G(1) (authorised representative must not accept conflicted remuneration);

(i) section 963J (employer must not pay employees conflicted remuneration);

(j) section 963K (financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative);

(k) subsection 964A(1) (platform operator must not accept volume-based shelf-space fees);

(l) subsections 964D(1) and (2) (financial services licensee must not charge asset-based fees on borrowed amounts);

(m) subsection 964E(1) (authorised representative must not charge asset-based fees on borrowed amounts);

(n) section 965 (anti-avoidance of Part 7.7A provisions).

***Part 10.1 transitionals*** means the provisions of Part 10.1 and of regulations for the purposes of those provisions.



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***participant***, when used in a provision (the ***relevant provision***) outside Chapter 7 in relation to a clearing and settlement facility or a financial market, has the same meaning as it has in Chapter 7 in relation to a clearing and settlement facility or a financial market, except that it does not include a reference to a recognised affiliate (within the meaning of that Chapter) in relation to such a facility or market unless regulations for the purposes of this definition provide that, in the relevant provision, it does include a recognised affiliate.

***party***, in relation to a transaction that has been completed, given effect to, or terminated, includes a person who was a party to the transaction.

***passport fund***, when used in a provision outside Chapter 8A, has the same meaning as in Chapter 8A.

***Passport Rules***: see section 1211A.

***payment*** (when used in Division 2 of Part 2D.2 (sections 200 to 200J) includes a payment by way of damages for breach of contract.

***payment order*** means a cheque (including a cheque that a bank or other institution draws on itself), bank draft, money order or postal order.

***payment period***, in relation to an infringement notice issued under Part 9.4AB, has the meaning given by section 1317DAQ.

***person***, when used in Division 2 of Part 2D.2 (sections 200 to 200J), includes a superannuation fund.

***place of origin***:

(a) in relation to a body corporate at a particular time, means:

(i) in the case of a body incorporated at that time in a State or Territory—that State or Territory; or

(ii) otherwise—the place of the body's incorporation at that time; or



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(b) in relation to an unincorporated body—the State or Territory, or other place, in which the body is formed.

***platform*** includes a website or other electronic facility.

***play a significant role***: a person ***plays a significant role*** in the audit of a company or a registered scheme for a financial year if:

(a) the person is appointed as an individual auditor of the company or scheme for that financial year and:
  (i) acts as an auditor for the company or scheme for that financial year; or
  (ii) prepares an audit report for the company or the scheme in relation to a financial report of the company or scheme for that financial year or for a half-year falling within that financial year; or

(b) a firm or company is appointed as an auditor of the company or scheme for that financial year and the person:
  (i) is a registered company auditor; and
  (ii) acts, on behalf of the firm or company, as a lead auditor, or review auditor, in relation to an audit of the company or scheme for that financial year or for a half-year falling within that financial year.

***pooling determination*** means a determination under subsection 571(1).

***pooling order*** means an order under subsection 579E(1).

***positive solvency resolution*** means a resolution by the directors of a company that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

***possession*** has a meaning affected by section 86.

***power*** includes an authority.



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***PPSA retention of title property*** (short for Personal Property Security Act retention of title property) has the meaning given by section 51F.

***PPSA security interest*** (short for Personal Property Security Act security interest) has the meaning given by section 51.

***premises*** includes:

(a) a structure, building, aircraft, vehicle or vessel; and
(b) any land or place (whether enclosed or built on or not); and
(c) a part of a structure, building, aircraft, vehicle or vessel or of such a place.

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

***prescribed financial market*** means a financial market that is prescribed by regulations made for the purposes of this definition.

***printed*** includes type-written, lithographed or reproduced by any mechanical means.

***procure*** includes cause.

***Product Disclosure Statement***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

Note: For the effect of the lodgment of a Replacement Product Disclosure Statement, see section 1014J.

***professional accounting body*** has the same meaning as in the ASIC Act.

***professional employee*** of an individual auditor, audit firm or audit company means an employee of the auditor, firm or company who participates in the conduct of the audits on behalf of the auditor, firm or company and, in the course of doing so, exercises professional judgment in relation to the application of or compliance with:

(a) accounting standards; or
(b) auditing standards; or



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(c) the provisions of this Act dealing with financial reporting and the conduct of audits.

***professional investor*** means a person in relation to whom one or more of the following paragraphs apply:

(a) the person is a financial services licensee;

(b) the person is a body regulated by APRA, other than a trustee of any of the following (within the meaning of the *Superannuation Industry (Supervision) Act 1993*):

(i) a superannuation fund;

(ii) an approved deposit fund;

(iii) a pooled superannuation trust;

(iv) a public sector superannuation scheme;

(c) the person is a body registered under the *Financial Corporations Act 1974*;

(d) the person is the trustee of:

(i) a superannuation fund; or

(ii) an approved deposit fund; or

(iii) a pooled superannuation trust; or

(iv) a public sector superannuation scheme;

within the meaning of the *Superannuation Industry (Supervision) Act 1993* and the fund, trust or scheme has net assets of at least $10 million;

(e) the person controls at least $10 million (including any amount held by an associate or under a trust that the person manages);

(f) the person is a listed entity, or a related body corporate of a listed entity;

(g) the person is an exempt public authority;

(h) the person is a body corporate, or an unincorporated body, that:

(i) carries on a business of investment in financial products, interests in land or other investments; and

(ii) for those purposes, invests funds received (directly or indirectly) following an offer or invitation to the public,



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within the meaning of section 82, the terms of which provided for the funds subscribed to be invested for those purposes;

(i) the person is a foreign entity that, if established or incorporated in Australia, would be covered by one of the preceding paragraphs.

***professional member of an audit team*** has the meaning given by section 324AE.

***profile statement*** means a profile statement that is lodged with ASIC.

***property*** means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action, and:

(a) in Part 5.3A (administration)—has a meaning affected by section 435B; and

(b) in Part 5.4B (winding up in insolvency or by the Court)—has a meaning affected by section 465; and

(c) in Part 5.5 (voluntary winding up)—has a meaning affected by section 489F; and

(d) in Part 5.6 (winding up generally)—has a meaning affected by section 513AA; and

(e) in Part 5.7B (recovering property or compensation for creditors of insolvent company)—has a meaning affected by section 588C; and

(f) in Part 5.8 (offences relating to external administration)—has a meaning affected by subsection 589(5); and

(g) in Part 5A.1 (deregistration, and transfer of registration, of companies)—has a meaning affected by section 601; and

(h) in Part 5B.2 (registrable bodies)—has a meaning affected by section 601C; and

(i) in Schedule 2 (the Insolvency Practice Schedule)—has a meaning affected by section 5-26 of that Schedule.



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Note: A reference in this Act to the property of a corporation does not include a reference to any PPSA retention of title property of the corporation, unless provided otherwise expressly or by necessary implication (see section 51F). The sections mentioned in paragraphs (a) to (h) extend references to property of a corporation in Parts of this Act to PPSA retention of title property (or to certain PPSA retention of title property).

***proportional takeover approval provisions***, in relation to a company, means provisions of the kind referred to in subsection 648D(1) that are contained in, or that it is proposed to insert in, the constitution of the company.

***proportional takeover bid*** means an off-market bid for a specified proportion of the securities in the bid class (see paragraph 618(1)(b)).

***proprietary company*** has the meaning given by subsection 45A(1).

***prospectus*** means a prospectus that is lodged with ASIC.

***prove*** includes establish in any way (for example, but without limitation, through the operation of a presumption for which this Act or a law of a State or Territory provides).

***providing finance*** means:

(a) lending money; or

(b) giving guarantees or security for loans made by someone else; or

(c) drawing, accepting, indorsing, negotiating or discounting a bill of exchange, cheque, payment order or promissory note so that someone can obtain funds.

***provision*** of a law includes:

(a) a subsection, section, Subdivision, Division, Part or Chapter of the law; and

(b) a Schedule, or an item in a Schedule, to the law.

***provisional liquidator*** has a meaning affected by paragraph 530AA(b) (which deals with 2 or more persons appointed as provisional liquidators).



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***public company*** means a company other than a proprietary company and:

(a) in section 195 and Chapter 2E, includes a body corporate (other than a prescribed body corporate) that:

(i) is incorporated in a State or an internal Territory, but not under this Act; and

(ii) is included in the official list of a prescribed financial market; and

(b) in Chapter 2E does not include a company that is not required to have "Limited" in its name because of section 150 or 151.

***public document***, in relation to a body corporate, has the meaning given by section 88A.

***publish***:

(a) in relation to a notice—means, in Chapter 7, publish by any means, including in a newspaper or periodical, on the internet, by broadcasting or televising or in a cinematograph film; and

(b) in any case—includes issue.

***qualified accountant*** has the meaning given by section 88B.

***qualified privilege*** has the meaning given by section 89.

***quarter day*** means 31 March, 30 June, 30 September or 31 December.

***quotation***, in relation to financial products or in relation to a financial market, includes the displaying or providing, on a financial market, of information concerning:

(a) if offers to dispose of, purchase or exchange the financial product at particular prices, or for particular consideration, are made or accepted on that financial market—those prices or that consideration; or

(b) if offers or invitations are made on that financial market, being offers or invitations that are intended, or may



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reasonably be expected, to result in the making or acceptance of offers to dispose of, purchase or exchange the financial products at particular prices, or for particular consideration—those prices or that consideration; or

(c) in any case—the price at which, or the consideration for which, particular persons, or particular classes of persons, propose, or may reasonably be expected, to dispose of, purchase or exchange the financial products.

***quoted ED securities*** has the meaning given by section 111AM.

***quoted security*** means a security that is quoted on a prescribed financial market.

***receiver*** has a meaning affected by paragraph 434D(b) (which deals with 2 or more persons appointed as receivers).

***receiver and manager*** has a meaning affected by section 90 and has a meaning affected by paragraph 434E(b) (which deals with 2 or more persons appointed as receivers and managers).

***recognised offer*** has the meaning given by section 1200B.

***redeemable preference share*** means a preference share in a body corporate that is, or at the body's option is to be, liable to be redeemed.

***referring State*** has the meaning given by section 4.

***register*** means register under this Act.

***registered Australian body*** means a registrable Australian body that is registered under Division 1 of Part 5B.2.

***registered body*** means a registered Australian body or a registered foreign company.

***registered company auditor***:

(a) means a person registered as an auditor under Part 9.2; and



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(b) in relation to a body corporate that is not a company—includes a person qualified to act as the body's auditor under the law of the body's incorporation.

***registered foreign company*** means a foreign company that is registered under Division 2 of Part 5B.2.

***registered liquidator*** has the same meaning as in section 5-5 of Schedule 2.

***registered office***, in relation to a body corporate, means the body's registered office under section 142 or 601CT, as the case requires.

***registered scheme*** means a managed investment scheme that is registered under section 601EB.

***registrable Australian body*** means:

(a) a body corporate, not being:
  (i) a company; or
  (ii) an exempt public authority; or
  (iii) a corporation sole; or

(b) an unincorporated body that, under the law of its place of formation:
  (i) may sue or be sued; or
  (ii) may hold property;

  in the name of its secretary or of an officer of the body duly appointed for that purpose;

but does not include a foreign company.

***registrable body*** means a registrable Australian body or a foreign company.

***regulated entity*** has the meaning given by section 1317AAB.

***Regulatory Powers Act*** means the *Regulatory Powers (Standard Provisions) Act 2014*.



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***related body corporate***, in relation to a body corporate, means a body corporate that is related to the first-mentioned body by virtue of section 50.

***related entity***, in relation to a body corporate, means any of the following:

(a) a promoter of the body;
(b) a relative of such a promoter;
(c) a relative of a spouse of such a promoter;
(d) a director or member of the body or of a related body corporate;
(e) a relative of such a director or member;
(f) a relative of a spouse of such a director or member;
(g) a body corporate that is related to the first-mentioned body;
(h) a beneficiary under a trust of which the first-mentioned body is or has at any time been a trustee;
(i) a relative of such a beneficiary;
(j) a relative of a spouse of such a beneficiary;
(k) a body corporate one of whose directors is also a director of the first-mentioned body;
(l) a trustee of a trust under which a person is a beneficiary, where the person is a related entity of the first-mentioned body because of any other application or applications of this definition.

***related party***:

(a) when used in Chapter 2E—has the meaning given by section 228; and
(b) when used in Part 6D.3A—has the meaning given by subsection 738G(3); and
(c) when used in Division 2 of Part 5C.10, Chapter 8A and the Passport Rules for this jurisdiction—has the meaning given by the Passport Rules for this jurisdiction.

***relation-back day*** has the meaning given by section 91.



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***relative***, in relation to a person, means the spouse, parent or remoter lineal ancestor, child or remoter issue, or brother or sister of the person.

***relevant agreement*** means an agreement, arrangement or understanding:

(a) whether formal or informal or partly formal and partly informal; and

(b) whether written or oral or partly written and partly oral; and

(c) whether or not having legal or equitable force and whether or not based on legal or equitable rights.

***relevant date***, in relation to a winding up, means the day on which the winding up is taken because of Division 1A of Part 5.6 to have begun.

Note: Subsection 553(1B) modifies the operation of this definition for debts and claims that arise while a company is under a deed of company arrangement if the deed terminates immediately before the winding up.

***relevant financial market***, for a listed company, listed registered scheme or listed notified foreign passport fund means:

(a) the prescribed financial market on which the company, scheme or fund is listed; or

(b) if the company, scheme or fund is listed on 2 or more prescribed financial markets—each of those markets.

***relevant interest***, in relation to securities, has a meaning given by sections 608 and 609.

***relevant market operator***, for a listed company, listed registered scheme or listed notified foreign passport fund means:

(a) if there is only one relevant financial market for the company, scheme or fund—the operator of that relevant financial market; or

(b) if there is 2 or more relevant financial markets for the company, scheme or fund—each of the operators of each of those relevant financial markets.



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***relinquishment order*** has the meaning given by subsection 1317GAB(1).

***remedial order*** means an order that:

(a) restrains a person from exercising any voting or other rights attached to securities; or

(b) directs a body corporate not to make or to defer payment of an amount due from the body corporate in respect of securities; or

(c) restrains a person from acquiring securities or an interest in securities; or

(d) directs a person to dispose of, or not to dispose of, securities or interests in securities; or

(e) directs the disposal referred to in paragraph (d):

(i) to be made within a specified time; or

(ii) to be made subject to specified conditions; or

(iii) not to be made to a specified person or persons or to a specified class or classes of persons;

(f) directs a specified person to pay to the body corporate an amount equal to any profit or benefit that the person obtains because of the disposal referred to in paragraph (d); or

(g) vests securities, or an interest in securities, in ASIC; or

(h) directs a body corporate not to register the transfer or transmission of securities; or

(i) cancels securities issued as consideration for offers under a takeover bid; or

(j) declares that an exercise of the voting or other rights attached to securities be disregarded; or

(k) cancels or declares voidable:

(i) an agreement or offer relating to a takeover bid, or a proposed takeover bid; or

(ii) any other agreement or offer in connection with the acquisition of securities or relevant interests in securities;

(l) directs a person to give specified information to the holders of securities of a body corporate; or



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(m) directs a body corporate not to issue securities to a person; or

(n) if an order of a kind referred to in paragraphs (a) to (m) is in force in respect of securities—directs the registered holder of the securities to give written notice of the order to any person whom the holder knows to be entitled to exercise a right to vote attached to those securities; or

(o) directs a body corporate to repeal or modify its existing constitution or adopt a particular constitution; or

(p) if a person has failed to comply with a requirement of Chapter 6, 6A, 6B or 6C—directs that person to comply with that requirement.

***remuneration*** of an officer or employee of a corporation. A benefit given to an officer or employee of a corporation is ***remuneration*** if and only if the benefit, were it received by a director of the corporation, would be remuneration of the director for the purposes of an accounting standard that deals with disclosure in companies' financial reports of information about directors' remuneration. For the purposes of this definition, the following are not officers of a corporation:

(a) a receiver, or receiver and manager, of the property of the corporation;

(b) an administrator of the corporation;

(c) an administrator of a deed of company arrangement executed by the corporation;

(d) a liquidator of the corporation;

(e) a trustee or other person administering a compromise or arrangement made between the corporation and someone else.

***remuneration committee*** has the meaning given by paragraph 206K(2)(b).

***remuneration consultant*** means a person:

(a) who makes a remuneration recommendation under a contract for services with the company to whose key management personnel the recommendation relates; and



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(b) who is not an officer or employee of the company.

***remuneration recommendation*** has the meaning given by section 9B.

***remuneration report*** means the section of the directors' report for a financial year for a listed public company that is included under subsection 300A(1).

***renounceable option*** means an assignable option to have an allotment of shares in a body corporate made to the holder of the option.

***Replacement Product Disclosure Statement***, when used in a provision outside Chapter 7, has the same meaning it has in Chapter 7.

***reproduction***, in relation to a document, means a machine-copy of the document or a print made from a negative of the document.

***resolution***, when used in a provision outside Schedule 2 in relation to creditors or contributories, means a resolution passed at a meeting of the creditors or contributories.

***resolution for voluntary winding up*** means the special resolution referred to in section 491.

***responsible entity*** of a registered scheme means the company named in ASIC's record of the scheme's registration as the responsible entity or temporary responsible entity of the scheme.

***responsible holding party*** for an Australian passport fund or a notified foreign passport fund means the responsible holding party of the assets of the fund under the Passport Rules for this jurisdiction.

***responsible intermediary***, in relation to a CSF offer, has the meaning given by subsection 738L(5).

***responsible officer***, in relation to a body corporate that applies for an Australian financial services licence, means an officer of the



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body who would perform duties in connection with the holding of the licence.

***result*** includes:

(a) when used as a verb—result indirectly; and

(b) when used as a noun—an indirect result.

***retail client***, when used in Part 6D.3A, has the meaning given by section 738D.

***retention of title clause***: property is subject to a ***retention of title clause*** under a contract for the sale of property:

(a) if the contract contains a provision the effect of which is that the seller retains title in the property until the purchase price, or another amount, has been paid in full; and

(b) if the purchase price, or the other amount, as the case may be, has not been paid in full; and

(c) to the extent that the contract does not give rise to a PPSA security interest in the property.

Note: See also the definitions of ***PPSA security interest*** in section 51 and ***PPSA retention of title property*** in section 51F.

***retirement village scheme*** means a scheme, undertaking or enterprise (in this definition called the ***relevant scheme***), whether in Australia or elsewhere, that is being, or is proposed to be, carried out or undertaken with the intention that the participants, or a majority of the participants, in the relevant scheme be provided, in connection with the relevant scheme, with residential accommodation within a retirement community, whether or not the entitlement of a participant to be provided with such accommodation derives from a proprietary interest held by the participant in the premises where the accommodation is provided, but does not include a time-sharing scheme.

***return of particulars*** for a company, registered scheme or notified foreign passport fund means a statement given by ASIC that contains any or all of the following:



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(a) some or all of the particulars in relation to the company, scheme or fund that are recorded in a register that ASIC maintains, or ensures is maintained, under subsection 1214(1) or 1274(1);
(b) a requirement to provide a particular under section 348B;
(c) a requirement to comply with a subsection of section 348C (and, if applicable, pass a resolution).

***review auditor*** has the meaning given by section 324AF.

***review date*** has the meaning given by section 345A.

***review fee*** has the meaning given by section 5 of the *Corporations (Review Fees) Act 2003*.

***revoke***, in relation to an accounting standard, means, in the case of a provision of an accounting standard, vary the last-mentioned accounting standard by omitting the provision.

***rights issue*** has the meaning given by subsections 9A(1) and (2).

***rules*** means:
(a) rules of the Federal Court; or
(b) rules of the Supreme Court of a State or internal Territory;
as the case requires.

***scheme property*** of a registered scheme means:
(a) contributions of money or money's worth to the scheme; and
(b) money that forms part of the scheme property under provisions of this Act or the ASIC Act; and
(c) money borrowed or raised by the responsible entity for the purposes of the scheme; and
(d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and
(e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).



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Note 1: Paragraph (a)—if what a member contributes to a scheme is rights over property, the rights in the property that the member retains do not form part of the scheme property.

Note 2: For provisions that are relevant to paragraph (b), see subsections 177(4), 1317HA(1A), 1317HB(3) and 1317HD(3) of this Act and subsection 93A(5) of the ASIC Act.

***scrip*** means documents that are, or are documents of title to, securities.

***section 513C day***, in relation to the administration of a company, has the meaning given by section 513C.

***secured creditor*** has the meaning given by section 51E.

***secured party*** has the meaning given by section 51B.

***securities*** has the meaning given by section 92.

***security interest*** has the meaning given by section 51A.

***selective buy-back*** means a buy-back that is none of the following:

(a) a buy-back under an equal access scheme within the meaning of subsections 257B(2) and (3);
(b) a minimum holding buy-back;
(c) an on-market buy-back;
(d) an employee share scheme buy-back.

***senior manager***:

(a) in relation to a corporation—means a person (other than a director or secretary of the corporation) who:
    (i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
    (ii) has the capacity to affect significantly the corporation's financial standing; and
(b) in relation to a partnership—means a person (other than a partner) who:



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(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the partnership; or

(ii) has the capacity to affect significantly the partnership's financial standing; and

(c) in relation to a trust—means a person (other than a trustee) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business or affairs of the trust; or

(ii) has the capacity to affect significantly the financial standing of the trust; and

(d) in relation to a joint venture—means a person (other than a director or secretary of a corporation participating in the joint venture) who:

(i) makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the joint venture; or

(ii) has the capacity to affect significantly the financial standing of the joint venture.

***serious fraud*** means an offence involving fraud or dishonesty, being an offence:

(a) against an Australian law or any other law; and

(b) punishable by imprisonment for life or for a period, or maximum period, of at least 3 months.

***sheriff*** includes a person charged with the execution of a writ or other process.

***significant financial benchmark*** has the meaning given by section 908AC.

***simple corporate bonds*** has the meaning given by section 713A.

***simple corporate bonds depository interest*** means a beneficial interest in simple corporate bonds, where the interest is or was



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issued by a simple corporate bonds depository nominee (as a simple corporate bonds depository nominee).

***simple corporate bonds depository nominee*** means a person who:

(a) issues to someone else one or more beneficial interests in simple corporate bonds that the person:
  (i) owns legally; or
  (ii) would own beneficially, apart from the issue of those interests; or
  (iii) has a beneficial interest in; and
(b) does so with the agreement of the body that issued the bonds.

***small company limited by guarantee*** has the meaning given by section 45B.

***small proprietary company*** has the meaning given by subsection 45A(2).

***solvency resolution*** means a resolution by the directors of a company as to whether or not, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

***solvent*** has the meaning given by subsection 95A(1).

***special resolution***, when used in a provision outside Schedule 2 means:

(a) in relation to a company, a resolution:
  (i) of which notice as set out in paragraph 249L(1)(c) has been given; and
  (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or
(b) in relation to a registered scheme, a resolution:
  (i) of which notice as set out in paragraph 252J(c) has been given; and
  (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.



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***spouse*** of a person includes a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*.

***staff member***, in relation to ASIC, means a person who is a staff member for the purposes of the ASIC Act.

***standard opening hours*** means 10 am to 12 noon and 2 pm to 4 pm each business day.

***State***, when used in a geographical sense, includes the coastal sea of the State.

***State Fair Trading Act*** means the following Acts for each State and Territory:

**State Fair Trading Acts**

| | State or Territory | Act |
|---|---|---|
| 1 | New South Wales | Fair Trading Act 1987 |
| 2 | Victoria | Fair Trading Act 1999 |
| 3 | Queensland | Fair Trading Act 1989 |
| 4 | South Australia | Fair Trading Act 1987 |
| 5 | Western Australia | Fair Trading Act 1987 |
| 6 | Tasmania | Fair Trading Act 1990 |
| 7 | Northern Territory | Consumer Affairs and Fair Trading Act 1990 |
| 8 | Australian Capital Territory | Fair Trading Act 1992 |

***State Family Court***, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* applies because of a Proclamation made under subsection 41(2) of that Act.

***statement***, in Chapter 7, includes matter that is not written but conveys a message.

***State or Territory authority*** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under a law of a State or Territory.



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***State or Territory court*** means a court of a State, the Capital Territory or the Northern Territory.

***State or Territory Supreme Court*** means the Supreme Court of:

(a) a State; or
(b) the Capital Territory; or
(c) the Northern Territory.

***statutory demand*** means:

(a) a document that is, or purports to be, a demand served under section 459E; or
(b) such a document as varied by an order under subsection 459H(4).

***statutory minimum*** means:

(a) if an amount greater than $2,000 is prescribed—the prescribed amount; or
(b) otherwise—$2,000.

***subject to an infringement notice*** under Part 9.4AB has a meaning given by section 1317DAN.

***subsection 1337B(3) proceeding*** means a proceeding with respect to a matter referred to in subsection 1337B(3).

***subsidiary***, in relation to a body corporate, means a body corporate that is a subsidiary of the first-mentioned body by virtue of Division 6.

***substantial holding***: a person has a ***substantial holding*** in a body corporate, listed registered scheme or listed notified foreign passport fund, if:

(a) the total votes attached to voting shares in the body or voting interests in the scheme or fund, in which they or their associates:
    (i) have relevant interests; and



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(ii) would have a relevant interest but for subsection 609(6) (market traded options) or 609(7) (conditional agreements);

is 5% or more of the total number of votes attached to voting shares in the body or interests in the scheme or fund; or

(b) the person has made a takeover bid for voting shares in the body or voting interests in the scheme, and the bid period has started and not yet ended.

Note 1: For ***relevant interest***, see section 608.

Note 2: Paragraph (b) does not apply in relation to a notified foreign passport fund.

***substantial interest*** has a meaning affected by section 602A.

***substantial part***, in relation to activities, includes the whole of those activities.

***superannuation guarantee charge*** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

***superannuation guarantee shortfall*** has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.

***superior court*** means the Federal Court of Australia, the Supreme Court of a State or Territory, the Family Court or a State Family Court.

***superior court matter*** means a civil matter that this Act clearly intends (for example, by use of the expression ***the Court***) to be dealt with only by a superior court.

***Supplementary Product Disclosure Statement***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***suspended***, in relation to a CSF offer, has the meaning given by subsection 738N(6).

***takeover bid*** means an off-market bid or market bid made under Chapter 6.



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***takeover contract*** means a contract that results from the acceptance of an offer made under a takeover bid.

***target*** for a takeover bid means the company, listed body or managed investment scheme whose securities are to be acquired under the bid.

***target's statement*** means a target's statement under sections 638 to 640 as supplemented.

***territorial sea*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***Territory*** means:

(a) the Capital Territory; or
(b) the Northern Territory; or
(c) an external Territory;

and, when used in a geographical sense, includes the coastal sea of the Territory.

***this Act*** includes the regulations, the Insolvency Practice Rules and the Passport Rules for this jurisdiction.

***this jurisdiction*** means the geographical area that consists of:

(a) each referring State (including its coastal sea); and
(b) the Capital Territory (including the coastal sea of the Jervis Bay Territory); and
(c) the Northern Territory (including its coastal sea); and
(d) also, for the purposes of the application of a provision of Chapter 7 or an associated provision (as defined in section 5)—any external Territory in which the provision applies because of subsection 5(9) (but only to the extent provided for in that subsection).

***time-sharing scheme*** means a scheme, undertaking or enterprise, whether in Australia or elsewhere:

(a) participants in which are, or may become, entitled to use, occupy or possess, for 2 or more periods during the period for which the scheme, undertaking or enterprise is to operate,



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property to which the scheme, undertaking or enterprise relates; and

(b) that is to operate for a period of not less than 3 years.

***trade***, in relation to financial products, in relation to a financial market, includes:

(a) make or accept on that financial market an offer to dispose of, acquire or exchange the financial products; and

(b) make on that financial market an offer or invitation that is intended, or may reasonably be expected, to result in the making or acceptance of an offer to dispose of, acquire or exchange the financial products.

***trading day*** of a financial market means a day on which the market is open for trading in financial products.

***transaction***, in Part 5.7B, in relation to a body corporate or Part 5.7 body, means a transaction to which the body is a party, for example (but without limitation):

(a) a conveyance, transfer or other disposition by the body of property of the body; and

(b) a security interest granted by the body in its property (including a security interest in the body's PPSA retention of title property); and

(c) a guarantee given by the body; and

(d) a payment made by the body; and

(e) an obligation incurred by the body; and

(f) a release or waiver by the body; and

(g) a loan to the body;

and includes such a transaction that has been completed or given effect to, or that has terminated.

***transmission*** means a transmission, by means of electric or electromagnetic energy, of:

(a) sounds, including speech and music; or

(b) visual images; or



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(c) signals for the communication, whether as between persons and persons, persons and things or things and things, of any matter otherwise than in the form of sounds or visual images; or
(d) signals for the actuation or control of machinery or apparatus.

***transparency***, in relation to a document, means:
(a) a developed negative or positive photograph of that document (in this definition called an ***original photograph***) made, on a transparent base, by means of light reflected from, or transmitted through, the document; or
(b) a copy of an original photograph made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with the original photograph; or
(c) any one of a series of copies of an original photograph, the first of the series being made by the use of photo-sensitive material (being photo-sensitive material on a transparent base) placed in surface contact with a copy referred to in paragraph (b), and each succeeding copy in the series being made, in the same manner, from any preceding copy in the series.

***transparency reporting auditor*** has the meaning given by subsection 332(1).

***transparency reporting year*** has the meaning given by subsection 332(2).

***Tribunal*** means the Administrative Appeals Tribunal.

***ultimate holding company***, in relation to a body corporate, means a body corporate that:
(a) is a holding company of the first-mentioned body; and
(b) is itself a subsidiary of no body corporate.

***unclaimed property*** means:
(a) property paid or transferred to ASIC under a provision of this Act that provides for property to be transferred, or for the



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Court to direct that property be transferred, to ASIC to be dealt with under Part 9.7; or

(b) any other property that a provision of this Act provides for ASIC to deal with under Part 9.7; or

(c) property that vests in ASIC under section 1404; or

(d) an accretion to, or substitution for, property that is unclaimed property because of any other application or applications of this definition.

***uncommercial transaction*** has the meaning given by section 588FB.

***underlying securities*** means:

(a) in relation to an option over securities—those securities; and

(b) in relation to scrip that is constituted by documents that are, or are documents of title to, securities—those securities.

***undertaking***, in relation to a managed investment scheme, means the undertaking, scheme, enterprise, contract or arrangement to which the scheme relates.

***underwrite*** includes sub-underwrite.

***unfair loan*** has the meaning given by section 588FD.

***unfair preference*** has the meaning given by section 588FA.

***unit***, in relation to a share, debenture or other interest, means a right or interest, whether legal or equitable, in the share, debenture or other interest, by whatever term called, and includes an option to acquire such a right or interest in the share, debenture or other interest.

***unlimited company*** means a company whose members have no limit placed on their liability.

***unlisted disclosing entity*** has the meaning given by subsection 111AL(2).



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***unreasonable director-related transaction*** has the meaning given by section 588FDA.

***unsecured***, in relation to a debt, has in Part 5.7B a meaning affected by section 588D.

***value***, in relation to an asset, includes amount.

***voting interest***, in relation to a managed investment scheme (including a notified foreign passport fund), means an issued interest in the scheme that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances:

(a) on a proposal that affects rights attached to the interests;
(b) on a proposal to wind up the scheme;
(c) on a proposal for the disposal of the whole of the scheme or fund property, business and undertaking;
(d) during the winding up of the scheme.

***voting power*** in a body or managed investment scheme has the meaning given by section 610.

***voting share*** in a body corporate means an issued share in the body that carries any voting rights beyond the following:

(a) a right to vote while a dividend (or part of a dividend) in respect of the share is unpaid;
(b) a right to vote on a proposal to reduce the body's share capital;
(c) a right to vote on a resolution to approve the terms of a buy-back agreement;
(d) a right to vote on a proposal that affects the rights attached to the share;
(e) a right to vote on a proposal to wind the body up;
(f) a right to vote on a proposal for the disposal of the whole of the body's property, business and undertaking;
(g) a right to vote during the body's winding up.



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***wages***, in relation to a company, means amounts payable to or in respect of an employee of the company (whether the employee is remunerated by salary, wages, commission or otherwise) under an industrial instrument, including amounts payable by way of allowance or reimbursement but excluding amounts payable in respect of leave of absence.

***wholly-owned subsidiary***, in relation to a body corporate, means a body corporate none of whose members is a person other than:

(a) the first-mentioned body; or

(b) a nominee of the first-mentioned body; or

(c) a subsidiary of the first-mentioned body, being a subsidiary none of whose members is a person other than:

(i) the first-mentioned body; or

(ii) a nominee of the first-mentioned body; or

(d) a nominee of such a subsidiary.

***winding up by the Court*** includes winding up in insolvency.

***wound up by the Court*** includes wound up in insolvency.

## 9AA Certain family relationships

For the purposes of this Act, relationships (including the relationship of being family) are taken to include:

(a) relationships between de facto partners (within the meaning of the *Acts Interpretation Act 1901*); and

(b) relationships of child and parent that arise:

(i) if someone is an exnuptial or adoptive child of a person; or

(ii) if someone is the child of a person because of the definition of ***child*** in this Act; and

(c) relationships traced through relationships referred to in paragraphs (a) and (b).



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## 9A Meaning of *rights issue*

(1) A ***rights issue*** is an offer of a body's securities for issue in respect of which the following conditions are met:
  (a) the securities being offered for issue are in a particular class;
  (b) either:
    (i) the offer is made to every person who holds securities in that class to issue them, or their assignee, with the percentage of the securities to be issued that is the same as the percentage of the securities in that class that they hold before the offer; or
    (ii) if the conditions in subsection (3) are met—such an offer is made to every person with a registered address in Australia or New Zealand who holds securities in that class;
  (c) the terms of each offer are the same.

(2) A ***rights issue*** is an offer of interests in a registered scheme or notified foreign passport fund for issue in respect of which the following conditions are met:
  (a) the interests being offered for issue are in a particular class;
  (b) either:
    (i) the offer is made to every person who holds interests in that class to issue them, or their assignee, with the percentage of the interests to be issued that is the same as the percentage of the interests in that class that they hold before the offer; or
    (ii) if the conditions in subsection (3) are met—such an offer is made to every person with a registered address in Australia or New Zealand who holds interests in that class;
  (c) the terms of each offer are the same.

(3) The conditions in this subsection are met if:
  (a) the offering entity decides that it is unreasonable to offer securities or interests (as the case requires) for issue to persons (the ***non-residents***) with a registered address in a



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place outside Australia or New Zealand, after taking into account the following matters:

(i) the number of non-residents, in that place, to whom offers would otherwise be made;

(ii) the number and value of the securities or interests that would otherwise be offered for issue;

(iii) the cost of complying with the laws, and any requirements of any regulatory authority, of the place where the securities or interests would otherwise be offered for issue; and

(b) the offering entity:

(i) sends details of the offer to each non-resident in that place; and

(ii) advises each non-resident in that place that the non-resident will not be offered the securities or interests; and

(c) if the invitation to apply for, or the right to be issued with, the securities or interests is able to be assigned—the offering entity:

(i) advises each non-resident in that place that a nominee will be appointed to sell the invitation or right that would otherwise have been offered to the non-resident; and

(ii) advises each non-resident that the nominee will send the non-resident any net proceeds from the sale of that invitation or those rights; and

(iii) appoints a nominee in Australia to carry out the obligations referred to in subparagraphs (i) and (ii).

(3A) For the purposes of subsection (3), ***offering entity*** means the following:

(a) in relation to an offer of securities in a body that is not a registered scheme or a notified foreign passport fund—the body;

(b) in relation to an offer of interests in a registered scheme—the responsible entity of the scheme;



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(c) in relation to an offer of interests in a notified foreign passport fund—the operator of the fund.

(4) For the purposes of this section, a reference to an offer of securities includes a reference to an invitation to apply for the issue of securities.

## 9B Meaning of *remuneration recommendation*

(1) A ***remuneration recommendation*** is:

(a) a recommendation about either or both of the following:

(i) how much the remuneration should be;

(ii) what elements the remuneration should have;

for one or more members of the key management personnel for a company; or

(b) a recommendation or advice about a matter or of a kind prescribed by the regulations.

(2) None of the following is a ***remuneration recommendation*** (even if it would otherwise be covered by subsection (1)):

(a) advice about the operation of the law (including tax law);

(b) advice about the operation of accounting principles (for example, about how options should be valued);

(c) advice about the operation of actuarial principles and practice;

(d) the provision of facts;

(e) the provision of information of a general nature relevant to all employees of the company;

(f) a recommendation, or advice or information, of a kind prescribed by the regulations.

(3) Subsection (2) does not limit the things that are not remuneration recommendations, nor does it mean that something specified in that subsection would otherwise be a remuneration recommendation within the meaning of subsection (1).

(4) ASIC may by writing declare that subsection (1) does not apply to a specified recommendation or specified advice, but may do so



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only if ASIC is satisfied that it would be unreasonable in the circumstances for the advice or recommendation to be a remuneration recommendation. The declaration has effect accordingly. The declaration is not a legislative instrument.



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## Division 2—Associates

### 10 Effect of Division

(1) This Division has effect for the purposes of interpreting a reference (in this Division called the ***associate reference***), in relation to a person (in this Division called the ***primary person***), to an associate.

(2) A person is not an associate of the primary person except as provided in this Division.

(3) Nothing in this Division limits the generality of anything else in it.

### 11 Associates of bodies corporate

If the primary person is a body corporate, the associate reference includes a reference to:

(a) a director or secretary of the body; and

(b) a related body corporate; and

(c) a director or secretary of a related body corporate.

### 12 References in Chapters 6 to 6C, and other references relating to voting power and takeovers etc.

(1) Subject to subsection 16(1), but despite anything else in this Part, this section applies for the purposes of interpreting a reference to an associate (the ***associate reference***), in relation to a designated body, if:

(a) the reference occurs in a provision of Chapter 6, 6A, 6B or 6C; or

(b) the reference occurs in a provision outside those Chapters that relates to any of the following matters:

(i) the extent, or restriction, of a power to exercise, or to control the exercise of, the votes attached to voting shares in the designated body;



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(ii) the primary person's voting power in the designated body;
(iii) relevant interests in securities in the designated body;
(iv) a substantial holding in the designated body;
(v) a takeover bid for securities in the designated body;
(vi) the compulsory acquisition, or compulsory buy-out, of securities in the designated body.

(2) For the purposes of the application of the associate reference in relation to the designated body, a person (the ***second person***) is an associate of the primary person if, and only if, one or more of the following paragraphs applies:
(a) the primary person is a body corporate and the second person is:
(i) a body corporate the primary person controls; or
(ii) a body corporate that controls the primary person; or
(iii) a body corporate that is controlled by an entity that controls the primary person;
(b) the second person is a person with whom the primary person has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the designated body's board or the conduct of the designated body's affairs;
(c) the second person is a person with whom the primary person is acting, or proposing to act, in concert in relation to the designated body's affairs.

(3) For the purposes of the application of this section in relation to a designated body that is a managed investment scheme:
(a) a reference to controlling or influencing the composition of the designated body's board is taken to be a reference to controlling or influencing:
(i) if the scheme is a registered scheme—whether a particular company becomes or remains the scheme's responsible entity; or
(ii) if the scheme is not a registered scheme—whether a particular person is appointed, or remains appointed, to



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the office (by whatever name it is known) in relation to the scheme that corresponds most closely to the office of responsible entity of a registered scheme; and

(b) a reference to voting shares in the designated body is taken to be a reference to voting interests in the managed investment scheme.

(4) In relation to a matter relating to securities in a designated body, a person may be an associate of the body and the body may be an associate of the person.

(5) In this section:

***designated body*** means:

(a) a body; or

(b) a managed investment scheme.

## 13 References in Chapter 7

If the associate reference occurs in Chapter 7, it includes a reference to:

(a) a person in partnership with whom the primary person carries on a financial services business; and

(b) subject to subsection 16(2), a person who is a partner of the primary person otherwise than because of carrying on a financial services business in partnership with the primary person; and

(c) a trustee of a trust in relation to which the primary person benefits, or is capable of benefiting, otherwise than because of transactions entered into in the ordinary course of business in connection with the lending of money; and

(d) a director of a body corporate of which the primary person is also a director and that carries on a financial services business; and

(e) subject to subsection 16(2), a director of a body corporate of which the primary person is also a director and that does not carry on a financial services business.



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## 15 General

(1) The associate reference includes a reference to:

(a) a person in concert with whom the primary person is acting, or proposes to act; and

(b) a person who, under the regulations, is, for the purposes of the provision in which the associate reference occurs, an associate of the primary person; and

(c) a person with whom the primary person is, or proposes to become, associated, whether formally or informally, in any other way;

in respect of the matter to which the associate reference relates.

(2) If the primary person has entered, or proposes to enter, into a transaction, or has done, or proposes to do, any act or thing, in order to become associated with another person as mentioned in an applicable provision of this Division, the associate reference includes a reference to that other person.

## 16 Exclusions

(1) A person is not an associate of another person by virtue of section 12 or subsection 15(1), or by virtue of subsection 15(2) as it applies in relation to section 12 or subsection 15(1), merely because of one or more of the following:

(a) one gives advice to the other, or acts on the other's behalf, in the proper performance of the functions attaching to a professional capacity or a business relationship;

(b) one, a client, gives specific instructions to the other, whose ordinary business includes dealing in financial products, to acquire financial products on the client's behalf in the ordinary course of that business;

(c) one had sent, or proposes to send, to the other an offer under a takeover bid for shares held by the other;

(d) one has appointed the other, otherwise than for valuable consideration given by the other or by an associate of the



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other, to vote as a proxy or representative at a meeting of members, or of a class of members, of a body corporate.

(2) For the purposes of proceedings under this Act in which it is alleged that a person was an associate of another person by virtue of paragraph 13(b) or (e), the first-mentioned person is not taken to have been an associate of the other person in relation to a matter by virtue of that paragraph unless it is proved that the first-mentioned person knew, or ought to have known, at that time, the material particulars of that matter.

## 17 Associates of composite person that carries on a financial services business

A reference to an associate, in relation to an entity (other than a body corporate) that carries on a financial services business, is, if 2 or more persons constitute the entity, a reference to an associate of any of those persons.



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## Division 3—Carrying on business

### 18 Carrying on business: otherwise than for profit

A reference to a person carrying on business, carrying on a business, or carrying on a business of a particular kind, includes a reference to the person carrying on business, carrying on a business, or carrying on a business of that kind, as the case may be:

(a) in any case—otherwise than for profit; or

(b) in the case of a body corporate—otherwise than for the profit of the members or corporators of the body.

### 19 Businesses of a particular kind

A reference to a business of a particular kind includes a reference to a business of that kind that is part of, or is carried on in conjunction with, any other business.

### 20 Carrying on a business: alone or together with others

A reference in this Act to a person carrying on a business, or a business of a particular kind, is a reference to the person carrying on a business, or a business of that kind, whether alone or together with any other person or persons.

### 21 Carrying on business in Australia or a State or Territory

(1) A body corporate that has a place of business in Australia, or in a State or Territory, carries on business in Australia, or in that State or Territory, as the case may be.

(2) A reference to a body corporate carrying on business in Australia, or in a State or Territory, includes a reference to the body:

(a) establishing or using a share transfer office or share registration office in Australia, or in the State or Territory, as the case may be; or



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(b) administering, managing, or otherwise dealing with, property situated in Australia, or in the State or Territory, as the case may be, as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

(3) Despite subsection (2), a body corporate does not carry on business in Australia, or in a State or Territory, merely because, in Australia, or in the State or Territory, as the case may be, the body:

(a) is or becomes a party to a proceeding or effects settlement of a proceeding or of a claim or dispute; or

(b) holds meetings of its directors or shareholders or carries on other activities concerning its internal affairs; or

(c) maintains a bank account; or

(d) effects a sale through an independent contractor; or

(e) solicits or procures an order that becomes a binding contract only if the order is accepted outside Australia, or the State or Territory, as the case may be; or

(f) creates evidence of a debt, or creates a security interest in property, including PPSA retention of title property of the body; or

(g) secures or collects any of its debts or enforces its rights in regard to any securities relating to such debts; or

(h) conducts an isolated transaction that is completed within a period of 31 days, not being one of a number of similar transactions repeated from time to time; or

(j) invests any of its funds or holds any property.



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# Division 5A—Types of company

## 45A Proprietary companies

(1) A proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

Note 1: A proprietary company can be registered under section 118 or 601BD. A company can convert to a proprietary company under Part 2B.7.

Note 2: A proprietary company needs to be limited by shares or be an unlimited company with a share capital (see subsection 112(1)).

Note 3: A proprietary company needs to:

(a) have no more than 50 shareholders, although employee shareholders and shareholders connected with CSF offers do not count for this purpose; and

(b) not do anything to require disclosure to investors under Chapter 6D (except in limited circumstances);

(see section 113).

*Small proprietary company*

(2) A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than $25 million, or any other amount prescribed by the regulations for the purposes of this paragraph;

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than $12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph;

(c) the company and the entities it controls (if any) have fewer than 50, or any other number prescribed by the regulations for the purposes of this paragraph, employees at the end of the financial year.

Note: A small proprietary company generally has reduced financial reporting requirements (see subsection 292(2)).



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*Large proprietary company*

(3) A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

(a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is $25 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(a), or more;

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $12.5 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(b), or more;

(c) the company and the entities it controls (if any) have 50, or any other number prescribed by the regulations for the purposes of paragraph (2)(c), or more employees at the end of the financial year.

*When a company controls an entity*

(4) For the purposes of this section, the question whether a proprietary company controls an entity is to be decided in accordance with the accounting standards made for the purposes of paragraph 295(2)(b) (even if the standards do not otherwise apply to the company).

*Counting employees*

(5) In counting employees for the purposes of subsections (2) and (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.

*Accounting standards*

(6) Consolidated revenue and the value of consolidated gross assets are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).



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## 45B Small companies limited by guarantee

(1) A company is a ***small company limited by guarantee*** in a particular financial year if:

(a) it is a company limited by guarantee for the whole of the financial year; and

(b) it is not a deductible gift recipient at any time during the financial year; and

(c) either:

(i) where the company is not required by the accounting standards to be included in consolidated financial statements—the revenue of the company for the financial year is less than the threshold amount; or

(ii) where the company is required by the accounting standards to be included in consolidated financial statements—the consolidated revenue of the consolidated entity for the financial year is less than the threshold amount; and

(d) it is not one of the following:

(i) a Commonwealth company for the purposes of the *Public Governance, Performance and Accountability Act 2013*;

(ii) a subsidiary of a Commonwealth company for the purposes of that Act;

(iii) a subsidiary of a corporate Commonwealth entity for the purposes of that Act; and

(e) it has not been a transferring financial institution of a State or Territory within the meaning of clause 1 of Schedule 4 to this Act; and

(f) it is not a company that is permitted to use the expression ***building society***, ***credit society*** or ***credit union*** under section 66 of the *Banking Act 1959* at any time during the financial year.

(2) The ***threshold amount***, for the purposes of subparagraphs (1)(c)(i) and (ii), is $250,000, or any other amount prescribed by the regulations for the purposes of this subsection.



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(3) Revenue and consolidated revenue are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).



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## Division 6—Subsidiaries and related bodies corporate

### 46 What is a subsidiary

A body corporate (in this section called the ***first body***) is a subsidiary of another body corporate if, and only if:

(a) the other body:

(i) controls the composition of the first body's board; or

(ii) is in a position to cast, or control the casting of, more than one-half of the maximum number of votes that might be cast at a general meeting of the first body; or

(iii) holds more than one-half of the issued share capital of the first body (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or

(b) the first body is a subsidiary of a subsidiary of the other body.

### 47 Control of a body corporate's board

Without limiting by implication the circumstances in which the composition of a body corporate's board is taken to be controlled by another body corporate, the composition of the board is taken to be so controlled if the other body, by exercising a power exercisable (whether with or without the consent or concurrence of any other person) by it, can appoint or remove all, or the majority, of the directors of the first-mentioned body, and, for the purposes of this Division, the other body is taken to have power to make such an appointment if:

(a) a person cannot be appointed as a director of the first-mentioned body without the exercise by the other body of such a power in the person's favour; or

(b) a person's appointment as a director of the first-mentioned body follows necessarily from the person being a director or other officer of the other body.



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## 48 Matters to be disregarded

(1) This section applies for the purposes of determining whether a body corporate (in this section called the ***first body***) is a subsidiary of another body corporate.

(2) Any shares held, or power exercisable, by the other body in a fiduciary capacity are treated as not held or exercisable by it.

(3) Subject to subsections (4) and (5), any shares held, or power exercisable:
   (a) by a person as a nominee for the other body (except where the other body is concerned only in a fiduciary capacity); or
   (b) by, or by a nominee for, a subsidiary of the other body (not being a subsidiary that is concerned only in a fiduciary capacity);

   are treated as held or exercisable by the other body.

(4) Any shares held, or power exercisable, by a person by virtue of the provisions of debentures of the first body, or of a trust deed for securing an issue of such debentures, are to be disregarded.

(5) Any shares held, or power exercisable, otherwise than as mentioned in subsection (4), by, or by a nominee for, the other body or a subsidiary of it are to be treated as not held or exercisable by the other body if:
   (a) the ordinary business of the other body or that subsidiary, as the case may be, includes lending money; and
   (b) the shares are held, or the power is exercisable, only by way of security given for the purposes of a transaction entered into in the ordinary course of business in connection with lending money, not being a transaction entered into with an associate of the other body, or of that subsidiary, as the case may be.

(6) Any shares in the first body that are MCIs, and any powers exercisable by a person by virtue of such shares, are to be disregarded.



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## 49 References in this Division to a subsidiary

A reference in paragraph 46(b) or 48(3)(b) or subsection 48(5) to being a subsidiary, or to a subsidiary, of a body corporate includes a reference to being a subsidiary, or to a body corporate that is a subsidiary, as the case may be, of the first-mentioned body by virtue of any other application or applications of this Division.

## 50 Related bodies corporate

Where a body corporate is:

(a) a holding company of another body corporate; or

(b) a subsidiary of another body corporate; or

(c) a subsidiary of a holding company of another body corporate;

the first-mentioned body and the other body are related to each other.

## 50AAA Associated entities

(1) One entity (the ***associate***) is an associated entity of another entity (the ***principal***) if subsection (2), (3), (4), (5), (6) or (7) is satisfied.

(2) This subsection is satisfied if the associate and the principal are related bodies corporate.

(3) This subsection is satisfied if the principal controls the associate.

(4) This subsection is satisfied if:

(a) the associate controls the principal; and

(b) the operations, resources or affairs of the principal are material to the associate.

(5) This subsection is satisfied if:

(a) the associate has a qualifying investment (see subsection (8)) in the principal; and

(b) the associate has significant influence over the principal; and

(c) the interest is material to the associate.



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(6) This subsection is satisfied if:
  (a) the principal has a qualifying investment (see subsection (8)) in the associate; and
  (b) the principal has significant influence over the associate; and
  (c) the interest is material to the principal.

(7) This subsection is satisfied if:
  (a) an entity (the ***third entity)*** controls both the principal and the associate; and
  (b) the operations, resources or affairs of the principal and the associate are both material to the third entity.

(8) For the purposes of this section, one entity (the ***first entity***) has a ***qualifying investment*** in another entity (the ***second entity***) if the first entity:
  (a) has an asset that is an investment in the second entity; or
  (b) has an asset that is the beneficial interest in an investment in the second entity and has control over that asset.

## 50AA Control

(1) For the purposes of this Act, an entity controls a second entity if the first entity has the capacity to determine the outcome of decisions about the second entity's financial and operating policies.

(2) In determining whether the first entity has this capacity:
  (a) the practical influence the first entity can exert (rather than the rights it can enforce) is the issue to be considered; and
  (b) any practice or pattern of behaviour affecting the second entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) The first entity does not control the second entity merely because the first entity and a third entity jointly have the capacity to determine the outcome of decisions about the second entity's financial and operating policies.



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(4) If the first entity:
  (a) has the capacity to influence decisions about the second entity's financial and operating policies; and
  (b) is under a legal obligation to exercise that capacity for the benefit of someone other than the first entity's members;

the first entity is taken not to control the second entity.



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# Division 6A—Security interests

## 51 Meaning of *PPSA security interest*

In this Act:

***PPSA security interest*** (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:
(a) section 8 (interests to which the Act does not apply);
(b) section 12 (meaning of ***security interest***);
(c) Chapter 9 (transitional provisions).

Note 2: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*.

## 51A Meaning of *security interest*

In this Act:

***security interest*** means:
(a) a PPSA security interest; or
(b) a charge, lien or pledge.

## 51B Meaning of *secured party*

In this Act:

***secured party***, in relation to a security interest, means:
(a) if the security interest is a PPSA security interest—a secured party within the meaning of the *Personal Property Securities Act 2009*; or



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(b) if the security interest is not a PPSA security interest, but consists of a charge, lien or pledge in relation to the property—a chargee, lienee or pledgee in relation to the charge, lien or pledge.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see section 51A).

## 51C Meaning of *circulating security interest*

In this Act:

***circulating security interest*** means a security interest that is:

(a) a PPSA security interest, if:

(i) the security interest has attached to a circulating asset within the meaning of the *Personal Property Securities Act 2009*; and

(ii) the grantor (within the meaning of that Act) has title to the asset; or

(b) a floating charge.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see section 51A).

## 51D Meaning of *possessory security interest*

In this Act:

***possessory security interest***, in relation to property, means a security interest that is:

(a) a PPSA security interest in the property that is perfected by possession or control, within the meaning of the *Personal Property Securities Act 2009*; or

(b) a lien or a pledge in relation to the property.

Note: Security interests are either PPSA security interests, or charges, liens or pledges (see section 51A).

## 51E Meaning of secured creditor

In this Act:



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***secured creditor*** of a corporation means a creditor of the corporation, if the debt owing to the creditor is secured by a security interest.

## 51F Meaning of *PPSA retention of title property*

*Definition*

(1) Property is ***PPSA retention of title property*** (short for Personal Property Securities Act retention of title property) of a corporation if:

(a) the property is personal property; and

(b) the property is used or occupied by, or is in the possession of, the corporation; and

(c) the corporation does not have title to the property; and

(d) a PPSA security interest is attached to the property, within the meaning of the *Personal Property Securities Act 2009*; and

(e) the corporation is the grantor in relation to the PPSA security interest, within the meaning of that Act.

Examples: The following personal property is ***PPSA retention of title property*** if a PPSA security interest attaches to the property by virtue of the transaction concerned, and the grantor is a corporation:

(a) property that is the subject of an agreement to sell subject to retention of title, or a hire purchase agreement, that secures the payment or performance of an obligation (see subsection 12(2) of the *Personal Property Securities Act 2009*);

(b) property that is the subject of a lease, or a consignment agreement, that secures the payment or performance of an obligation (see subsection 12(2) of the *Personal Property Securities Act 2009*);

(c) goods that are the subject of a commercial consignment (see subsection 12(3) of the *Personal Property Securities Act 2009*);

(d) goods that are leased or bailed under a PPS lease (see subsection 12(3) of the *Personal Property Securities Act 2009*).

*References to property of a corporation*

(2) A reference in this Act to the property of a corporation does not include a reference to any PPSA retention of title property of the



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corporation, unless provided otherwise expressly or by necessary implication.

Note: See also the definition of ***property*** in section 9.



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# Division 6B—Mutual entities

## 51M Mutual entities

(1) A company is a ***mutual entity*** if:
  (a) the company is registered under this Act; and
  (b) the company's constitution provides that a person has no more than one vote at a general meeting of the company for each capacity in which the person is a member of the company.

(2) To avoid doubt:
  (a) the requirement in paragraph (1)(b) does not fail to be satisfied merely because the company's constitution provides that:
    (i) 2 or more persons may together be joint members of the company; and
    (ii) those persons each have one vote at a general meeting of the company; and
  (b) that requirement does not fail to be satisfied merely because the company's constitution provides that:
    (i) a person may vote as proxy or representative at a general meeting of the company; and
    (ii) as a result of voting as a proxy or representative, the person may have more than one vote at a general meeting of the company.



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# Division 7—Interpretation of other expressions

## 52 Doing acts

A reference to doing an act or thing includes a reference to causing or authorising the act or thing to be done.

## 52A Signing

Without affecting the law on agency, if this Act requires that something be signed, it can be signed by an individual using a power of attorney from the person required to sign.

## 53 Affairs of a body corporate

For the purposes of the definition of ***examinable affairs*** in section 9, section 53AA, 232, 233 or 234, paragraph 461(1)(e), section 487, subsection 1307(1) or section 1309, or of a prescribed provision of this Act, the affairs of a body corporate include:

(a) the promotion, formation, membership, control, business, trading, transactions and dealings (whether alone or jointly with any other person or persons and including transactions and dealings as agent, bailee or trustee), property (whether held alone or jointly with any other person or persons and including property held as agent, bailee or trustee), liabilities (including liabilities owed jointly with any other person or persons and liabilities as trustee), profits and other income, receipts, losses, outgoings and expenditure of the body; and

(b) in the case of a body corporate (not being a licensed trustee company or the Public Trustee of a State or Territory) that is a trustee (but without limiting the generality of paragraph (a))—matters concerned with the ascertainment of the identity of the persons who are beneficiaries under the trust, their rights under the trust and any payments that they have received, or are entitled to receive, under the terms of the trust; and



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(c) the internal management and proceedings of the body; and

(d) any act or thing done (including any contract made and any transaction entered into) by or on behalf of the body, or to or in relation to the body or its business or property, at a time when:

(i) a receiver, or a receiver and manager, is in possession of, or has control over, property of the body; or

(ii) the body is under administration; or

(iia) a deed of company arrangement executed by the body has not yet terminated; or

(iii) a compromise or arrangement made between the body and any other person or persons is being administered; or

(iv) the body is being wound up;

and, without limiting the generality of the foregoing, any conduct of such a receiver or such a receiver and manager, of an administrator of the body, of an administrator of such a deed of company arrangement, of a person administering such a compromise or arrangement or of a liquidator or provisional liquidator of the body; and

(e) the ownership of shares in, debentures of, and interests in a managed investment scheme made available by, the body; and

(f) the power of persons to exercise, or to control the exercise of, the rights to vote attached to shares in the body or to dispose of, or to exercise control over the disposal of, such shares; and

(g) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the body or are or have been able to control or materially to influence the policy of the body; and

(h) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests in a managed investment scheme made available by, the body; and



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(j) where the body has made available interests in a managed investment scheme—any matters concerning the financial or business undertaking, scheme, common enterprise or investment contract to which the interests relate; and

(k) matters relating to or arising out of the audit of, or working papers or reports of an auditor concerning, any matters referred to in a preceding paragraph.

## 53AA Business affairs of a body corporate

A body corporate's business affairs include (without limitation):

(a) any of the body's affairs (including anything that is included in the body's affairs because of section 53); and

(b) matters concerned with ascertaining the corporations with which the body is or has been connected.

## 53AB Business affairs of a natural person

A natural person's business affairs include (without limitation):

(a) the person's examinable operations and examinable assets and liabilities; and

(b) any act done (including any contract made and any transaction entered into) by or on behalf of the person, or to or in relation to the person or his or her business or property, at a time when:

(i) the person was, under the *Bankruptcy Act 1966* or the law of an external Territory, a bankrupt in respect of a bankruptcy from which the person had not been discharged; or

(ii) the person had, under a law of an external Territory or of a foreign country, the status of an undischarged bankrupt; or

(iii) the person's property was subject to control under Division 2 of Part X of the *Bankruptcy Act 1966* because of an authority given by the person under section 188 of that Act; or



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(iv) a personal insolvency agreement under Part X of the *Bankruptcy Act 1966* or under the corresponding provisions of the law of an external Territory or of a foreign country was in effect in relation to the person or the person's property; and

(c) without limiting the generality of paragraph (b), any conduct of the trustee of such a bankrupt estate or of such a personal insolvency agreement or a person acting under such an authority; and

(d) matters concerned with ascertaining the corporations with which the person is or has been connected.

## 53AC Business affairs of a partnership

A partnership's business affairs include (without limitation):

(a) the partnership's promotion, formation, membership, control, examinable operations and examinable assets and liabilities; and

(b) the partnership's management and proceedings; and

(c) any act done (including any contract made and any transaction entered into) by or on behalf of the partnership, or to or in relation to the partnership, at a time when the partnership is being wound up; and

(d) matters concerned with ascertaining the corporations with which the partnership is or has been connected.

## 53AD Business affairs of a trust

A trust's business affairs include (without limitation):

(a) the creation of the trust; and

(b) matters arising under, or otherwise relating to, the terms of the trust; and

(c) the appointment and removal of a trustee of the trust; and

(d) the business, trading, transactions and dealings of the trustee of the trust; and

(e) the profits, income and receipts of the trustee of the trust; and



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(f) the losses, outgoings and expenditure of the trustee of the trust; and
(g) the trust property, including transactions and dealings in, and the income arising from, the trust property; and
(h) the liabilities of the trustee of the trust; and
(j) the management of the trust; and
(k) any act done (including any contract made and any transaction entered into) by or on behalf of the trustee of the trust, or to or in relation to the trust, at a time when the trust is being wound up; and
(l) matters concerned with ascertaining the corporations with which the trust is or has been connected.

## 57 Classes of shares or interests in managed investment schemes

(1) The shares in a body corporate, if not divided into 2 or more classes, constitute a class.

(2) If the interests in a managed investment scheme to which an undertaking relates are not divided into 2 or more classes, they constitute a class.

## 57A Meaning of *corporation*

(1) Subject to this section, in this Act, ***corporation*** includes:
(a) a company; and
(b) any body corporate (whether incorporated in this jurisdiction or elsewhere); and
(c) an unincorporated body that under the law of its place of origin, may sue or be sued, or may hold property in the name of its secretary or of an office holder of the body duly appointed for that purpose.

(2) Neither of the following is a ***corporation***:
(a) an exempt public authority;
(b) a corporation sole.



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(3) To avoid doubt, an Aboriginal and Torres Strait Islander corporation is taken to be a ***corporation*** for the purposes of this Act.

Note: Various provisions of this Act that generally apply to corporations do not apply to Aboriginal and Torres Strait Islander corporations because of express provisions to that effect: see section 190B, subsection 197(5), section 206HB and subsections 599(2), 1309(6), 1318(5) and 1335(3).

## 58AA Meaning of *court* and *Court*

(1) Subject to subsection (2), in this Act:

***court*** means any court.

***Court*** means any of the following courts:

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

(2) Except where there is a clear expression of a contrary intention (for example, by use of the expression “the Court”), proceedings in relation to a matter under this Act may, subject to Part 9.6A, be brought in any court.

Note: The matters dealt with in Part 9.6A include the applicability of limits on the jurisdictional competence of courts.

## 58B Discharge of obligations under this Act

(2) Subject to subsection (3), an act required to be done under this Act may, for the purposes of this Act, be done anywhere in Australia, whether in or outside this jurisdiction.

(3) Nothing in subsection (2) affects the operation of any provision of this Act that:



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(a) expressly requires a particular act to be done in this jurisdiction; or
(b) expressly or by implication permits a particular act to be done outside Australia.

## 59 Debentures as consideration for acquisition of shares

A reference to a body corporate that offers debentures as consideration for the acquisition of shares in a body corporate includes a reference to a body corporate that offers a cash sum as consideration for the acquisition of shares where it is to be a term of the contract for the acquisition of those shares that the offeree makes, or that the sum is applied in whole or in part in making, a payment by way of deposit with, or loan to, the body corporate that offers the sum.

## 60 Declaration of relevant relationships

*Administrator*

(1) In this Act, a ***declaration of relevant relationships***, in relation to an administrator of a company under administration, means a written declaration:
(a) stating whether any of the following:
(i) the administrator;
(ii) if the administrator's firm (if any) is a partnership—a partner in that partnership;
(iii) if the administrator's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;

has, or has had within the preceding 24 months, a relationship with:
(iv) the company; or
(v) an associate of the company; or
(vi) a former liquidator, or former provisional liquidator, of the company; or



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(vii) a person who is entitled to enforce a security interest in the whole, or substantially the whole, of the company's property (including any PPSA retention of title property); and

(b) if so, stating the administrator's reasons for believing that none of the relevant relationships result in the administrator having a conflict of interest or duty.

*Liquidator*

(2) In this Act, a ***declaration of relevant relationships***, in relation to a liquidator of a company, means a written declaration:

(a) stating whether any of the following:

(i) the liquidator;

(ii) if the liquidator's firm (if any) is a partnership—a partner in that partnership;

(iii) if the liquidator's firm (if any) is a body corporate—that body corporate or an associate of that body corporate;

has, or has had within the preceding 24 months, a relationship with:

(iv) the company; or

(v) an associate of the company; or

(vi) a former liquidator, or former provisional liquidator, of the company; or

(vii) a former administrator of the company; or

(viii) a former administrator of a deed of company arrangement executed by the company; and

(b) if so, stating the liquidator's reasons for believing that none of the relevant relationships result in the liquidator having a conflict of interest or duty.

## 64 Entering into a transaction in relation to shares or securities

A reference in Chapter 6 to entering into a transaction in relation to shares or securities includes a reference to:



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(a) entering into, or becoming a party to, a relevant agreement in relation to the shares or securities; and
(b) exercising an option to have the shares or securities allotted.

## 64A Entities

Except in Chapters 2E and 8A, a reference to an entity:
(a) is a reference to a natural person, a body corporate (other than an exempt public authority), a partnership or a trust; and
(b) includes, in the case of a trust, a reference to the trustee of the trust.

## 64B Entities connected with a corporation

*Body corporate*

(1) A body corporate is connected with a corporation if, and only if, the corporation:
(a) can control, or influence materially, the body's activities or internal affairs; or
(b) is a member of the body; or
(c) is in a position to cast, or to control the casting of, a vote at a general meeting of the body; or
(d) has power to dispose of, or to exercise control over the disposal of, a share in the body; or
(e) is financially interested in the body's success or failure or apparent success or failure; or
(f) is owed a debt by the body; or
(g) is engaged by the body under a contract for services; or
(h) acts as agent for the body in any transaction or dealing.

*Natural person*

(2) A natural person is connected with a corporation if, and only if, the corporation:
(a) is a trustee of a trust under which the person is capable of benefiting; or



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(b) is engaged by the person under a contract for services; or
(c) acts as agent for the person in any transaction or dealing; or
(d) is an attorney of the person under a power of attorney; or
(e) has appointed the person as the corporation's attorney under a power of attorney; or
(f) is given financial, business or legal advice by the person in the performance of the functions attaching to the person's professional capacity.

*Partnership*

(3) A partnership is connected with a corporation if, and only if, the corporation:
(a) is a partner in the partnership; or
(b) can control, or influence materially, the partnership's activities or internal affairs; or
(c) is financially interested in the partnership's success or failure or apparent success or failure; or
(d) is a creditor of the partnership; or
(e) is engaged by the partnership under a contract for services; or
(f) acts as agent for the partnership in any transaction or dealing.

*Trust*

(4) A trust is connected with a corporation if, and only if, the corporation:
(a) is the settlor, or one of the settlors, of the trust; or
(b) has power under the terms of the trust to appoint or remove a trustee of the trust or to vary, or cause to be varied, any of the terms of the trust; or
(c) is a trustee of the trust; or
(d) can control, or influence materially, the activities of the trust; or
(e) is capable of benefiting under the trust; or
(f) is a creditor of the trustee of the trust; or



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(g) is engaged by the trustee of the trust under a contract for services; or
(h) acts as agent for the trustee of the trust in any transaction or dealing.

## 65 Eligible money market dealer

ASIC may declare a body corporate to be an authorised dealer in the short term money market by notice published in the *Gazette*.

## 66A Exempt bodies

A body corporate is an exempt body of a State or Territory if, and only if, it:
(a) is not a company; and
(b) is incorporated by or under a law of the State or Territory.

## 70 Extension of period for doing an act

Where this Act confers power to extend the period for doing an act, an application for the exercise of the power may be made, and the power may be exercised, even if the period, or the period as last extended, as the case requires, has ended.

## 73A When a court is taken to find a person guilty of an offence

An Australian court finds a person guilty of an offence if, and only if:
(a) the court convicts the person of the offence; or
(b) the person is charged before the court with the offence and is found in the court to have committed the offence, but the court does not proceed to convict the person of the offence.

## 75 Inclusion in official list

A reference to a body corporate or other person included in an official list of a body corporate is a reference to:



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(a) a body corporate or other person whose name is included in that official list; or
(b) a body corporate or other person whose name has been changed but whose previous name was included in that official list immediately before the change and is still so included.

## 79 Involvement in contraventions

A person is involved in a contravention if, and only if, the person:
(a) has aided, abetted, counselled or procured the contravention; or
(b) has induced, whether by threats or promises or otherwise, the contravention; or
(c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the contravention; or
(d) has conspired with others to effect the contravention.

## 80 Jervis Bay Territory taken to be part of the Australian Capital Territory

The Jervis Bay Territory is taken to be part of the Australian Capital Territory.

## 82 Offers and invitations to the public

A reference in this Act to, or to the making of, an offer to the public or to, or to the issuing of, an invitation to the public is, unless the contrary intention appears, to be construed as including a reference to, or to the making of, an offer to any section of the public or to, or to the issuing of, an invitation to any section of the public, as the case may be, whether selected as clients of the person making the offer or issuing the invitation or in any other manner and notwithstanding that the offer is capable of acceptance only by each person to whom it is made or that an offer or application may be made pursuant to the invitation only by a person to whom the



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invitation is issued, but a bona fide offer or invitation is not taken to be an offer or invitation to the public if it:

(a) is an offer or invitation to enter into an underwriting agreement; or

(b) is made or issued to a person whose ordinary business is to buy or sell shares, debentures or interests in managed investment schemes, whether as principal or agent; or

(c) is made or issued to existing members or debenture holders of a corporation and relates to shares in, or debentures of, that corporation; or

(d) is made or issued to existing members of a company in connection with a proposal referred to in section 507 and relates to shares in that company.

## 83 Officers, and other persons, in default

A reference, in relation to a contravention, to an officer of a body corporate, or to a person, who is in default is a reference to an officer of the body (including a person who later ceases to be such an officer), or to a person, as the case may be, who is involved in the contravention.

## 86 Possession

A thing that is in a person's custody or under a person's control is in the person's possession.

## 88A Public document of a body corporate

(1) Subject to this section, ***public document***, in relation to a body, means:

(a) an instrument of, or purporting to be signed, issued or published by or on behalf of, the body that:

(i) when signed, issued or published, is intended to be lodged or is required by or under this Act or the ASIC Act to be lodged; or



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(ii) is signed, issued or published under or for the purposes of this Act, the ASIC Act or any other Australian law; or

(b) an instrument of, or purporting to be signed or issued by or on behalf of, the body that is signed or issued in the course of, or for the purposes of, a particular transaction or dealing; or

(c) without limiting paragraph (a) or (b), a business letter, statement of account, invoice, receipt, order for goods, order for services or official notice of, or purporting to be signed or issued by or on behalf of, the body.

(2) A thing is not a public document of a body if it:

(a) is applied, or is intended or required to be applied:

(i) to goods; or

(ii) to a package, label, reel or thing in or with which goods are, or are to be, supplied; and

(b) is so applied, or is intended or required to be so applied, for a purpose connected with the supply of the goods.

(3) In subsection (2):

***apply to*** includes print on, weave in, impress on, work into, or annex, affix or attach to.

***label*** includes a band or ticket.

***package*** includes:

(a) a covering, stopper, glass, bottle, vessel, box, capsule, case, frame or wrapper; or

(b) any other container or thing in which goods are, or are to be, packed.

## 88B Qualified accountants

(1) For the purposes of this Act, a ***qualified accountant*** is a person covered by a declaration in force under subsection (2).



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(2) ASIC may, in writing, declare that all members of a specified professional body, or all persons in a specified class of members of a specified professional body, are qualified accountants for the purposes of this Act.

(3) ASIC may, in writing, vary or revoke a declaration made under subsection (2).

## 89 Qualified privilege

(1) Where this Act provides that a person has qualified privilege in respect of an act, matter or thing, the person:
   (a) has qualified privilege in proceedings for defamation; or
   (b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;

   as the case requires, in respect of that act, matter or thing.

(2) In subsection (1):

   ***malice*** includes ill will to the person concerned or any other improper motive.

(3) Neither this section nor a provision of this Act that provides as mentioned in subsection (1) limits or affects any right, privilege or immunity that a person has, apart from this section or such a provision, as defendant in proceedings, or an action, for defamation.

## 90 Receivers and managers

A receiver of property of a body corporate is also a manager if the receiver manages, or has under the terms of the receiver's appointment power to manage, affairs of the body.

## 91 Relation-back day

For the purposes of this Act, the following table sets out the meaning of ***relation-back day*** in relation to a winding up of a company or Part 5.7 body.



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| 1 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, the company was under administration; and<br>(c) the order was made in response to an application filed at or after the beginning of the administration; | the section 513C day in relation to the administration. |
| 2 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, the company was under administration; and<br>(c) the order was made in response to an application filed before the beginning of the administration; | the day on which that application was filed. |
| 3 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and<br>(c) the order was made in response to an application filed at or after | the section 513C day in relation to that administration. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | the beginning of the administration that ended when the deed was executed; | |
| 4 | in the case of a company:<br>(a) the Court orders under section 233, 459A, 459B or 461 that the company be wound up; and<br>(b) immediately before the order was made, a deed of company arrangement had been executed by the company and had not yet terminated; and<br>(c) the order was made in response to an application filed before the beginning of the administration that ended when the deed was executed; | the day on which that application was filed. |
| 5 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the resolution was passed, the company was under administration; and<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration; | the section 513C day in relation to the administration. |
| 6 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the | the section 513C day in relation to the administration. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | resolution was passed, the company was under administration; and<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration, but that application was dismissed or withdrawn before the administration commenced; | |
| 7 | in the case of a company:<br>(a) the company resolves by special resolution that it be wound up voluntarily; and<br>(b) immediately before the resolution was passed, the company was under administration; and<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration; and<br>(d) that application had not been dismissed or withdrawn before the administration commenced; | the day on which that application was filed. |
| 8 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because, at a meeting convened by the administrator of a deed of company arrangement executed by the company, the company's creditors:<br>(a) passed a resolution terminating | the section 513C day in relation to the administration that ended when the deed was executed. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | the deed of company arrangement; and<br>(b) also resolved under section 445E that the company be wound up;<br>and either:<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(d) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but that application was dismissed or withdrawn before the administration commenced; | |
| 9 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because, at a meeting convened by the administrator of a deed of company arrangement executed by the company, the company's creditors:<br>(a) passed a resolution terminating the deed of company arrangement; and<br>(b) also resolved under section 445E that the company be wound up;<br>and both:<br>(c) an application for an order under section 233, 459A, 459B or 461 | the day on which that application was filed. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(d) that application has not been dismissed or withdrawn before the first-mentioned resolution is taken to have been passed; | |
| 10 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because the Court made an order under section 445D terminating a deed of company arrangement executed by the company, and either:<br>(a) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(b) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but that application was dismissed or withdrawn before the administration commenced; | the section 513C day in relation to the administration that ended when the deed was executed. |
| 11 | in the case of a company:<br>(a) the company is taken to have passed a special resolution that it be wound up voluntarily because the Court made an order under section 445D terminating a deed | the day on which that application was filed. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | of company arrangement executed by the company; and<br>(b) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(c) that application has not been dismissed or withdrawn before the resolution is taken to have been passed; | |
| 12 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because:<br>(a) a deed of company arrangement executed by the company specifies particular circumstances in which the deed is to terminate and the company is to be wound up; and<br>(b) those circumstances exist at a particular time;<br>and either:<br>(c) no application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; or<br>(d) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed, but | the section 513C day in relation to the administration that ended when the deed was executed. |



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| **Relation-back day** | | |
|---|---|---|
| **Item** | **If:** | **the *relation-back day* is:** |
| | that application was dismissed or withdrawn before the administration commenced; | |
| 13 | in the case of a company, the company is taken to have passed a special resolution that it be wound up voluntarily because:<br>(a) a deed of company arrangement executed by the company specifies particular circumstances in which the deed is to terminate and the company is to be wound up; and<br>(b) those circumstances exist at a particular time;<br>and both:<br>(c) an application for an order under section 233, 459A, 459B or 461 that the company be wound up was filed before the beginning of the administration that ended when the deed was executed; and<br>(d) that application had not been dismissed or withdrawn before the resolution is taken to have been passed; | the day on which that application was filed. |
| 14 | because of Division 1A of Part 5.6, the winding up is taken to have begun on the day when an order that the company or body be wound up was made; | the day on which the application for the order was filed. |
| 15 | any other case applies; | the day on which the winding up is taken, because of Division 1A of Part 5.6, to have begun. |



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## 92 Securities

(1) Subject to this section, ***securities*** means:

(a) debentures, stocks or bonds issued or proposed to be issued by a government; or

(b) shares in, or debentures of, a body; or

(c) interests in a managed investment scheme; or

(d) units of such shares;

but does not include:

(f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or

(g) an excluded security.

Note: A derivative does not include an option to acquire a security by way of issue (see the combined effect of paragraph 761D(3)(c), paragraph 764A(1)(a) and paragraph (d) of the definition of ***security*** in section 761A).

(2) The expression ***securities***, when used in relation to a body, means:

(a) shares in the body; or

(b) debentures of the body; or

(c) interests in a managed investment scheme made available by the body; or

(d) units of such shares;

but does not include:

(e) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or

(f) an excluded security.

Note: A derivative does not include an option to acquire a security by way of issue (see the note to subsection (1)).

(2A) In Part 1.2A, ***securities*** means:

(a) shares in a body; or

(b) debentures of a body; or



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(c) interests in a registered scheme or a notified foreign passport fund; or

(d) legal or equitable rights or interests in:

(i) shares; or

(ii) debentures; or

(iii) interests in a registered scheme or a notified foreign passport fund; or

(e) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c) or (d).

It does not cover:

(f) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c) or (d); or

(g) a market traded option.

Note 1: A derivative does not include an option to acquire a security by way of issue (see the note to subsection (1)).

Note 2: Section 9 defines ***body***.

(3) In Chapters 6 to 6CA (inclusive):

***securities*** means:

(a) shares in a body; or

(b) debentures of a body; or

(c) interests in a registered scheme; or

(d) when used in Chapter 6C—an interest in a listed notified foreign passport fund; or

(e) legal or equitable rights or interests in:

(i) shares; or

(ii) debentures; or

(iii) interests in a registered scheme or interests in a fund mentioned in paragraph (d); or

(f) options to acquire (whether by way of issue or transfer) a security covered by paragraph (a), (b), (c), (d) or (e).

It does not cover:



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(g) a derivative (as defined in Chapter 7), other than an option to acquire by way of transfer a security covered by paragraph (a), (b), (c), (d) or (e); or

(h) a market traded option; or

(i) when used outside Chapter 6C—an interest in a notified foreign passport fund.

Note 1: A derivative does not include an option to acquire a security by way of issue (see the note to subsection (1)).

Note 2: Section 9 defines ***body***.

(4) In Chapter 6D ***securities*** has the meaning given by section 700 and in Chapter 7 ***security*** has the meaning given by section 761A.

## 95A Solvency and insolvency

(1) A person is solvent if, and only if, the person is able to pay all the person's debts, as and when they become due and payable.

(2) A person who is not solvent is insolvent.



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## Division 8—Miscellaneous interpretation rules

### 100 Address of registered office etc.

(1) Where a provision of this Act requires a notice to be lodged of, or information in an application to specify:

(a) the address of an office, or of a proposed office, of a body corporate or other person; or

(b) a change in the situation of an office of a body corporate or other person;

the notice:

(c) must specify the full address, or the full new address, as the case requires, of the relevant office including, where applicable, the number of the room and of the floor or level of the building on which the office is situated; and

(d) where the notice or application relates to the address or situation of an office of a body corporate and the address specified in accordance with paragraph (a) is the address of premises that are not to be occupied by the body corporate—must include a written statement to the effect that the person who occupies those premises has consented in writing to the address being specified in the notice or application and has not withdrawn that consent.

(2) ASIC may require a person who has lodged a notice or application that includes a statement under paragraph (1)(d) to produce to ASIC the consent referred to in the statement.

### 100A Operation of certain laws relating to instruments on which stamp duty has not been paid

Nothing in this Act affects the operation of any provision of any law:

(a) relating to the admissibility in evidence, or any other use, in any proceedings, of a document in respect of which any applicable stamp duty has not been paid; or



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(b) prohibiting the registration by a company of a transfer of securities if any stamp duty applicable in respect of the transfer has not been paid.

## 101 Amount of stock representing a number of shares

In relation to a body corporate the whole or a portion of whose share capital consists of stock, a reference to a number of shares (including a number expressed as a percentage) is, in relation to an amount of stock, a reference to the amount of stock that represents that number of shares.

## 102 Applications to be in writing

An application to ASIC for the issuing of a document or the doing of any other act or thing by ASIC under this Act must be in writing.

Note: For electronic lodgment of documents with ASIC, see section 352.

## 102B *In Australia or elsewhere, in this jurisdiction or elsewhere etc.*

(1) The expression ***in Australia or elsewhere***, or a similar expression, does not limit the generality of the expression ***in this jurisdiction or elsewhere*** or a similar expression.

(2) The expression ***outside this jurisdiction*** includes places outside Australia.

## 102C In Australia

***In Australia*** means in Australia (whether in this jurisdiction or not).

Note: This definition is needed if there is a State that is not a referring State. If all the States are referring States, every place in Australia will also be in this jurisdiction.

## 103 Effect of certain contraventions of this Act

(1) This section has effect except so far as this Act otherwise provides.



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(2) An act, transaction, agreement, instrument, matter or thing is not invalid merely because of:

(a) a contravention of section 115, 208, 209, 601CA or 601CD; or

(b) a failure to comply with a requirement of this Act that a person cause a notice, or a copy of a document, to be published in the *Gazette* or in a newspaper.

Note: Section 1101H provides that a failure to comply with requirements of Chapter 7 generally does not affect the validity or enforceability of any transaction, contract or other arrangement.

(4) In this section:

***invalid*** includes void, voidable and unenforceable.

(5) Nothing in this section limits the generality of anything else in it.

## 104 Effect of provisions empowering a person to require or prohibit conduct

Where, in accordance with a provision of this Act other than the replaceable rules, a person requires another person to do, or prohibits another person from doing, a particular act, that provision is taken to require the other person to comply with the requirement or prohibition, as the case may be.

## 105 Calculation of time

Without limiting subsection 36(1) of the *Acts Interpretation Act 1901*, in calculating how many days a particular day, act or event is before or after another day, act or event, the first-mentioned day, or the day of the first-mentioned act or event, is to be counted but not the other day, or the day of the other act or event.

## 106 Performance of functions by Commission delegate

For the purpose of the performance of a function, or the exercise of a power, under this Act by a Commission delegate, a reference to ASIC in a provision of this Act relating to the performance of the



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function, or the exercise of the power, includes a reference to the Commission delegate.

## 107 Notice in relation to top 20 members of a class

For the purposes of subsection 163(3B), section 178B and paragraph 601BC(2)(lc), if 2 or more members in the top 20 members of a class of shares each hold the same number of shares, details of each of those members must be included in any notice given in relation to those provisions.

## 108 Parts of dollar to be disregarded in determining majority in value of creditors etc.

In determining whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done any other act or thing, if a creditor's debt consists of a number of whole dollars and a part of a dollar, the part of the dollar is to be disregarded.

## 109 References to persons, things and matters

(1) Except so far as the contrary intention appears, a provision of this Act is to be interpreted in such a manner that any 2 or more references in the provision are capable of having the same referent or referents, or of having a referent or referents in common, as the case requires.

(2) In subsection (1), ***referent***, in relation to a reference in a provision, means:

(a) in so far as the reference is interpreted as being in the singular number—a person to whom, or a thing or matter to which; or

(b) in so far as the reference is interpreted as being in the plural number—any one or 2 or more persons to whom, or of 2 or more things or matters to which;

the reference is taken, in the application of the provision, to refer.



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## 109X Service of documents

(1) For the purposes of any law, a document may be served on a company by:
  (a) leaving it at, or posting it to, the company's registered office; or
  (b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or
  (c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or
  (d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

(2) For the purposes of any law, a document may be served on a director or company secretary by leaving it at, or posting it to, the alternative address notified to ASIC under subsection 5H(2), 117(2), 205B(1) or (4) or 601BC(2). However, this only applies to service on the director or company secretary:
  (a) in their capacity as a director or company secretary; or
  (b) for the purposes of a proceeding in respect of conduct they engaged in as a director or company secretary.

(3) Subsections (1) and (2) do not apply to a process, order or document that may be served under section 9 of the *Service and Execution of Process Act 1992*.

(6) This section does not affect:
  (a) any other provision of this Act, or any provision of another law, that permits; or
  (b) the power of a court to authorise;
  a document to be served in a different way.

(7) This section applies to provisions of a law dealing with service whether it uses the expression "serve" or uses any other similar expression such as "give" or "send".



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# Part 1.2A—Disclosing entities

## Division 1—Object of Part

### 111AA Object of Part

The object of this Part is:

(a) to define ***disclosing entity*** and other key terms relevant to disclosing entities (this is done in Division 2); and

(b) to outline the significance for this Act of being a disclosing entity (this is done in Division 3); and

(c) to provide for exemptions from, and modifications of, the special requirements imposed by this Act in relation to disclosing entities (this is done in Division 4).



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## Division 2—Definitions

### 111AB Terms defined in Division

This Division contains definitions of the following terms:

(a) disclosing entity (section 111AC);
(b) ED securities (section 111AD);
(c) ED securities of a disclosing entity (section 111AK);
(d) listed disclosing entity (subsection 111AL(1));
(e) quoted ED securities (section 111AM);
(f) unlisted disclosing entity (subsection 111AL(2)).

### 111AC Disclosing entity

(1) If any securities of a body (except interests in a managed investment scheme) are ED securities, the body is a ***disclosing entity*** for the purposes of this Act.

(2) If any interests in a managed investment scheme are ED securities, the undertaking to which the interests relate is a ***disclosing entity*** for the purposes of this Act.

### 111AD ED securities

(1) Securities of a body are ***ED securities*** (short for "enhanced disclosure securities") for the purposes of this Act if, and only if:
   (a) they are ED securities under section 111AE, 111AF, 111AFA, 111AFB, 111AG or 111AI; and
   (b) they are not declared under section 111AJ not to be ED securities.

(2) For the purposes of sections 111AE, 111AF, 111AG and 111AI, a class of shares or debentures is taken to include units of shares or debentures in that class.



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## 111AE Securities of bodies or undertakings included in a licensed market's official list

(1) If:

(a) a body corporate (other than a notified foreign passport fund) is, with its agreement, consent or acquiescence, included in the official list of a prescribed financial market; and

(b) the market's listing rules (according to their terms) apply to the body in relation to a class (which may be some or all) of securities issued by the body;

securities issued by the body in that class are ***ED securities***, and that market is a ***listing market*** in relation to that body.

(1A) If:

(a) an undertaking to which interests in a registered scheme relates is, with the agreement, consent or acquiescence of the responsible entity, included in the official list of a prescribed financial market; and

(b) the market's listing rules (according to their terms) apply to the undertaking in relation to a class (which may be some or all) of managed investment products that relate to the scheme;

managed investment products in that class that relate to the scheme are ***ED securities***, and that market is a ***listing market*** in relation to the undertaking.

(1B) If:

(a) an undertaking to which interests in a notified foreign passport fund relate is, with the agreement, consent or acquiescence of the operator of the fund, included in the official list of a prescribed financial market; and

(b) the market's listing rules (according to their terms) apply to the fund in relation to a class (which may be some or all) of foreign passport fund products that relate to the fund;

foreign passport fund products in that class that relate to the fund are ***ED securities***, and that market is a ***listing market*** in relation to the fund.



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(2) Subsections (1) and (1A) do not apply to securities of a body if:
  (a) the body is a public authority of the Commonwealth or an instrumentality or agency of the Crown in right of the Commonwealth; and
  (b) the only securities issued by the body that would otherwise be ED securities because of subsection (1) or (1A) are debentures; and
  (c) both the repayment of principal, and the payment of interest, in respect of those debentures is guaranteed by the Commonwealth.

(3) Subsections (1) and (1A) do not apply to securities of a body that is:
  (a) a public authority of a State or Territory; or
  (b) an instrumentality or agency of the Crown in right of a State or Territory.

## 111AF Securities (except debentures and managed investment products) held by 100 or more persons

(1) Securities (except debentures or managed investment products) in a class of securities of a body are ***ED securities*** if:
  (a) a disclosure document in relation to securities in that class has been lodged with ASIC under Chapter 6D; and
  (b) securities in that class have been issued pursuant to the disclosure document; and
  (c) after an issue of securities in that class pursuant to the disclosure document, 100 or more persons held securities in that class; and
  (d) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (c).

(2) Securities (except debentures and managed investment products) in a class of securities of a body are ***ED securities*** if securities in that class have been issued under a recognised offer and the offeror's records indicate that 100 or more people who reside in this



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jurisdiction have held securities in that class (whether or not as a result of the recognised offer) at all times since the issue.

### 111AFA Managed investment products held by 100 or more persons

(1) Managed investment products in a class of managed investment products issued by a body are ***ED securities*** if 100 or more people hold managed investment products in that class as a result of offers that gave rise to obligations to give Product Disclosure Statements (whether or not all in the same terms) under Chapter 7.

(2) Interests in a class of interests in a managed investment scheme issued by a body are ***ED securities*** if interests in that class have been issued under a recognised offer and the offeror's records indicate that 100 or more people who reside in this jurisdiction have held interests in that class (whether or not as a result of the recognised offer) at all times since the issue.

### 111AFB Foreign passport fund products held by 100 or more persons

Foreign passport fund products in a class of foreign passport fund products issued by a body are ***ED securities*** if 100 or more people who reside in this jurisdiction hold foreign passport fund products in that class.

### 111AG Securities issued as consideration for an acquisition under an off-market takeover bid or Part 5.1 compromise or arrangement

(1) Securities (except debentures) in a class of securities of a body are ***ED securities*** if:

(a) securities in that class have been issued by the body as consideration for offers under an off-market bid; and

(b) after an issue of securities in that class under the off-market bid, 100 or more persons held securities in that class; and



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(c) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (b).

(2) Securities in a class of securities of a body are ***ED securities*** if:

(a) securities in that class have been issued as consideration for the acquisition or cancellation of securities of another body pursuant to a compromise or arrangement under Part 5.1; and

(b) securities in that class, or those or any other securities of the other body, were ED securities immediately before securities in that class were first issued pursuant to the compromise or arrangement; and

(c) after an issue of securities in that class pursuant to the compromise or arrangement, 100 or more persons held securities in that class; and

(d) securities in that class have been held by 100 or more persons at all times since the issue of securities referred to in paragraph (c).

## 111AH When a person holds securities for the purposes of sections 111AF, 111AFA, 111AFB and 111AG

(1) For the purposes of sections 111AF, 111AFA and 111AG, a person holds securities if, and only if:

(a) the person is registered as the holder of the securities in a register under section 169, 170, 171 or 601CZB; or

(b) the person is entitled to be so registered.

(1A) For the purposes of section 111AFB, a person holds securities in a notified foreign passport fund if, and only if:

(a) the person is registered as the holder of securities in the fund on a register maintained by the operator of the fund under the law of the home economy for the fund; or

(b) the person is entitled to be so registered.

(2) For the purposes of sections 111AF, 111AFA, 111AFB and 111AG, joint holders of securities count as one person.



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## 111AI Debentures

Debentures of a borrower are ***ED securities*** if:

(a) section 283AA requires the borrower to appoint a trustee; or

(b) section 283AA does not apply to the borrower only because the offer of the debentures to which section 283AA would otherwise have applied is a recognised offer.

## 111AJ Regulations may declare securities not to be ED securities

(1) The regulations may declare specified securities of bodies not to be ED securities.

(2) Regulations in force for the purposes of subsection (1) have effect accordingly, despite anything else in this Division.

## 111AK ED securities of a disclosing entity

For the purposes of this Act, ED securities because of which (having regard to section 111AC) a disclosing entity is such an entity are ED securities of the entity.

## 111AL Listed or unlisted disclosing entity

(1) For the purposes of this Act, a disclosing entity is a ***listed disclosing entity*** if all or any ED securities of the entity are quoted ED securities.

(2) For the purposes of this Act, a disclosing entity that is not a listed disclosing entity is an ***unlisted disclosing entity***.

## 111AM Quoted ED securities

For the purposes of this Act, ED securities are ***quoted ED securities*** if they are ED securities because of section 111AE.



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## Division 3—Significance of being a disclosing entity

### 111AN Division contains outline of significance of being a disclosing entity

This Division outlines the significance for this Act of being a disclosing entity.

### 111ANA Requirements relating to remuneration recommendations in relation to key management personnel

There are special requirements in Part 2D.8 for remuneration recommendations in relation to key management personnel for disclosing entities that are companies.

### 111AO Accounting requirements

A disclosing entity incorporated or formed in Australia has to prepare financial statements and reports for half-years as well as full financial years. These requirements are set out in Chapter 2M.

### 111AP Continuous disclosure requirements

(1) A disclosing entity is subject to the continuous disclosure requirements of sections 674 and 675.

### 111AQ Prospectus relief

Section 713 applies (subject to certain qualifications) to prospectuses for quoted ED securities of disclosing entities. The section's requirements for the content of prospectuses are less comprehensive than those that apply to other prospectuses under section 710.



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## 111AQA Product Disclosure Statement relief

Obligations that apply to disclosing entities can be taken into account in deciding what information should be included in a Product Disclosure Statement—see section 1013FA and paragraph 1013F(2)(d).



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## Division 4—Exemptions and modifications

### 111AR Meaning of *disclosing entity provisions*

(1) For the purposes of this Division, the ***disclosing entity provisions*** are the provisions of the following:
  (a) Chapter 2M as it applies to disclosing entities;
  (d) sections 674 and 675.

(2) A reference in subsection (1) to a Part, Division or section includes a reference to regulations in force for the purposes of the Part, Division or section.

### 111AS Exemptions by regulations

(1) The regulations may exempt specified persons from all or specified disclosing entity provisions:
  (a) either generally or as otherwise specified; and
  (b) either unconditionally or subject to specified conditions.

(2) Without limiting subsection (1), an exemption may relate to specified securities.

### 111AT Exemptions by ASIC

(1) ASIC may, by writing, exempt specified persons from all or specified disclosing entity provisions:
  (a) either generally or as otherwise specified; and
  (b) either unconditionally or subject to specified conditions.

(2) Without limiting subsection (1), an exemption may relate to specified securities.

(3) ASIC must cause a copy of an exemption to be published in the *Gazette*.



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## 111AU Enforcing conditions of exemptions

(1) A person must not intentionally or recklessly contravene a condition to which an exemption under section 111AS or 111AT is subject.

(2) If a person contravenes such a condition, the Court may, on the application of ASIC, order the person to comply with the condition.

## 111AV Modifications by regulations

(1) The regulations may make modifications of all or specified disclosing entity provisions.

(2) Without limiting subsection (1), a modification may relate to specified securities.

## 111AW Exemptions and modifications have effect

Exemptions and modifications under this Division have effect accordingly.

## 111AX Effect of Division

Nothing in this Division limits, or is limited by, any other exemption or modification power (for example, section 340, 340A, 341, 341A or 741).



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# Part 1.4—Technical provisions about aids for readers

## 111J Small business guide

(1) If, because of:
  (a) regulations made under this Act; or
  (b) instruments issued by ASIC under this Act;
the small business guide as set out in Part 1.5 has become out of date, the regulations may set out modifications of the guide that would bring it up to date. The guide then is to be read as if it were so modified.

(2) The small business guide is divided into sections (numbered 1, 2, 3…) and the sections are divided into paragraphs (numbered 1.1, 1.2, 1.3…). For example, a reference in the guide to 3.1 is a reference to paragraph 3.1 of the guide.



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Section 1

# Part 1.5—Small business guide

This guide summarises the main rules in the Corporations Act (the *Corporations Act 2001*) that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Act as it applies to those companies and directs readers to the operative provisions in the Corporations Act.

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Act, the regulations made under the Corporations Act, and ASIC Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

## 1 What registration means

*1.1 Separate legal entity that has its own powers*

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company's money and other assets belong to the company and must be used for the company's purposes.

A company has the powers of an individual, including the powers to:

- own and dispose of property and other assets
- enter into contracts
- sue and be sued.



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Once a company is registered, its separate legal status, property, rights and liabilities continue until ASIC (Australian Securities and Investments Commission) deregisters the company.

[sections 119, 124—125, 601AA—601AD]

*1.2 Limited liability of shareholders*

Shareholders of a company are not liable (in their capacity as shareholders) for the company's debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, particularly if a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[section 516]

*1.3 Director's liability for company's debts*

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of certain of the director's duties to the company (see 5.3).

In addition to having liability for the company's debts or to pay compensation to the company, a director may also be subject to a civil penalty.

If a company holds property on trust, a director of the company may be liable in some circumstances for liabilities incurred by the company as trustee.

[sections 197, 344, 588G, 588J, 588M, 1317H]

*1.4 Director's liability as guarantor/security over personal assets*

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:



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- for a personal guarantee of the company's liabilities; and
- for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over their house to secure the company's repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

*1.5 Continuous existence*

A company continues to exist even if 1 or more of its shareholders or directors sells their shares, dies or leaves the company. If a company has only 1 shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 119, 224A]

*1.6 Rules for the internal management of a company*

The Corporations Act contains a basic set of rules for the internal management of a company (appointments, meetings etc.).

Some of these rules are mandatory for all companies. There are a few special rules for single shareholder/single director companies.

Other internal management rules in the Corporations Act are replaceable rules. The replaceable rules do not apply to:

- a single shareholder/single director company; or
- a company that had a constitution before the introduction of the replaceable rules regime and has not repealed it.

A company does not need to have a separate constitution of its own; it can simply take advantage of the rules in the Corporations Act. The company will need a constitution only if it wants to displace, modify or add to the replaceable rules.



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[sections 134-141 and 198E]

*1.7 How a company acts*

A company does not have a physical existence. It must act through other people.

Individual directors, the company secretary, company employees or agents may be authorised to enter into contracts that bind the company (see 7).

In some circumstances, a company will be bound by something done by another person (see 1.8).

*1.8 Directors*

The directors of a company are responsible for managing the company's business. It is a replaceable rule (see 1.6) that generally the directors may exercise all the powers of the company except a power that the Corporations Act, a replaceable rule or a provision of the company's constitution (if any) requires the company to exercise in general meeting.

The only director of a company who is also the only shareholder is responsible for managing the company's business and may exercise all of the company's powers.

The Corporations Act sets out rules dealing with the calling and conduct of directors' meetings. Directors must keep a written record (minutes) of their resolutions and meetings.

There are 2 ways that directors may pass resolutions:

- at a meeting; or
- by having all of the directors record and sign their decision.

If a company has only 1 director, the sole director may also pass a resolution by recording and signing their decision.



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[sections 198A, 198E, 202C, subsection 202F(1), sections 248A-248G, 251A]

### *1.9 Shareholders*

The shareholders of a company own the company, but the company has a separate legal existence and the company's assets belong to the company.

Shareholders can make decisions about the company by passing a resolution, usually at a meeting. A "special resolution" usually involves more important questions affecting the company as a whole or the rights of some or all of its shareholders.

There are 2 ways that shareholders may pass a resolution:

- at a meeting; or
- by having all of the shareholders record and sign their decision.

If a meeting is held, an ordinary resolution must be passed by a majority of the votes cast by shareholders of the company entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed). A special resolution must be passed by at least 75% of the votes cast by shareholders of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

The sole shareholder of a company may pass a resolution by recording and signing their decision.

A company must keep a written record (minutes) of the members' resolutions and meetings.

[sections 9 (***special resolution***), 249A, 249B, 249L, 251A]

### *1.10 What others can assume about the company*

Anyone who does any business with the company is entitled to assume that the company has a legal right to conduct that business



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unless the person knows, or suspects, otherwise. For example, an outsider dealing with the company is entitled to assume:

- that a person who is shown in a notice lodged with ASIC as being the director or company secretary of a company has been properly appointed and is authorised to act for the company; and
- that a person who is held out by the company to be a director, company secretary or agent of the company has been properly appointed and is authorised to act for the company.

[sections 128—130]

## 2 The company structure for small business

*2.1 Proprietary company for small business*

Generally, a proprietary company limited by shares is the most suitable company for use by small business. Such a proprietary company must have a least 1 shareholder but no more than 50 shareholders (not counting employee shareholders, CSF shareholders, or holders of shares issued pursuant to CSF offers that have yet to be traded in certain ways). It may have 1 or more directors.

[sections 112—113]

## 3 Setting up a new company

The operators of small businesses can either buy "shelf" companies or set up new companies themselves.

*3.1 "Shelf" companies*

The operator of a small business may find it more convenient to buy a "shelf" company (a company that has already been registered but has not traded) from businesses which set up companies for this purpose or from some legal or accounting firms.



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*3.2 Setting up a company*

To set up a new company themselves, the operator must apply to ASIC for registration of the company.

A proprietary company limited by shares must have at least 1 shareholder.

To obtain registration, a person must lodge a properly completed application form with ASIC. The form must set out certain information including details of every person who has consented to be a shareholder, director or company secretary of the company.

The company comes into existence when ASIC registers it.

[sections 117—119, 135—136, 140]

*3.3 ACN and name*

When a company is registered, ASIC allocates to it a unique 9 digit number called the Australian Company Number (ACN). (For use of the ACN see 4.1).

In practice, a new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words "Proprietary Limited" as part of its name. Those words can be abbreviated to "Pty Ltd".

A proprietary company may adopt its ACN as its name. If it does so, its name must also contain the words "Australian Company Number" (which can be abbreviated to "ACN"). For example, the company's name might be "ACN 123 456 789 Pty Ltd".

[sections 119, 147—161]

*3.4 Contracts entered into before the company is registered*

A company can ratify a contract entered into by someone on its behalf or for its benefit before it was registered. If the company does not ratify the contract, the person who entered into the contract may be personally liable.



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[sections 131—133]

*3.5 First shareholders, directors and company secretary*

A person listed with their consent as a shareholder, director or company secretary in the application for registration of the company becomes a shareholder, director or company secretary of the company on its registration.

The same person may be both a director of the company and the company secretary.

See 5.1 and 5.2 for directors and 5.4 for company secretaries. See 6.1 for shareholders.

[section 120]

*3.6 Issuing shares*

It is a replaceable rule (see 1.6) that, before issuing new shares, a company must first offer them to the existing shareholders in the proportions that the shareholders already hold. A company may issue shares at a price it determines.

[sections 254B, 254D]

*3.7 Registered office*

A company must have a registered office in Australia and must inform ASIC of the location of the office. A post office box cannot be the registered office of a company. The purpose of the registered office is to have a place where all communications and notices to the company may be sent.

If the company does not occupy the premises where its registered office is located, the occupier of the premises must agree in writing to having the company's registered office located there.

A proprietary company is not required to open its registered office to the public but this does not affect its obligation to make documents available for inspection.



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The company must notify ASIC of any change of address of its registered office.

[sections 100, 142, 143, 173, 1300]

*3.8 Principal place of business*

If a company has a principal place of business that is different from its registered office, it must notify ASIC of the address of its principal place of business and of any changes to that address.

[sections 117, 146]

*3.9 Registers kept by the company*

A company must keep registers, including a register of shareholders. A company must keep its registers at:

- the company's registered office; or
- the company's principal place of business; or
- a place (whether on premises of the company or of someone else) where the work in maintaining the register is done; or
- another place approved by ASIC.

A register may be kept either in a bound or looseleaf book or on computer.

If a register is kept on computer, its contents must be capable of being printed out in hard copy.

[sections 172, 1300, 1301, 1306]

*3.10 Register of shareholders*

A company must keep in its register of shareholders such information as:

- the names and addresses of its shareholders; and



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- details of shares held by individual shareholders.

[sections 168—169]

## 4 Continuing obligations after the company is set up

The Corporations Act and other laws impose obligations on companies themselves and on their directors and company secretaries. Some of the more important obligations imposed under the Corporations Act are discussed below.

*4.1 Use of company name and ACN*

The name of a company must be shown at all the company's business premises (including its registered office) that are open to the public. The company's name and its ACN or ABN (if the last 9 digits are the same, and in the same order, as the last 9 digits of its ACN) must appear:

- on some of its public documents; and
- on its cheques and negotiable instruments; and
- on all documents lodged with ASIC; and
- if it has one, on its common seal.

[sections 123, 144, 147—156,
ASIC Practice Note 47]

*4.2 Extract of particulars*

Each year, ASIC issues each company with an extract of particulars within 2 weeks of the company's review date (which is generally the anniversary of the company's registration). The extract includes details recorded on ASIC's database such as:

- names and addresses of each director and company secretary;
- issued shares and options granted;



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- details of its shareholders;
- address of its registered office;
- address of its principal place of business.

If any of the details are not correct as at the date the extract is received, the company must correct those details.

The correction may be lodged with ASIC on a printed form or, if an agreement is in place to lodge electronically, in accordance with the agreement.

[Sections 346A and 346C, 352]

*4.3 Review fee*

A company must pay a review fee to ASIC each year.

[Corporations (Review Fees) Act 2003]

*4.4 Notification to ASIC of changes*

The company must notify ASIC if certain basic changes to the company occur. The following table sets out these notification requirements.

**Notification requirements**

| | **If...** | **the company must notify ASIC of the change...** | **see section...** |
|---|---|---|---|
| 1 | a company issues shares | within 28 days after the issue | 254X |
| 2 | a company changes the location of a register | within 7 days after the change | 172 |
| 3 | a company changes the address of its registered office or principal place of business | within 28 days after the change | 142, 146 |



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| **Notification requirements** | | | |
|---|---|---|---|
| | **If...** | **the company must notify ASIC of the change...** | **see section...** |
| 4 | a company changes its directors or company secretary | within 28 days after the change (unless the director or company secretary has notified ASIC of the change) | 205B |
| 5 | there is a change in the name or address of the company's directors or secretary | within 28 days after the change | 205B |
| 7 | a company has a new ultimate holding company, or details about the ultimate holding company change | within 28 days after the change happens | 349A |
| 8 | any of the changes in items 1 to 7 means that:<br>(a) the company must add or alter particulars in its member register kept under section 169; or<br>(b) the company must add or alter particulars in its member register kept under section 169, and as a result, details about the number and class of shares on issue, or the amount paid and unpaid on the shares, alter. | within the time determined under the table in section 178D | 178A<br>178C |

## 5 Company directors and company secretaries

### *5.1 Who can be a director*

Only an individual who is at least 18 years old can be a director. If a company has only 1 director, they must ordinarily reside in



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Australia. If a company has more than 1 director, at least 1 of the directors must ordinarily reside in Australia.

A director must consent in writing to holding the position of director. The company must keep the consent and must notify ASIC of the appointment.

In some circumstances, the Corporations Act imposes the duties and obligations of a director on a person who, although not formally appointed as a director of a company, nevertheless acts as a director or gives instructions to the formally appointed directors as to how they should act.

The Court or ASIC may prohibit a person from being a director or from otherwise being involved in the management of a company if, for example, the person has breached the Corporations Act.

A person needs the Court's permission to be a director if the person has been convicted of certain offences or is, in some circumstances, unable to pay their debts as they fall due.

Generally, a director may resign by giving notice of the resignation to the company. A director who resigns may notify ASIC of the resignation. If the director does not do so, the company must notify ASIC of the director's resignation.

[sections 9, 201A, 201B, 201D, 205A, 205B and 206A-206G, 228-230 and 242 and subsection 1317EA(3)]

*5.2 Appointment of new directors*

It is a replaceable rule (see 1.6) that shareholders may appoint directors by resolution at a general meeting.

[section 201G]

*5.3 Duties and liabilities of directors*

In managing the business of a company (see 1.7), each of its directors is subject to a wide range of duties under the Corporations Act and other laws. Some of the more important duties are:



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- to act in good faith
- to act in the best interests of the company
- to avoid conflicts between the interests of the company and the director's interests
- to act honestly
- to exercise care and diligence
- to prevent the company trading while it is unable to pay its debts
- if the company is being wound up—to report to the liquidator on the affairs of the company
- if the company is being wound up—to help the liquidator (by, for example, giving to the liquidator any records of the company that the director has).

A director who fails to perform their duties:

- may be guilty of a criminal offence with a penalty of imprisonment for up to 10 years or a fine, or both (the fine is the greater of 4,500 penalty units and 3 times the amount of the benefit derived and detriment avoided because of the offence); and
- may contravene a civil penalty provision (and the Court may order the person to pay the Commonwealth an amount equal to the greater of 5,000 penalty units and 3 times the amount of the benefit derived and detriment avoided because of the contravention); and
- may be personally liable to compensate the company or others for any loss or damage they suffer; and
- may be prohibited from managing a company.



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A director's obligations may continue even after the company has been deregistered.

[Sections 180, 181, 182, 183, 184, 475, 530A, 588G, 596, 601AE, 601AH, 1317H]

*5.4 Company secretaries*

A company other than a proprietary company must have a company secretary. However, a proprietary company may choose to have a company secretary. The directors appoint the company secretary. A company secretary must be at least 18 years old. If a company has only 1 company secretary, they must ordinarily reside in Australia. If a company has more than 1 company secretary, at least 1 of them must ordinarily reside in Australia.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify ASIC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. A company secretary who resigns may notify ASIC of the resignation. If the company secretary does not do so, the company must notify ASIC of the company secretary's resignation.

The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Act on company officers.

The company secretary has specific responsibilities under the Corporations Act, including responsibility for ensuring that the company:

- notifies ASIC about changes to the identities, names and addresses of the company's directors and company secretaries; and



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- notifies ASIC about changes to the register of members; and
- notifies ASIC about changes to any ultimate holding company; and
- responds, if necessary, to an extract of particulars that it receives and that it responds to any return of particulars that it receives.

A company secretary's obligations may continue even after the company has been deregistered.

[sections 83, 142, 178A, 178C, 188, 204A-204G, 205A, 205B, 346C, 348D, 349A, 601AD, 601AH]

## 6 Shares and shareholders

A proprietary company limited by shares must have a share capital and at least 1 shareholder. ASIC may apply to a Court to have a company wound up if it does not have any shareholders.

[sections 461—462]

*6.1 Becoming a shareholder and ceasing to be a shareholder*

A person may become a shareholder of a company in several ways, including the following:

- the person being listed as a shareholder of the company in the application for registration of the company
- the company issuing shares to the person
- the person buying shares in the company from an existing shareholder and the company registering the transfer.

Some of the ways in which a person ceases to be a shareholder are:

- the person sells all of their shares in the company and the company registers the transfer of the shares



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- the company buys back all the person's shares
- ASIC cancels the company's registration.

[sections 117, 120, 601AA—601AD]

*6.2 Classes of shares*

A company may have different classes of shares. The rights and restrictions attached to the shares in a class distinguish it from other classes of shares.

[sections 254A—254B]

*6.3 Meetings of shareholders*

Directors have the power to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares.

Shareholders who hold at least 5% of the votes which may be cast at a general meeting of a company have the power to call and hold a meeting themselves or to require the directors to call and hold a meeting. Meetings may be held regularly or to resolve specific questions about the management or business of the company.

The Corporations Act sets out rules dealing with shareholders' meetings.

A shareholder of a company may ask the company for a copy of the record of a meeting or of a decision of shareholders taken without a meeting.

[sections 249A—251B]

*6.4 Voting rights*

Different rights to vote at meetings of shareholders may attach to different classes of shares. It is a replaceable rule (see 1.6) that, subject to those different rights, each shareholder has 1 vote on a show of hands and, on a poll, 1 vote for each share held.

[sections 250E, 254A—254B]



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*6.5 Buying and selling shares*

A shareholder may sell their shares but only if the sale would not breach the company's constitution (if any). It is a replaceable rule (see 1.6) that the directors have a discretion to refuse to register a transfer of shares.

[sections 1091D—1091E]

## 7 Signing company documents

A company's power to sign, discharge and otherwise deal with contracts can be exercised by an individual acting with the company's authority and on its behalf. A company can deal with contracts without using a common seal.

A company may execute a document by having it signed by:

- 2 directors of the company; or
- a director and the company secretary; or
- for a company with a sole director who is also the sole secretary—that director.

If the document is to have effect as a deed, it should be expressed to be a deed.

[sections 126—127]

A company is not required to have a common seal. If it does, the seal must show the company's name and its ACN or ABN (if the last 9 digits are the same, and in the same order, as the last 9 digits of its ACN). The seal is equivalent to the company's signature and may be used on important company documents such as mortgages.

[sections 123, 127(2)]

## 8 Funding the company's operations

The shareholders may fund the company's operations by lending money to the company or by taking up other shares in the



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company. Except if it is raising funds from its own employees or shareholders or under a CSF offer, a proprietary company must not engage in any fundraising activity that would require disclosure to investors under Chapter 6D (for example, advertising in a newspaper inviting people to invest in the company).

The company may also borrow money from banks and other financial organisations.

Anyone who has lent money, or provided credit, to the company may ask for a security interest in the company's assets to secure the performance by the company of its obligations.

[sections 113, 124]

## 9 Returns to shareholders

Shareholders can take money out of the company in a number of ways, but only if the company complies with its constitution (if any), the Corporations Act and all other relevant laws. If a company pays out money in a way that results in the company being unable to pay its debts as they fall due, its directors may be liable:

- to pay compensation; and
- for criminal and civil penalties.

[sections 588G, 1317E, 1317G, 1317H, 1317P]

### *9.1 Dividends*

Dividends are payments to shareholders. They can only be paid if:

- the company's assets are sufficiently in excess of its liabilities immediately before the dividend is declared; and
- the payment of the dividend is fair and reasonable to the company's shareholders as a whole and does not materially prejudice the company's ability to pay its creditors.



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It is a replaceable rule (see 1.6) that the directors decide whether the company should pay a dividend.

[sections 254T, 254U]

*9.2 Buy-back of shares*

A company can buy back shares from shareholders.

[sections 257A—257J]

*9.4 Distribution of surplus assets on winding up*

If a company is wound up and there are any assets left over after all the company's debts have been paid, the surplus is distributed to shareholders in accordance with the rights attaching to their shares.

## 10 Annual financial reports and audit

*10.1 The small/large distinction*

The accounting requirements imposed on a proprietary company under the Corporations Act depend on whether the company is classified as small or large. A company's classification can change from 1 financial year to another as its circumstances change.

A company is classified as small for a financial year if it satisfies at least 2 of the following tests:

- gross operating revenue of less than $10 million for the year
- gross assets of less than $5 million at the end of the year
- fewer than 50 employees at the end of the year.

A company that does not satisfy at least 2 of these tests is classified as large.

[section 45A]



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As the great majority of proprietary companies are small under these tests, the discussion below deals mainly with the accounting requirements for small proprietary companies.

[sections 286—301]

*10.2 Financial records*

Under the Corporations Act, all proprietary companies must keep sufficient financial records to record and explain their transactions and financial position and to allow true and fair financial statements to be prepared and audited. ***Financial record*** here means some kind of systematic record of the company's financial transactions—not merely a collection of receipts, invoices, bank statements and cheque butts. Financial records may be kept on computer.

[sections 286—289]

*10.3 Preparing annual financial reports and directors' reports*

The Corporations Act requires a small proprietary company to prepare an annual financial report (an annual profit and loss statement, a balance sheet and a statement of cash flows) and a directors' report (about the company's operations, dividends paid or recommended, options issued etc.) if:

- the shareholders with at least 5% of the votes in the company direct it to do so; or
- ASIC directs it to do so; or
- it has one or more CSF shareholders at any time during the financial year.

Unless the shareholders' direction specifies otherwise, the company must prepare the annual financial report in accordance with the applicable accounting standards.

Although the Corporations Act itself may not require a small proprietary company to prepare a financial report except in the



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circumstances mentioned, the company may need to prepare the annual financial reports for the purposes of other laws (for example, income tax laws). Moreover, good business practice may also make it advisable for the company to prepare the financial reports so that it can monitor and better manage its financial position.

Large proprietary companies must prepare annual financial reports and a directors' report, have the financial report audited and send both reports to shareholders. They must also lodge the annual financial reports with ASIC unless exempted.

[sections 286—301, 319—320]

## 11 Disagreements within the company

*11.1 Special problems faced by minority shareholders*

There are remedies available to a shareholder of a company if:

- the affairs of the company are being conducted in a way that is unfair to that shareholder or to other shareholders of the company; or
- the affairs of the company are being conducted in a way that is against the interests of the company as a whole.

A Court may, for example, order the winding up of a company or the appointment of a receiver.

[sections 232-235, 461]

*11.2 Buy—back of shares*

A company may buy back the shares of a shareholder who wants to sever their relationship with the company.

[sections 257A—257J]



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*11.3 Selling shares*

A shareholder in a company who wants to sever their relationship with the company may decide to sell their shares. However, the shareholder may not be able to sell their shares readily—particularly if they want to sell their shares to someone who is not an existing shareholder. Some of the difficulties they may face in that case are:

- under the replaceable rules the directors have a discretion to refuse to transfer the shares; and
- restrictions in the company's constitution (if any) on transferring shares.

[sections 707, 1041H, 1091D-1091E]

## 12 Companies in financial trouble

*12.1 Voluntary administration*

If a company experiences financial problems, the directors may appoint an administrator to take over the operations of the company to see if the company's creditors and the company can work out a solution to the company's problems.

If the company's creditors and the company cannot agree, the company may be wound up (see 12.3).

[Part 5.3A]

*12.2 Receivers*

A receiver, or receiver and manager, may be appointed by order of a Court or under an agreement with a secured creditor to take over some or all of the assets of a company. Generally this would occur if the company is in financial difficulty. A receiver may be appointed, for example, because an amount owed to a secured creditor is overdue.

[Part 5.2]



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*12.3 Winding up and distribution*

A company may be wound up by order of a Court, or voluntarily if the shareholders of the company pass a special resolution to do so.

A liquidator is appointed:

- when a Court orders a company to be wound up; or
- the shareholders of a company pass a resolution to wind up the company.

[Parts 5.4, 5.4B, 5.5].

*12.4 Liquidators*

A liquidator is appointed to administer the winding up of a company. The liquidator's main functions are:

- to take possession of the company's assets; and
- to determine debts owed by the company and pay the company's creditors; and
- to distribute to shareholders any assets of the company left over after paying creditors (any distribution to shareholders is made according to the rights attaching to their shares); and
- finally, to have the company deregistered.

[Parts 5.4B, 5.6]

*12.5 Order of payment of debts*

Generally, creditors who hold security interests in company assets are paid first.

[Division 6 of Part 5.6]



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## Section 12

### *12.6 Cancellation of registration*

If a company has ceased trading or has been wound up, it remains on the register until ASIC cancels the company's registration. Once a company is deregistered, it ceases to exist.

[sections 601AA—601AB, 601AH]



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# Part 1.6—Interaction with Australian Charities and Not-for-profits Commission Act 2012

## 111K Bodies corporate registered under the *Australian Charities and Not-for-profits Commission Act 2012*

This Part applies to a body corporate that:

(a) is registered under the *Australian Charities and Not-for-profits Commission Act 2012*; and

(b) is none of the following:

(i) a Commonwealth company for the purposes of the *Public Governance, Performance and Accountability Act 2013*;

(ii) a subsidiary of a Commonwealth company for the purposes of that Act;

(iii) a subsidiary of a corporate Commonwealth entity for the purposes of that Act.

## 111L Provisions not applicable to the body corporate

(1) A provision of this Act mentioned in the following table does not apply to the body corporate, subject to any conditions prescribed by the regulations for the purposes of this subsection in relation to the provision:

**Provisions of this Act that do not apply to bodies corporate registered under the ACNC Act**

| Item | Column 1<br>Provision(s) | Column 2<br>Topic |
|---|---|---|
| 1 | subsection 136(5) | Public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution |



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## Section 111L

| **Provisions of this Act that do not apply to bodies corporate registered under the ACNC Act** | | |
|---|---|---|
| **Item** | **Column 1**<br>**Provision(s)** | **Column 2**<br>**Topic** |
| 2 | section 138 | ASIC may direct company to lodge consolidated constitution |
| 3 | section 139 | Company must send copy of constitution to member |
| 4 | subsection 142(2), section 146 and subsection 146A(2) | Company must notify ASIC of changes of address |
| 5 | (a) sections 180 to 183; and<br>(b) section 185, to the extent that it relates to sections 180 to 183 | Duties of directors etc. |
| 6 | section 188, to the extent it relates to a provision mentioned in another item of this table | Responsibility of secretaries and directors for certain contraventions |
| 7 | sections 191 to 194 | Interests of directors |
| 8 | (a) sections 201L and 205A to 205C; and<br>(b) section 205D, to the extent it relates to section 205B; and<br>(c) section 205E | Public information about directors etc. |
| 9 | (a) Part 2G.2 (other than sections 250PAA and 250PAB); and<br>(b) Part 2G.3, to the extent that it relates to meetings of the body corporate's members | Meetings of members |
| 10 | (a) Parts 2M.1 and 2M.2; and<br>(b) Part 2M.3 | Financial reports and audit |
| 11 | Chapter 2N | Updating ASIC information about companies, registered schemes and notified foreign passport funds |
| 12 | sections 601CDA, 601CK and 601CTA | Foreign companies |



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| **Provisions of this Act that do not apply to bodies corporate registered under the ACNC Act** | | |
|---|---|---|
| **Item** | **Column 1**<br>**Provision(s)** | **Column 2**<br>**Topic** |
| 13 | subsection 601CT(3), section 601CV and subsections 601DH(1) and (1A) | Registered body must notify ASIC of certain changes |

(2) Regulations made for the purposes of subsection (1) may be indefinite or limited to a specified period.

*Reporting by debenture issuers*

(3) Item 10 of the table in subsection (1) does not apply in relation to a financial year if the body corporate was a borrower in relation to debentures at the end of the year.

*Prescribed provisions*

(4) A provision of this Act prescribed by the regulations for the purposes of this subsection does not apply to the body corporate.

(5) Regulations made for the purposes of subsection (4) may:
  (a) be expressed to be subject to conditions; and
  (b) be indefinite or limited to a specified period; and
  (c) specify a provision even if the provision is mentioned in another section of this Part.

## 111M Member approval

(1) This section applies if:
  (a) a provision of this Act provides that one or more conditions must be satisfied for there to be member approval (however described) in relation to the body corporate; and

    Example: Division 3 of Part 2E.1.

  (b) the governance standards (within the meaning of the *Australian Charities and Not-for-profits Commission Act*



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*2012*) provide that one or more conditions must be satisfied for there to be such member approval.

(2) Paragraph (1)(a) does not apply to a condition that a person give to another person particular information that relates to the matter that is the subject of the member approval.

Example: Paragraph 218(1)(b).

(3) The provision mentioned in paragraph (1)(a) has effect, in relation to the body corporate, as if it, instead of providing for the conditions mentioned in that paragraph, provided for the conditions mentioned in paragraph (1)(b).

## 111N Notices

*Notice of change of address*

(1) For the purposes of subsection 142(3), the body corporate is treated as having lodged with ASIC on a day a notice that the address of its registered office has changed to a new address, if, on that day, the body corporate notifies the Commissioner of the ACNC, in accordance with the *Australian Charities and Not-for-profits Commission Act 2012*, that the body corporate's address for service has changed to that new address.

(2) The Commissioner must give a copy of the notice to ASIC.

*Notice of change of name—registered Australian bodies and registered foreign companies*

(3) For the purpose of subsection 601DH(2), the body corporate is treated as having given ASIC on a day written notice of a change to its name if, on that day, the body corporate gives the Commissioner of the ACNC, in accordance with the *Australian Charities and Not-for-profits Commission Act 2012*, notice of the change.

(4) The Commissioner must give a copy of the notice to ASIC.



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## 111P Annual general meetings

(1) An order made under section 250PAA applies to a requirement in the governance standards (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) for the holding of an annual general meeting in the same way as the order applies to the requirement in section 250N.

(2) An exemption under section 250PAB applies to a provision of the governance standards (within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*) that requires the holding of an annual general meeting in the same way as the exemption applies to section 250N.

## 111Q Presumptions to be made in recovery proceedings

(1) Paragraph 588E(4)(a) and subsection 588E(5) apply to the body corporate as if the references in those provisions to subsection 286(1) were references to subsections 55-5(1) to (3) of the *Australian Charities and Not-for-profits Commission Act 2012*.

(2) Paragraph 588E(4)(b) and subsection 588E(6) apply to the body corporate as if the references in those provisions to subsection 286(2) were references to subsections 55-5(4) and (5) of the *Australian Charities and Not-for-profits Commission Act 2012*.



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# Chapter 2A—Registering a company

## Part 2A.1—What companies can be registered

### 112 Types of companies

*Types of companies*

(1) The following types of companies can be registered under this Act:

| | |
|---|---|
| Proprietary companies | Limited by shares |
| | Unlimited with share capital |
| Public companies | Limited by shares |
| | Limited by guarantee |
| | Unlimited with share capital |
| | No liability company |

Note: Other types of companies that were previously allowed continue to exist under the Part 10.1 transitionals.

*No liability companies*

(2) A company may be registered as a no liability company only if:
  (a) the company has a share capital; and
  (b) the company's constitution states that its sole objects are mining purposes; and
  (c) the company has no contractual right under its constitution to recover calls made on its shares from a shareholder who fails to pay them.

Note 1: Section 9 defines ***mining purposes*** and ***minerals***.

Note 2: Special provisions on no liability companies are found in the provisions referred to in the following table:



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| No liability company provisions | | |
|---|---|---|
| **item** | **topic** | **provisions** |
| 1 | names | 148, 156, 162 |
| 2 | terms of issue of shares | 254B |
| 3 | liability on partly-paid shares | 254M |
| 4 | calls | 254P-254R |
| 5 | winding up | 477-478, 483, 514 |
| 6 | registering a body as a company | 601BA |
| 7 | transitional | the Part 10.1 transitionals |

(3) A no liability company must not engage in activities that are outside its mining purposes objects.

(4) The directors of a no liability company must not:
  (a) let the whole or proportion of a mine or claim on tribute; or
  (b) make any contract for working any land on tribute;
unless:
  (c) the letting or contract is approved by a special resolution; or
  (d) no such letting or contract has been made within the period of 2 years immediately preceding the proposed letting or contract.

(5) An act or transaction is not invalid merely because of a contravention of subsection (3) or (4).

## 113 Proprietary companies

(1) A company must have no more than 50 non—employee shareholders if it is to:
  (a) be registered as a proprietary company; or
  (b) change to a proprietary company; or
  (c) remain registered as a proprietary company.

Note: Proprietary companies have different financial reporting obligations depending on whether they are small proprietary companies or large proprietary companies (see section 45A and Part 2M.3).



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(2) In applying subsection (1):
  (a) count joint holders of a particular parcel of shares as 1 person; and
  (b) an employee shareholder is:
    (i) a shareholder who is an employee of the company or of a subsidiary of the company; or
    (ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder; and
  (c) do not count as a shareholder any CSF shareholder of the company; and
  (d) do not count as a shareholder an entity, in relation to a security of the company held by the entity, if:
    (i) that security was originally issued to another entity pursuant to a CSF offer by the company; and
    (ii) unless the circumstances (if any) prescribed by the regulations for the purposes of this subparagraph exist—no securities of the company have been traded on a financial market (whether in Australia or elsewhere); and
    (iii) all the other requirements (if any) prescribed by the regulations for the purposes of this subparagraph are met.

(3) A proprietary company must not engage in any activity that would require disclosure to investors under Chapter 6D, except for:
  (a) an offer of its shares to:
    (i) existing shareholders of the company; or
    (ii) employees of the company or of a subsidiary of the company; or
  (b) a CSF offer.

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

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

(4) An act or transaction is not invalid merely because of a contravention of subsection (3).



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Note: If a proprietary company contravenes this section, ASIC may require it to change to a public company (see section 165).

## 114 Minimum of 1 member

A company needs to have at least 1 member.

## 115 Restrictions on size of partnerships and associations

(1) A person must not participate in the formation of a partnership or association that:

(a) has as an object gain for itself or for any of its members; and

(b) has more than 20 members;

unless the partnership or association is incorporated or formed under an Australian law.

Note: For the effect of a contravention of this section, see section 103.

(2) The regulations may specify a higher number that is higher than the number specified in paragraph (1)(b) for the purposes of the application of that paragraph to a particular kind of partnership or association.

(3) An offence based on subsection (1) is an offence of strict liability.

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

## 116 Trade unions cannot be registered

A trade union cannot be registered under this Act.



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# Part 2A.2—How a company is registered

## 117 Applying for registration

*Lodging application*

(1) To register a company, a person must lodge an application with ASIC.

Note: For the types of companies that can be registered, see section 112.

*Contents of the application*

(2) The application must state the following:
- (a) the type of company that is proposed to be registered under this Act;
- (b) the company's proposed name (unless the ACN is to be used in its name);
- (c) the name and address of each person who consents to become a member;
- (d) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a director;
- (e) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary;
- (f) the address of each person who consents in writing to become a director or company secretary;
- (g) the address of the company's proposed registered office;
- (h) for a public company—the proposed opening hours of its registered office (if they are not the standard opening hours);
- (j) the address of the company's proposed principal place of business (if it is not the address of the proposed registered office);



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(k) for a company limited by shares or an unlimited company—the following:
  (i) the number and class of shares each member agrees in writing to take up;
  (ii) the amount (if any) each member agrees in writing to pay for each share;
  (iia) whether the shares each member agrees in writing to take up will be fully paid on registration;
  (iii) if that amount is not to be paid in full on registration—the amount (if any) each member agrees in writing to be unpaid on each share;
  (iv) whether or not the shares each member agrees in writing to take up will be beneficially owned by the member on registration;

(l) for a public company that is limited by shares or is an unlimited company, if shares will be issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application;

(m) for a company limited by guarantee—the proposed amount of the guarantee that each member agrees to in writing;

(ma) whether or not, on registration, the company will have an ultimate holding company;

(mb) if, on registration, the company will have an ultimate holding company—the following:
  (i) the name of the ultimate holding company;
  (ii) if the ultimate holding company is registered in Australia—its ABN, ACN or ARBN;
  (iii) if the ultimate holding company is not registered in Australia—the place at which it was incorporated or formed;

(n) the State or Territory in this jurisdiction in which the company is to be taken to be registered.

Note 1: Paragraph (b)—sections 147 and 152 deal with the availability and reservation of names.



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Note 2: Paragraph (f)—the address that must be stated is usually the residential address, although an alternative address can sometimes be stated instead (see section 205D).

Note 3: Paragraph (g)—if the company is not to be the occupier of premises at the address of its registered office, the application must state that the occupier has consented to the address being specified in the application and has not withdrawn that consent (see section 100).

Note 4: Paragraph (h)—for ***standard opening hours***, see section 9.

(3) If the company is to be a public company and is to have a constitution on registration, a copy of the constitution must be lodged with the application.

(4) The application must be in the prescribed form.

(5) An applicant must have the consents and agreements referred to in subsection (2) when the application is lodged. After the company is registered, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.

(6) An offence based on subsection (5) is an offence of strict liability.

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

## 118 ASIC gives company ACN, registers company and issues certificate

*Registration*

(1) If an application is lodged under section 117, ASIC may:
  (a) give the company an ACN; and
  (b) register the company; and
  (c) issue a certificate that states:
    (i) the company's name; and
    (ii) the company's ACN; and
    (iii) the company's type; and
    (iv) that the company is registered as a company under this Act; and



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(v) the State or Territory in this jurisdiction in which the company is taken to be registered; and

(vi) the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

*ASIC must keep record of registration*

(2) ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

## 119 Company comes into existence on registration

A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company's name is the name specified in the certificate of registration.

Note: The company remains in existence until it is deregistered (see Chapter 5A).

## 119A Jurisdiction of incorporation and jurisdiction of registration

*Jurisdiction in which company incorporated*

(1) A company is incorporated in this jurisdiction.

*Jurisdiction of registration*

(2) A company is taken to be registered in:

(a) the State or Territory specified:

(i) in the application for the company's registration under paragraph 117(2)(n) (registration of company under this Part); or

(ii) in the application for the company's registration under paragraph 601BC(2)(o) (registration of registrable body as company under Part 5B.1); or



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(b) the State or Territory in which the company is taken to be registered under paragraph 5H(4)(b) (registration of body as company on basis of State or Territory law).

This subsection has effect subject to subsection (3).

Note 1: ASIC must specify the State or Territory in which the company is taken to be registered in the company's certificate of registration (see paragraph 118(1)(c)(v) and 601BD(1)(c)(v)).

Note 2: The company's legal capacity and powers do not depend in any way on the particular State or Territory it is taken to be registered in (see section 124).

Note 3: A law of a State or Territory may impose obligations, or confer rights or powers, on a person by reference to the State or Territory in which a company is taken to be registered for the purposes of this Act. For example, a State or Territory law dealing with stamp duty on share transfers might impose duty on transfers of shares in companies that are taken to be registered in that State or Territory for the purposes of this Act.

(3) The State or Territory in which a company is taken to be registered changes to the State or Territory in this jurisdiction nominated by the company if:

(a) either:

(i) the relevant Minister of the State or Territory in which the company is taken to be registered before the change approves the change; or

(ii) the State in which the company is taken to be registered ceases to be a referring State; and

(b) the procedural requirements specified in the regulations are satisfied.

(4) A company continues to be registered under this Act even if the State in which the company is taken to be registered ceases to be a referring State.

## 120 Members, directors and company secretary of a company

(1) A person becomes a member, director or company secretary of a company on registration if the person is specified in the application



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with their consent as a proposed member, director or company secretary of the company.

(2) The shares to be taken up by the members as specified in the application are taken to be issued to the members on registration of the company.

Note: A member's name must be entered in the register of members (see section 169).

## 121 Registered office

The address specified in the application for registration for the company's proposed registered office becomes the address of the company's registered office on registration.

## 122 Expenses incurred in promoting and setting up company

The expenses incurred before registration in promoting and setting up a company may be paid out of the company's assets.

## 123 Company may have common seal

(1) A company may have a common seal. If a company does have a common seal, the company must set out on it:

(a) for a company that has its ACN in its name—the company's name; or

(b) otherwise—the company's name and either:

(i) the expression "Australian Company Number" and the company's ACN; or

(ii) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN—the expression "Australian Business Number" and the company's ABN.

Note 1: A company may make contracts and execute documents without using a seal (see sections 126 and 127).

Note 2: For abbreviations that can be used on a seal, see section 149.



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## Section 123

(2) A company may have a duplicate common seal. The duplicate must be a copy of the common seal with the words “duplicate seal”, “share seal” or “certificate seal” added.

(3) A person must not use, or authorise the use of, a seal that purports to be the common seal of a company or a duplicate if the seal does not comply with the requirements set out in subsection (1) or (2).

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

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



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# Chapter 2B—Basic features of a company

## Part 2B.1—Company powers and how they are exercised

### 124 Legal capacity and powers of a company

(1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

(a) issue and cancel shares in the company;

(b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);

(c) grant options over unissued shares in the company;

(d) distribute any of the company's property among the members, in kind or otherwise;

(e) grant a security interest in uncalled capital;

(f) grant a circulating security interest over the company's property;

(g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;

(h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

Note: For a company's power to issue bonus, partly—paid, preference and redeemable preference shares, see section 254A.

(2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.



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(3) For the avoidance of doubt, this section does not:
  (a) authorise a company to do an act that is prohibited by a law of a State or Territory; or
  (b) give a company a right that a law of a State or Territory denies to the company.

(4) Subsection (1) does not prevent a mutual entity that is a company limited by guarantee issuing MCIs.

## 125 Constitution may limit powers and set out objects

(1) If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution.

(2) If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to or beyond any objects in the company's constitution.

## 126 Agent exercising a company's power to make contracts

(1) A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.

(2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

## 127 Execution of documents (including deeds) by the company itself

(1) A company may execute a document without using a common seal if the document is signed by:
  (a) 2 directors of the company; or
  (b) a director and a company secretary of the company; or



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(c) for a proprietary company that has a sole director who is also the sole company secretary—that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the company.

(2) A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

(a) 2 directors of the company; or

(b) a director and a company secretary of the company; or

(c) for a proprietary company that has a sole director who is also the sole company secretary—that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the company.

(3) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).

(4) This section does not limit the ways in which a company may execute a document (including a deed).



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# Part 2B.2—Assumptions people dealing with companies are entitled to make

## 128 Entitlement to make assumptions

(1) A person is entitled to make the assumptions in section 129 in relation to dealings with a company. The company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

(2) A person is entitled to make the assumptions in section 129 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from a company. The company and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

(3) The assumptions may be made even if an officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings.

(4) A person is not entitled to make an assumption in section 129 if at the time of the dealings they knew or suspected that the assumption was incorrect.

## 129 Assumptions that can be made under section 128

*Constitution and replaceable rules complied with*

(1) A person may assume that the company's constitution (if any), and any provisions of this Act that apply to the company as replaceable rules, have been complied with.



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*Director or company secretary*

(2) A person may assume that anyone who appears, from information provided by the company that is available to the public from ASIC, to be a director or a company secretary of the company:
   (a) has been duly appointed; and
   (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or company secretary of a similar company.

*Officer or agent*

(3) A person may assume that anyone who is held out by the company to be an officer or agent of the company:
   (a) has been duly appointed; and
   (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar company.

*Proper performance of duties*

(4) A person may assume that the officers and agents of the company properly perform their duties to the company.

*Document duly executed without seal*

(5) A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1). For the purposes of making the assumption, a person may also assume that anyone who signs the document and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

*Document duly executed with seal*

(6) A person may assume that a document has been duly executed by the company if:



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(a) the company's common seal appears to have been fixed to the document in accordance with subsection 127(2); and
(b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.

For the purposes of making the assumption, a person may also assume that anyone who witnesses the fixing of the common seal and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

*Officer or agent with authority to warrant that document is genuine or true copy*

(7) A person may assume that an officer or agent of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is genuine or is a true copy.

(8) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

## 130 Information available to the public from ASIC does not constitute constructive notice

A person is not taken to have information about a company merely because the information is available to the public from ASIC.



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# Part 2B.3—Contracts before registration

## 131 Contracts before registration

(1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a company before it is registered, the company becomes bound by the contract and entitled to its benefit if the company, or a company that is reasonably identifiable with it, is registered and ratifies the contract:

(a) within the time agreed to by the parties to the contract; or

(b) if there is no agreed time—within a reasonable time after the contract is entered into.

(2) The person is liable to pay damages to each other party to the pre-registration contract if the company is not registered, or the company is registered but does not ratify the contract or enter into a substitute for it:

(a) within the time agreed to by the parties to the contract; or

(b) if there is no agreed time—within a reasonable time after the contract is entered into.

The amount that the person is liable to pay to a party is the amount the company would be liable to pay to the party if the company had ratified the contract and then did not perform it at all.

(3) If proceedings are brought to recover damages under subsection (2) because the company is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it considers appropriate in the circumstances, including ordering the company to do 1 or more of the following:

(a) pay all or part of the damages that the person is liable to pay;

(b) transfer property that the company received because of the contract to a party to the contract;

(c) pay an amount to a party to the contract.



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(4) If the company ratifies the pre—registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the company is ordered to pay.

## 132 Person may be released from liability but is not entitled to indemnity

(1) A party to the pre—registration contract may release the person from all or part of their liability under section 131 to the party by signing a release.

(2) Despite any rule of law or equity, the person does not have any right of indemnity against the company in respect of the person's liability under this Part. This is so even if the person was acting, or purporting to act, as trustee for the company.

## 133 This Part replaces other rights and liabilities

This Part replaces any rights or liabilities anyone would otherwise have on the pre—registration contract.



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# Part 2B.4—Replaceable rules and constitution

## 134 Internal management of companies

A company's internal management may be governed by provisions of this Act that apply to the company as replaceable rules, by a constitution or by a combination of both.

Note: There are additional rules about internal management in ordinary provisions of this Act and also in the common law.

## 135 Replaceable rules

*Companies to which replaceable rules apply*

(1) A section or subsection (except subsection 129(1), this section and sections 140 and 141) whose heading contains the words:

(a) *replaceable rule*—applies as a replaceable rule to:

(i) each company that is or was registered after 1 July 1998; and

(ii) any company registered before 1 July 1998 that repeals or repealed its constitution after that day; and

(b) *replaceable rule for proprietary companies and mandatory rule for public companies*—applies:

(i) as a replaceable rule to any proprietary company that is or was registered after 1 July 1998; and

(ii) as a replaceable rule to any company that is or was registered after 1 July 1998 and that changes or changed to a proprietary company (but only while it is a proprietary company); and

(iii) as a replaceable rule to any proprietary company that is or was registered before 1 July 1998 that repeals or repealed its constitution after that day; and

(iv) as an ordinary provision of this Act to any public company whenever registered.



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The section or subsection does not apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 1: See sections 198E, 201F and 202C for the special provisions that apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 2: A company may include in its constitution (by reference or otherwise) a replaceable rule that does not otherwise apply to it.

*Company's constitution can displace or modify replaceable rules*

(2) A provision of a section or subsection that applies to a company as a replaceable rule can be displaced or modified by the company's constitution.

*Failure to comply with replaceable rules*

(3) A failure to comply with the replaceable rules as they apply to a company is not of itself a contravention of this Act (so the provisions about criminal liability, civil liability and injunctions do not apply).

Note: Replaceable rules that apply to a company have effect as a contract (see section 140).

## 136 Constitution of a company

(1) A company adopts a constitution:

(a) on registration—if each person specified in the application for the company's registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or

(b) after registration—if the company passes a special resolution adopting a constitution or a court order is made under section 233 that requires the company to adopt the constitution.

Note: The *Life Insurance Act 1995* has rules about how benefit fund rules become part of a company's constitution and about amending those rules. They override this Act (see section 1348 of this Act). Consequential amendments to the rest of the company's constitution



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can be made under that Act or this Act (see Subdivision 2 of Division 4 of Part 2A of that Act).

(2) The company may modify or repeal its constitution, or a provision of its constitution, by special resolution.

Note: The company may need leave of the Court to modify or repeal its constitution if it was adopted as the result of a Court order (see subsection 233(3)).

(3) The company's constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.

(4) Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.

(5) A public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after it is passed. The company must also lodge with ASIC within that period:

(a) if the company adopts a constitution—a copy of that constitution; or

(b) if the company modifies its constitution—a copy of that modification.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

(6) An offence based on subsection (5) is an offence of strict liability.

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

## 137 Date of effect of adoption, modification or repeal of constitution

If a new constitution is adopted or an existing constitution is modified or repealed, that adoption, modification or repeal takes effect:

(a) if it is the result of a special resolution:



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(i) on the date on which the resolution is passed if it specified no later date; or

(ii) on a date specified in, or determined in accordance with, the resolution if the relevant date is later than the date on which the resolution is passed; or

(b) if it is the result of a Court order made under section 233:

(i) on the date on which the order is made if it specifies no later date; or

(ii) on a date specified by the order.

## 138 ASIC may direct company to lodge consolidated constitution

ASIC may direct a company to lodge a consolidated copy of its constitution with ASIC.

## 139 Company must send copy of constitution to member

(1) A company must send a copy of its constitution to a member of the company within 7 days if the member:

(a) asks the company, in writing, for the copy; and

(b) pays any fee (up to the prescribed amount) required by the company.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 140 Effect of constitution and replaceable rules

(1) A company's constitution (if any) and any replaceable rules that apply to the company have effect as a contract:

(a) between the company and each member; and

(b) between the company and each director and company secretary; and

(c) between a member and each other member;

under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.



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(2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:
  (a) requires the member to take up additional shares; or
  (b) increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the company; or
  (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:
    (i) in connection with the company's change from a public company to a proprietary company under Part 2B.7; or
    (ii) to insert proportional takeover approval provisions into the company's constitution.

## 141 Table of replaceable rules

The following table sets out the provisions of this Act that apply as replaceable rules.

| **Provisions that apply as replaceable rules** | | |
|---|---|---|
| | **Officers and Employees** | |
| 1 | Voting and completion of transactions—directors of proprietary companies | 194 |
| 2 | Powers of directors | 198A |
| 3 | Negotiable instruments | 198B |
| 4 | Managing director | 198C |
| 5 | Company may appoint a director | 201G |
| 6 | Directors may appoint other directors | 201H |
| 7 | Appointment of managing directors | 201J |
| 8 | Alternate directors | 201K |
| 9 | Remuneration of directors | 202A |
| 10 | Director may resign by giving written notice to company | 203A |
| 11 | Removal by members—proprietary company | 203C |
| 12 | Termination of appointment of managing director | 203F |



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## Section 141

| **Provisions that apply as replaceable rules** | | |
|---|---|---|
| 13 | Terms and conditions of office for secretaries | 204F |
| | **Inspection of books** | |
| 14 | Company or directors may allow member to inspect books | 247D |
| | **Director's Meetings** | |
| 15 | Circulating resolutions of companies with more than 1 director | 248A |
| 16 | Calling directors' meetings | 248C |
| 17 | Chairing directors' meetings | 248E |
| 18 | Quorum at directors' meetings | 248F |
| 19 | Passing of directors' resolutions | 248G |
| | **Meetings of members** | |
| 20 | Calling of meetings of members by a director | 249C |
| 21 | Notice to joint members | 249J(2) |
| 22 | When notice by post or fax is given | 249J(4) |
| 22A | When notice under paragraph 249J(3)(cb) is given | 249J(5) |
| 23 | Notice of adjourned meetings | 249M |
| 24 | Quorum | 249T |
| 25 | Chairing meetings of members | 249U |
| 26 | Business at adjourned meetings | 249W(2) |
| 27 | Who can appoint a proxy<br>*[replaceable rule for proprietary companies only]* | 249X |
| 28 | Proxy vote valid even if member dies, revokes appointment etc. | 250C(2) |
| 29 | How many votes a member has | 250E |
| 30 | Jointly held shares | 250F |
| 31 | Objections to right to vote | 250G |
| 32 | How voting is carried out | 250J |
| 33 | When and how polls must be taken | 250M |
| | **Shares** | |
| 33A | Pre-emption for existing shareholders on issue of shares in proprietary company | 254D |
| 33B | Other provisions about paying dividends | 254U |



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| **Provisions that apply as replaceable rules** | | |
|---|---|---|
| 34 | Dividend rights for shares in proprietary companies | 254W(2) |
| | **Transfer of shares** | |
| 35 | Transmission of shares on death | 1072A |
| 36 | Transmission of shares on bankruptcy | 1072B |
| 37 | Transmission of shares on mental incapacity | 1072D |
| 38 | Registration of transfers | 1072F |
| 39 | Additional general discretion for directors of proprietary companies to refuse to register transfers | 1072G |



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# Part 2B.5—Registered office and places of business

## 142 Registered office

(1) A company must have a registered office in this jurisdiction. Communications and notices to the company may be addressed to its registered office.

Note 1: A document may be served on a company by leaving it at, or posting it to, the company's registered office (see subsection 109X(1)).

Note 2: Communications and notices from ASIC may also be addressed to the company's contact address (see section 146A).

(2) A company must lodge notice of a change of address of its registered office with ASIC not later than 28 days after the date on which the change occurs. The notice must be in the prescribed form.

Note: If the company is not to be the occupier of premises at the address of its new registered office, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 100).

(2A) An offence based on subsection (1) or (2) is an offence of strict liability.

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

(3) A notice of change of address takes effect from the later of:

(a) the seventh day after the notice was lodged; or

(b) a later day specified in the notice as the date from which the change is to take effect.

## 143 ASIC may change address of registered office to a director's address

(1) A company that does not occupy the premises at the address of its registered office must be able to show to ASIC the occupier's



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written consent to the company's use of those premises as its registered office.

Note: ASIC can require the company to produce the consent (see section 100).

(1A) An offence based on subsection (1) is an offence of strict liability.

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

(2) If ASIC becomes aware that the occupier of those premises:

(a) has not consented to the use of the premises as the address of the company's registered office; or

(b) has withdrawn the consent;

ASIC may give written notice to a director of the company who resides in this jurisdiction that ASIC intends to change the address of the company's registered office to the director's address.

(3) If ASIC is not notified of the address of the company's proposed new registered office under subsection 142(2) within 28 days after the notice under subsection (2) is sent, ASIC may change the address of the company's registered office to the director's address.

## 144 Company's name must be displayed at registered office etc.

(1) A company must display its name prominently at every place at which the company carries on business and that is open to the public.

(2) A public company must also display its name and the words "Registered Office" prominently at its registered office.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 145 Opening hours of registered office of public company

(1) The registered office of a public company must be open to the public:



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(a) each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; or

(b) at least 3 hours chosen by the company between 9 am and 5 pm each business day.

(2) If the company chooses its own opening hours, the hours must be specified:

(a) if the company is to have its own opening hours from its registration—in the application for registration of the company under section 117 (normal registration process) or the notice lodged under section 5H (registration of body as company on basis of State or Territory law); or

(b) if the company changes its opening hours after its registration—in the most recent notice of change of opening hours lodged with ASIC under subsection (3).

(3) The company must lodge notice of a change in the opening hours of its registered office with ASIC before the day on which a change occurs. The notice must be in the prescribed form.

(4) An offence based on subsection (1) or (3) is an offence of strict liability.

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

## 146 Change of address of principal place of business

(1) A company must lodge with ASIC notice of a change of the address of its principal place of business not later than 28 days after the date on which the change occurs. The notice must be in the prescribed form.

(2) An offence based on subsection (1) is an offence of strict liability.

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



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## 146A Contact address

(1) A company may have a contact address (whether or not in this jurisdiction). Communications and notices from ASIC to the company may be addressed to its contact address.

(2) If a company is to have a contact address, the company must lodge notice of the address in the prescribed form.



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# Part 2B.6—Names

## Division 1—Selecting and using a name

### 147 When a name is available

*Name is available unless identical or unacceptable*

(1) A name is available to a company unless the name is:
  (a) identical (under rules set out in the regulations) to a name that is reserved or registered under this Act for another body; or
  (b) identical (under rules set out in the regulations) to a name that is held or registered on the Business Names Register in respect of another individual or body who is not the person applying to have the name; or
  (c) unacceptable for registration under the regulations.

*Minister may consent to a name being available to a company*

(2) The Minister may consent in writing to a name being available to a company even if the name is:
  (a) identical to a name that is reserved or registered under this Act for another body; or
  (b) unacceptable for registration under the regulations.

(3) The Minister's consent may be given subject to conditions.

Note: If the company breaches a condition, ASIC may direct it to change its name under section 158.

(4) The regulations may specify that a particular unacceptable name is available to a company if:
  (a) a specified public authority, or an instrumentality or agency of the Crown in right of the Commonwealth, a State or an internal Territory has consented to the company using or assuming the name; or



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(b) the company is otherwise permitted to use or assume the name by or under:
  (i) an Act of the Commonwealth, a State or an internal Territory; or
  (ii) a specified provision of an Act of the Commonwealth, a State or an internal Territory.

The consent of the authority, instrumentality or agency may be given subject to conditions.

Note: If the consent is withdrawn, the company ceases to be permitted or the company breaches a condition, ASIC may direct it to change its name under section 158.

## 148 A company's name

*Company may use available name or ACN*

(1) A company may have as its name:
  (a) an available name; or
  (b) the expression "Australian Company Number" followed by the company's ACN.

The name must also include the words required by subsection (2) or (3).

*Limited companies*

(2) A limited public company must have the word "Limited" at the end of its name unless section 150 or 151 applies. A limited proprietary company must have the words "Proprietary Limited" at the end of its name.

*Unlimited proprietary companies*

(3) An unlimited proprietary company must have the word "Proprietary" at the end of its name.



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*No liability companies*

(4) A no liability company must have the words "No Liability" at the end of its name.

*Public companies with "Proprietary" included in their name*

(5) A public company must not include the word "Proprietary" (or an abbreviation of it) in its name unless:
  (a) it was a public company before 1 July 1998; and
  (b) the word "Proprietary" (or an abbreviation of it) was included in its name before 1 July 1998.

(6) An offence based on subsection (2), (3), (4) or (5) is an offence of strict liability.

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

## 149 Acceptable abbreviations

(1) The abbreviations set out in the following table may be used:
  (a) instead of words that this Act requires to be part of a company's name or to be included in a document or on a company's common seal; and
  (b) instead of words that are part of a company's name; and
  (c) with or without full stops.

| **Acceptable abbreviations** | | [operative table] |
|---|---|---|
| | **Word** | **Abbreviation** |
| 1 | Company | Co or Coy |
| 2 | Proprietary | Pty |
| 3 | Limited | Ltd |
| 4 | No Liability | NL |
| 5 | Australian | Aust |
| 6 | Number | No |
| 7 | and | & |



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| **Acceptable abbreviations** | | [operative table] |
|---|---|---|
| | **Word** | **Abbreviation** |
| 8 | Australian Company Number | ACN |
| 9 | Australian Business Number | ABN |

(2) If a company's name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

## 150 Exception to requirement for using "Limited" in name

*Name*

(1) A company is not required to have the word "Limited" at the end of its name if:
  (a) the company is registered under the *Australian Charities and Not-for-profits Commission Act 2012* as the type of entity mentioned in column 1 of item 1 of the table in subsection 25-5(5) of that Act (charity); and
  (b) the company's constitution:
    (i) prohibits the company paying fees to its directors; and
    (ii) requires the directors to approve all other payments the company makes to directors.

(2) A company that, in accordance with subsection (1), does not have "Limited" at the end of its name must notify ASIC as soon as practicable if:
  (a) the company ceases to be registered as mentioned in paragraph (1)(a); or
  (b) any of the prohibitions or requirements mentioned in paragraph (1)(b) are not complied with or the company's constitution is modified to remove any of those prohibitions or requirements.

(3) An offence based on subsection (2) is an offence of strict liability.

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



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(4) Paragraph 157(1)(a) (company must pass special resolution to change name) does not apply to a change of the name of a company to omit the word "Limited" in accordance with this section.

*Name may be stated without "Limited"*

(5) If a company:
  (a) has the word "Limited" at the end of its name; but
  (b) under subsection (1), is not required to do so;

the word "Limited" may be omitted anywhere that the name of the company is required to be used (including on the company's common seal).

## 151 Exception to requirement for using "Limited" in name—pre-existing licences

(1) A licence that:
  (a) allowed a company to omit "Limited" from its name; and
  (b) was in force immediately before 1 July 1998; and
  (c) was in force immediately before the commencement of this section;

continues in force subject to subsection (3).

(2) The company must notify ASIC as soon as practicable if it:
  (a) breaches a condition of the licence; or
  (b) pursues objects or purposes that would have prevented it being granted the licence; or
  (c) applies its profits or other income to promote objects or purposes that would have prevented it being granted the licence; or
  (d) pays a dividend to its members; or
  (e) modifies its constitution to allow it to do anything set out in paragraphs (a) to (d).

(2AA) If:



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(a) a company holds a licence that is in force under this section; and

(b) either the licence or the company's constitution requires a modification to the constitution to have previously been submitted to, and approved by:

(i) the Minister; or

(ii) another Minister of the Commonwealth, a State or a Territory; or

(iii) an officer, instrumentality or agency of the Commonwealth, a State or a Territory;

then the licence or constitution (as the case requires) is taken instead to require the company to notify ASIC as soon as practicable of the modification.

(2A) An offence based on subsection (2) is an offence of strict liability.

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

(3) ASIC may revoke the company's licence if:

(a) the company does anything set out in paragraphs (2)(a) to (e); or

(b) the company fails to notify ASIC in accordance with subsection (2AA).

## 152 Reserving a name

(1) A person may lodge an application in the prescribed form with ASIC to reserve a name for a company. If the name is available, ASIC must reserve it.

Note: For available names, see section 147.

(2) The reservation lasts for 2 months from the date when the application was lodged. An applicant may ask ASIC in writing for an extension of the reservation during a period that the name is reserved, and ASIC may extend the reservation for 2 months.

(3) ASIC must cancel a reservation if the applicant asks ASIC in writing to do so.



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## 153 Using a name and ACN on documents

(1) A company must set out its name on all its public documents and negotiable instruments.

(2) Subject to sections 154 and 155, if the company's ACN is not used in its name, the company must also set out with its name, or with 1 of the references to its name, either:

(a) the expression "Australian Company Number" followed by the company's ACN; or

(b) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN—the words "Australian Business Number" followed by the company's ABN.

If the company's name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

Note 1: If a company has a common seal, its name and ACN or ABN must be set out on the seal (see section 123).

Note 2: A public company must display its name at its registered office. Every company must display its name at places at which the company carries on business and that are open to the public (see section 144).

Note 3: Section 149 provides that "ACN" is an acceptable abbreviation of "Australian Company Number", and that "ABN" is an acceptable abbreviation of "Australian Business Number".

Note 4: In any case where the company's ACN would be used, the company's ABN may be used instead if section 1344 is satisfied.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 154 Exception to requirement to have ACN on receipts

A company does not have to set out the expression "Australian Company Number" followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.



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## 155 Regulations may exempt from requirement to set out information on documents

The regulations may exempt a specified company, or a class of companies, from the requirement in subsection 153(2) to set out information on its public documents and negotiable instruments. The exemption may relate to specified documents or instruments, or a class of documents or instruments.

## 156 Carrying on business using "Limited", "No Liability" or "Proprietary" in name

(1) A person must not carry on business in this jurisdiction under a name or title that:

(a) has the words "Limited" or "No Liability" (or an abbreviation of those words) at the end; or

(b) includes the word "Proprietary" (or an abbreviation of it).

(2) An offence based on subsection (1) is an offence of strict liability.

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

(3) Subsection (1) does not apply to the extent that the person is allowed or required to carry on business in this jurisdiction under the name or title under a law of the Commonwealth or a law of a State or Territory in this jurisdiction.

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



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# Division 2—Changing a company's name

## 157 Company changing its name

(1) If a company wants to change its name, it must:
  (a) pass a special resolution adopting a new name; and
  (b) lodge an application in the prescribed form with ASIC.

Note: The company may reserve a name before the resolution is passed or the application is lodged (see section 152).

(2) The company must lodge a copy of the special resolution with ASIC within 14 days after it is passed.

(2A) An offence based on subsection (2) is an offence of strict liability.

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

(3) If the proposed name is available, ASIC must change the company's name by altering the details of the company's registration to reflect the change. The change of name takes effect when ASIC alters the details of the company's registration.

Note: For available names, see section 147.

## 157A Change of name of company under external administration

*Application by liquidator*

(1) The liquidator of a company that is being wound up may lodge an application with ASIC to change the name of the company if the liquidator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

(2) Subsection (1) does not apply to a members' voluntary winding up.

*Application by administrator*

(3) The administrator of a company under administration may lodge an application with ASIC to change the name of the company if the



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administrator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by deed administrator*

(4) The administrator of a deed of company arrangement may lodge an application with ASIC to change the name of the company if the administrator is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by managing controller*

(5) If:
  (a) a person is the managing controller of property of a company; and
  (b) the person is entitled to enforce a security interest in the whole, or substantially the whole, of the company's property;

the person may lodge an application with ASIC to change the name of the company if the person is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Application by receiver*

(6) If:
  (a) a person is a receiver of property of a company; and
  (b) the property subject to the receivership consists of, or includes, goodwill in relation to the name of the company;

the person may lodge an application with ASIC to change the name of the company if the person is satisfied that the proposed change of name is in the interests of the creditors of the company as a whole.

*Change of name*

(7) If:
  (a) an application is lodged under subsection (1), (3), (4), (5) or (6); and



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(b) the proposed name is available;

ASIC must change the company's name by altering the details of the company's registration to reflect the change. The change of name takes effect when ASIC alters the details of the company's registration.

Note: For available names, see section 147.

## 158 ASIC's power to direct company to change its name

(1) ASIC may direct a company in writing to change its name within 2 months if:

(a) the name should not have been registered; or

(b) the company has breached a condition under subsection 147(3) on the availability of the name; or

(c) a consent given under subsection 147(4) to use or assume the name has been withdrawn; or

(d) the company has breached a condition on a consent given under subsection 147(4); or

(e) the company ceases to be permitted to use or assume the name (as referred to in paragraph 147(4)(b)).

(2) The company must comply with the direction within 2 months after being given it by doing everything necessary to change its name under section 157.

(2A) An offence based on subsection (2) is an offence of strict liability.

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

(3) If the company does not comply with subsection (2), ASIC may change the company's name to its ACN and any other words that section 148 requires, by altering the details of the company's registration to reflect the change.

(4) A change of name under subsection (3) takes effect when ASIC alters the details of the company's registration.



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## 159 ASIC's power to include "Limited" in company's name

(1) ASIC may change a company's name so that it includes the word "Limited" by altering the details of the company's registration to reflect the change if:

(a) the company contravenes any of the requirements or prohibitions in its constitution referred to in subsection 150(1); or

(b) the company modifies its constitution to remove any of those requirements or prohibitions; or

(c) ASIC revokes a licence referred to in section 151 that applies to the company.

(2) The change of name takes effect when ASIC alters the details of the company's registration.

## 160 ASIC must issue new certificate if company's name changes

If ASIC changes a company's name, it must give the company a new certificate of registration. The company's new name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

## 161 Effect of name change

(1) A change of company name does not:

(a) create a new legal entity; or

(b) affect the company's existing property, rights or obligations; or

(c) render defective any legal proceedings by or against the company.

(2) Any legal proceedings that could have been continued or begun by or against the company in its former name may be continued or begun by or against it in its new name.



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## 161A Company under external administration—former name to be used on documents

(1) This section applies to a company if:

(a) any of the following conditions is satisfied:

(i) the company is being wound up;

(ii) the company is under administration;

(iii) the company has executed a deed of company arrangement that has not yet terminated;

(iv) there is a managing controller of property of the company;

(v) there is a receiver of property of the company; and

(b) any of the following conditions is satisfied:

(i) a change of the company's name takes effect;

(ii) in the case of a company that is being wound up—a change of the company's name took effect during the 6-month period ending immediately before the relevant date;

(iii) in the case of a company under administration—a change of the company's name took effect during the 6-month period ending immediately before the administration began;

(iv) in the case of a company that has executed a deed of company arrangement—a change of the company's name took effect during the 6-month period ending immediately before the beginning of the administration that ended when the deed was executed;

(v) in the case of a company where there is a managing controller—a change in the company's name took effect during the 6-month period ending immediately before the appointment of the managing controller;

(vi) in the case of a company where there is a receiver—a change in the company's name took effect during the 6-month period ending immediately before the appointment of the receiver.



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(2) If subparagraph (1)(b)(i) applies, the company must set out its former name on all its public documents and negotiable instruments.

(3) If subparagraph (1)(b)(ii), (iii), (iv), (v) or (vi) applies, then, except with the leave of the Court, the company must set out its former name on all its public documents and negotiable instruments.

(4) An offence based on subsection (2) or (3) is an offence of strict liability.

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

(5) The regulations may exempt a specified company, or a class of companies, from the requirement in subsection (2) or (3). The exemption may relate to specified documents or instruments, or a specified class of documents or instruments.

(6) The Court may only grant leave under subsection (3) on the application of:

(a) if subparagraph (1)(b)(ii) applies—the liquidator of the company; or

(b) if subparagraph (1)(b)(iii) applies—the administrator of the company; or

(c) if subparagraph (1)(b)(iv) applies—the administrator of the deed of company arrangement; or

(d) if subparagraph (1)(b)(v) applies—the managing controller; or

(e) if subparagraph (1)(b)(vi) applies—the receiver.

(6A) As soon as practicable after applying for leave under subsection (3), the applicant must lodge with ASIC a notice stating that the application has been made. The notice must be in the prescribed form.

(7) The Court may only grant leave under subsection (3) if it is satisfied that the granting of leave will not result in any significant risk to the interests of the company's creditors (including contingent or prospective creditors) as a whole.



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# Part 2B.7—Changing company type

## 162 Changing company type

(1) A company may change to a company of a different type as set out in the following table by:
  (a) passing a special resolution resolving to change its type; and
  (b) complying with sections 163 and 164.

| **Allowed conversions** | | [operative table] |
|---|---|---|
| | **This type of company may change…** | **…to this type of company** |
| 1 | proprietary company limited by shares | unlimited proprietary company<br>unlimited public company<br>public company limited by shares |
| 2 | unlimited proprietary company | proprietary company limited by shares *(but only if, within the last 3 years, it was not a limited company that became an unlimited company)*<br>public company limited by shares *(but only if, within the last 3 years, it was not a limited company that became an unlimited company)*<br>unlimited public company |
| 3 | public company limited by shares | unlimited public company<br>unlimited proprietary company<br>proprietary company limited by shares<br>no liability company (see subsection (2)) |



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| **Allowed conversions** | | [operative table] |
|---|---|---|
| | **This type of company may change…** | **…to this type of company** |
| 4 | company limited by guarantee | public company limited by shares<br>unlimited public company<br>proprietary company limited by shares<br>unlimited proprietary company |
| 5 | unlimited public company | public company limited by shares *(but only if, within the last 3 years, it was not a limited company that became an unlimited company)*<br>proprietary company limited by shares *(but only if, within the last 3 years, it was not a limited company that became an unlimited company)*<br>unlimited proprietary company |
| 6 | public no liability company | public company limited by shares *(but only if all the issued shares are fully paid up)*<br>proprietary company limited by shares (but only if all the issued shares are fully paid up) |

Note 1: A public company seeking to change to a proprietary company must comply with the requirements for proprietary companies set out in section 113.

Note 2: Other types of companies that were previously allowed can change type under the Part 10.1 transitionals.

(2) A public company limited by shares may only convert to a no liability company if:

(a) the company's constitution states that its sole objects are mining purposes; and

(b) under the constitution the company has no contractual right to recover calls made on its shares from a shareholder who fails to pay them; and

(c) all the company's issued shares are fully paid up.



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Note: Section 9 defines ***mining purposes*** and ***minerals.***

(3) The company must lodge a copy of the special resolution with ASIC within 14 days after it is passed.

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

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

(4) A special resolution to change an unlimited company that has share capital to a company limited by shares may also provide that a specified portion of its uncalled share capital may only be called up if the company becomes a Chapter 5 body corporate.

## 163 Applying for change of type

*Lodging application*

(1) To change its type, a company must lodge an application with ASIC.

*Contents of the application*

(2) The application must be accompanied by the following:
  (a) a copy of:
    (i) the special resolution that resolves to change the type of the company, specifies the new type and the company's new name (if a change of name is necessary); and
    (ii) any other special resolution passed in connection with the change of type;
  (b) for a company limited by guarantee changing to a company limited by shares:
    (i) a statement signed by the directors of the company that in their opinion the company's creditors are not likely to be materially prejudiced by the change of type and that sets out their reasons for that opinion; and
    (ii) any special resolution dealing with an issue of shares according to section 167;



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(c) for a company limited by shares or a company limited by guarantee changing to an unlimited company:
  (i) an assent to the change of type in the prescribed form signed by all the members of the company; and
  (ii) a statement signed by a director or a company secretary of the company that all the members of the company have signed the assent;

(d) for a proprietary company changing to a public company:
  (i) a consolidated copy of the company's constitution (if any) as at the date of lodgment; and
  (ii) a copy of each document (including an agreement or consent) or resolution that is necessary to ascertain the rights attached to issued or unissued shares of the company.

Note 1: The company must lodge a copy of any special resolution modifying its constitution passed after the application is lodged (see subsection 136(5)).

Note 2: The company must lodge information relating to any change of rights attached to its shares, or any division or conversion of its shares into new classes, occurring after the application is lodged (see section 246F).

*Company limited by guarantee to company limited by shares*

(3) If shares will be issued to persons under paragraph 166(2)(c) on the change of type from a company limited by guarantee to a company limited by shares, the application must state:

(a) that the company has prepared a list that sets out the following details about each person to whom the shares will be issued:
  (i) name and address;
  (ii) the number and class of shares the person will take up;
  (iii) the amount (if any) the person will pay for the shares;
  (iv) the amount (if any) that will be unpaid on the shares; and

(b) the number and class of shares those persons will take up; and



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(c) the amount (if any) those persons will pay for the shares; and

(ca) the amount (if any) that will be unpaid on the shares; and

(d) if the shares will be issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application; and

(e) that each of those persons who is not a member of the company when the application is made consents in writing to the inclusion in the list of the details about them that are referred to in paragraph (a).

The shares may be issued to existing members only, to new members only or to existing and new members.

Note: An offer of shares associated with a proposed change of type may need disclosure to investors under Part 6D.2 (see sections 706, 707, 708, 708AA and 708A).

(3A) For a company changing to a proprietary company, if any of the particulars in the register kept by the company under section 169 and mentioned in paragraph 178A(1)(b) are different from the particulars set out:

(a) in the latest extract of particulars received by the company; or

(b) if the company responded to the latest extract it received—in the company's extract taken together with the company's response to the extract;

the application must set out those different particulars in addition to the other information required by this section.

(3B) If the company has more than 20 members, the company is only required to set out the different particulars under subsection (3A) that relate to a person who is a top 20 member of a class of the company.

Note: See also section 107.

(3C) If subsection (3A) applies and any details mentioned in subsection 178C(1) are different from the details set out:



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(a) in the latest extract of particulars received by the company; or

(b) if the company responded to the latest extract it received—in the company's extract taken together with the company's response to the extract;

the application must set out those different details as well.

(4) The application must be in the prescribed form.

(5) The company must have the consents referred to in paragraph (3)(e) (if any) when the application is lodged. The company must keep the consents.

(6) An offence based on subsection (5) is an offence of strict liability.

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

## 164 ASIC changes type of company

(1) ASIC must give notice under subsection (3) that it intends to alter the details of the company's registration if:

(a) ASIC is satisfied that:

(i) the application complies with section 163; and

(ii) for an application by a company limited by guarantee to change to a company limited by shares—the company's creditors are not likely to be materially prejudiced by the change; and

(b) for an application by a company limited by guarantee to change to a company limited by shares that is accompanied by a copy of a special resolution dealing with an issue of shares according to section 167—ASIC is not of the opinion that the obligations that would attach to the shares are unreasonable compared with the obligations that attach to membership of the company limited by guarantee.

(2) To make a decision under subparagraph (1)(a)(ii), ASIC may direct the company in writing to:

(a) notify some or all of its creditors of the proposed change in the way ASIC specifies; and



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(b) invite those creditors to make submissions to ASIC.

(3) The notice that ASIC intends to alter the details of the company's registration must be:

(a) included on ASIC database; and

(b) published in the *Gazette*.

The notice must also state that ASIC will alter the details of the company's registration 1 month after the notice has been published in the *Gazette* unless an order by a court or the Administrative Appeals Tribunal prevents it from doing so.

(4) Subject to an order made by a court or the Administrative Appeals Tribunal within that month, after that month has passed ASIC must alter the details of the company's registration to reflect the company's new type.

(5) A change of type under this section takes effect when ASIC alters the details of the company's registration. Despite subsection 246D(3) and section 246E, a special resolution passed in connection with the change of type also takes effect when ASIC alters the details of the company's registration.

(6) ASIC must give the company a new certificate of registration after it alters the details of the company's registration. The company's name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

(7) If ASIC alters the details of a company's registration under subsection (4), a court is not to make an order reversing the alteration of the details of the company's registration.

Note: The Administrative Appeals Tribunal cannot review the change of the company's type once ASIC has issued a new certificate of registration to the company (see subsection 1274(7A) and paragraph 1317C(b)).



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## 165 ASIC may direct a proprietary company to change to a public company in certain circumstances

(1) ASIC may direct a proprietary company in writing to change to a public company within 2 months if it is satisfied that the company has contravened section 113 (requirements for proprietary companies).

(2) The company must comply with the direction within 2 months after being given it by doing everything necessary to change to a public company under section 164.

(2A) An offence based on subsection (2) is an offence of strict liability.

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

(3) If a proprietary company does not comply with subsection (2), ASIC may change the company from a proprietary to a public company by altering the details of the company's registration to reflect the company's new type.

(4) A change of type under this section takes effect when ASIC alters the details of the company's registration.

(5) ASIC must give the company a new certificate of registration after it alters the details of the company's registration under subsection (3). The company's name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

## 166 Effect of change of type

(1) A change of type does not:
  (a) create a new legal entity; or
  (b) affect the company's existing property, rights or obligations (except as against the members of the company in their capacity as members); or
  (c) render defective any legal proceedings by or against the company or its members.



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(2) On the change of type of a company from a company limited by guarantee to a company limited by shares:
  (a) the liability of each member and past member as a guarantor on the winding up of the company is extinguished; and
  (b) the members cease to be members of the company; and
  (c) if shares are to be issued to a person as specified in the list referred to in subsection 163(3):
    (i) the shares are taken to be issued to that person; and
    (ii) the person is taken to have consented to be a member of the company; and
    (iii) the person becomes a member of the company.

Note: The company must maintain a register of members that complies with subsection 169(3).

## 167 Issue of shares by company or holding company—company limited by guarantee changing to company limited by shares

(1) If:
  (a) a company limited by guarantee changes type under this Part to a company limited by shares; and
  (b) that company, or another company that beneficially owns all the shares in that company, issues shares to a person who was a member of that company immediately before the change of type took effect;

the person becomes a member of the company issuing the shares if:
  (c) the issue of the shares is in accordance with the special resolution that accompanied the application to change type under subparagraph 163(2)(a)(ii); and
  (d) the shares are fully paid up; and
  (e) the business, assets and liabilities of the issuing company (together with its subsidiaries) when the shares are issued are substantially the same as the business, assets and liabilities of the company changing type (together with its subsidiaries) immediately before the change of type took effect.



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(2) If shares are issued according to this section, a court is not to make an order reversing the issue of the shares.

## 167AA Application of Part to company limited both by shares and by guarantee

(1) A company limited both by shares and by guarantee may change to one of the following types of companies under this Part:
   (a) a proprietary company limited by shares;
   (b) a public company limited by shares;
   (c) a company limited by guarantee.

(2) This Part applies to the change with any modifications that are necessary.



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# Part 2B.8—Mutual capital instruments (MCIs)

## Division 1—Preliminary

### 167AB Simplified outline of this Part

This Part provides for mutual capital instruments (MCIs).

An MCI is a share in a mutual entity that meets requirements relating to voting rights and other matters. Certain kinds of mutual entities may issue MCIs and become MCI mutual entities.

Division 3 sets out a special procedure for amending the constitution of a mutual entity that proposes to issue MCIs.



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## Division 2—MCI mutual entities and MCIs

### 167AC Meaning of *MCI mutual entity*

A mutual entity is an ***MCI mutual entity*** if:

(a) the entity is a public company; and

(b) the entity does not have voting shares (other than MCIs) quoted on a prescribed financial market; and

(c) the entity is not a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*; and

(d) the entity's constitution states that the entity is intended to be an MCI mutual entity for the purposes of this Act; and

(e) the entity has issued one or more MCIs.

### 167AD Meaning of *MCI*

(1) A share in a mutual entity is an ***MCI*** (short for mutual capital instrument) if:

(a) paragraphs 167AC(a), (b), (c) and (d) apply to the entity; and

(b) the share meets the requirements in sections 167AE and 167AF.

(2) To avoid doubt, if a share that is an MCI ceases to meet one or more of those requirements, the share ceases to be an MCI.

(3) Nothing in this Division requires an MCI mutual entity to treat the holders of MCIs in the same way as members of the entity who do not hold MCIs.

Note: For example, this Division does not require an MCI mutual entity that provides services to a class of members to provide those services to holders of MCIs.



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## 167AE MCI requirements—class rights

A share in a mutual entity meets the requirement in this section if the rights attached to the share can be varied or cancelled only by special resolution of the company and either:

(a) by special resolution passed at a meeting of the class of members holding shares in the same class; or

(b) with the written consent of members with at least 75% of the votes in the class.

## 167AF MCI requirements—other requirements

A share in a mutual entity meets the requirements in this section if the entity's constitution:

(a) provides that the share can only be issued as a fully paid share; and

(b) provides that dividends in respect of the share are non-cumulative; and

(c) sets out the rights attached to the share with respect to participation in surplus assets and profits.

## 167AG MCIs must be cancelled before MCI mutual entity demutualises

A resolution of an MCI mutual entity that would result in the entity ceasing to be an MCI mutual entity can only take effect if:

(a) there are no MCIs in the entity; or

(b) the resolution provides for each MCI to be cancelled at or before the time the entity ceases to be an MCI mutual entity (whether or not the holders of the MCIs to be cancelled are to receive other securities in respect of those MCIs).



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# Division 3—Special procedure for amending constitution of mutual entity that proposes to issue MCIs

## 167AH Purpose and application of this Division

(1) This Division sets out a special procedure for the constitution of a mutual entity to be amended to provide for the entity to issue MCIs.

(2) This Division applies to a mutual entity that:
  (a) is a public company; and
  (b) does not have voting shares quoted on a prescribed financial market; and
  (c) is not a registered entity within the meaning of the *Australian Charities and Not-for-profits Commission Act 2012*.

## 167AI MCI amendment resolution

(1) An ***MCI amendment resolution*** is a resolution of the mutual entity to amend the entity's constitution for one or more of the following purposes, and for no other purpose:
  (a) to include a statement that the entity is intended to be an MCI mutual entity for the purposes of this Act;
  (b) to provide for the entity to issue MCIs;
  (c) to provide for the rights and obligations attached to MCIs;
  (d) to make changes that are incidental or ancillary to the purpose in paragraph (a), (b) or (c).

(2) An MCI amendment resolution must not result in the mutual entity ceasing to be a mutual entity.

## 167AJ Procedure for MCI amendment resolution

(1) This section applies to a meeting of the mutual entity's members if:



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(a) notice of an MCI amendment resolution to be proposed at the meeting is given in accordance with paragraph 249L(1)(c); and

(b) the meeting is held during the period of 36 months beginning on the day this section commences; and

(c) no more than 2 MCI amendment resolutions have been considered at previous meetings of the mutual entity's members.

(2) The MCI amendment resolution:

(a) must be passed at the meeting by at least 75% of the votes cast by or on behalf of members who are present at the meeting (including members who have appointed proxies who are present at the meeting) and entitled to vote on the resolution; and

(b) if so passed—has effect as a special resolution despite subsections 136(3) and (4) and anything in the mutual entity's constitution.

(3) Despite section 135 and anything in the mutual entity's constitution, section 249T (quorum) applies to the meeting to the extent that the meeting is considering or voting on the MCI amendment resolution.



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# Chapter 2C—Registers

## Part 2C.1—Registers generally

### 167A Who is covered by this Chapter

(1) This Chapter covers:
  (a) all companies; and
  (b) all registered schemes.

(2) A registered scheme's responsible entity:
  (a) must perform the obligations imposed under this Chapter in respect of the scheme; and
  (b) may exercise the powers given by this Chapter in respect of the scheme.

### 168 Registers to be maintained

(1) A company or registered scheme must set up and maintain:
  (a) a register of members (see section 169); and
  (b) if the company or scheme grants options over unissued shares or interests—a register of option holders and copies of options documents (see section 170); and
  (c) if the company issues debentures—a register of debenture holders (see section 171).

Note 1A: See also section 672DA (register of relevant interests in listed company, listed registered scheme or listed notified foreign passport fund).

Note 2: The registers may be kept on computer (see section 1306).

(1A) An offence based on subsection (1) is an offence of strict liability.

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

(2) For the purposes of this Chapter, choses in action (including an undertaking) that fall into one of the exceptions in paragraphs (a),



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(b), (e) and (f) of the definition of ***debenture*** in section 9 must also be entered into the register of debenture holders.

## 169 Register of members

*General requirements*

(1) The register of members must contain the following information about each member:
  (a) the member's name and address;
  (b) the date on which the entry of the member's name in the register is made.

*Index to register*

(2) If the company or scheme has more than 50 members, the company or scheme must include in the register an up-to-date index of members' names. The index must be convenient to use and allow a member's entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index.

*Companies with share capital*

(3) If the company has a share capital, the register must also show:
  (a) the date on which every allotment of shares takes place; and
  (b) the number of shares in each allotment; and
  (c) the shares held by each member; and
  (d) the class of shares; and
  (e) the share numbers (if any), or share certificate numbers (if any), of the shares; and
  (ea) the amount paid on the shares; and
  (eb) whether or not the shares are fully paid; and
  (f) the amount unpaid on the shares (if any).

Note 1: Transfers of shares are entered in the register under section 1071D. Section 1072E deals with the registration of trustees etc. on the death, incapacity or bankruptcy of the shareholder.



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Note 2: For the treatment of joint holders see subsection (8).

(4) The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:

(a) all of the company's shares were issued before 1 July 1998**;** and

(b) the register continues to show the par values of the shares as they were immediately before 1 July 1998.

(5) The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:

(a) all of the company's shares were issued before 1 July 1998**;** and

(b) the company is not a listed company.

*Non-beneficial ownership—companies other than listed companies*

(5A) The register of a company that:

(a) has a share capital; and

(b) is neither a listed company (within the meaning of section 603) nor a company covered by an order under section 707;

must indicate any shares that a member does not hold beneficially.

Note: See also section 1072H (in particular, subsection 1072H(8) which contains relevant presumptions about beneficial ownership).

(6) In deciding for the purposes of subsection (5A) whether a member holds shares beneficially or non-beneficially, the company is to have regard only to information in notices given to the company under section 1072H, 672B or 672C.

*Proprietary companies that have made CSF offers*

(6AA) The register of a proprietary company that has made one or more CSF offers must also show:

(a) the date on which every issue of shares in the company pursuant to each CSF offer takes place; and

(b) the number of shares issued pursuant to each CSF offer; and



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(c) the shares issued to each member pursuant to each CSF offer; and

(d) the date on which an entity ceases to be a CSF shareholder of the company for a particular share in the company;

during any period in which the company has one or more CSF shareholders.

*Registered schemes*

(6A) The register of a registered scheme must also show:

(a) the date on which every issue of interests takes place; and

(b) the number of interests in each issue; and

(c) the interests held by each member; and

(d) the class of interests; and

(e) the amount paid, or agreed to be considered as paid, on the interests.

*Former members*

(7) A register of members must also show:

(a) the name and details of each person who stopped being a member of the company or scheme within the last 7 years; and

(b) the date on which the person stopped being a member.

The company or scheme may keep these entries separately from the rest of the register.

*Joint holders*

(8) For the purposes of this section:

(a) 2 or more persons who jointly hold shares in the company or interests in the scheme are taken to be a single member of the company or scheme in relation to those shares or interests; and

(b) 2 or more persons who have given a guarantee jointly are taken to be a single member of the company.



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They may also be members of the company or scheme because of shares or interests that they hold, or a guarantee that they have given, in their own right or jointly with others.

## 170 Register of option holders and copies of options documents

(1) The register of option holders must contain the following information about each holder of options over unissued shares in the company or unissued interests in the scheme:

(a) the option holder's name and address;

(b) the date on which the entry of the option holder's name in the register is made;

(c) the date of grant of the options;

(d) the number and description of the shares or interests over which the options were granted;

(e) either:

(i) the period during which the options may be exercised; or

(ii) the time at which the options may be exercised;

(f) any event that must happen before the options can be exercised;

(g) any consideration for the grant of the options;

(h) any consideration for the exercise of the options or the method by which that consideration is to be determined.

Because it is a register of the holders of options that are still exercisable, the register must be updated whenever options are exercised or expire.

(2) Information about the grant of an option must be entered in the register within 14 days after the grant of the option.

*Copies of options documents*

(3) The company or scheme must keep with the register a copy of every document that grants an option over unissued shares or interests.



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

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

(3B) Subsection (3) does not apply if the option is listed for quotation on a prescribed financial market.

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

(4) The company or scheme must change the register to reflect the transfer of an option only if the person transferring the option gives the company or scheme written notice of the transfer.

(5) A failure to comply with this section in relation to an option does not affect the option itself.

## 171 Register of debenture holders

(1) The register of debenture holders must contain the following information about each holder of a debenture:
  (a) the debenture holder's name and address;
  (b) the amount of the debentures held.

Note: See subsection 168(2) for the coverage of ***debenture***.

(2) A company's failure to comply with this section in relation to a debenture does not affect the debenture itself.

## 172 Location of registers

(1) A register kept under this Chapter that relates to a company must be kept at:
  (a) the company's registered office; or
  (b) the company's principal place of business in this jurisdiction; or
  (c) a place in this jurisdiction (whether of the company or of someone else) where the work involved in maintaining the register is done; or
  (d) another place in this jurisdiction approved by ASIC.



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(1A) A register kept under this Chapter that relates to a registered scheme must be kept at:

(a) the responsible entity's registered office; or

(b) an office at the responsible entity's principal place of business in this jurisdiction; or

(c) an office in this jurisdiction (whether of the responsible entity or of someone else) where the work involved in maintaining the register is done; or

(d) another office in this jurisdiction approved by ASIC.

*Notice to ASIC*

(2) The company or scheme must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:

(a) established at an office that:

(i) is not the registered office of the company or responsible entity; and

(ii) is not at the principal place of business of the company or responsible entity in this jurisdiction; or

(b) moved from one place to another.

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

(3) An offence based on subsection (1), (1A) or (2) is an offence of strict liability.

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

## 173 Right to inspect and get copies

*Right to inspect*

(1) A company or registered scheme must allow anyone to inspect a register kept under this Chapter. If the register is not kept on a computer, the person inspects the register itself. If the register is kept on a computer, the person inspects the register by computer.



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Note: Other provisions that are relevant to the inspection of registers are:

- section 1300 (place and times for inspection)
- section 1301 (the location of documents that are kept on computers)
- section 1306 (form and evidentiary value).

*Inspection fees*

(2) A member of a company or a registered scheme, a registered option holder or a registered debenture holder may inspect a register kept under this Chapter without charge. Other people may inspect the register only on payment of any fee (up to the prescribed amount) required by the company or scheme.

*Right to get copies*

(3) The company or scheme must give a person a copy of the register (or a part of the register) within 7 days if the person:

(a) makes an application to the company or registered scheme in accordance with subsection (3A); and

(b) pays any fee (up to the prescribed amount) required by the company or scheme.

ASIC may allow a longer period to comply with the request. If the register is kept on a computer, the company or registered scheme must give the copy to the person in the prescribed form.

(3A) An application is in accordance with this subsection if:

(a) the application states each purpose for which the person is accessing the copy; and

(b) none of those purposes is a prescribed purpose; and

(c) the application is in the prescribed form.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

(4) A person has the same rights to inspect, and obtain copies of, the documents kept under subsection 170(3) as the person has in respect of the register of option holders itself.



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(5) The company is not required under subsection (1) or (3) to allow a person to see, or to give a person a copy that contains, share certificate numbers.

*ASIC power in relation to register of debenture holders*

(6) ASIC may exempt a company from complying with subsections (1) and (3) in relation to information in a register of debenture holders about debentures that are not convertible into shares or options over unissued shares.

(7) The exemption:
  (a) must be in writing; and
  (b) may be general or limited; and
  (c) may be subject to conditions specified in the exemption.

(8) ASIC must publish a copy of the exemption in the *Gazette*.

(9) A person must not contravene a condition of the exemption.

(9A) An offence based on subsection (1), (3) or (9) is an offence of strict liability.

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

(10) On application by ASIC, the Court may order a person who contravenes a condition of the exemption to comply with the condition.

## 174 Agent's obligations

(1) A person who agrees to maintain a register on behalf of a company or registered scheme for the purposes of this Chapter must:
  (a) make the register available for inspection under this Chapter; and
  (b) provide the copies required by this Chapter.

(2) An offence based on subsection (1) is an offence of strict liability.

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



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## 175 Correction of registers

(1) A company or registered scheme or a person aggrieved may apply to the Court to have a register kept by the company or scheme under this Part corrected.

(2) If the Court orders the company or scheme to correct the register, it may also order the company or scheme to compensate a party to the application for loss or damage suffered.

(3) If:
  (a) the Court orders a company or scheme to correct its register of members; and
  (b) the company or scheme has lodged a list of its members with ASIC;

the company or scheme must lodge notice of the correction with ASIC.

Note: A proprietary company may also have to notify certain particulars under Part 2C.2 of this Chapter.

## 176 Evidentiary value of registers

In the absence of evidence to the contrary, a register kept under this Chapter is proof of the matters shown in the register under this Chapter.

## 177 Use of information on registers

(1) A person must not:
  (a) use information about a person obtained from a register kept under this Chapter to contact or send material to the person; or
  (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person.

Note: An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.



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(1AA) A person must not:

(a) use information obtained from a register kept under this Chapter for any purpose prescribed by regulations made for the purposes of paragraph 173(3A)(b); or

(b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

(1A) Subsection (1) does not apply if the use or disclosure of the information is:

(a) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or

(b) approved by the company or scheme.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(1B) An offence based on subsection (1) or (1AA) is an offence of strict liability.

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

(2) A person who contravenes subsection (1) or (1AA) is liable to compensate anyone else who suffers loss or damage because of the contravention.

(3) A person who makes a profit from a contravention of subsection (1) or (1AA) owes a debt to the company or the scheme. The amount of the debt is the amount of the profit.

(4) If a person owes a debt under subsection (3) to the scheme:

(a) the debt may be recovered by the responsible entity as a debt due to it; and

(b) any amount paid or recovered in respect of the debt forms part of the scheme property.

## 178 Overseas branch registers—companies

(1) A company may keep a branch register of members of the company at a place outside Australia.



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(2) If a company keeps an overseas branch register under subsection (1):
   (a) the company must keep the branch register in the same manner as this Act requires the company to keep the register kept under section 169 (the ***principal register***); and
   (b) the company must enter in the principal register the details contained in the branch register; and
   (c) the company must distinguish shares that are registered in the branch register from the shares registered in the principal register.

## 178AA Overseas branch registers—Australian passport funds

(1) An Australian passport fund may keep a branch register of members of the fund outside Australia.

(2) If an Australian passport fund keeps an overseas branch register under subsection (1):
   (a) the fund must keep the branch register in the same manner as this Act requires the fund to keep the register kept under section 169 (the ***principal register***); and
   (b) the fund must enter in the principal register the details contained in the branch register; and
   (c) the fund must distinguish interests that are registered in the branch register from the interests registered in the principal register.



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# Part 2C.2—Notice by proprietary companies of changes to member register

## 178A Notice of change to member register

(1) A proprietary company must notify ASIC within the time determined under section 178D and in the prescribed form, if:
  (a) it is required to add or alter a particular in the register it maintains under section 169; and
  (b) the particular is one required to be kept under any of the following:
    (i) subsection 169(1) (name and address and date of entry of member's name into register);
    (ii) paragraph 169(3)(b) (number of shares in each allotment to the member);
    (iii) paragraph 169(3)(c) (the number of shares held by the member);
    (iv) paragraph 169(3)(d) (the class of shares held by the member);
    (v) paragraph 169(3)(ea) (the amount paid on the member's shares);
    (vi) paragraph 169(3)(eb) (whether the member's shares are fully paid);
    (vii) paragraph 169(3)(f) (the amount unpaid, if any, on the member's shares);
    (viii) subsection 169(5A) (statement whether any of the member's shares are held beneficially);
    (ix) subsection 169(6AA) (shares issued as a result of CSF offers).

(2) An offence based on subsection (1) is an offence of strict liability.

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



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## 178B Top 20 only

If a proprietary company has more than 20 members, the company is only required to notify additions or alterations of particulars under section 178A that relate to a person who is, or as a result of the addition or alteration will become, a top 20 member of a class of the company.

Note: See also section 107.

## 178C Notice of change to share structure

(1) A proprietary company that is required to notify ASIC under section 178A of an addition or alteration must also notify ASIC, at the same time, of any of the following details in relation to the company that are different from the details previously notified to ASIC:

(a) the total number of the company's shares on issue;

(b) the classes into which the shares are divided;

(c) for each class issued:

(i) the total number of shares for the class;

(ii) the total amount paid up for the class;

(iii) the total amount unpaid for the class;

(d) that the company has started to have one or more CSF shareholders;

(e) that the company has ceased to have any CSF shareholders.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 178D Time within which ASIC must be notified

A proprietary company must notify ASIC under section 178A within the time determined by this table.



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| **Time within which the company must notify ASIC** | | |
|---|---|---|
| **Item** | **If the need to add or alter a particular arises in connection with this event...** | **The company must notify ASIC within this time...** |
| 1 | the Court orders the company to correct its member register kept under section 169 | at the same time that it notifies ASIC of the correction under subsection 175(3) |
| 2 | the company divides shares into classes, or converts shares of a class into shares of another class | within the time within which it must notify ASIC of the particulars of the division or conversion under subsection 246F(1) |
| 3 | the company issues shares | within the time within which it must notify ASIC of the particulars of the issue under subsection 254X(1) |
| 4 | the company reduces its share capital | within the time within which it must notify ASIC of shareholder approval of the reduction under subsection 256C(3) |
| 5 | an event not covered by items 1 to 4 | within 28 days after the day on which it adds or alters the particular in the register |



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# Chapter 2D—Officers and employees

## Part 2D.1—Duties and powers

### 179 Background to duties of directors, other officers and employees

(1) This Part sets out some of the most significant duties of directors, secretaries, other officers and employees of corporations. Other duties are imposed by other provisions of this Act and other laws (including the general law).

(2) Section 9 defines both ***director*** and ***officer***. ***Officer*** includes, as well as directors and secretaries, some other people who manage the corporation or its property (such as receivers and liquidators).



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# Division 1—General duties

## 180 Care and diligence—civil obligation only

*Care and diligence—directors and other officers*

(1) A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:
   (a) were a director or officer of a corporation in the corporation's circumstances; and
   (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Note: This subsection is a civil penalty provision (see section 1317E).

*Business judgment rule*

(2) A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:
   (a) make the judgment in good faith for a proper purpose; and
   (b) do not have a material personal interest in the subject matter of the judgment; and
   (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
   (d) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence)—it does not operate in relation to duties under any other provision of this Act or under any other laws.



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(3) In this section:

***business judgment*** means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

## 181 Good faith—civil obligations

*Good faith—directors and other officers*

(1) A director or other officer of a corporation must exercise their powers and discharge their duties:
   (a) in good faith in the best interests of the corporation; and
   (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines ***involved***.

Note 2: This subsection is a civil penalty provision (see section 1317E).

## 182 Use of position—civil obligations

*Use of position—directors, other officers and employees*

(1) A director, secretary, other officer or employee of a corporation must not improperly use their position to:
   (a) gain an advantage for themselves or someone else; or
   (b) cause detriment to the corporation.

Note: This subsection is a civil penalty provision (see section 1317E).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines ***involved***.

Note 2: This subsection is a civil penalty provision (see section 1317E).



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## 183 Use of information—civil obligations

*Use of information—directors, other officers and employees*

(1) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:
  (a) gain an advantage for themselves or someone else; or
  (b) cause detriment to the corporation.

Note 1: This duty continues after the person stops being an officer or employee of the corporation.

Note 2: This subsection is a civil penalty provision (see section 1317E).

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines ***involved***.

Note 2: This subsection is a civil penalty provision (see section 1317E).

## 184 Good faith, use of position and use of information—criminal offences

*Good faith—directors and other officers*

(1) A director or other officer of a corporation commits an offence if they:
  (a) are reckless; or
  (b) are dishonest;

and fail to exercise their powers and discharge their duties:
  (c) in good faith in the best interests of the corporation; or
  (d) for a proper purpose.

Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

*Use of position—directors, other officers and employees*

(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:



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(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

(2A) To avoid doubt, it is not a defence in a proceeding for an offence against subsection (2) that the director, other officer or employee of the corporation uses their position dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for the corporation; or

(b) with the result that the corporation directly or indirectly gained an advantage.

*Use of information—directors, other officers and employees*

(3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

(4) To avoid doubt, it is not a defence in a proceeding for an offence against subsection (3) that the person uses the information dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for the corporation; or

(b) with the result that the corporation directly or indirectly gained an advantage.

## 185 Interaction of sections 180 to 184 with other laws etc.

Sections 180 to 184:



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(a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
(b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsections 180(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 180(1).

## 186 Territorial application of sections 180 to 184

Sections 180 to 184 do not apply to an act or omission by a director or other officer or employee of a foreign company unless the act or omission occurred in connection with:

(a) the foreign company carrying on business in this jurisdiction; or
(b) an act that the foreign company does, or proposes to do, in this jurisdiction; or
(c) a decision by the foreign company whether or not to do, or refrain from doing, an act in this jurisdiction.

## 187 Directors of wholly-owned subsidiaries

A director of a corporation that is a wholly-owned subsidiary of a body corporate is taken to act in good faith in the best interests of the subsidiary if:

(a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and
(b) the director acts in good faith in the best interests of the holding company; and
(c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.



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## 188 Responsibility of secretaries etc. for certain corporate contraventions

*Responsibility of company secretaries*

(1) A secretary of a company contravenes this subsection if the company contravenes any of the following provisions (each of which is a ***corporate responsibility provision***):

(a) section 142 (registered office);

(b) section 145 (public company's registered office to be open to public);

(c) section 146 (change of principal place of business);

(d) section 178A (change to proprietary company's member register);

(e) section 178C (change to proprietary company's share structure);

(f) section 205B (lodgement of notices with ASIC);

(g) section 254X (issue of shares);

(h) section 319 (lodgement of annual reports with ASIC);

(i) section 320 (lodgement of half-year reports with ASIC);

(j) section 346C (response to extract of particulars);

(k) section 348D (response to return of particulars);

(l) section 349A (change to proprietary company's ultimate holding company).

Note 1: See section 204A for the circumstances in which a company must have a secretary.

Note 2: This subsection is a civil penalty provision (see section 1317E).

*Responsibility of directors of proprietary companies*

(2) Each director of a proprietary company contravenes this subsection if:

(a) the proprietary company contravenes a corporate responsibility provision; and

(b) the proprietary company does not have a secretary when it contravenes that provision.



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Note 1: See section 204A for the circumstances in which a company must have a secretary.

Note 2: This subsection is a civil penalty provision (see section 1317E).

*Defence of reasonable steps*

(3) A person does not contravene subsection (1) or (2) in relation to a company's contravention of a corporate responsibility provision if the person shows that he or she took reasonable steps to ensure that the company complied with the provision.

## 189 Reliance on information or advice provided by others

If:

(a) a director relies on information, or professional or expert advice, given or prepared by:

(i) an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or

(ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence; or

(iii) another director or officer in relation to matters within the director's or officer's authority; or

(iv) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and

(b) the reliance was made:

(i) in good faith; and

(ii) after making an independent assessment of the information or advice, having regard to the director's knowledge of the corporation and the complexity of the structure and operations of the corporation; and

(c) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to



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determine whether a director has performed a duty under this Part or an equivalent general law duty;

the director's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

## 190 Responsibility for actions of delegate

(1) If the directors delegate a power under section 198D, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.

(2) A director is not responsible under subsection (1) if:

(a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution (if any); and

(b) the director believed:

(i) on reasonable grounds; and

(ii) in good faith; and

(iii) after making proper inquiry if the circumstances indicated the need for inquiry;

that the delegate was reliable and competent in relation to the power delegated.

## 190A Limited application of Division to registrable Australian bodies

This Division does not apply to an act or omission by a director or other officer or employee of a corporation that is a registrable Australian body unless the act or omission occurred in connection with:

(a) the body carrying on business outside its place of origin; or

(b) an act that the body does or proposed to do outside its place of origin; or

(c) a decision by the body whether or not to do or refrain from doing outside its place of origin.



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## 190B Division does not apply to Aboriginal and Torres Strait Islander corporations

This Division does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Division 265 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* deals with the general duties of directors, secretaries, officers and employees of Aboriginal and Torres Strait Islander corporations.

## 190C Division does not apply in relation to notified foreign passport funds or their operators

This Division does not apply to an act or omission by a person, if:

(a) the act or omission is in the person's capacity as a director, other officer or employee of a notified foreign passport fund; or

(b) the act or omission:

(i) is in the person's capacity as a director, other officer or employee of the operator of a notified foreign passport fund; and

(ii) is connected with the operation of the fund.



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# Division 2—Disclosure of, and voting on matters involving, material personal interests

## 191 Material personal interest—director's duty to disclose

*Director's duty to notify other directors of material personal interest when conflict arises*

(1) A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless subsection (2) says otherwise.

(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the director of a company has a material personal interest in a matter that relates to the affairs of the company.

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

(2) The director does not need to give notice of an interest under subsection (1) if:

(a) the interest:

(i) arises because the director is a member of the company and is held in common with the other members of the company; or

(ii) arises in relation to the director's remuneration as a director of the company; or

(iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or

(iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or

(v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or



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(vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or

(vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or

(viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or

(b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or

(c) all the following conditions are satisfied:

(i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1);

(ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company—the notice is given to that person;

(iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(d) the director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest.

Note: Subparagraph (c)(ii)—the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

(3) The notice required by subsection (1) must:

(a) give details of:

(i) the nature and extent of the interest; and



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(ii) the relation of the interest to the affairs of the company; and

(b) be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

*Effect of contravention by director*

(4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

*Section does not apply to single director proprietary company*

(5) This section does not apply to a proprietary company that has only 1 director.

## 192 Director may give other directors standing notice about an interest

*Power to give notice*

(1) A director of a company who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

(2) The notice under subsection (1) must:

(a) give details of the nature and extent of the interest; and

(b) be given:

(i) at a directors' meeting (either orally or in writing); or

(ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.



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*Standing notice must be tabled at meeting if given to directors individually*

(3) If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.

*Nature and extent of interest must be recorded in minutes*

(4) The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

*Dates of effect and expiry of standing notice*

(5) The standing notice:
  (a) takes effect as soon as it is given; and
  (b) ceases to have effect if a person who was not a director of the company at the time when the notice was given is appointed as a director of the company.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Note: The notice may be given to the person referred to in paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

*Effect of material increase in nature or extent of interest*

(6) The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

*Effect of contravention by director*

(7) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.



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## 193 Interaction of sections 191 and 192 with other laws etc.

Sections 191 and 192 have effect in addition to, and not in derogation of:

(a) any general law rule about conflicts of interest; and

(b) any provision in a company's constitution (if any) that restricts a director from:

(i) having a material personal interest in a matter; or

(ii) holding an office or possessing property;

involving duties or interests that conflict with their duties or interests as a director.

## 194 Voting and completion of transactions—directors of proprietary companies (*replaceable rule—see section 135*)

If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:

(a) under section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or

(b) the interest is one that does not need to be disclosed under section 191;

then:

(c) the director may vote on matters that relate to the interest; and

(d) any transactions that relate to the interest may proceed; and

(e) the director may retain benefits under the transaction even though the director has the interest; and

(f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).



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## 195 Restrictions on voting—directors of public companies only

*Restrictions on voting and being present*

(1) A director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not:
  (a) be present while the matter is being considered at the meeting; or
  (b) vote on the matter.

(1A) Subsection (1) does not apply if:
  (a) subsection (2) or (3) allows the director to be present; or
  (b) the interest does not need to be disclosed under section 191.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(1B) An offence based on subsection (1) is an offence of strict liability.

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

*Participation with approval of other directors*

(2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
  (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
  (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

*Participation with ASIC approval*

(3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.



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*Director may consider or vote on resolution to deal with matter at general meeting*

(4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

*Effect of contravention by director*

(5) A contravention by a director of:
  (a) this section; or
  (b) a condition attached to a declaration or order made by ASIC under section 196;

does not affect the validity of any resolution.

## 196 ASIC power to make declarations and class orders

*ASIC's power to make specific declarations*

(1) ASIC may declare in writing that a director of a public company who has a material personal interest in a matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, ASIC may only make the declaration if:
  (a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors' meeting if the director were not allowed to vote on the matter at the meeting; and
  (b) the matter needs to be dealt with urgently, or there is some other compelling reason for the matter being dealt with at the directors' meeting, rather than by a general meeting called under subsection 195(4).

(2) The declaration may:
  (a) apply to all or only some of the directors; or



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(b) specify conditions that the company or director must comply with.

*ASIC's power to make class orders*

(3) ASIC may make an order in writing that enables directors who have a material personal interest in a matter to be present while the matter is being considered at a directors' meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of public companies, directors, resolutions or interests.

(4) The order may be expressed to be subject to conditions.

(5) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.



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## Division 3—Duty to discharge certain trust liabilities

### 197 Directors liable for debts and other obligations incurred by corporation as trustee

(1) A person who is a director of a corporation when it incurs a liability while acting, or purporting to act, as trustee, is liable to discharge the whole or a part of the liability if the corporation:

(a) has not discharged, and cannot discharge, the liability or that part of it; and

(b) is not entitled to be fully indemnified against the liability out of trust assets solely because of one or more of the following:

(i) a breach of trust by the corporation;

(ii) the corporation's acting outside the scope of its powers as trustee;

(iii) a term of the trust denying, or limiting, the corporation's right to be indemnified against the liability.

The person is liable both individually and jointly with the corporation and anyone else who is liable under this subsection.

Note: The person will not be liable under this subsection merely because there are insufficient trust assets out of which the corporation can be indemnified.

(2) The person is not liable under subsection (1) if the person would be entitled to have been fully indemnified by 1 of the other directors against the liability had all the directors of the corporation been trustees when the liability was incurred.

(3) This section does not apply to a liability incurred outside Australia by a foreign company.

(3A) This section does not apply to a liability incurred by a corporation that is:

(a) a notified foreign passport fund; or

(b) the operator of a notified foreign passport fund acting in that capacity.



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(4) This section does not apply to a liability incurred by a registrable Australian body outside its place of origin.

(5) This section does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Section 271-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* deals with the liability of directors of Aboriginal and Torres Strait Islander corporations for debts and other liabilities incurred by those corporations as trustee.



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## Division 4—Powers

### 198A Powers of directors (*replaceable rule—see section 135*)

(1) The business of a company is to be managed by or under the direction of the directors.

Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

(2) The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

### 198B Negotiable instruments (*replaceable rule—see section 135*)

(1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

(2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

### 198C Managing director (*replaceable rule—see section 135*)

(1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.

(2) The directors may revoke or vary a conferral of powers on the managing director.

### 198D Delegation

(1) Unless the company's constitution provides otherwise, the directors of a company may delegate any of their powers to:



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(a) a committee of directors; or
(b) a director; or
(c) an employee of the company; or
(d) any other person.

Note: The delegation must be recorded in the company's minute book (see section 251A).

(2) The delegate must exercise the powers delegated in accordance with any directions of the directors.

(3) The exercise of the power by the delegate is as effective as if the directors had exercised it.

## 198E Single director/shareholder proprietary companies

*Powers of director*

(1) The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

Note: For example, the director may issue shares, borrow money and issue debentures.

*Negotiable instruments*

(2) The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.



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## 198F Right of access to company books

*Right while director*

(1) A director of a company may inspect the books of the company (other than its financial records) at all reasonable times for the purposes of a legal proceeding:
   (a) to which the person is a party; or
   (b) that the person proposes in good faith to bring; or
   (c) that the person has reason to believe will be brought against them.

Note: Section 290 gives the director a right of access to financial records.

*Right during 7 years after ceasing to be director*

(2) A person who has ceased to be a director of a company may inspect the books of the company (including its financial records) at all reasonable times for the purposes of a legal proceeding:
   (a) to which the person is a party; or
   (b) that the person proposes in good faith to bring; or
   (c) that the person has reason to believe will be brought against them.

This right continues for 7 years after the person ceased to be a director of the company.

*Right to take copies*

(3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

*Company not to refuse access*

(4) A company must allow a person to exercise their rights to inspect or take copies of the books under this section.



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*Interaction with other rules*

(5) This section does not limit any right of access to company books that a person has apart from this section.



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# Division 5—Exercise of powers while company under external administration

## 198G Exercise of powers while company under external administration

*Powers of officers while company under external administration*

(1) While a company is under external administration, an officer of the company must not perform or exercise a function or power of that office.

*Offence*

(2) A person commits an offence if:
  (a) the person is an officer of a company; and
  (b) the company is under external administration; and
  (c) the person purports to perform or exercise a function or power of that office.

Penalty: 30 penalty units.

*Exceptions*

(3) Subsections (1) and (2) do not apply to the extent that the officer of the company is acting:
  (a) as the external administrator of the company; or
  (b) with the written approval of the external administrator of the company or the Court; or
  (c) in circumstances in which, despite the fact that the company is under external administration, the officer is permitted by this Act to act.

Note: In proceedings to determine whether a person has committed an offence under subsection (2), a defendant bears an evidential burden in relation to the matters in subsection (3), see subsection 13.3(3) of the *Criminal Code*.



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(4) Subsections (1) and (2) do not apply if the company has executed a deed of company arrangement and the deed has not yet terminated.

Note 1: Section 444G deals with the effect of a deed of company arrangement on various persons.

Note 2: In proceedings to determine whether a person has committed an offence under subsection (2), a defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

*Functions and powers of liquidator or provisional liquidator prevail in case of conflict*

(5) If subsection (3) applies and there is a conflict between a function or power of the external administrator of the company and a function or power of the officer in relation to the company, the external administrator's function or power prevails.

*Effect of section*

(6) This section does not remove an officer of a company from office.

(7) For the purposes of this section, a person is not an officer of a company merely because he or she is a managing controller, appointed under a power contained in an instrument, of property of the company.

(8) Nothing in this section affects a secured creditor's right to realise or otherwise deal with the security interest.

*Definitions*

(9) In this section:

***external administration*** of a company has the same meaning as in Schedule 2.

***external administrator*** of a company has the same meaning as in Schedule 2.



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# Part 2D.2—Restrictions on indemnities, insurance and termination payments

## Division 1—Indemnities and insurance for officers and auditors

### 199A Indemnification and exemption of officer or auditor

*Exemptions not allowed*

(1) A company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as an officer or auditor of the company.

*When indemnity for liability (other than for legal costs) not allowed*

(2) A company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:

(a) a liability owed to the company or a related body corporate;

(b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE;

(c) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

*When indemnity for legal costs not allowed*

(3) A company or related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs



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incurred in defending an action for a liability incurred as an officer or auditor of the company if the costs are incurred:

(a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or

(b) in defending or resisting criminal proceedings in which the person is found guilty; or

(c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or

(d) in connection with proceedings for relief to the person under this Act in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

Note 1: Paragraph (c)—This includes proceedings by ASIC for an order under section 206C, 206D, 206E or 206EAA (disqualification), section 232 (oppression), section 961M, 1317E, 1317G, 1317H, 1317HA, 1317HB, 1317HC or 1317HE (civil penalties) or section 1324 (injunction).

Note 2: The company may be able to give the person a loan or advance in respect of the legal costs (see section 212).

(4) For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

## 199B Insurance premiums for certain liabilities of director, secretary, other officer or auditor

(1) A company or a related body corporate must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against a liability (other than one for legal costs) arising out of:

(a) conduct involving a wilful breach of duty in relation to the company; or

(b) a contravention of section 182 or 183.



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This section applies to a premium whether it is paid directly or through an interposed entity.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 199C Certain indemnities, exemptions, payments and agreements not authorised and certain documents void

(1) Sections 199A and 199B do not authorise anything that would otherwise be unlawful.

(2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 199A or 199B.



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# Division 2—Termination payments

## 200 Interpreting this Division

For the purposes of this Division, in determining whether a benefit is given:

(a) give a broad interpretation to benefits being given, even if criminal or civil penalties may be involved; and

(b) the economic and commercial substance of conduct is to prevail over its legal form.

## 200AA Meaning of *managerial or executive office*

*If the company is a disclosing entity*

(1) For a company to which section 300A applies for the previous financial year for the company, a person holds a ***managerial or executive office*** in the company during the current financial year if the person's details were included in the directors' report for that previous financial year for the company in accordance with paragraph 300A(1)(c).

Note: A person holding a managerial or executive office ceases to do so if the person's details are not included in the next directors' report. However, this is not relevant to whether the person has retired from an office or position in the company (see paragraph 200A(1)(f)).

(2) The person is taken to hold the managerial or executive office for the whole of the current financial year unless and until the person retires from an office or position in the company before the end of that year.

Note: ***Retires*** has an extended meaning (see section 200A).

*Otherwise*

(3) For a body corporate not covered by subsection (1), a ***managerial or executive office*** for the body corporate is:

(a) an office of director of the body corporate; or



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(b) any other office or position in connection with the management of the body corporate's affairs that is held by a person who also holds an office of director of the body corporate or a related body corporate.

## 200AB Meaning of *benefit*

(1) For the purposes of this Division, a ***benefit*** includes any of the following:

(a) a payment or other valuable consideration;

(b) any kind of real or personal property;

(c) any legal or equitable estate or interest in real or personal property;

(d) any legal or equitable right;

(e) a thing specified in regulations made for the purposes of this paragraph.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) However, for the purposes of this Division, a ***benefit*** does not include a thing specified in regulations made for the purposes of this subsection.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

## 200A When benefit given in connection with retirement from an office or position

*General rules*

(1) For the purposes of this Division:

(a) a benefit is given in connection with a person's retirement from an office or position if the benefit is given:

(i) by way of compensation for, or otherwise in connection with, the loss by the person of the office or position; or

(ii) in connection with the person's retirement from the office or position; and



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(b) giving a benefit includes:
  (i) if the benefit is a payment—making the payment; and
  (ii) if the benefit is an interest in property—transferring the interest; and
(c) a person gives a benefit even if the person is obliged to give the benefit under a contract; and
(d) a pension or lump sum is paid or payable in connection with the person's retirement from an office or position if the pension or lump sum is paid or payable:
  (i) by way of compensation for, or otherwise in connection with, the loss by the person of the office or position; or
  (ii) in connection with the person's retirement from the office or position; and
(e) retirement from an office or position includes:
  (i) loss of the office or position; and
  (ii) resignation from the office or position; and
  (iii) death of a person at a time when they hold the office or position; and
(f) when working out whether a person has retired from an office or position, disregard whether or not the person's details are included in a directors' report in accordance with paragraph 300A(1)(c).

*Rules in regulations*

(1A) Without limiting subsection (1), a benefit is given in connection with a person's retirement from an office or position if the benefit is given in circumstances specified in regulations made for the purposes of this subsection.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*Related benefits*

(2) For the purposes of this Division, if:
(a) a person (***person A***) gives another person a benefit (***benefit A***); and



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(b) person A gives benefit A for the purpose, or for purposes including the purpose, of enabling or assisting someone to give a person a benefit in connection with the retirement of a person (***person B***) from an office or position;

person A is taken to give benefit A in connection with the person B's retirement from that office or position.

## 200B Retirement benefits generally need membership approval

*Benefits in connection with retirement if person has held a managerial or executive office*

(1) An entity mentioned in subsection (1AA) must not give a person a benefit in connection with a person's (the ***retiree's***) retirement from an office, or position of employment, in a company or a related body corporate if:

(a) the office or position is a managerial or executive office; or

(b) the retiree has, at any time during the last 3 years before his or her retirement, held a managerial or executive office in the company or a related body corporate;

unless there is member approval under section 200E for the giving of the benefit.

Note 1: This subsection extends to benefits given by way of compensation for, or otherwise in connection with, a person's loss of an office or position (see subsections 200A(1) and (3)).

Note 2: Sections 200F, 200G and 200H provide for exceptions to this subsection.

Note 3: The recipient of the benefit need not be the retiree.

(1AA) The entities are as follows:

(a) the company;

(b) an associate of the company (other than a body corporate that is related to the company and is itself a company);

(c) a prescribed superannuation fund in relation to the company.



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(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the benefit is in connection with the retiree's, or someone else's, retirement.

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

*Prescribed superannuation funds*

(2) For the purposes of this section:

(a) a superannuation fund is taken to be a prescribed superannuation fund in relation to a company if the company, or an associate of the company, gives a benefit to the superannuation fund in prescribed circumstances; and

(b) if a prescribed superannuation fund in relation to a company gives a benefit to another superannuation fund in prescribed circumstances, the other superannuation fund is taken to be a prescribed superannuation fund in relation to the company.

*Prescribed circumstances*

(3) For the purposes of this section, if:

(a) a company, or an associate of a company, gives a benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a benefit in connection with the retiree's retirement from an office or position in the company or a related body corporate; or

(b) a superannuation fund gives a benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a benefit in connection with the retiree's retirement from an office or position in a company or a related body corporate;

the benefit first referred to in paragraph (a) or (b) is taken to be given in prescribed circumstances.

(4) In this section:

***superannuation fund*** means a provident, benefit, superannuation or retirement fund.



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## 200C Benefits on transfer of undertaking or property need membership approval

(1) A person must not give a benefit to a person who:
  (a) holds, or has at any previous time held, a managerial or executive office in a company or a related body corporate; or
  (b) is the spouse of a person referred to in paragraph (a); or
  (c) is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
  (d) is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

in connection with the transfer of the whole or any part of the undertaking or property of the company.

(2) For an offence based on subsection (1), strict liability applies to the circumstance, that the transfer is in connection with the transfer of the whole or any part of the undertaking or property of the company.

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

(3) Subsection (1) does not apply to the extent that there is member approval under section 200E.

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

## 200D Contravention to receive benefit without member approval

(1) A person who:
  (a) holds, or has at any previous time held, a managerial or executive office in a company or related body corporate; or
  (b) is the spouse of a person referred to in paragraph (a); or
  (c) is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
  (d) is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;

must not receive a benefit if the giving of the benefit contravenes section 200B or 200C.



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(2) An offence based on subsection (1) is an offence of strict liability.

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

## 200E Approval by members

*Conditions for member approval*

(1) For the purposes of section 200B, the conditions set out in subsections (1B), (2) and (2A) must be satisfied for there to be member approval under this section for the giving of the benefit to the person in connection with the retiree's retirement from the office or position.

(1A) For the purposes of section 200C, the conditions set out in subsections (1B) and (2) must be satisfied for there to be member approval under this section for the giving of the benefit.

*First condition*

(1B) The first condition is that the giving of the benefit be approved by a resolution passed at a general meeting of:

(a) the company; and

(b) if the company is a subsidiary of a listed domestic corporation—the listed corporation; and

(c) if the company has a holding company that:

(i) is a domestic corporation that is not listed; and

(ii) is not itself a subsidiary of a domestic corporation;

the holding company.

*Second condition*

(2) The second condition is that details of the benefit must be set out in, or accompany, the notice of the general meeting that is to consider the resolution. The details must include:

(a) if the proposed benefit is a payment:

(i) the amount of the payment; or



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(ii) if that amount cannot be ascertained at the time of the disclosure—the manner in which that amount is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that amount; and

(b) otherwise:

(i) the money value of the proposed benefit; or

(ii) if that value cannot be ascertained at the time of the disclosure—the manner in which that value is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that value.

These requirements are in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to giving or receiving a benefit.

*Third condition—for approvals relating to section 200B*

(2A) The third condition is that at the general meeting, a vote on the resolution must not be cast (in any capacity) by or on behalf of:

(a) the retiree; or

(b) an associate of the retiree.

(2B) Subsection (2A) does not prevent the casting of a vote if:

(a) it is cast by a person as a proxy appointed by writing that specifies how the proxy is to vote on the resolution; and

(b) it is not cast on behalf of the retiree or an associate of the retiree.

(2C) The regulations may prescribe cases where subsection (2A) does not apply.

*Meeting may approve a lesser benefit*

(3) For the purposes of subsection (1B), the resolution may give approval by approving the giving of another benefit to the person if:

(a) the other benefit is given to the person instead of the proposed benefit; and



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(b) the amount or money value of the benefit is less than the amount or money value of the proposed benefit.

*Effect of approval on directors' duties*

(4) Member approval under this section does not relieve a director of a body corporate from any duty to the body corporate (whether under section 180, 181, 182, 183 or 184 or otherwise and whether of a fiduciary nature or not) in connection with the giving of the benefit.

## 200F Exempt benefits and benefits given in certain circumstances

(1) Subsection 200B(1) does not apply to:
  (a) a benefit that is a payment made in respect of leave of absence to which the person is entitled under an industrial instrument; or
  (aa) a benefit given under an order of a court; or
  (b) a benefit given in prescribed circumstances.

(2) Subsection 200B(1) does not apply to a benefit given in connection with a person's retirement from an office or position in relation to a company if:
  (a) the benefit is:
    (i) a genuine payment by way of damages for breach of contract; or
    (ii) given to the person under an agreement made between the company and the person before the person became the holder of the office or position as the consideration, or part of the consideration, for the person agreeing to hold the office or position; and
  (b) the value of the benefit, when added to the value of all other benefits (if any) already given in connection with the person's retirement from offices or positions in the company and related bodies corporate, does not exceed the amount worked out under whichever of subsections (3) and (4) is applicable.



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(3) This subsection applies if the relevant period for the person is less than 1 year. The amount worked out under this subsection is:

$$\frac{\text{Estimated annual base salary} \times \text{Number of days in relevant period}}{365}$$

where:

***estimated annual base salary*** is a reasonable estimate of the base salary that the person would have received from the company and related bodies corporate during the relevant period if the relevant period had been 1 year.

Note: The ***relevant period*** for the person is defined in subsection (5).

(4) This subsection applies in every other case. The amount worked out under this subsection is:

(a) if the relevant period is 1 year—the base salary that the person received from the company and related bodies corporate during the relevant period; or

(b) if the relevant period is more than 1 year but less than 2 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period, worked out as if:

(i) the relevant period were 2 years; and

(ii) the person's annual base salary for the second year were a reasonable estimate of what the person would have received as base salary after the first year of the relevant period had the relevant period been 2 years; or

(c) if the relevant period is 2 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period; or

(d) if the relevant period is more than 2 years but less than 3 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period, worked out as if:

(i) the relevant period were 3 years; and



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(ii) the person's annual base salary for the third year were a reasonable estimate of what the person would have received as base salary after the second year of the relevant period had the relevant period been 3 years; or

(e) if the relevant period is 3 years or more—the average annual base salary that the person received from the company and related bodies corporate during the last 3 years of the relevant period.

(5) For the purposes of this section, if a person has held a managerial or executive office in relation to a company:

(a) throughout a period; or

(b) throughout a number of periods;

the ***relevant period*** for that person is that period or the period consisting of those periods.

## 200G Genuine payments of pension and lump sum

(1) Subsection 200B(1) does not apply to a benefit if:

(a) the benefit is a payment in connection with a person's retirement from an office or position in a company or a related body corporate; and

(b) the payment is for past services the person rendered to:

(i) the company; or

(ii) a related body corporate; or

(iii) a body that was a related body corporate of the company when the past services were rendered; and

(c) the value of the benefit, when added to the value of all other benefits (if any) already given in connection with the person's retirement from offices or positions in the company and related bodies corporate does not exceed the amount worked out under whichever of subsections (2) and (3) is applicable.

In applying paragraph (c), disregard any pensions or lump sums that section 200F applies to.



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(2) This subsection applies if the relevant period for the person is less than 1 year. The amount worked out under this subsection is:

$$\frac{\text{Estimated annual base salary} \times \text{Number of days in relevant period}}{365}$$

where:

***estimated annual base salary*** is a reasonable estimate of the base salary that the person would have received from the company and related bodies corporate during the relevant period if the relevant period had been 1 year.

Note: The ***relevant period*** for the person is defined in subsection (6).

(3) This subsection applies in every other case. The amount worked out under this subsection is:

(a) if the relevant period is 1 year—the base salary that the person received from the company and related bodies corporate during the relevant period; or

(b) if the relevant period is more than 1 year but less than 2 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period, worked out as if:

(i) the relevant period were 2 years; and

(ii) the person's annual base salary for the second year were a reasonable estimate of what the person would have received as base salary after the first year of the relevant period had the relevant period been 2 years; or

(c) if the relevant period is 2 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period; or

(d) if the relevant period is more than 2 years but less than 3 years—the average annual base salary that the person received from the company and related bodies corporate during the relevant period, worked out as if:

(i) the relevant period were 3 years; and



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(ii) the person's annual base salary for the third year were a reasonable estimate of what the person would have received as base salary after the second year of the relevant period had the relevant period been 3 years; or

(e) if the relevant period is 3 years or more—the average annual base salary that the person received from the company and related bodies corporate during the last 3 years of the relevant period.

(4) In determining for the purposes of paragraph (1)(c) the value of a pension or lump sum payment, disregard any part of the pension or lump sum payment that is attributable to:

(a) a contribution made by the person; or

(b) a contribution made by a person other than:

(i) the company; or

(ii) a body corporate (a ***relevant body corporate***) that is a related body corporate of the company, or that was, when the contribution was made, such a related body corporate; or

(iii) an associate of the company, or of a relevant body corporate, in respect of:

(A) the payment of the pension, or the making of the lump sum payment, as the case may be; or

(B) the making of the contribution.

(6) In this section:

***payment*** means a payment by way of pension or lump sum and includes a superannuation, retiring allowance, superannuation gratuity or similar payment.

***relevant period***: if a person has held a managerial or executive office in the company or a related body corporate:

(a) throughout a period; or

(b) throughout a number of periods;

the ***relevant period*** for that person is that period or the period consisting of those periods.



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## 200H Benefits required by law

Subsection 200B(1) does not apply to a benefit given by a person if failure to give the benefit would constitute a contravention of a law in force in Australia or elsewhere (otherwise than because of breach of contract or breach of trust).

## 200J Benefits to be held on trust and repaid

(1) If an entity (the ***giver***) contravenes section 200B by giving a benefit to a person (the ***recipient***), then the amount of the benefit, or the money value of the benefit if it is not a payment:
  (a) is taken to be received by the recipient on trust for the giver; and
  (b) must be immediately repaid by the recipient to the giver.

(1A) An amount repayable under subsection (1) to the giver:
  (a) is a debt due to the giver; and
  (b) may be recovered by the giver in a court of competent jurisdiction.

(2) Subsection (1) applies to the whole of the amount of a payment or of the money value of the benefit even though giving the benefit would not have contravened section 200B if that amount or value of the benefit had been less.



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# Part 2D.3—Appointment, remuneration and cessation of appointment of directors

## Division 1—Appointment of directors

### Subdivision A—General rules

#### 201A Minimum number of directors

*Proprietary companies*

(1) A proprietary company must have at least 1 director. That director must ordinarily reside in Australia.

(1A) However, a proprietary company must have at least 2 directors while the company has one or more CSF shareholders. Of those directors:

(a) if there are only 2 of them—at least one of them must ordinarily reside in Australia; or

(b) otherwise—a majority of them must ordinarily reside in Australia.

Note: The company must also have at least 2 directors when making the CSF offer (see paragraph 738H(1)(a)).

*Public companies*

(2) A public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in Australia.

#### 201B Who can be a director

(1) Only an individual who is at least 18 may be appointed as a director of a company.



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(2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as director of a company if the appointment is made with permission granted by ASIC under section 206GAB or leave granted by the Court under section 206G.

## 201D Consent to act as director

(1) A company contravenes this subsection if a person does not give the company a signed consent to act as a director of the company before being appointed.

(2) The company must keep the consent.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 201E Special rules for the appointment of public company directors

(1) A resolution passed at a general meeting of a public company appointing or confirming the appointment of 2 or more directors is void unless:
   (a) the meeting has resolved that the appointments or confirmations may be voted on together; and
   (b) no votes were cast against the resolution.

(2) This section does not affect:
   (a) a resolution to appoint directors by an amendment to the company's constitution (if any); or
   (b) a ballot or poll to elect 2 or more directors if the ballot or poll does not require members voting for 1 candidate to vote for another candidate.

(3) For the purposes of paragraph (2)(b), a ballot or poll does not require a member to vote for a candidate merely because the member is required to express a preference among individual candidates in order to cast a valid vote.



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## 201F Special rules for the appointment of directors for single director/single shareholder proprietary companies

(1) The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record.

*Appointment of new director on death, mental incapacity or bankruptcy*

(2) If a person who is the only director and the only shareholder of a proprietary company:
  (a) dies; or
  (b) cannot manage the company because of the person's mental incapacity;

and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

(3) If:
  (a) the office of the director of a proprietary company is vacated under subsection 206B(3) or (4) because of the bankruptcy of the director; and
  (b) the person is the only director and the only shareholder of the company; and
  (c) a trustee in bankruptcy is appointed to the person's property;

the trustee may appoint a person as the director of the company.

(4) A person who has a power of appointment under subsection (2) or (3) may appoint themselves as director.

(5) A person appointed as a director of a company under subsection (2), (3) or (4) holds office as if they had been appointed in the usual way.



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## 201G Company may appoint a director *(replaceable rule—see section 135)*

A company may appoint a person as a director by resolution passed in general meeting.

## 201H Directors may appoint other directors *(replaceable rule—see section 135)*

*Appointment by other directors*

(1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

*Proprietary company—confirmation by meeting within 2 months*

(2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

*Public company—confirmation by next AGM*

(3) If a person is appointed by the other directors as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

## 201J Appointment of managing directors *(replaceable rule—see section 135)*

The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.



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## 201K Alternate directors *(replaceable rule—see section 135)*

(1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

(2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

(3) When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.

(4) The appointing director may terminate the alternate's appointment at any time.

(5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

## 201L Signpost—ASIC to be notified of appointment

Under section 205B, a company must notify ASIC within 28 days if a person is appointed as a director or as an alternate director.

## 201M Effectiveness of acts by directors

(1) An act done by a director is effective even if their appointment, or the continuance of their appointment, is invalid because the company or director did not comply with the company's constitution (if any) or any provision of this Act.

(2) Subsection (1) does not deal with the question whether an effective act by a director:

(a) binds the company in its dealings with other people; or

(b) makes the company liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a director (for example,



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calling a meeting of the company's members or signing a document to be lodged with ASIC or minutes of a meeting). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

## Subdivision B—Limits on numbers of directors of public companies

### 201N Application of Subdivision

(1) This Subdivision applies in relation to a public company if its constitution allows its directors to set a limit (a ***board limit***) whose effect is to restrict the number of directors of the company to a number less than the maximum number of directors specified in the constitution.

Note: This Subdivision applies however the constitution or board limit is expressed.

(2) If a company's constitution provides that the maximum number of directors is either a specified number or another number determined by the directors:

(a) any number determined by the directors that is lower than the specified number is a ***board limit***; and

(b) any lowering by the directors of that lower number is also a ***board limit***.

(3) Subsection (2) does not limit, and is not limited by, subsection (1).

### 201P Directors must not set board limit unless proposed limit has been approved by general meeting

(1) The directors must not set a board limit unless:

(a) a resolution (a ***board limit resolution***) approving the proposal to set the limit specified in the resolution has been passed by a general meeting of the company; and

(b) the notice of the meeting set out an intention to propose the board limit resolution and stated the resolution; and



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(c) the notice was accompanied by a statement explaining the resolution and meeting the requirements in section 201Q.

Note 1: Subsection 249L(3) requires information in the notice of meeting to be presented clearly, concisely and effectively.

Note 2: Section 201U specifies the consequences of a contravention of subsection (1) of this section. Also, section 1324 provides for injunctions to enforce subsection (1) of this section.

(2) A board limit resolution has effect until immediately before the start of the first AGM of the company after the general meeting by which the resolution was passed.

(3) A board limit resolution does not prevent the appointment of a person as a director of the company by the other directors of the company between general meetings of the company.

(4) However, if a person is appointed by the other directors as a director of the company while a board limit resolution has effect, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

(5) Subsections (1), (2) and (4) have effect despite the company's constitution.

Note: Although subsection (4) is like subsection 201H(3) in many ways, it is not a replaceable rule like subsection 201H(3).

## 201Q Requirements for explanatory statement to members

The statement accompanying the notice of a general meeting stating an intention to propose the board limit resolution must be in writing and set out clearly, concisely and effectively:

(a) the directors' reasons for proposing the board limit resolution; and

(b) all other information that:

(i) is reasonably required by members in order to decide whether or not it is in the company's interests to pass the proposed board limit resolution; and



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(ii) is known to the company or to any of its directors.

Note: Section 1309 creates offences where false and misleading material relating to a corporation's affairs is made available or furnished to members.

## 201R Records of voting on board limit resolution if poll demanded

(1) This section applies if a poll is duly demanded on the question that the board limit resolution be passed.

(2) For each member of the company who votes on the poll in person, the company must record in writing:
  (a) the member's name; and
  (b) how many votes the member casts for the resolution and how many against.

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

(3) For each member of the company who votes on the poll by proxy, or by a representative authorised under section 250D, the company must record in writing:
  (a) the member's name; and
  (b) in relation to each person who votes as proxy, or as such a representative, for the member:
    (i) the person's name; and
    (ii) how many votes the person casts on the resolution as proxy, or as such a representative, for the member; and
    (iii) how many of those votes the person casts for the resolution and how many against.

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

## 201S Notice of resolution to be lodged

The company must lodge a notice setting out the text of the board limit resolution within 14 days after the resolution is passed.



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## 201T Declaration by court of substantial compliance

(1) The Court may declare that a requirement set by section 201Q, 201R or 201S has been satisfied if the Court finds that it has been substantially satisfied.

(2) A declaration may be made only on the application of an interested person.

## 201U Consequences of setting board limit in breach of section 201P

*Application*

(1) This section applies if the directors of the company set a board limit in contravention of subsection 201P(1).

*Board limit etc. ineffective*

(2) The board limit and anything done in reliance on it have no effect for the purposes of:
   (a) the company's constitution; or
   (b) this Act, except this section.

Note: If a board limit resolution is not passed, the number of directors of a company that can be appointed (for example by a general meeting) depends on the maximum number of directors specified by the company's constitution. This is so even if the directors purport to set a board limit despite the fact the board limit resolution was not passed.

(3) If:
   (a) one or more directors are appointed by one or more resolutions passed at a particular general meeting of the company; and
   (b) because of the board limit, the general meeting was not given the opportunity to pass one or more resolutions appointing a number of directors such that the number of directors of the company would (if those resolutions had been passed) have exceeded the board limit;

   every appointment of director made by a resolution passed at the general meeting is invalid.



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Note: This subsection does not apply if a shortage of persons consenting to be appointed director was the reason the general meeting was not given the opportunity to pass one or more resolutions appointing a number of directors such that the number of directors of the company would (if those resolutions had been passed) have exceeded the board limit.

(4) Subsections (2) and (3) have effect despite anything else in the company's constitution or in this Act, except sections 128, 129 and 201M.

Note: Sections 128 and 129 deal with assumptions a person dealing with the company may make, including assumptions about the due appointment of directors. Section 201M deals with effectiveness of acts by a director in circumstances where the director's appointment is invalid for certain reasons.

*Company and candidates for directors may seek compensation*

(5) Subsection (6) applies if either of the following (the ***suffering party***) suffers loss or damage because of the setting of the board limit in contravention of subsection 201P(1):

(a) the company;

(b) a person for whom both the following conditions are met:

(i) the person had given the company a written indication that he or she would be a candidate to be appointed director at a general meeting;

(ii) because of the board limit, the general meeting was not given the opportunity to consider passing a resolution to appoint the person as director.

(6) The suffering party may institute a proceeding in the Court for the contravention.

Note: Section 1325 deals with the orders the Court may make to compensate the suffering party for the loss.

*Contravention does not give rise to an offence*

(7) A person is not guilty of an offence because of the contravention.



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## Division 2—Remuneration of directors

### 202A Remuneration of directors *(replaceable rule—see section 135)*

(1) The directors of a company are to be paid the remuneration that the company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

(2) The company may also pay the directors' travelling and other expenses that they properly incur:

(a) in attending directors' meetings or any meetings of committees of directors; and

(b) in attending any general meetings of the company; and

(c) in connection with the company's business.

### 202B Members may obtain information about directors' remuneration

(1) A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by:

(a) members with at least 5% of the votes that may be cast at a general meeting of the company; or

(b) at least 100 members who are entitled to vote at a general meeting of the company.

The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

(1A) An offence based on subsection (1) is an offence of strict liability.

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

(2) The company must comply with the direction as soon as practicable by:



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(a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and
(b) having the statement audited; and
(c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

## 202C Special rule for single director/single shareholder proprietary companies

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.



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## Division 3—Resignation, retirement or removal of directors

### 203A Director may resign by giving written notice to company *(replaceable rule—see section 135)*

A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

### 203B Signpost to consequences of disqualification from managing corporations

A person ceases to be a director of a company if the person becomes disqualified from managing corporations under Part 2D.6 (see subsection 206A(2)) unless ASIC or the Court allows them to manage the company (see sections 206GAB and 206G).

### 203C Removal by members—proprietary companies *(replaceable rule—see section 135)*

A proprietary company:

(a) may by resolution remove a director from office; and

(b) may by resolution appoint another person as a director instead.

### 203D Removal by members—public companies

*Resolution for removal of director*

(1) A public company may by resolution remove a director from office despite anything in:

(a) the company's constitution (if any); or

(b) an agreement between the company and the director; or

(c) an agreement between any or all members of the company and the director.



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If the director was appointed to represent the interests of particular shareholders or debenture holders, the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.

Note: See sections 249C to 249G for the rules on who may call meetings, sections 249H to 249M on how to call meetings and sections 249N to 249Q for rules on members' resolutions.

*Notice of intention to move resolution for removal of director*

(2) Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

*Director to be informed*

(3) The company must give the director a copy of the notice as soon as practicable after it is received.

*Director's right to put case to members*

(4) The director is entitled to put their case to members by:
  (a) giving the company a written statement for circulation to members (see subsections (5) and (6)); and
  (b) speaking to the motion at the meeting (whether or not the director is a member of the company).

(5) The written statement is to be circulated by the company to members by:
  (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
  (b) if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.



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(6) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

*Time of retirement*

(7) If a person is appointed to replace a director removed under this section, the time at which:
  (a) the replacement director; or
  (b) any other director;
is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.

*Strict liability offences*

(8) An offence based on subsection (3) or (5) is an offence of strict liability.

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

## 203E Director cannot be removed by other directors—public companies

A resolution, request or notice of any or all of the directors of a public company is void to the extent that it purports to:
  (a) remove a director from their office; or
  (b) require a director to vacate their office.

## 203F Termination of appointment of managing director *(replaceable rule—see section 135)*

(1) A person ceases to be managing director if they cease to be a director.

(2) The directors may revoke or vary an appointment of a managing director.



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# Part 2D.4—Appointment of secretaries

## 204A Minimum number of secretaries

*Proprietary companies*

(1) A proprietary company is not required to have a secretary but, if it does have 1 or more secretaries, at least 1 of them must ordinarily reside in Australia.

*Public companies*

(2) A public company must have at least 1 secretary. At least 1 of them must ordinarily reside in Australia.

*Strict liability offences*

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 204B Who can be a secretary

(1) Only an individual who is at least 18 may be appointed as a secretary of a company.

(2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as a secretary of a company if the appointment is made with permission granted by ASIC under section 206GAB or leave granted by the Court under section 206G.

## 204C Consent to act as secretary

(1) A company contravenes this subsection if a person does not give the company a signed consent to act as secretary of the company before being appointed.



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(2) The company must keep the consent.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 204D How a secretary is appointed

A secretary is to be appointed by the directors.

Note 1: The company must notify ASIC of the appointment within 28 days (see subsection 205B(1)).

Note 2: Section 188 deals with the responsibilities of secretaries for contraventions by the company.

## 204E Effectiveness of acts by secretaries

(1) An act done by a secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the company or secretary did not comply with the company's constitution (if any) or any provision of this Act.

(2) Subsection (1) does not deal with the question whether an effective act by a secretary:

(a) binds the company in its dealings with other people; or

(b) makes the company liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a secretary (for example, signing and sending out a notice of a meeting of directors if the company's constitution authorises the secretary to do so or signing a document to be lodged with ASIC). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

## 204F Terms and conditions of office for secretaries (*replaceable rule—see section 135*)

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.



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## 204G Signpost to consequences of disqualification from managing corporations

A person ceases to be a secretary of a company if the person becomes disqualified from managing corporations under Part 2D.6 (see subsection 206A(2)) unless ASIC or the Court allows them to manage the company (see sections 206GAB and 206G).



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# Part 2D.5—Public information about directors and secretaries

## 205A Director, secretary or alternate director may notify ASIC of resignation or retirement

(1) If a director, secretary or alternate director retires or resigns, they may give ASIC written notice of the retirement or resignation. The notice must be in the prescribed form.

(2) To be effective, a notice of resignation must be accompanied by a copy of the letter of resignation given to the company.

Note: If a director, secretary or alternative director of a company gives a written notice in accordance with this section, the company is not required to lodge a notice with ASIC under subsection 205B(5) (see subsection 205B(6)).

## 205B Notice of name and address of directors and secretaries to ASIC

*New directors or secretaries*

(1) A company must lodge with ASIC a notice of the personal details of a director or secretary within 28 days after they are appointed. The notice must be in the prescribed form.

Note 1: If a person becomes a director under subsection 120(1) there is no appointment and no notice is required under this subsection.

Note 2: If a person who was appointed as an alternate director becomes a director under the terms of their appointment as an alternate director, there is no appointment as a director and no notice is required under this subsection.

*New alternate directors*

(2) A company must lodge with ASIC a notice of:



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(a) the personal details of a person who is appointed as an alternate director; and
(b) the terms of their appointment (including terms about when the alternate director is to act as a director);

within 28 days after their appointment as an alternate director. The notice must be in the prescribed form.

*Personal details*

(3) The personal details of a director, alternate director, or secretary are:
(a) their given and family names; and
(b) all of their former given and family names; and
(c) their date and place of birth; and
(d) their address.

Note: For ***address*** see section 205D.

*Changes in details*

(4) The company must lodge with ASIC notice of any change in the personal details of a director, alternate director or secretary within 28 days after the change. The notice must be in the prescribed form.

*Notice required if person stops being a director or secretary*

(5) If a person stops being a director, alternate director or secretary of the company, the company must lodge with ASIC notice of the fact within 28 days. The notice must be in the prescribed form.

(6) Subsection (5) does not apply if:
(a) the person was an alternate director who stopped being a director in accordance with the terms of their appointment as an alternate director; or
(b) the person gives ASIC a written notice of the person's retirement or resignation as a director, alternate director or secretary of the company in accordance with section 205A.



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

(7) An offence based on subsection (1), (2), (4) or (5) is an offence of strict liability.

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

## 205C Director and secretary must give information to company

(1) A director, alternate director or secretary must give the company any information the company needs to comply with subsection 205B(1) or (2) within 7 days after their initial appointment unless they have previously given the information to the company.

(2) A director, alternate director or secretary must give the company any information the company needs to comply with subsection 205B(4) within 7 days after any change in their personal details.

(3) An offence based on subsection (1) or (2) is an offence of strict liability.

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

## 205D Address for officers

*Address is normally residential address*

(1) A person's address for the purposes of a notice or application under subsection 5H(2), 117(2), 205B(1), (2) or (4) or 601BC(2) must be their usual residential address unless they are entitled to have an alternative address substituted for their usual residential address under subsection (2).

*Entitlement to have alternative address*

(2) The person is entitled to have an alternative address substituted for their usual residential address if:



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(a) their name, but not their residential address, is on an electoral roll under the *Commonwealth Electoral Act 1918* because of section 104 of that Act; or

(b) their name is not on an electoral roll under that Act and ASIC determines, in writing, that including their residential address in the notice or application would put at risk their personal safety or the personal safety of members of their family.

This alternative address must be in Australia and be one at which documents can be served on the person. At any particular time, a person is entitled to have only 1 alternative address under this section.

Note: See subsection 109X(2) on the status of the alternative address as an address for service.

(3) A person who takes advantage of subsection (2) must:

(a) before or at the same time as the alternative address is first included in a notice or application, lodge with ASIC notice of the person's usual residential address; and

(b) lodge with ASIC notice of any change in the person's usual residential address within 14 days after the change.

A notice under this subsection must be in the prescribed form.

(4) If a court gives a judgment for payment of a sum of money against a person who is taking advantage of subsection (2), ASIC may give details of the person's usual residential address to an officer of the court for the purposes of enforcing the judgment debt.

## 205E ASIC's power to ask for information about person's position as director or secretary

(1) ASIC may ask a person, in writing, to inform ASIC:

(a) whether the person is a director or secretary of a particular company; and

(b) if the person is no longer a director or secretary of the company—the date on which the person stopped being a director or secretary.



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(2) The person must give the information to ASIC in writing by the date specified in the request.

(3) An offence based on subsection (2) is an offence of strict liability.

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

## 205F Director must give information to company

(1) A director must give the company any information affecting or relating to the director that the company needs, or will need, to comply with Chapter 6. The director must give the information to the company as soon as practicable after becoming aware that the company needs, or will need, the information. The company must give the information to each of the other directors of the company within 7 days of receiving it.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 205G Listed company—director to notify market operator of shareholdings etc.

*Notifiable interests*

(1) A director of a listed public company must notify the relevant market operator in accordance with subsections (2), (3) and (4) of the following interests of the director:
   (a) relevant interests in securities of the company or a related body corporate;
   (b) contracts:
      (i) to which the director is a party or under which the director is entitled to a benefit; and
      (ii) that confer a right to call for or deliver shares in, debentures of, or interests in a managed investment scheme made available by, the company or a related body corporate.



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Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

(2) A notice of a relevant interest in securities under paragraph (1)(a) must give details of:
  (a) the number of securities; and
  (b) the circumstances giving rise to the relevant interest.

*Occasions for initial notification*

(3) The director must notify the relevant market operator within 14 days after each of the following occasions:
  (a) appointment as a director of the company;
  (b) the listing of the company.

Paragraph (a) does not apply to a director who retires and is then reappointed at the same meeting.

Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

*Updating notices*

(4) The director must notify the relevant market operator within 14 days after any change in the director's interests.

Note: Under section 353, ASIC may determine conditions that must be complied with when lodging documents electronically under this subsection.

(5) The director need not give the information to the relevant market operator under this section if the director has already given the information to the relevant market operator.

*ASIC's power to make class orders*

(6) ASIC may make an order in writing relieving a director of the obligation to notify the relevant market operator of an interest in a security or contract. The order may be made in respect of a specified class of companies, directors, securities or contracts.



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(7) The order may be expressed to be subject to conditions.

(8) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

*Fault-based offence*

(9) A person commits an offence if the person contravenes subsection (1).

*Strict liability offence*

(10) A person commits an offence of strict liability if the person contravenes subsection (1).



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# Part 2D.6—Disqualification from managing corporations

## 206A Disqualified person not to manage corporations

(1) A person who is disqualified from managing corporations under this Part commits an offence if:

(a) they make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or

(b) they exercise the capacity to affect significantly the corporation's financial standing; or

(c) they communicate instructions or wishes (other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation) to the directors of the corporation:

(i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or

(ii) intending that the directors will act in accordance with those instructions or wishes.

Note: Under section 1274AA, ASIC is required to keep a record of persons disqualified from managing corporations.

(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the person is disqualified from managing corporations under this Part.

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

(1B) It is a defence to a contravention of subsection (1) if the person had permission to manage the corporation under either section 206GAB or 206G and their conduct was within the terms of that permission.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1B), see subsection 13.3(3) of the *Criminal Code*.



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(2) A person ceases to be a director, alternate director or a secretary of a company if:
  (a) the person becomes disqualified from managing corporations under this Part; and
  (b) they are not given permission to manage the corporation under section 206GAB or 206G.

Note: If a person ceases to be a director, alternate director or a secretary under subsection (2) the company must notify ASIC (see subsection 205B(5)).

## 206B Automatic disqualification—convictions, bankruptcy and foreign court orders etc.

*Convictions*

(1) A person becomes disqualified from managing corporations if the person:
  (a) is convicted on indictment of an offence that:
    (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation; or
    (ii) concerns an act that has the capacity to affect significantly the corporation's financial standing; or
  (b) is convicted of an offence that:
    (i) is a contravention of this Act and is punishable by imprisonment for a period greater than 12 months; or
    (ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or
  (c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

  The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.

(2) The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for:



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(a) if the person does not serve a term of imprisonment—5 years after the day on which they are convicted; or
(b) if the person serves a term of imprisonment—5 years after the day on which they are released from prison.

*Bankruptcy or personal insolvency agreement*

(3) A person is disqualified from managing corporations if the person is an undischarged bankrupt under the law of Australia, its external territories or another country.

(4) A person is disqualified from managing corporations if:
(a) the person has executed a personal insolvency agreement under:
(i) Part X of the *Bankruptcy Act 1966*; or
(ii) a similar law of an external Territory or a foreign country; and
(b) the terms of the agreement have not been fully complied with.

(5) A person is disqualified from managing corporations at a particular time if the person is, at that time, disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

*Foreign court orders*

(6) A person is disqualified from managing corporations if the person is disqualified, under an order made by a court of a foreign jurisdiction that is in force, from:
(a) being a director of a foreign company; or
(b) being concerned in the management of a foreign company; or
(c) being a director of a passport fund, or of an operator of a passport fund; or
(d) being concerned in the management of a passport fund.



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*Definitions*

(7) In this section:

***foreign jurisdiction*** means a foreign country, or part of a foreign country, prescribed by the regulations as a foreign jurisdiction for the purposes of this section.

## 206BA Extension of period of automatic disqualification under section 206B

(1) This section applies if:
  (a) under subsection 206B(1); or
  (b) as a result of the operation of subsection 279-5(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and subsection 206B(5) of this Act;

  a person is disqualified from managing corporations on being convicted of an offence.

(2) On application by ASIC, the Court may extend by up to an additional 15 years the period of disqualification.

(3) ASIC must apply:
  (a) before the period of disqualification begins; or
  (b) before the end of the first year of the disqualification.

(4) ASIC may apply only once in relation to the disqualification.

(5) In determining whether an extension is justified (and if so, for how long), the Court may have regard to any matters that the Court considers appropriate.

## 206C Court power of disqualification—contravention of civil penalty provision

(1) On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:
  (a) a declaration is made under:



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(i) section 1317E (civil penalty provision) that the person has contravened a corporation/scheme civil penalty provision or subsection 670A(4), 727(6), 728(4) or 1309(12); or

(ii) section 386-1 (civil penalty provision) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* that the person has contravened a civil penalty provision (within the meaning of that Act); and

(b) the Court is satisfied that the disqualification is justified.

(2) In determining whether the disqualification is justified, the Court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the Court considers appropriate.

(3) To avoid doubt, the reference in paragraph (2)(a) to a corporation includes a reference to an Aboriginal and Torres Strait Islander corporation.

## 206D Court power of disqualification—insolvency and non-payment of debts

(1) On application by ASIC, the Court may disqualify a person from managing corporations for up to 20 years if:

(a) within the last 7 years, the person has been an officer of 2 or more corporations when they have failed; and

(b) the Court is satisfied that:

(i) the manner in which the corporation was managed was wholly or partly responsible for the corporation failing; and

(ii) the disqualification is justified.

(1A) To avoid doubt, the references in paragraphs (1)(a) and (b) to a corporation include references to an Aboriginal and Torres Strait Islander corporation.

(2) For the purposes of subsection (1), a corporation fails if:



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(a) a Court orders the corporation to be wound up under:
  (i) section 459B of this Act; or
  (ii) section 526-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*;
because the Court is satisfied that the corporation is insolvent; or

(b) the corporation enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or

(c) the corporation executes a deed of company arrangement and creditors are not fully paid or are unlikely to be fully paid; or

(d) the corporation ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or

(e) a levy of execution against the corporation is not satisfied; or

(f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the corporation; or

(g) the corporation enters into a compromise or arrangement with its creditors under Part 5.1 (including that Part as applied by section 45-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*); or

(h) the corporation is wound up and a liquidator lodges a report under subsection 533(1) (including that subsection as applied by section 526-35 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) about the corporation's inability to pay its debts.

Note: To satisfy paragraph (h), a corporation must begin to be wound up while the person is an officer or within 12 months after the person ceases to be an officer. However, the report under subsection 533(1) may be lodged by the liquidator at a time that is more than 12 months after the person ceases to be an officer. Sections 513A to 513D contain rules about when a company begins to be wound up.

(2A) The reference in paragraph (2)(c) to a deed of company arrangement includes a reference to a deed of corporation arrangement (within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

(2B) For the purposes of subsection (1), a person is an ***officer*** of an Aboriginal and Torres Strait Islander corporation if the person is an



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officer of that corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

(3) In determining whether the disqualification is justified, the Court may have regard to:
  (a) the person's conduct in relation to the management, business or property of any corporation; and
  (b) any other matters that the Court considers appropriate.

(4) To avoid doubt, the reference in paragraph (3)(a) to a corporation includes a reference to an Aboriginal and Torres Strait Islander corporation.

## 206E Court power of disqualification—repeated contraventions of Act

(1) On application by ASIC, the Court may disqualify a person from managing corporations for the period that the Court considers appropriate if:
  (a) the person:
    (i) has at least twice been an officer of a body corporate that has contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while they were an officer of the body corporate and each time the person has failed to take reasonable steps to prevent the contravention; or
    (ii) has at least twice contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while they were an officer of a body corporate; or
    (iii) has been an officer of a body corporate and has done something that would have contravened subsection 180(1) or section 181 if the body corporate had been a corporation; and
  (b) the Court is satisfied that the disqualification is justified.

(1A) For the purposes of subsection (1), a person is an ***officer*** of an Aboriginal and Torres Strait Islander corporation if the person is an



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officer of that corporation within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

(2) In determining whether the disqualification is justified, the Court may have regard to:
  (a) the person's conduct in relation to the management, business or property of any corporation; and
  (b) any other matters that the Court considers appropriate.

(3) To avoid doubt, the reference in paragraph (2)(a) to a corporation includes a reference to an Aboriginal and Torres Strait Islander corporation.

## 206EAA Court power of disqualification—disqualification under a law of a foreign jurisdiction

(1) On application by ASIC, the Court may disqualify a person from managing corporations for the period that the Court considers appropriate if:
  (a) the person is disqualified under the law of a foreign jurisdiction from:
    (i) being a director of, or being concerned in the management of, a foreign company; or
    (ii) carrying on activities that the Court is satisfied are substantially similar to being a director of, or being concerned in the management of, a foreign company; or
    (iii) being a director of a passport fund, or of the operator of a passport fund; or
    (iv) being concerned in the management of a passport fund; or
    (v) carrying on activities that the Court is satisfied are substantially similar to being a director of a passport fund, or of the operator of a passport fund, or being concerned in the management of a passport fund; and
  (b) the Court is satisfied that the disqualification under this subsection is justified.



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(2) In determining what is an appropriate period for which to disqualify the person, the Court may have regard to the period for which the person is disqualified under the law of the foreign jurisdiction.

(3) In determining whether the disqualification is justified, the Court may have regard to:
  (a) the person's conduct in relation to the management, business or property of a foreign company or a passport fund (as the case requires); and
  (b) any other matters that the Court considers appropriate.

(4) In this section:

***foreign jurisdiction*** has the same meaning as in section 206B.

## 206EAB Court power of disqualification—unrecovered payments under employee entitlements scheme

(1) On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:
  (a) subsection (2) applies to the person in relation to 2 or more corporations; and
  (b) the Court is satisfied that the disqualification is justified.

(2) This subsection applies to the person in relation to a corporation if:
  (a) within the last 7 years:
    (i) the person has been an officer of the corporation; and
    (ii) while the person was an officer, or within 12 months after the person ceased to be an officer, the corporation began to be wound up; and
    (iii) money was advanced for the purposes of paying the entitlements of employees of the corporation under the *Fair Entitlements Guarantee Act 2012*; and
  (b) the Commonwealth has received a minimal return, or no return, on the advance (whether or not the corporation is still being wound up, or has been wound up); and



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(c) the Court is satisfied that the Commonwealth is unlikely to receive more than a minimal return on the advance; and

(d) either of the following occurred during the 7-year period mentioned in paragraph (a):

(i) the corporation contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation, and the person failed to take reasonable steps to prevent the contravention;

(ii) the person contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation.

(3) For the purposes of paragraphs (2)(b) and (c), the Commonwealth has received a minimal return on an advance under the *Fair Entitlements Guarantee Act 2012* if the amount of the advance recovered by the Commonwealth is 10 cents in the dollar or less.

Note: For recovery of advances paid under the *Fair Entitlements Guarantee Act 2012*, see Part 5 of that Act.

(4) In determining whether the disqualification is justified, the Court may have regard to:

(a) the person's conduct in relation to the management, business or property of any corporation; and

(b) any other matters that the Court considers appropriate.

(5) To avoid doubt, the references in paragraph (1)(a) and subsections (2) and (4) to a corporation include references to an Aboriginal and Torres Strait Islander corporation.

## 206EA Disqualification under the *Competition and Consumer Act 2010* etc.

A person is disqualified from managing corporations if a court order disqualifying the person from managing corporations is in force under:

(a) section 86E of the *Competition and Consumer Act 2010*; or



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(b) section 248 of Schedule 2 to that Act, as that section applies as a law of the Commonwealth, a State or a Territory.

## 206EB Disqualification under the ASIC Act

A person is disqualified from managing corporations if a court order disqualifying the person from managing corporations is in force under section 12GLD of the ASIC Act.

## 206F ASIC's power of disqualification

*Power to disqualify*

(1) ASIC may disqualify a person from managing corporations for up to 5 years if:

(a) within 7 years immediately before ASIC gives a notice under paragraph (b)(i):

(i) the person has been an officer of 2 or more corporations; and

(ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) (including that subsection as applied by section 526-35 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) about the corporation's inability to pay its debts; and

(b) ASIC has given the person:

(i) a notice in the prescribed form requiring them to demonstrate why they should not be disqualified; and

(ii) an opportunity to be heard on the question; and

(c) ASIC is satisfied that the disqualification is justified.

(1A) To avoid doubt, the references in paragraph (1)(a) to corporations include references to Aboriginal and Torres Strait Islander corporations.



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*Grounds for disqualification*

(2) In determining whether disqualification is justified, ASIC:
  (a) must have regard to whether any of the corporations mentioned in subsection (1) were related to one another; and
  (b) may have regard to:
    (i) the person's conduct in relation to the management, business or property of any corporation; and
    (ii) whether the disqualification would be in the public interest; and
    (iii) any other matters that ASIC considers appropriate.

(2A) To avoid doubt, the references in subsection (2) to a corporation includes a reference to an Aboriginal and Torres Strait Islander corporation.

*Notice of disqualification*

(3) If ASIC disqualifies a person from managing corporations under this section, ASIC must serve a notice on the person advising them of the disqualification. The notice must be in the prescribed form.

*Start of disqualification*

(4) The disqualification takes effect from the time when a notice referred to in subsection (3) is served on the person.

## 206GAA ASIC's power of disqualification—unrecovered payments under employee entitlements scheme

(1) ASIC may disqualify a person from managing corporations for up to 5 years if:
  (a) subsection (2) applies to the person in relation to 2 or more corporations; and
  (b) ASIC has given the person:
    (i) a notice in the prescribed form requiring them to demonstrate why they should not be disqualified; and
    (ii) an opportunity to be heard on the question; and



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(c) ASIC is satisfied that the disqualification is justified.

(2) This subsection applies to the person in relation to a corporation if:

(a) within 7 years immediately before ASIC gives the notice under subparagraph (1)(b)(i):

(i) the person has been an officer of the corporation; and

(ii) while the person was an officer, or within 12 months after the person ceased to be an officer, the corporation began to be wound up; and

(iii) money was advanced for the purposes of paying the entitlements of employees of the corporation under the *Fair Entitlements Guarantee Act 2012*; and

(b) the Commonwealth has received a minimal return, or no return, on the advance (whether or not the corporation is still being wound up, or has been wound up); and

(c) ASIC has reason to believe that the Commonwealth is unlikely to receive more than a minimal return on the advance; and

(d) ASIC has reason to believe that either of the following occurred during the 7-year period mentioned in paragraph (a):

(i) the corporation contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation, and the person failed to take reasonable steps to prevent the contravention;

(ii) the person contravened this Act or the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* while the person was an officer of the corporation.

(3) For the purposes of paragraphs (2)(b) and (c), the Commonwealth has received a minimal return on an advance under the *Fair Entitlements Guarantee Act 2012* if the amount of the advance recovered by the Commonwealth is 10 cents in the dollar or less.

Note: For recovery of advances paid under the *Fair Entitlements Guarantee Act 2012*, see Part 5 of that Act.



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(4) In determining whether the disqualification is justified, ASIC:
  (a) must have regard to whether any of the corporations mentioned in paragraph (1)(a) were related to one another; and
  (b) may have regard to:
    (i) the person's conduct in relation to the management, business or property of any corporation; and
    (ii) whether the disqualification would be in the public interest; and
    (iii) any other matters that ASIC considers appropriate.

(5) To avoid doubt, the references in paragraph (1)(a) and subsections (2) and (4) to a corporation include references to an Aboriginal and Torres Strait Islander corporation.

*Notice of disqualification*

(6) If ASIC disqualifies a person from managing corporations under this section, ASIC must serve a notice on the person advising them of the disqualification. The notice must be in the prescribed form.

*Start of disqualification*

(7) The disqualification takes effect from the time when a notice referred to in subsection (6) is served on the person.

## 206GAB ASIC power to grant leave

ASIC may give a person who it has disqualified from managing corporations under this Part written permission to manage a particular corporation or corporations. The permission may be expressed to be subject to conditions and exceptions determined by ASIC.

## 206G Court power to grant leave

(1) A person who is disqualified from managing corporations may apply to the Court for leave to manage:



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(a) corporations; or
(b) a particular class of corporations; or
(c) a particular corporation;

if the person was not disqualified by ASIC.

(2) The person must lodge a notice with ASIC at least 21 days before commencing the proceedings. The notice must be in the prescribed form.

(3) The order granting leave may be expressed to be subject to exceptions and conditions determined by the Court.

Note: If the Court grants the person leave to manage the corporation, the person may be appointed as a director (see section 201B) or secretary (see section 204B) of a company.

(4) The person must lodge with ASIC a copy of any order granting leave within 14 days after the order is made.

(5) On application by ASIC, the Court may revoke the leave. The order revoking leave does not take effect until it is served on the person.

## 206GA Involvement of ACCC—leave orders under section 206G

*Scope of section*

(1) This section applies in relation to a person who is disqualified from managing corporations under section 206EA.

*Notice lodged with ASIC before leave application*

(2) If the person lodges a notice with ASIC under subsection 206G(2), ASIC must give the ACCC a copy of the notice.

*Leave orders*

(3) If the person lodges a copy of an order with ASIC under subsection 206G(4), ASIC must give the ACCC a copy of the order.



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*Revoking leave*

(4) If ASIC decides to apply for an order under subsection 206G(5) in relation to the person, it must consult the ACCC before making the application.

*Definition*

(5) In this section:

***ACCC*** means the Australian Competition and Consumer Commission.

## 206H Limited application of Part to foreign companies

This Part (except for subsection 206B(6) and section 206EAA) does not apply in respect of an act or omission by a person while they are managing a corporation that is a foreign company unless the act or omission occurred in connection with:

(a) the foreign company carrying on business in this jurisdiction; or

(b) an act that the foreign company does, or proposes to do, in this jurisdiction; or

(c) a decision by the foreign company whether or not to do, or refrain from doing, an act in this jurisdiction.

## 206HAA Limited application of Part to notified foreign passport funds and their operators

This Part (except for subsection 206B(6) and section 206EAA) does not apply in respect of an act or omission by a person while they are managing a corporation that is either the operator of a notified foreign passport fund, or a notified foreign passport fund, unless the act or omission occurred in connection with:

(a) the operator or the fund carrying on business in this jurisdiction; or

(b) an act that the operator or the fund does, or proposes to do, in this jurisdiction; or



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(c) a decision by the operator or the fund whether or not to do, or refrain from doing, an act in this jurisdiction.

## 206HA Limited application of Part to registrable Australian bodies

This Part does not apply in respect of an act or omission by a person while they are managing a corporation that is a registrable Australian body unless the act or omission occurred in connection with:

(a) the body carrying on business outside its place of origin; or
(b) an act that the body does or proposes to do outside its place of origin; or
(c) a decision by the body whether or not to do, or refrain from doing, an act outside its place of origin.

## 206HB Part does not apply to Aboriginal and Torres Strait Islander corporations

This Part does not apply, of its own force, to disqualify a person from managing a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note 1: Subsection 279-5(5) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* provides that a person who is disqualified from managing corporations under this Part will be automatically disqualified under Part 6-5 of that Act from managing Aboriginal and Torres Strait Islander corporations.

Note 2: Similarly, subsection 206B(5) of this Act provides that a person who is disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* will be automatically disqualified under this Part from managing corporations.



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# Part 2D.7—Ban on hedging remuneration of key management personnel

## 206J No hedging of remuneration of key management personnel

(1) A member of the key management personnel for a company that is a disclosing entity, or a closely related party of such a member, must not enter into an arrangement (with anyone) if the arrangement would have the effect of limiting the exposure of the member to risk relating to an element of the member's remuneration that:

(a) has not vested in the member; or

(b) has vested in the member but remains subject to a holding lock.

(2) Without limiting paragraph (1)(a), remuneration that is not payable to a member until a particular day is, until that day, remuneration that has not vested in the member.

(3) In determining whether an arrangement has the effect described in subsection (1) in relation to an element of remuneration described in that subsection, regard is to be had to the regulations (if any) made for the purposes of this subsection.

(4) A member of the key management personnel for a company who contravenes subsection (1) commits an offence.

(5) An offence against subsection (4) is an offence of strict liability.

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

(6) A person commits an offence if:

(a) the person is a member of the key management personnel for a company; and

(b) a closely related party of the member contravenes subsection (1) in relation to the member; and

(c) the person is reckless as to the contravention.



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## Section 206J

(7) A closely related party of a member of the key management personnel for a company commits an offence if the party intentionally contravenes subsection (1) in relation to the member.

(8) ASIC may by writing declare that subsection (1) does not apply to a specified arrangement, but may do so only if ASIC is satisfied that the operation of that subsection would be unreasonable in the circumstances. The declaration has effect accordingly. The declaration is not a legislative instrument.

Note: A defendant bears an evidential burden in relation to the matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.



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# Part 2D.8—Remuneration recommendations in relation to key management personnel for disclosing entities

## 206K Board to approve remuneration consultants

(1) This section applies to a contract (a ***remuneration consultancy contract***):
  (a) that is for services that include making a remuneration recommendation in relation to one or more members of the key management personnel for a company that is a disclosing entity; and
  (b) that is between the company and a person (the ***proposed consultant***) who, by making the recommendation under the contract, will be a remuneration consultant.

(2) Before a company enters into a remuneration consultancy contract, the proposed consultant must be approved by:
  (a) the directors of the company; or
  (b) the members of a committee (the ***remuneration committee***) that:
    (i) is a committee of the board of directors of the company; and
    (ii) has functions relating to the remuneration of key management personnel for the company.

(3) A contravention of subsection (2):
  (a) is not an offence except as provided by subsection (4); and
  (b) does not affect the validity of the contract.

(4) The company commits an offence if, at the time the company enters into the contract, the proposed consultant has not been approved in accordance with subsection (2).

(5) An offence against subsection (4) is an offence of strict liability.



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

## 206L Remuneration recommendation by remuneration consultants

(1) This section applies to a remuneration recommendation made by a remuneration consultant in relation to one or more members of the key management personnel for a company that is a disclosing entity.

(2) The remuneration consultant must provide the recommendation directly to either or both of the following:
  (a) the directors of the company;
  (b) the members of the remuneration committee (if any).

(3) However, the remuneration consultant must not provide the recommendation to a person who is an executive director of the company unless all the directors of the company are executive directors of the company.

(4) The remuneration consultant must not provide the recommendation to a person who is neither a director of the company nor a member of the remuneration committee.

(5) If the remuneration consultant contravenes subsection (2) the remuneration consultant is not guilty of an offence. This does not prevent the remuneration consultant from being guilty of an offence for contravening subsection (3) or (4).

Note: Subsection 1311(1) makes it an offence for the remuneration consultant to contravene subsection (3) or (4).

(6) This section does not prevent someone other than the remuneration consultant from providing the recommendation to a person who is neither a director of the company nor a member of the remuneration committee.

## 206M Declaration by remuneration consultant

(1) This section applies to a remuneration consultant who makes a remuneration recommendation in relation to one or more members



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of the key management personnel for a company that is a disclosing entity.

(2) The remuneration consultant must include with the recommendation a declaration about whether the consultant's recommendation is made free from undue influence by the member or members of the key management personnel to whom the recommendation relates.

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

(3) An offence based on subsection (2) is an offence of strict liability.

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



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# Chapter 2E—Related party transactions

## 207 Purpose

The rules in this Chapter are designed to protect the interests of a public company's members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.



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# Part 2E.1—Member approval needed for related party benefit

## Division 1—Need for member approval

### 208 Need for member approval for financial benefit

(1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:

(a) the public company or entity must:

(i) obtain the approval of the public company's members in the way set out in sections 217 to 227; and

(ii) give the benefit within 15 months after the approval; or

(b) the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note 1: Section 228 defines ***related party***, section 9 defines ***entity***, section 50AA defines ***control*** and section 229 affects the meaning of ***giving a financial benefit***.

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this subsection, see subsection 209(3). Section 79 defines ***involved***.

(2) If:

(a) the giving of the benefit is required by a contract; and

(b) the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and

(c) the contract was made:

(i) within 15 months after that approval; or

(ii) before that approval, if the contract was conditional on the approval being obtained;

member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.



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## 209 Consequences of breach

(1) If the public company or entity contravenes section 208:

(a) the contravention does not affect the validity of any contract or transaction connected with the giving of the benefit; and

(b) the public company or entity is not guilty of an offence.

Note: A Court may order an injunction to stop the company or entity giving the benefit to the related party (see section 1324).

(2) A person contravenes this subsection if they are involved in a contravention of section 208 by a public company or entity.

Note 1: This subsection is a civil penalty provision.

Note 2: Section 79 defines ***involved***.

(3) A person commits an offence if they are involved in a contravention of section 208 by a public company or entity and the involvement is dishonest.



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# Division 2—Exceptions to the requirement for member approval

## 210 Arm's length terms

Member approval is not needed to give a financial benefit on terms that:

(a) would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length; or

(b) are less favourable to the related party than the terms referred to in paragraph (a).

## 211 Remuneration and reimbursement for officer or employee

*Benefits that are reasonable remuneration*

(1) Member approval is not needed to give a financial benefit if:

(a) the benefit is remuneration to a related party as an officer or employee of the following:

(i) the public company;

(ii) an entity that the public company controls;

(iii) an entity that controls the public company;

(iv) an entity that is controlled by an entity that controls the public company; and

(b) to give the remuneration would be reasonable given:

(i) the circumstances of the public company or entity giving the remuneration; and

(ii) the related party's circumstances (including the responsibilities involved in the office or employment).

*Benefits that are payments of expenses incurred*

(2) Member approval is not needed to give a financial benefit if:



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(a) the benefit is payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, by a related party in performing duties as an officer or employee of the following:
  (i) the public company;
  (ii) an entity that the public company controls;
  (iii) an entity that controls the public company;
  (iv) an entity that is controlled by an entity that controls the public company; and
(b) to give the benefit would be reasonable in the circumstances of the public company or entity giving the remuneration.

(3) For the purposes of this section:
(a) a contribution made by a body corporate to a fund or scheme for the purposes of making provision for, or obtaining, superannuation benefits (including defined benefits) for an officer of the body, or for dependants of an officer of the body, is remuneration provided by the body to the officer of the body; and
(b) a financial benefit given to a person because of the person ceasing to hold an office or employment as an officer or employee of a body corporate is remuneration paid or provided to the person in a capacity as an officer of the body.

## 212 Indemnities, exemptions, insurance premiums and payment for legal costs for officers

*Indemnities, exemptions and insurance premiums*

(1) Member approval is not needed to give a financial benefit if:
(a) the benefit is for a related party who is an officer of the public company or entity; and
(b) the benefit is:
  (i) an indemnity, exemption or insurance premium in respect of a liability incurred as an officer of the public company or entity; or
  (ii) an agreement to give an indemnity or exemption, or to pay an insurance premium, of that kind; and



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(c) to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.

Note: Sections 199A to 199C may prohibit giving an indemnity or exemption or paying an insurance premium for an officer.

*Payments in respect of legal costs*

(2) Member approval is not needed to give a financial benefit if:
  (a) the benefit is for a related party who is an officer of the public company or entity; and
  (b) the benefit is the making of, or an agreement to make, a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by the officer in defending an action for a liability incurred as an officer of the public company or entity; and
  (c) either:
    (i) section 199A does not apply to the costs; or
    (ii) if section 199A applies to the costs—the officer must repay the amount paid if the costs become costs for which the company must not give the officer an indemnity under that section; and
  (d) to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.

(3) In working out for the purposes of subsection (1) or (2) whether giving the benefit is reasonable in the circumstances:
  (a) assess whether it would be reasonable on the basis of the circumstances existing:
    (i) if the benefit is given under an agreement—at the time when the agreement is or was made; or
    (ii) if the benefit is not given under an agreement—at the time when the benefit is or was given; and
  (b) disregard any other financial benefit given or payable to the officer by the public company or entity.



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## 213 Small amounts given to related entity

(1) Member approval is not needed to give a financial benefit to a related party in a financial year if the total of the following amounts or values is less than or equal to the amount prescribed by the regulations for the purposes of this section:

(a) the amount or value of the financial benefit;

(b) the total of all other amounts or values of financial benefits given to the related party, in the financial year, for which member approval was not needed because of this section.

(2) In working out the total of the amounts or values referred to in paragraphs (1)(a) and (b):

(a) add in all amounts or values of financial benefits given to the related party in the financial year by:

(i) the public company or entity; and

(ii) any entities controlled by the public company or entity; and

(b) disregard:

(i) amounts that have been repaid; and

(ii) amounts that fall under any other exception in this Part.

For the purposes of this subsection, the time at which the entity must be controlled by the public company is the time at which the financial benefit is given.

## 214 Benefit to or by closely-held subsidiary

(1) Member approval is not needed to give a financial benefit if the benefit is given:

(a) by a body corporate to a closely-held subsidiary of the body; or

(b) by a closely-held subsidiary of a body corporate to the body or an entity it controls.

(2) For the purposes of this section, a body corporate is a closely-held subsidiary of another body corporate if, and only if, no member of the first-mentioned body is a person other than:



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(a) the other body; or
(b) a nominee of the other body; or
(c) a body corporate that is a closely-held subsidiary of the other body because of any other application or applications of this subsection; or
(d) a nominee of a body referred to in paragraph (c).

(3) For the purposes of subsection (2), disregard shares that are not voting shares.

## 215 Benefits to members that do not discriminate unfairly

Member approval is not needed to give a financial benefit if:
(a) the benefit is given to the related party in their capacity as a member of the public company; and
(b) giving the benefit does not discriminate unfairly against the other members of the public company.

## 216 Court order

Member approval is not needed to give a financial benefit under an order of a court.



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## Division 3—Procedure for obtaining member approval

### 217 Resolution may specify matters by class or kind

A resolution under this Division may specify anything either in particular or by reference to class or kind.

### 218 Company must lodge material that will be put to members with ASIC

(1) At least 14 days before the notice convening the relevant meeting is given, the public company must lodge:
  (a) a proposed notice of meeting setting out the text of the proposed resolution; and
  (b) a proposed explanatory statement satisfying section 219; and
  (c) any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution; and
  (d) any other document that any of the following proposes to give to members of the public company before or at the meeting:
    (i) the company;
    (ii) a related party of the company to whom the proposed resolution would permit a financial benefit to be given;
    (iii) an associate of the company or of such a related party;

  and can reasonably be expected to be material to a member in deciding how to vote on the proposed resolution.

(2) If, when the notice convening the meeting is given, ASIC:
  (a) has approved in writing a period of less than 14 days for the purposes of subsection (1); and
  (b) has not revoked the approval by written notice to the public company;

  subsection (1) applies as if the reference to 14 days were a reference to the approved period.



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(3) ASIC may give and revoke approvals for the purposes of subsection (2).

## 219 Requirements for explanatory statement to members

(1) The proposed explanatory statement lodged under section 218 must be in writing and set out:
  (a) the related parties to whom the proposed resolution would permit financial benefits to be given; and
  (b) the nature of the financial benefits; and
  (c) in relation to each director of the company:
    (i) if the director wanted to make a recommendation to members about the proposed resolution—the recommendation and his or her reasons for it; or
    (ii) if not—why not; or
    (iii) if the director was not available to consider the proposed resolution—why not; and
  (d) in relation to each such director:
    (i) whether the director had an interest in the outcome of the proposed resolution; and
    (ii) if so—what it was; and
  (e) all other information that:
    (i) is reasonably required by members in order to decide whether or not it is in the company's interests to pass the proposed resolution; and
    (ii) is known to the company or to any of its directors.

(2) An example of the kind of information referred to in paragraph (1)(e) is information about what, from an economic and commercial point of view, are the true potential costs and detriments of, or resulting from, giving financial benefits as permitted by the proposed resolution, including (without limitation):
  (a) opportunity costs; and
  (b) taxation consequences (such as liability to fringe benefits tax); and



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(c) benefits forgone by whoever would give the benefits.

Note: Sections 180 and 181 require an officer of a corporation to act honestly and to exercise care and diligence. These duties extend to preparing an explanatory statement under this section. Section 1309 creates offences where false and misleading material relating to a corporation's affairs is made available or furnished to members.

## 220 ASIC may comment on proposed resolution

(1) Within 14 days after a public company lodges documents under section 218, ASIC may give to the company written comments on those documents (other than comments about whether the proposed resolution is in the company's best interests).

(2) If the company is listed, ASIC may consult with the relevant market operator for the purposes of giving comments to the company.

(3) Subsection (2) does not limit the persons with whom ASIC may consult.

(4) ASIC must keep a copy of the written comments it gives to a company under subsection (1), and subsections 1274(2) and (5) apply to the copy as if it were a document lodged with ASIC.

(5) The fact that ASIC has given particular comments, or has declined to give comments, under subsection (1) does not in any way affect the performance or exercise of any of ASIC's functions and powers.

## 221 Requirements for notice of meeting

The notice convening the meeting:

(a) must be the same, in all material respects, as the proposed notice lodged under section 218; and

(b) must be accompanied by an explanatory statement that is the same, in all material respects, as the proposed explanatory statement lodged under that section; and



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(c) must be accompanied by a document that is, or documents that are, the same, in all material respects, as the document or documents (if any) lodged under paragraph 218(1)(c); and
(d) if ASIC has given to the public company, under section 220, comments on the documents lodged under section 218—must be accompanied by a copy of those comments; and
(e) must not be accompanied by any other documents.

## 222 Other material put to members

Each document (if any) that:
(a) did not accompany the notice convening the meeting; and
(b) was given to members of the public company before or at the meeting by:
(i) the public company; or
(ii) a related party of the public company to whom the proposed resolution would permit a financial benefit to be given; or
(iii) an associate of the public company or of such a related party; and
(c) can reasonably be expected to have been material to a member in deciding how to vote on the proposed resolution;

must be the same, in all material respects, as a document lodged under paragraph 218(1)(d).

## 223 Proposed resolution cannot be varied

The resolution must be the same as the proposed resolution set out in the proposed notice lodged under section 218.

## 224 Voting by or on behalf of related party interested in proposed resolution

(1) At a general meeting, a vote on a proposed resolution under this Division must not be cast (in any capacity) by or on behalf of:
(a) a related party of the public company to whom the resolution would permit a financial benefit to be given; or



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(b) an associate of such a related party.

(2) Subsection (1) does not prevent the casting of a vote if:
(a) it is cast by a person as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; and
(b) it is not cast on behalf of a related party or associate of a kind referred to in subsection (1).

(3) The regulations may prescribe cases where subsection (1) does not apply.

(4) ASIC may by writing declare that:
(a) subsection (1) does not apply to a specified proposed resolution; or
(b) subsection (1) does not prevent the casting of a vote, on a specified proposed resolution, by a specified entity, or on behalf of a specified entity;

but may only do so if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the public company.

(5) A declaration in force under subsection (4) has effect accordingly.

(6) If a vote is cast in contravention of subsection (1), the related party or associate, as the case may be, contravenes this subsection, whether or not the proposed resolution is passed.

(7) For the purposes of this section, a vote is cast on behalf of an entity if, and only if, it is cast:
(a) as proxy for the entity; or
(b) otherwise on behalf of the entity; or
(c) in respect of a share in respect of which the entity has:
(i) power to vote; or
(ii) power to exercise, or control the exercise of, a right to vote.



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(8) Subject to subsection 225(1), a contravention of this section does not affect the validity of a resolution.

(9) Subject to Part 1.1A, this section has effect despite:
  (a) anything else in:
    (i) this Act; or
    (ii) any other law (including the general law) of a State or Territory; or
  (b) anything in a body corporate's constitution.

## 225 Voting on the resolution

(1) If any votes on the resolution are cast in contravention of subsection 224(1), it must be the case that the resolution would still be passed even if those votes were disregarded.

(2) If a poll was duly demanded on the question that the resolution be passed, subsections (3) and (4) apply in relation to voting on the poll.

(3) In relation to each member of the public company who voted on the resolution in person, the public company must record in writing:
  (a) the member's name; and
  (b) how many votes the member cast for the resolution and how many against.

(4) In relation to each member of the public company who voted on the resolution by proxy, or by a representative authorised under section 250D, the public company must record in writing:
  (a) the member's name; and
  (b) in relation to each person who voted as proxy, or as such a representative, for the member:
    (i) the person's name; and
    (ii) how many votes the person cast on the resolution as proxy, or as such a representative, for the member; and
    (iii) how many of those votes the person cast for the resolution and how many against.



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(5) For 7 years after the day when a resolution under this Division is passed, the public company must retain the records it made under this section in relation to the resolution.

(6) An offence based on subsection (3), (4) or (5) is an offence of strict liability.

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

## 226 Notice of resolution to be lodged

The public company must lodge a notice setting out the text of the resolution within 14 days after the resolution is passed.

## 227 Declaration by court of substantial compliance

(1) The Court may declare that the conditions prescribed by this Division have been satisfied if it finds that they have been substantially satisfied.

(2) A declaration may be made only on the application of an interested person.



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# Part 2E.2—Related parties and financial benefits

## 228 Related parties

*Controlling entities*

(1) An entity that controls a public company is a related party of the public company.

*Directors and their spouses*

(2) The following persons are related parties of a public company:
  (a) directors of the public company;
  (b) directors (if any) of an entity that controls the public company;
  (c) if the public company is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;
  (d) spouses of the persons referred to in paragraphs (a), (b) and (c).

*Relatives of directors and spouses*

(3) The following relatives of persons referred to in subsection (2) are related parties of the public company:
  (a) parents;
  (b) children.

*Entities controlled by other related parties*

(4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.



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*Related party in previous 6 months*

(5) An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

*Entity has reasonable grounds to believe it will become related party in future*

(6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

*Acting in concert with related party*

(7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit.

## 229 Giving a financial benefit

(1) In determining whether a financial benefit is given for the purposes of this Chapter:
   (a) give a broad interpretation to financial benefits being given, even if criminal or civil penalties may be involved; and
   (b) the economic and commercial substance of conduct is to prevail over its legal form; and
   (c) disregard any consideration that is or may be given for the benefit, even if the consideration is adequate.

(2) ***Giving a financial benefit*** includes the following:
   (a) giving a financial benefit indirectly, for example, through 1 or more interposed entities;
   (b) giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force;



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(c) giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).

(3) The following are examples of ***giving a financial benefit*** to a related party:

(a) giving or providing the related party finance or property;

(b) buying an asset from or selling an asset to the related party;

(c) leasing an asset from or to the related party;

(d) supplying services to or receiving services from the related party;

(e) issuing securities or granting an option to the related party;

(f) taking up or releasing an obligation of the related party.



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# Part 2E.3—Interaction with other rules

## 230 General duties still apply

A director is not relieved from any of their duties under this Act (including sections 180 and 184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter.



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# Chapter 2F—Members' rights and remedies

## 231 Membership of a company

A person is a member of a company if they:

(a) are a member of the company on its registration; or

(b) agree to become a member of the company after its registration and their name is entered on the register of members; or

(c) become a member of the company under section 167 (membership arising from conversion of a company from one limited by guarantee to one limited by shares).



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# Part 2F.1—Oppressive conduct of affairs

## 232 Grounds for Court order

The Court may make an order under section 233 if:

(a) the conduct of a company's affairs; or

(b) an actual or proposed act or omission by or on behalf of a company; or

(c) a resolution, or a proposed resolution, of members or a class of members of a company;

is either:

(d) contrary to the interests of the members as a whole; or

(e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

For the purposes of this Part, a person to whom a share in the company has been transmitted by will or by operation of law is taken to be a member of the company.

Note: For ***affairs***, see section 53.

## 233 Orders the Court can make

(1) The Court can make any order under this section that it considers appropriate in relation to the company, including an order:

(a) that the company be wound up;

(b) that the company's existing constitution be modified or repealed;

(c) regulating the conduct of the company's affairs in the future;

(d) for the purchase of any shares by any member or person to whom a share in the company has been transmitted by will or by operation of law;

(e) for the purchase of shares with an appropriate reduction of the company's share capital;



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(f) for the company to institute, prosecute, defend or discontinue specified proceedings;
(g) authorising a member, or a person to whom a share in the company has been transmitted by will or by operation of law, to institute, prosecute, defend or discontinue specified proceedings in the name and on behalf of the company;
(h) appointing a receiver or a receiver and manager of any or all of the company's property;
(i) restraining a person from engaging in specified conduct or from doing a specified act;
(j) requiring a person to do a specified act.

*Order that the company be wound up*

(2) If an order that a company be wound up is made under this section, the provisions of this Act relating to the winding up of companies apply:
(a) as if the order were made under section 461; and
(b) with such changes as are necessary.

*Order altering constitution*

(3) If an order made under this section repeals or modifies a company's constitution, or requires the company to adopt a constitution, the company does not have the power under section 136 to change or repeal the constitution if that change or repeal would be inconsistent with the provisions of the order, unless:
(a) the order states that the company does have the power to make such a change or repeal; or
(b) the company first obtains the leave of the Court.

## 234 Who can apply for order

An application for an order under section 233 in relation to a company may be made by:



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(a) a member of the company, even if the application relates to an act or omission that is against:
  (i) the member in a capacity other than as a member; or
  (ii) another member in their capacity as a member; or
(b) a person who has been removed from the register of members because of a selective reduction; or
(c) a person who has ceased to be a member of the company if the application relates to the circumstances in which they ceased to be a member; or
(d) a person to whom a share in the company has been transmitted by will or by operation of law; or
(e) a person whom ASIC thinks appropriate having regard to investigations it is conducting or has conducted into:
  (i) the company's affairs; or
  (ii) matters connected with the company's affairs.

Note 1: If an application is made under this section, in certain cases the court may order that the company be wound up in insolvency (see section 459B).

Note 2: For ***selective reduction***, see subsection 256B(2).

## 235 Requirement for person to lodge order

(1) If an order is made under section 233, the applicant must lodge a copy of the order with ASIC within 14 days after it is made.

(2) An offence based on subsection (1) is an offence of strict liability.

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



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# Part 2F.1A—Proceedings on behalf of a company by members and others

## 236 Bringing, or intervening in, proceedings on behalf of a company

(1) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if:

(a) the person is:

(i) a member, former member, or person entitled to be registered as a member, of the company or of a related body corporate; or

(ii) an officer or former officer of the company; and

(b) the person is acting with leave granted under section 237.

(2) Proceedings brought on behalf of a company must be brought in the company's name.

(3) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

Note 1: For the right to inspect company books, see subsections 247A(3) to (6).

Note 2: For the requirements to disclose proceedings and leave applications in the annual directors' report, see subsections 300(14) and (15).

Note 3: This section does not prevent a person bringing, or intervening in, proceedings on their own behalf in respect of a personal right.

## 237 Applying for and granting leave

(1) A person referred to in paragraph 236(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.

(2) The Court must grant the application if it is satisfied that:



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(a) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
(b) the applicant is acting in good faith; and
(c) it is in the best interests of the company that the applicant be granted leave; and
(d) if the applicant is applying for leave to bring proceedings—there is a serious question to be tried; and
(e) either:
(i) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
(ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.

(3) A rebuttable presumption that granting leave is not in the best interests of the company arises if it is established that:
(a) the proceedings are:
(i) by the company against a third party; or
(ii) by a third party against the company; and
(b) the company has decided:
(i) not to bring the proceedings; or
(ii) not to defend the proceedings; or
(iii) to discontinue, settle or compromise the proceedings; and
(c) all of the directors who participated in that decision:
(i) acted in good faith for a proper purpose; and
(ii) did not have a material personal interest in the decision; and
(iii) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and
(iv) rationally believed that the decision was in the best interests of the company.



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The director's belief that the decision was in the best interests of the company is a rational one unless the belief is one that no reasonable person in their position would hold.

(4) For the purposes of subsection (3):
  (a) a person is a third party if:
    (i) the company is a public company and the person is not a related party of the company; or
    (ii) the company is not a public company and the person would not be a related party of the company if the company were a public company; and
  (b) proceedings by or against the company include any appeal from a decision made in proceedings by or against the company.

Note: ***Related party*** is defined in section 228.

## 238 Substitution of another person for the person granted leave

(1) Any of the following persons may apply to the Court for an order that they be substituted for a person to whom leave has been granted under section 237:
  (a) a member, former member, or a person entitled to be registered as a member, of the company or of a related body corporate;
  (b) an officer, or former officer, of the company.

(2) The Court may make the order if it is satisfied that:
  (a) the applicant is acting in good faith; and
  (b) it is appropriate to make the order in all the circumstances.

(3) An order substituting one person for another has the effect that:
  (a) the grant of leave is taken to have been made in favour of the substituted person; and
  (b) if the other person has already brought the proceedings or intervened—the substituted person is taken to have brought those proceedings or to have made that intervention.



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## 239 Effect of ratification by members

(1) If the members of a company ratify or approve conduct, the ratification or approval:
  (a) does not prevent a person from bringing or intervening in proceedings with leave under section 237 or from applying for leave under that section; and
  (b) does not have the effect that proceedings brought or intervened in with leave under section 237 must be determined in favour of the defendant, or that an application for leave under that section must be refused.

(2) If members of a company ratify or approve conduct, the Court may take the ratification or approval into account in deciding what order or judgment (including as to damages) to make in proceedings brought or intervened in with leave under section 237 or in relation to an application for leave under that section. In doing this, it must have regard to:
  (a) how well-informed about the conduct the members were when deciding whether to ratify or approve the conduct; and
  (b) whether the members who ratified or approved the conduct were acting for proper purposes.

## 240 Leave to discontinue, compromise or settle proceedings brought, or intervened in, with leave

Proceedings brought or intervened in with leave must not be discontinued, compromised or settled without the leave of the Court.

## 241 General powers of the Court

(1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
  (a) interim orders; and
  (b) directions about the conduct of the proceedings, including requiring mediation; and



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(c) an order directing the company, or an officer of the company, to do, or not to do, any act; and

(d) an order appointing an independent person to investigate, and report to the Court on:

(i) the financial affairs of the company; or

(ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or

(iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.

(2) A person appointed by the Court under paragraph (1)(d) is entitled, on giving reasonable notice to the company, to inspect any books of the company for any purpose connected with their appointment.

(3) If the Court appoints a person under paragraph (1)(d):

(a) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed; and

(b) the Court may vary the order at any time; and

(c) the persons who may be made liable under the order, or the order as varied, are:

(i) all or any of the parties to the proceedings or application; and

(ii) the company; and

(d) if the order, or the order as varied, makes 2 or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.

(4) Subsection (3) does not affect the powers of the Court as to costs.

## 242 Power of the Court to make costs orders

The Court may at any time make any orders it considers appropriate about the costs of the following persons in relation to proceedings brought or intervened in with leave under section 237 or an application for leave under that section:

(a) the person who applied for or was granted leave;

(b) the company;



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(c) any other party to the proceedings or application.

An order under this section may require indemnification for costs.



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# Part 2F.2—Class rights

Note: This Part does not apply to the adoption or amendment of benefit fund rules or to consequential amendments to the rest of the company's constitution made under the *Life Insurance Act 1995*, see Subdivision 2 of Division 4 of Part 2A of that Act.

## 246B Varying and cancelling class rights

*If constitution sets out procedure*

(1) If a company has a constitution that sets out the procedure for varying or cancelling:
   (a) for a company with a share capital—rights attached to shares in a class of shares; or
   (b) for a company without a share capital—rights of members in a class of members;

   those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.

*If constitution does not set out procedure*

(2) If a company does not have a constitution, or has a constitution that does not set out the procedure for varying or cancelling:
   (a) for a company with a share capital—rights attached to shares in a class of shares; or
   (b) for a company without a share capital—rights of members in a class of members;

   those rights may be varied or cancelled only by special resolution of the company and:
   (c) by special resolution passed at a meeting:
      (i) for a company with a share capital of the class of members holding shares in the class; or
      (ii) for a company without a share capital of the class of members whose rights are being varied or cancelled; or



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(d) with the written consent of members with at least 75% of the votes in the class.

(3) The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.

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

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

## 246C Certain actions taken to vary rights etc.

*Company with share capital*

(1) If the shares in a class of shares in a company are divided into further classes, and after the division the rights attached to all of those shares are not the same:
   (a) the division is taken to vary the rights attached to every share that was in the class existing before the division; and
   (b) members who hold shares to which the same rights are attached after the division form a separate class.

(2) If the rights attached to some of the shares in a class of shares in a company are varied:
   (a) the variation is taken to vary the rights attached to every other share that was in the class existing before the variation; and
   (b) members who hold shares to which the same rights are attached after the variation form a separate class.

*Company without share capital*

(3) If the members in a class of members in a company without share capital are divided into further classes of members, and after the division the rights of all of those members are not the same:
   (a) the division is taken to vary the rights of every member who was in the class existing before the division; and



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(b) members who have the same rights after the division form a separate class.

(4) If the rights of some of the members in a class of members in a company without a share capital are varied:
(a) the variation is taken to vary the rights of every other member who was in the class existing before the variation; and
(b) members who have the same rights after the variation form a separate class.

*Company with 1 class of shares issuing new class of shares*

(5) If a company with 1 class of shares issues new shares, the issue is taken to vary the rights attached to shares already issued if:
(a) the rights attaching to the new shares are not the same as the rights attached to shares already issued; and
(b) those rights are not provided for in:
(i) the company's constitution (if any); or
(ii) a notice, document or resolution that is lodged with ASIC.

(6) If a company issues new preference shares that rank equally with existing preference shares, the issue is taken to vary the rights attached to the existing preference shares unless the issue is authorised by:
(a) the terms of issue of the existing preference shares; or
(b) the company's constitution (if any) as in force when the existing preference shares were issued.

## 246D Variation, cancellation or modification without unanimous support of class

(1) If members in a class do not all agree (whether by resolution or written consent) to:
(a) a variation or cancellation of their rights; or



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(b) a modification of the company's constitution (if any) to allow their rights to be varied or cancelled;

members with at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.

(2) An application may only be made within 1 month after the variation, cancellation or modification is made.

(3) The variation, cancellation or modification takes effect:

(a) if no application is made to the Court to have it set aside—1 month after the variation, cancellation or modification is made; or

(b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.

(4) The members of the class who want to have the variation, cancellation or modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.

(5) The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.

(6) Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.

(7) An offence based on subsection (6) is an offence of strict liability.

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

## 246E Variation, cancellation or modification with unanimous support of class

If the members in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:



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(a) if no later date is specified in the resolution or consent—on the date of the resolution or consent; or
(b) on a later date specified in the resolution or consent.

## 246F Company must lodge documents and resolutions with ASIC

(1) A company must lodge with ASIC a notice in the prescribed form setting out particulars of any of the following:
(a) a division of shares in the company into classes if the shares were not previously so divided;
(b) a conversion of shares in a class of shares in the company into shares in another class.

Note: A proprietary company may also have to notify certain particulars under Part 2C.2.

(2) The notice must be lodged within 14 days after the division or conversion.

(3) A public company must lodge with ASIC a copy of each document (including an agreement or consent) or resolution that:
(a) does any of the following:
(i) attaches rights to issued or unissued shares;
(ii) varies or cancels rights attaching to issued or unissued shares;
(iii) varies or cancels rights of members in a class of members of a company that does not have a share capital;
(iv) binds a class of members; and
(b) is not already lodged with ASIC.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

(3A) An offence based on subsection (1) or (3) is an offence of strict liability.

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



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(4) The document must be lodged within 14 days after it is made. The resolution must be lodged within 14 days after it is passed.

## 246G Member's copies of documents and resolutions

(1) A member of a company may ask the company in writing for a copy of a document or resolution referred to in section 246F. The company must send the copy to the member.

(1A) An offence based on subsection (1) is an offence of strict liability.

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

(2) If the company requires the member to pay for the copy, the company must send it:
   (a) within 7 days after the company receives the payment; or
   (b) within any longer period approved by ASIC.

(3) The amount of any payment the company requires cannot exceed the prescribed amount.

(4) If the company does not require payment for the copy, the company must send it:
   (a) within 7 days after the member asks for it; or
   (b) within any longer period approved by ASIC.

## 246H Application of this Part to MCI mutual entities that are companies limited by guarantee

For the purposes of applying this Part to an MCI mutual entity that is a company limited by guarantee, treat the entity:
   (a) in relation to a person who holds MCIs in the entity—as a company with a share capital; and
   (b) in relation to a non-shareholder mutual member—as a company without a share capital.



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# Part 2F.3—Inspection of books

## 247A Order for inspection of books of company or registered scheme

(1) On application by a member of a company or registered scheme, the Court may make an order:
  (a) authorising the applicant to inspect books of the company or scheme; or
  (b) authorising another person (whether a member or not) to inspect books of the company or scheme on the applicant's behalf.

  The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.

(2) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.

(3) A person who:
  (a) is granted leave under section 237; or
  (b) applies for leave under that section; or
  (c) is eligible to apply for leave under that section;

  may apply to the Court for an order under this section.

(4) On application, the Court may make an order authorising:
  (a) the applicant to inspect books of the company; or
  (b) another person to inspect books of the company on the applicant's behalf.

(5) The Court may make the order only if it is satisfied that:
  (a) the applicant is acting in good faith; and
  (b) the inspection is to be made for a purpose connected with:
    (i) applying for leave under section 237; or



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(ii) bringing or intervening in proceedings with leave under that section.

(6) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.

## 247B Ancillary orders

If the Court makes an order under section 247A, the Court may make any other orders it considers appropriate, including either or both of the following:

(a) an order limiting the use that a person who inspects books may make of information obtained during the inspection;

(b) an order limiting the right of a person who inspects books to make copies in accordance with subsection 247A(2).

## 247C Disclosure of information acquired in inspection

(1) A person who inspects books on behalf of an applicant under section 247A must not disclose information obtained during the inspection.

(2) Subsection (1) does not apply to the extent that the disclosure is to:

(a) ASIC; or

(b) the applicant.

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

(3) An offence based on subsection (1) is an offence of strict liability.

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

## 247D Company or directors may allow member to inspect books *(replaceable rule see section 135)*

The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.



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# Part 2F.4—Proceedings against a company by members and others

## 247E Shareholding does not prevent compensation claim

A person is not prevented from obtaining damages or other compensation from a company only because the person:

(a) holds, or has held, shares in the company; or

(b) has subscribed for shares in the company; or

(c) has a right to be included in the register that the company maintains under section 169.



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# Chapter 2G—Meetings

## Part 2G.1—Directors' meetings

### Division 1—Resolutions and declarations without meetings

#### 248A Circulating resolutions of companies with more than 1 director *(replaceable rule see section 135)*

*Resolutions*

(1) The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

*Copies*

(2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

*When the resolution is passed*

(3) The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

#### 248B Resolutions and declarations of 1 director proprietary companies

*Resolutions*

(1) The director of a proprietary company that has only 1 director may pass a resolution by recording it and signing the record.



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*Declarations*

(2) The director of a proprietary company that has only 1 director may make a declaration by recording it and signing the record. Recording and signing the declaration satisfies any requirement in this Act that the declaration be made at a directors' meeting.

Note 1: For directors' declarations, see sections 295 and 494.

Note 2: Passage of a resolution or the making of a declaration under this section must be recorded in the company's minute books (see section 251A).



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## Division 2—Directors' meetings

### 248C Calling directors' meetings *(replaceable rule see section 135)*

A directors' meeting may be called by a director giving reasonable notice individually to every other director.

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see subsection 201K(2)).

### 248D Use of technology

A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

### 248E Chairing directors' meetings *(replaceable rule see section 135)*

(1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

(2) The directors must elect a director present to chair a meeting, or part of it, if:
   (a) a director has not already been elected to chair the meeting; or
   (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

### 248F Quorum at directors' meetings *(replaceable rule see section 135)*

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting.

Note 1: For special quorum rules for public companies, see section 195.



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Note 2: For resolutions of 1 director proprietary companies without meetings, see section 248B.

## 248G Passing of directors' resolutions *(replaceable rule see section 135)*

(1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

(2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.



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# Part 2G.2—Meetings of members of companies

## Division 1—Resolutions without meetings

### 249A Circulating resolutions of proprietary companies with more than 1 member

(1) This section applies to resolutions of the members of proprietary companies that this Act or, if a company has a constitution, the company's constitution requires or permits to be passed at a general meeting. It does not apply to a resolution under section 329 to remove an auditor.

(2) A company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.

(3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

(4) The resolution is passed when the last member signs.

(5) A company that passes a resolution under this section without holding a meeting satisfies any requirement in this Act:
   (a) to give members information or a document relating to the resolution—by giving members that information or document with the document to be signed; and
   (b) to lodge with ASIC a copy of a notice of meeting to consider the resolution—by lodging a copy of the document to be signed by members; and
   (c) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution—by lodging a copy of the information or documents referred to in paragraph (a).



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(6) The passage of the resolution satisfies any requirement in this Act, or a company's constitution (if any), that the resolution be passed at a general meeting.

(7) This section does not affect any rule of law relating to the assent of members not given at a general meeting.

Note 1: A body corporate representative may sign a circulating resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

## 249B Resolutions of 1 member companies

(1) A company that has only 1 member may pass a resolution by the member recording it and signing the record.

(2) If this Act requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Note 1: A body corporate representative may sign such a resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).



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## Division 2—Who may call meetings of members

### 249C Calling of meetings of members by a director *(replaceable rule—see section 135)*

A director may call a meeting of the company's members.

### 249CA Calling of meetings of members of a listed company by a director

(1) A director may call a meeting of the company's members.

(2) This section only applies to a company that is listed.

(3) This section applies despite anything in the company's constitution.

### 249D Calling of general meeting by directors when requested by members

(1) The directors of a company must call and arrange to hold a general meeting on the request of members with at least 5% of the votes that may be cast at the general meeting.

(2) The request must:
  (a) be in writing; and
  (b) state any resolution to be proposed at the meeting; and
  (c) be signed by the members making the request; and
  (d) be given to the company.

(3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

(4) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.



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(5) The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

## 249E Failure of directors to call general meeting

(1) Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.

(2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.

(3) To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.

(4) The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.

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

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

(5) The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.



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## 249F Calling of general meetings by members

(1) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.

(2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called.

(3) The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

## 249G Calling of meetings of members by the Court

(1) The Court may order a meeting of the company's members to be called if it is impracticable to call the meeting in any other way.

(2) The Court may make the order on application by:
   (a) any director; or
   (b) any member who would be entitled to vote at the meeting.

Note: For the directions the Court may give for calling, holding or conducting a meeting it has ordered be called, see section 1319.



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# Division 3—How to call meetings of members

## 249H Amount of notice of meetings

*General rule*

(1) Subject to subsection (2), at least 21 days notice must be given of a meeting of a company's members. However, if a company has a constitution, it may specify a longer minimum period of notice.

*Calling meetings on shorter notice*

(2) A company may call on shorter notice:
  (a) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand; and
  (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

A company cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).

*Shorter notice not allowed—removing or appointing director*

(3) At least 21 days notice must be given of a meeting of the members of a public company at which a resolution will be moved to:
  (a) remove a director under section 203D; or
  (b) appoint a director in place of a director removed under that section.

*Shorter notice not allowed—removing auditor*

(4) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to remove an auditor under section 329.



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## 249HA Amount of notice of meetings of listed company

(1) Despite section 249H, at least 28 days notice must be given of a meeting of a company's members.

(2) This section only applies to a company that is listed.

(3) This section applies despite anything in the company's constitution.

## 249J Notice of meetings of members to members and directors

*Notice to members and directors individually*

(1) Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. Notice need only be given to 1 member of a joint membership.

*Notice to joint members (replaceable rule—see section 135)*

(2) Notice to joint members must be given to the joint member named first in the register of members.

*How notice is given*

(3) A company may give the notice of meeting to a member:
- (a) personally; or
- (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
- (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
- (ca) by sending it to the member by other electronic means (if any) nominated by the member; or
- (cb) by notifying the member in accordance with subsection (3A); or
- (d) by any other means that the company's constitution (if any) permits.



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Note: A defect in the notice given may not invalidate a meeting (see section 1322).

(3A) If the member nominates:

(a) an electronic means (the ***nominated notification means***) by which the member may be notified that notices of meeting are available; and

(b) an electronic means (the ***nominated access means***) the member may use to access notices of meeting;

the company may give the member notice of the meeting by notifying the member (using the nominated notification means):

(c) that the notice of meeting is available; and

(d) how the member may use the nominated access means to access the notice of meeting.

This subsection does not limit subsection (3).

*When notice by post or fax is given (replaceable rule—see section 135)*

(4) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

*When notice under paragraph (3)(cb) is given (replaceable rule—see section 135)*

(5) A notice of meeting given to a member under paragraph (3)(cb) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

## 249K Auditor entitled to notice and other communications

(1) A company must give its auditor:

(a) notice of a general meeting in the same way that a member of the company is entitled to receive notice; and

(b) any other communications relating to the general meeting that a member of the company is entitled to receive.

Note 1: For when a company must have an auditor, see Part 2M.3.



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Note 2: An auditor may appoint a representative to attend a meeting (see subsection 249V(4)).

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 249L Contents of notice of meetings of members

(1) A notice of a meeting of a company's members must:
  (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
  (b) state the general nature of the meeting's business; and
  (c) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution; and
  (d) if a member is entitled to appoint a proxy—contain a statement setting out the following information:
    (i) that the member has a right to appoint a proxy;
    (ii) whether or not the proxy needs to be a member of the company;
    (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

(2) The notice of the AGM of a listed company must also:
  (a) inform members that the resolution referred to in subsection 250R(2) (resolution on remuneration report) will be put at the AGM; and
  (b) if at the previous AGM at least 25% of the votes cast on a resolution that the remuneration report be adopted were against adoption of the report (but the same was not the case at the AGM before that):
    (i) explain the circumstances in which subsection 250V(1) would apply; and



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(ii) inform members that the resolution described in subsection 250V(1) as the spill resolution will be put at the AGM if that subsection applies.

Note: Subsection 250R(2) requires a resolution to adopt a remuneration report for a listed company to be put to the vote at the company's AGM.

(3) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

## 249LA Notice of meeting not required to contain certain information

(1) The regulations may provide that a notice of a meeting of a company's members is not required by section 249L or otherwise to include information specified in the regulations if any conditions specified in the regulations are satisfied.

(2) Without limiting subsection (1), the regulations may specify different conditions for:
   (a) different kinds of information; and
   (b) a notice of meeting given by a company or a class of companies.

(3) If:
   (a) regulations are made for the purposes of subsection (1); and
   (b) a notice of meeting does not include particular information in accordance with those regulations;

   the information is taken to be included in the notice of meeting.

## 249M Notice of adjourned meetings *(replaceable rule—see section 135)*

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.



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# Division 4—Members' rights to put resolutions etc. at general meetings

## 249N Members' resolutions

(1) The following members may give a company notice of a resolution that they propose to move at a general meeting:
  (a) members with at least 5% of the votes that may be cast on the resolution; or
  (b) at least 100 members who are entitled to vote at a general meeting.

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
  (a) a particular company; or
  (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

(2) The notice must:
  (a) be in writing; and:
  (b) set out the wording of the proposed resolution; and
  (c) be signed by the members proposing to move the resolution.

(3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

(4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

## 249O Company giving notice of members' resolutions

(1) If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.



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(2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.

(4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

(5) The company need not give notice of the resolution:
   (a) if it is more than 1,000 words long or defamatory; or
   (b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

## 249P Members' statements to be distributed

(1) Members may request a company to give to all its members a statement provided by the members making the request about:
   (a) a resolution that is proposed to be moved at a general meeting; or
   (b) any other matter that may be properly considered at a general meeting.

(2) The request must be made by:
   (a) members with at least 5% of the votes that may be cast on the resolution; or
   (b) at least 100 members who are entitled to vote at the meeting.

(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:



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(a) a particular company; or
(b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

(3) The request must be:
(a) in writing; and
(b) signed by the members making the request; and
(c) given to the company.

(4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

(5) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

(6) After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

(7) The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.

(8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

(9) The company need not comply with the request:
(a) if the statement is more than 1,000 words long or defamatory; or
(b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.



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# Division 5—Holding meetings of members

## 249Q Purpose

A meeting of a company's members must be held for a proper purpose.

## 249R Time and place for meetings of members

A meeting of a company's members must be held at a reasonable time and place.

## 249S Technology

A company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 1322 for the consequences of a member not being given a reasonable opportunity to participate.

## 249T Quorum *(replaceable rule—see section 135)*

(1) The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.

Note: For single member companies, see section 249B.

(2) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 249X.

Note 2: For body corporate representatives, see section 250D.

(3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the



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directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:

(a) if the date is not specified—the same day in the next week; and

(b) if the time is not specified—the same time; and

(c) if the place is not specified—the same place.

(4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## 249U Chairing meetings of members *(replaceable rule—see section 135)*

(1) The directors may elect an individual to chair meetings of the company's members.

(2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

(3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:

(a) a chair has not previously been elected by the directors to chair the meeting; or

(b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

(4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

## 249V Auditor's right to be heard at general meetings

(1) A company's auditor is entitled to attend any general meeting of the company.



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Note: Section 250RA imposes on the auditor of a listed public company an obligation to attend or be represented at the AGM.

(2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

(3) The auditor is entitled to be heard even if:
  (a) the auditor retires at the meeting; or
  (b) the meeting passes a resolution to remove the auditor from office.

(4) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

Note 1: At an AGM, members may ask the auditor questions (see section 250T).

Note 2: For when a company must have an auditor, see Part 2M.3.

## 249W Adjourned meetings

*When resolution passed*

(1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

*Business at adjourned meetings (replaceable rule—see section 135)*

(2) Only unfinished business is to be transacted at a meeting resumed after an adjournment



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## Division 6—Proxies and body corporate representatives

### 249X Who can appoint a proxy *(replaceable rule for proprietary companies and mandatory rule for public companies—see section 135)*

(1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

(1A) The person appointed as the member's proxy may be an individual or a body corporate.

Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy, see section 250D.

(2) The appointment may specify the proportion or number of votes that the proxy may exercise.

(3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

(4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

### 249Y Rights of proxies

*Rights of proxies*

(1) A proxy appointed to attend and vote for a member has the same rights as the member:
  (a) to speak at the meeting; and
  (b) to vote (but only to the extent allowed by the appointment); and
  (c) join in a demand for a poll.



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*Proxy's right to vote*

(2) If a company has a constitution, the constitution may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

*Effect of member's presence on proxy's authority*

(3) A company's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not deal with this, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

## 249Z Company sending appointment forms or lists of proxies must send to all members

(1) If a company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
   (a) if the member requested the form or list—the company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
   (b) otherwise—the company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 250A Appointing a proxy

(1) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations, by the member of the company making the appointment and contains the following information:



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(a) the member's name and address;
(b) the company's name;
(c) the proxy's name or the name of the office held by the proxy;
(d) the meetings at which the appointment may be used.

An appointment may be a standing one.

(1A) The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the company by different means (electronic or otherwise).

(2) If a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).

(3) An undated appointment is taken to have been dated on the day it is given to the company.

(6) An appointment does not have to be witnessed.

(7) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

## 250B Proxy documents

*Documents to be received by company before meeting*

(1) For an appointment of a proxy for a meeting of a company's members to be effective, the following documents must be received by the company at least 48 hours before the meeting:
(a) the proxy's appointment;
(b) if the appointment is signed, or otherwise authenticated in a manner prescribed by regulations made for the purposes of subsection 250A(1), by the appointor's attorney—the authority under which the appointment was signed or authenticated or a certified copy of the authority.



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*Documents received following adjournment of meeting*

(2) If a meeting of a company's members has been adjourned, an appointment and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

*Receipt of documents*

(3) A company receives a document referred to in subsection (1):
  (a) when the document is received at any of the following:
    (i) the company's registered office;
    (ii) a fax number at the company's registered office;
    (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and
  (b) if the notice of meeting specifies other electronic means by which a member may give the document—when the document given by those means is received by the company as prescribed by the regulations.

*Constitution or notice of meeting may provide for different notification period*

(5) The company's constitution (if any) or the notice of meeting may reduce the period of 48 hours referred to in subsection (1) or (2).

## 250BA Proxy documents—listed companies

(1) In a notice of meeting for a meeting of the members of the company, the company:
  (a) must specify a place and a fax number for the purposes of receipt of proxy appointments and proxy appointment authorities; and
  (b) may specify:
    (i) an electronic address for the purposes of receipt of proxy appointments and proxy appointment authorities; and



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(ii) other electronic means by which a member may give the company a proxy appointment or proxy appointment authority.

(2) This section only applies to a company that is listed.

(3) This section applies despite anything in the company's constitution.

## 250BB Proxy vote if appointment specifies way to vote

(1) An appointment of a proxy may specify the way the proxy is to vote on a particular resolution. If it does:

(a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and

(b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and

(c) if the proxy is the chair of the meeting at which the resolution is voted on—the proxy must vote on a poll, and must vote that way; and

(d) if the proxy is not the chair—the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: A company's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 249Y(2)).

(2) If the chair contravenes subsection (1), the chair commits an offence if the appointment as a proxy resulted from:

(a) the company sending to members:

(i) a list of persons willing to act as proxies; or

(ii) a proxy appointment form holding the chair out as being willing to act as a proxy; or

(b) the operation of section 250BC.

(3) If a person other than the chair contravenes paragraph (1)(a) or (d), the person commits an offence if the person:



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(a) agreed to the appointment; or
(b) held himself or herself out, or caused another person to hold him or her out, as being willing to act as a proxy in relation to the appointment.

(4) If a person other than the chair contravenes paragraph (1)(b), the person commits an offence if, in relation to at least 2 of the different ways of voting specified by the appointments, the person:
(a) agreed to at least one of the appointments specifying that way of voting; or
(b) held himself or herself out, or caused another person to hold him or her out, as being willing to act as a proxy in relation to at least one of the appointments specifying that way of voting.

(5) An offence against subsection (2), (3) or (4) is an offence of strict liability.

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

## 250BC Transfer of non-chair proxy to chair in certain circumstances

If:
(a) an appointment of a proxy specifies the way the proxy is to vote on a particular resolution at a meeting of the company's members; and
(b) the appointed proxy is not the chair of the meeting; and
(c) at the meeting, a poll is duly demanded on the question that the resolution be passed; and
(d) either of the following apply:
(i) if a record of attendance is made for the meeting—the proxy is not recorded as attending;
(ii) the proxy does not vote on the resolution;

the chair of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at that meeting.



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## 250BD Proxy voting by key management personnel or closely related parties

(1) A person appointed as a proxy must not vote, on the basis of that appointment, on a resolution connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity if:

(a) the person is either:

(i) a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity; or

(ii) a closely related party of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity; and

(b) the appointment does not specify the way the proxy is to vote on the resolution.

Note 1: Examples of resolutions connected directly or indirectly with the remuneration of a member of the key management personnel for the company or entity include:

(a) resolutions that must be put to the vote under subsection 250R(2) (about a resolution that the remuneration report for a listed company be adopted); and

(b) resolutions that must be put to the vote under subsection 250V(1) (about fresh elections for directors at meetings arising from concerns about remuneration reports); and

(c) resolutions determining directors' remuneration as mentioned in section 202A; and

(d) resolutions for the purposes of Chapter 2E (about public companies and entities they control giving financial benefits to related parties of public companies) affecting directors' remuneration.

Note 2: Subsections 250R(4) and 250V(2) also prevent the person from voting on the resolution if it is a resolution that must be put to the vote under subsection 250R(2) or 250V(1).

Note 3: Section 224 may also prohibit the person from voting on the resolution if it is a resolution for the purposes of Chapter 2E.



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Note 4: Failure to comply with this subsection is an offence: see subsection 1311(1).

(2) Subsection (1) does not apply if:

(a) the person is the chair of the meeting at which the resolution is voted on; and

(b) the appointment expressly authorises the chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity.

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

(3) ASIC may by writing declare that:

(a) subsection (1) does not apply to a specified resolution; or

(b) subsection (1) does not prevent the casting of a vote, on a specified resolution, by or on behalf of a specified entity;

but may do so only if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the company. The declaration has effect accordingly. The declaration is not a legislative instrument.

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

(4) A vote cast in contravention of subsection (1) is taken not to have been cast. This subsection has effect for the purposes of this Act except subsection (1) and subsections 250R(4) and (7), and section 1311 and Schedule 3 so far as they relate to any of those subsections.

Note: This means the vote is not counted in working out a percentage of votes cast or whether the resolution is passed, and does not affect the validity of the resolution.



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## 250C Validity of proxy vote

*Proxy vote valid even if proxy cannot vote as member*

(1) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

*Proxy vote valid even if member dies, revokes appointment etc. (replaceable rule—see section 135)*

(2) Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
   (a) the appointing member dies; or
   (b) the member is mentally incapacitated; or
   (c) the member revokes the proxy's appointment; or
   (d) the member revokes the authority under which the proxy was appointed by a third party; or
   (e) the member transfers the share in respect of which the proxy was given.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3)).

## 250D Body corporate representative

(1) A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
   (a) at meetings of a company's members; or
   (b) at meetings of creditors or debenture holders; or
   (c) relating to resolutions to be passed without meetings; or
   (d) in the capacity of a member's proxy appointed under subsection 249X(1).

The appointment may be a standing one.



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(2) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

(3) A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

(4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Note: For resolutions of members without meetings, see sections 249A and 249B.



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## Division 7—Voting at meetings of members

### 250E How many votes a member has *(replaceable rule—see section 135)*

*Company with share capital*

(1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
  (a) on a show of hands, each member has 1 vote; and
  (b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

*Company without share capital*

(2) Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

*Chair's casting vote*

(3) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

### 250F Jointly held shares *(replaceable rule—see section 135)*

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.



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## 250G Objections to right to vote *(replaceable rule—see section 135)*

A challenge to a right to vote at a meeting of a company's members:

(a) may only be made at the meeting; and

(b) must be determined by the chair, whose decision is final.

## 250H Votes need not all be cast in the same way

On a poll a person voting who is entitled to 2 or more votes:

(a) need not cast all their votes; and

(b) may cast their votes in different ways.

Note: For proxy appointments that specify the way the proxy is to vote on a particular resolution, see subsection 250BB(1).

## 250J How voting is carried out *(replaceable rule—see section 135)*

(1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

(1A) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

(2) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c)).

## 250K Matters on which a poll may be demanded

(1) A poll may be demanded on any resolution.

(2) If a company has a constitution, the constitution may provide that a poll cannot be demanded on any resolution concerning:



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(a) the election of the chair of a meeting; or
(b) the adjournment of a meeting.

(3) A demand for a poll may be withdrawn.

## 250L When a poll is effectively demanded

(1) At a meeting of a company's members, a poll may be demanded by:
(a) at least 5 members entitled to vote on the resolution; or
(b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
(c) the chair.

Note: A proxy may join in the demand for a poll (see paragraph 249Y(1)(c)).

(2) If a company has a constitution, the constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.

(3) The poll may be demanded:
(a) before a vote is taken; or
(b) before the voting results on a show of hands are declared; or
(c) immediately after the voting results on a show of hands are declared.

(4) The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

## 250M When and how polls must be taken *(replaceable rule—see section 135)*

(1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

(2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.



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# Division 8—AGMs of public companies

## 250N Public company must hold AGM

(1) A public company must hold an annual general meeting ***(AGM)*** within 18 months after its registration.

(2) A public company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.

Note: An AGM held to satisfy this subsection may also satisfy subsection (1).

(2A) An offence based on subsection (1) or (2) is an offence of strict liability.

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

(3) An AGM is to be held in addition to any other meetings held by a public company in the year.

Note 1: The company's annual financial report, directors' report and auditor's report must be laid before the AGM (see section 317).

Note 2: The rules in sections 249C-250M apply to an AGM.

(4) A public company that has only 1 member is not required to hold an AGM under this section.

(5) A company need not comply with subsection (1) if it is covered under section 738ZI at the end of the most recent financial year ending earlier than 18 months after its registration.

(6) A company need not comply with subsection (2) if it is covered under section 738ZI at the end of the financial year mentioned in subsection (2).



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## 250P Extension of time for holding AGM

(1) A public company may lodge an application with ASIC to extend the period within which section 250N requires the company to hold an AGM.

(2) If the company applies before the end of the period within which the company would otherwise be required to hold an AGM, ASIC may extend the period in writing. ASIC must specify the period of the extension.

(3) A company granted an extension under subsection (2) must hold its AGM within the extended period.

(4) ASIC may impose conditions on the extension and the company must comply with those conditions.

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

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

## 250PAA Exemptions by ASIC—class orders relating to externally-administered companies

(1) ASIC may, by legislative instrument, make an order exempting any of the following from section 250N:
  (a) a specified class of companies that are being wound up;
  (b) a specified class of companies under administration;
  (c) a specified class of companies subject to deeds of company arrangement.

(2) The order may be:
  (a) unconditional; or
  (b) subject to one or more specified conditions.

(3) ASIC must cause a copy of the order to be published in the *Gazette*.



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## 250PAB Exemptions by ASIC—individual externally-administered companies

(1) The liquidator of a company that is being wound up may lodge an application with ASIC to exempt the company from section 250N.

(2) The administrator of a company under administration may lodge an application with ASIC to exempt the company from section 250N.

(3) The administrator of a deed of company arrangement may lodge an application with ASIC to exempt the company from section 250N.

(4) If an application is lodged under subsection (1), (2) or (3), ASIC may, by writing, exempt the company from section 250N.

(5) The exemption may be:
  (a) unconditional; or
  (b) subject to one or more specified conditions.

(6) ASIC must cause a copy of the exemption to be published in the *Gazette*.

## 250PA Written questions to auditor submitted by members of listed company before AGM

*Member may submit question*

(1) A member of a listed company who is entitled to cast a vote at the AGM may submit a written question to the auditor under this section if the question is relevant to:
  (a) the content of the auditor's report to be considered at the AGM; or
  (b) the conduct of the audit of the annual financial report to be considered at the AGM.

The member submits the question to the auditor under this subsection by giving the question to the listed company no later than the fifth business day before the day on which the AGM is held.



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(2) Despite the question being one that is addressed to the auditor, the listed company may:
  (a) examine the contents of the question; and
  (b) make a copy of the question.

*Company to pass question on to auditor*

(3) The listed company must, as soon as practicable after the question is received by the company, pass the question on to the auditor. The company must pass the question on to the auditor even if the company believes the question is not relevant to the matters specified in paragraph (1)(a) and (b).

*Contravention by individual auditor*

(4) If the auditor is an individual auditor, the auditor contravenes this subsection if the auditor does not prepare, and give to the listed company, a document (the ***question list***) that sets out the questions that:
  (a) the listed company has passed on to the auditor; and
  (b) the auditor considers to be relevant to the matters specified in paragraphs (1)(a) and (b);

as soon as practicable after the end of the time for submitting questions under subsection (1) and a reasonable time before the AGM.

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

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

*Contravention by lead auditor*

(6) A person contravenes this subsection if:
  (a) the auditor is an audit firm or audit company; and
  (b) the person is the lead auditor for the audit; and
  (c) the person does not prepare, and give to the listed company, a document (the ***question list***) that sets out the questions that:
    (i) the listed company has passed on to the auditor; and



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(ii) the person considers to be relevant to the matters specified in paragraphs (1)(a) or (b);

as soon as practicable after the end of the time for submitting questions under subsection (1) and a reasonable time before the AGM.

(7) An offence based on subsection (6) is an offence of strict liability.

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

*Certain questions do not need to be included in question list*

(8) A question need not be included in the question list under subsection (4) or (6) if:

(a) the question list includes a question that is the same in substance as that question (even if it is differently expressed); or

(b) it is not practicable to include the question in the question list, or to decide whether to include the question in the question list, because of the time when the question is passed on to the auditor.

*Listed company to make question list available at AGM*

(9) The listed company must, at or before the start of the AGM, make copies of the question list reasonably available to the members attending the AGM.

## 250R Business of AGM

(1) The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

(a) the consideration of the annual financial report, directors' report and auditor's report;

(b) the election of directors;

(c) the appointment of the auditor;

(d) the fixing of the auditor's remuneration.



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*Advisory resolution for adoption of remuneration report*

(2) At a listed company's AGM, a resolution that the remuneration report be adopted must be put to the vote.

Note: Under paragraph 249L(2)(a), the notice of the AGM must inform members that this resolution will be put at the AGM.

(3) The vote on the resolution is advisory only and does not bind the directors or the company.

*Voting on advisory resolution by key management personnel or closely related parties*

(4) A vote on the resolution must not be cast (in any capacity) by or on behalf of either of the following persons:
  (a) a member of the key management personnel details of whose remuneration are included in the remuneration report;
  (b) a closely related party of such a member.

(5) However, a person (the ***voter***) described in subsection (4) may cast a vote on the resolution as a proxy if the vote is not cast on behalf of a person described in subsection (4) and either:
  (a) the voter is appointed as a proxy by writing that specifies the way the proxy is to vote on the resolution; or
  (b) the voter is the chair of the meeting and the appointment of the chair as proxy:
    (i) does not specify the way the proxy is to vote on the resolution; and
    (ii) expressly authorises the chair to exercise the proxy even if the resolution is connected directly or indirectly with the remuneration of a member of the key management personnel for the company or, if the company is part of a consolidated entity, for the entity.

(6) ASIC may by writing declare that:
  (a) subsection (4) does not apply to a specified resolution; or
  (b) subsection (4) does not prevent the casting of a vote, on a specified resolution, by or on behalf of a specified entity;



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but may do so only if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the listed company. The declaration has effect accordingly. The declaration is not a legislative instrument.

(7) A person described in subsection (4) contravenes this subsection if a vote on the resolution is cast by or on behalf of the person in contravention of that subsection (whether or not the resolution is passed).

Note: A contravention of this subsection is an offence: see subsection 1311(1).

(8) A vote cast in contravention of subsection (4) is taken not to have been cast. This subsection has effect for the purposes of this Act except subsections (4) and (7) and subsection 250BD(1), and section 1311 and Schedule 3 so far as they relate to any of those subsections.

Note: This means the vote is not counted in working out a percentage of votes cast or whether the resolution is passed, and does not affect the validity of the resolution.

(9) For the purposes of this section, a vote is cast on behalf of a person if, and only if, it is cast:

(a) as proxy for the person; or

(b) otherwise on behalf of the person; or

(c) in respect of a share in respect of which the person has:

(i) power to vote; or

(ii) power to exercise, or control the exercise of, a right to vote.

(10) Subject to Part 1.1A, subsections (4), (5), (6), (7), (8) and (9) have effect despite:

(a) anything else in:

(i) this Act; or

(ii) any other law (including the general law) of a State or Territory; and

(b) anything in the company's constitution.



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## 250RA Auditor required to attend listed company's AGM

*Contravention by individual auditor*

(1) If a listed company's auditor for a financial year is an individual auditor, the auditor contravenes this subsection if:
  (a) the auditor does not attend the company's AGM at which the audit report for that financial year is considered; and
  (b) the auditor does not arrange to be represented, at that AGM, by a person who:
    (i) is a suitably qualified member of the audit team that conducted the audit; and
    (ii) is in a position to answer questions about the audit.

(2) An offence based on subsection (1) is an offence of strict liability.

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

*Contravention by lead auditor*

(3) A person contravenes this subsection if:
  (a) a listed company's auditor for a financial year is an audit firm or an audit company; and
  (b) the person is the lead auditor for the audit; and
  (c) the person is not represented, at the AGM at which the audit report for that financial year is considered, by a person who:
    (i) is a suitably qualified member of the audit team that conducted the audit; and
    (ii) is in a position to answer questions about the audit.

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

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



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## 250S Questions and comments by members on company management at AGM

(1) The chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 250SA Listed company—remuneration report

(1) At a listed company's AGM, the chair must allow a reasonable opportunity for the members as a whole to ask questions about, or make comments on, the remuneration report. This section does not limit section 250S.

(2) An offence based on subsection (1) is an offence of strict liability.

## 250T Questions by members of auditors at AGM

(1) If the company's auditor or their representative is at the meeting, the chair of an AGM must:

(a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:

(i) the conduct of the audit; and

(ii) the preparation and content of the auditor's report; and

(iii) the accounting policies adopted by the company in relation to the preparation of the financial statements; and

(iv) the independence of the auditor in relation to the conduct of the audit; and

(b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA.

(2) An offence based on subsection (1) is an offence of strict liability.



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

(3) If :

(a) the company's auditor or their representative is at the meeting; and

(b) the auditor has prepared a written answer to a written question submitted to the auditor under section 250PA;

the Chair of the AGM may permit the auditor or their representative to table the written answer to the written question.

(4) The listed company must make the written answer tabled under subsection (3) reasonably available to members as soon as practicable after the AGM.



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# Division 9—Meetings arising from concerns about remuneration reports

## 250U Application

This Division applies in relation to a listed company if:

(a) at an AGM (the ***later AGM***) of the company, at least 25% of the votes cast on a resolution that the remuneration report be adopted were against adoption of the report; and

(b) at the immediately preceding AGM (the ***earlier AGM***) of the company, at least 25% of the votes cast on a resolution that the remuneration report be adopted were against adoption of the report; and

(c) a resolution was not put to the vote at the earlier AGM under an earlier application of section 250V.

Note: Subsection 250R(2) requires a resolution to adopt a remuneration report for a listed company to be put to the vote at the company's AGM.

## 250V Resolution to hold fresh elections for directors at special meeting to be put to vote at AGM

(1) At the later AGM, there must be put to the vote a resolution (the ***spill resolution***) that:

(a) another meeting (the ***spill meeting***) of the company's members be held within 90 days; and

(b) all the company's directors who:

(i) were directors of the company when the resolution to make the directors' report considered at the later AGM was passed; and

(ii) are not a managing director of the company who may, in accordance with the listing rules for a prescribed financial market in whose official list the company is included, continue to hold office indefinitely without being re-elected to the office;



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cease to hold office immediately before the end of the spill meeting; and

(c) resolutions to appoint persons to offices that will be vacated immediately before the end of the spill meeting be put to the vote at the spill meeting.

(2) Subsections 250R(4), (5), (6), (7), (8), (9) and (10), and other provisions of this Act so far as they relate to any of those subsections, apply in relation to the spill resolution in the same way as they apply in relation to a resolution that a remuneration report be adopted.

(3) To avoid doubt, section 203D does not apply in relation to the spill resolution.

## 250W Consequences of spill resolution being passed

(1) This section applies if the spill resolution is passed.

*Deadline for holding spill meeting*

(2) The company must hold the spill meeting within 90 days after the spill resolution was passed.

(3) Nothing in subsection (2) authorises any person to disregard:

(a) section 249HA (Amount of notice of meetings of listed company); or

(b) if a person intends to move a resolution relating to the appointment of a director of the company—any provision of the company's constitution that requires a minimum period of notice for such a resolution.

Note: Division 3 (which includes section 249HA) deals with giving notice of the spill meeting. Division 5 contains rules relevant to holding the spill meeting.

*If relevant directors cease to hold office before deadline*

(4) The company need not hold the spill meeting within 90 days after the spill resolution was passed if, before the end of that period,



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none of the company's directors described in paragraph 250V(1)(b) remain as directors of the company.

*Consequences of failure to hold spill meeting in time*

(5) If the company does not hold the spill meeting within 90 days after the spill resolution was passed, each person who is a director of the company at the end of those 90 days commits an offence.

Note: A person who is a director at the end of those 90 days may commit an offence even if he or she was not a director when the spill resolution was passed.

(6) An offence against subsection (5) is an offence of strict liability.

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

(7) Subsection (5) does not apply if the company need not hold the spill meeting because of subsection (4).

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

(8) Subsection (5) does not apply to a person who was not a director of the company at any time during the period:

(a) starting when the spill resolution was passed; and

(b) ending at the last time notice of the spill meeting could have been given to hold the spill meeting within 90 days after the spill resolution was passed and comply with section 249HA (Amount of notice of meetings of listed company).

Note: A defendant bears an evidential burden in relation to the matter in subsection (8): see subsection 13.3(3) of the *Criminal Code*.

*Cessation of relevant directors and commencement of newly-appointed directors*

(9) All the company's directors described in paragraph 250V(1)(b) cease to hold office immediately before the end of the spill meeting and the directors appointed by the meeting commence to hold office at the end of that meeting. This subsection has effect despite anything else in this Act and the company's constitution.



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## 250X Ensuring there are at least 3 directors after spill meeting

(1) This section applies if there would be fewer than 3 directors of the company immediately after the spill meeting apart from this section.

Note: Subsection 201A(2) requires the company to have at least 3 directors.

(2) Enough directors to ensure that the company has 3 directors immediately after the spill meeting are taken to have been appointed, by resolution passed at the spill meeting, from the persons who:

(a) gave the company signed consents to act as directors of the company in anticipation of being appointed by such a resolution; and

(b) were not appointed as directors by such a resolution apart from this section.

Note: The number of directors taken under subsection (2) to have been appointed is the difference between 3 and the number of directors holding office immediately after the spill meeting apart from this section.

(3) The persons taken to have been appointed are those with the highest percentages of votes favouring their appointment cast at the spill meeting on the resolution for their appointment (even if less than half the votes cast on the resolution were in favour of their appointment).

Example: Suppose that, under subsection (2), 2 directors are taken to have been appointed, and the percentages of votes favouring appointment were 50% for Jean, 40% for Karl and 30% for Lionel. Jean and Karl would both be taken to have been appointed directors, but Lionel would not.

(4) For the purposes of this section, if 2 or more persons have the same percentage of votes favouring their appointment, the one of those persons chosen by the director or directors who hold office apart from this subsection is taken to have a higher percentage than the rest of those persons.

Note: A director who holds office apart from subsection (4) could make a series of choices if 3 or more persons all have the same percentage of



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votes favouring their appointment and it is necessary to work out which 2 of those persons are taken to be appointed as directors.

(5) If a person is taken to have been appointed because of a choice under subsection (4), the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

(6) This section has effect despite anything else in this Act and the company's constitution.

## 250Y Term of office of director reappointed at spill meeting

If a director who ceased to hold office immediately before the end of the spill meeting is appointed as director by resolution passed at the spill meeting, his or her term of office runs as if the cessation and appointment had not happened.

Note: This section is subject to subsection 250X(5).



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# Part 2G.3—Minutes and members' access to minutes

## 251A Minutes

(1) A company must keep minute books in which it records within 1 month:
  (a) proceedings and resolutions of meetings of the company's members; and
  (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
  (c) resolutions passed by members without a meeting; and
  (d) resolutions passed by directors without a meeting; and
  (e) if the company is a proprietary company with only 1 director—the making of declarations by the director.

Note: For resolutions and declarations without meetings, see sections 248A, 248B, 249A and 249B.

(2) The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
  (a) the chair of the meeting;
  (b) the chair of the next meeting.

(3) The company must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.

(4) The director of a proprietary company with only 1 director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.

(5) A company must keep its minute books at:
  (a) its registered office; or
  (b) its principal place of business in this jurisdiction; or
  (c) another place in this jurisdiction approved by ASIC.



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(5A) An offence based on subsection (1), (2), (3), (4) or (5) is an offence of strict liability.

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

(6) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

## 251AA Disclosure of proxy votes—listed companies

(1) A company must record in the minutes of a meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:

(a) if the resolution is decided by a show of hands—the total number of proxy votes in respect of which the appointments specified that:

(i) the proxy is to vote for the resolution; and

(ii) the proxy is to vote against the resolution; and

(iii) the proxy is to abstain on the resolution; and

(iv) the proxy may vote at the proxy's discretion; and

(b) if the resolution is decided on a poll—the information specified in paragraph (a) and the total number of votes cast on the poll:

(i) in favour of the resolution; and

(ii) against the resolution; and

(iii) abstaining on the resolution.

(2) A company that must notify the operator of each market on which financial products of the company are listed of a resolution passed by members at a meeting of the company must, at the same time, give the relevant market operator the information specified in subsection (1).

(3) This section only applies to a company that is listed.

(4) This section applies despite anything in the company's constitution.



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## 251B Members' access to minutes

(1) A company must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.

(2) A member of a company may ask the company in writing for a copy of:
   (a) any minutes of a meeting of the company's members or an extract of the minutes; or
   (b) any minutes of a resolution passed by members without a meeting.

(3) If the company does not require the member to pay for the copy, the company must send it:
   (a) within 14 days after the member asks for it; or
   (b) within any longer period that ASIC approves.

(4) If the company requires payment for the copy, the company must send it:
   (a) within 14 days after the company receives the payment; or
   (b) within any longer period that ASIC approves.

   The amount of any payment the company requires cannot exceed the prescribed amount.

(5) An offence based on subsection (1), (3) or (4) is an offence of strict liability.

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



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# Part 2G.4—Meetings of members of registered schemes

## Division 1—Who may call meetings of members

### 252A Calling of meetings of members by responsible entity

The responsible entity of a registered scheme may call a meeting of the scheme's members.

### 252B Calling of meetings of members by responsible entity when requested by members

(1) The responsible entity of a registered scheme must call and arrange to hold a meeting of the scheme's members to consider and vote on a proposed special or extraordinary resolution on the request of:
  (a) members with at least 5% of the votes that may be cast on the resolution; or
  (b) at least 100 members who are entitled to vote on the resolution.

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
  (a) a particular scheme; or
  (b) a particular class of scheme.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

(2) The request must:
  (a) be in writing; and
  (b) state any resolution to be proposed at the meeting; and
  (c) be signed by the members proposing to move the resolution.

(3) The request may be accompanied by a statement about the proposed resolution provided by the members making the request.



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(4) Separate copies of a document setting out the request and statement (if any) may be used for signing by members if the wording of the request and statement (if any) is identical in each copy.

(5) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the responsible entity.

(6) The responsible entity must call the meeting within 21 days after the request is given to it. The meeting is to be held not later than 2 months after the request is given to the responsible entity.

(7) The responsible entity must give to each of the members a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The responsible entity must distribute the copies in the same way in which it gives notice of the meeting.

(8) The responsible entity does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.

(9) The responsible entity is responsible for the expenses of calling and holding the meeting and making the distribution. The responsible entity may meet those expenses from the scheme's assets.

## 252C Failure of responsible entity to call meeting of the scheme's members

(1) Members with more than 50% of the votes carried by interests held by the members who make a request under section 252B may call and arrange to hold a meeting of the scheme's members and distribute the statement (if any) if the responsible entity does not do so within 21 days after the request is given to the responsible entity.

(2) The meeting must be called and the statement is to be distributed in the same way—so far as is possible—in which meetings of the scheme's members may be called by the responsible entity and



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information is distributed to members by the responsible entity. The meeting must be held not later than 3 months after the request is given to the responsible entity.

(3) To call the meeting the members requesting the meeting may ask the responsible entity under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the responsible entity must give the members requesting the meeting the copy of the register without charge.

(4) The responsible entity must pay the reasonable expenses the members incurred because the responsible entity failed to call and arrange to hold the meeting and to make the distribution (if any). The responsible entity must not pay those expenses from the scheme's assets.

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

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

## 252D Calling of meetings of members by members

(1) Members of a registered scheme who hold interests carrying at least 5% of the votes that may be cast at a meeting of the scheme's members may call and arrange to hold a meeting of the scheme's members to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The members calling the meeting must pay the expenses of calling and holding the meeting.

(2) The meeting must be called in the same way—so far as is possible—in which meetings of the scheme's members may be called by the responsible entity.

(3) The percentage of the votes carried by interests that members hold is to be worked out as at the midnight before the meeting is called.



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## 252E Calling of meetings of members by the Court

(1) The Court may order a meeting of a registered scheme's members to be called to consider and vote on a proposed special or extraordinary resolution if it is impracticable to call the meeting in any other way.

(2) The Court may make the order on application by:
  (a) the responsible entity; or
  (b) any member of the scheme who would be entitled to vote at the meeting.

Note: For the directions the Court may give for calling, holding or conducting a meeting it has ordered be called, see section 1319.



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## Division 2—How to call meetings of members

### 252F Amount of notice of meetings

At least 21 days notice must be given of a meeting of the members of a registered scheme. However, the scheme's constitution may specify a longer minimum period of notice.

### 252G Notice of meetings of members to members, directors and auditors

*Notice to members, directors and auditors individually*

(1) Written notice of a meeting of a registered scheme's members must be given to:
  (a) each member of the scheme entitled to vote at the meeting; and
  (b) each director of the responsible entity; and
  (c) the auditor of the scheme; and
  (d) the auditor of the scheme compliance plan.

If an interest is held jointly, notice need only be given to 1 of the members.

*Notice to joint members*

(2) Unless the scheme's constitution provides otherwise, notice to joint members must be given to the joint member named first in the register of members.

*How notice is given*

(3) Unless the scheme's constitution provides otherwise, the responsible entity may give notice of the meeting to a member:
  (a) personally; or
  (b) by sending it by post to the address for the member in the register of members or an alternative address (if any) nominated by the member; or



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(c) by sending it to the fax number or electronic address (if any) nominated by the member.

Note: A defect in the notice given may not invalidate a meeting (see section 1322).

*When notice by post or fax is given*

(4) Unless the scheme's constitution provides otherwise, a notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

## 252H Auditors entitled to other communications

(1) The responsible entity of a registered scheme must give the auditor of the scheme and the auditor of the scheme compliance plan any other communications relating to the meeting that a member of the scheme is entitled to receive.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 252J Contents of notice of meetings of members

A notice of a meeting of a registered scheme's members must:

(a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and

(b) state the general nature of the meeting's business; and

(c) if a special or extraordinary resolution is to be proposed at the meeting—set out an intention to propose the special or extraordinary resolution and state the resolution; and

(d) contain a statement setting out the following information:

(i) that the member has a right to appoint a proxy;

(ii) that the proxy does not need to be a member of the registered scheme;



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(iii) that if the member appoints 2 proxies the member may specify the proportion or number of votes the proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

## 252K Notice of adjourned meetings

When a meeting is adjourned, new notice of the adjourned meeting must be given if the meeting is adjourned for 1 month or more.



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# Division 3—Members' rights to put resolutions etc. at meetings of members

## 252L Members' resolutions

(1) The following members of a registered scheme may give the responsible entity notice of a resolution that they propose to move at a meeting of the scheme's members:
  (a) members with at least 5% of the votes that may be cast on the resolution; or
  (b) at least 100 members who are entitled to vote at a meeting of the scheme's members.

(1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
  (a) a particular scheme; or
  (b) a particular class of scheme.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

(1B) The resolution must be:
  (a) a special resolution; or
  (b) an extraordinary resolution; or
  (c) a resolution to remove the responsible entity of a scheme that is listed and choose a new responsible entity.

(2) The notice must:
  (a) be in writing; and
  (b) set out the wording of the proposed resolution; and
  (c) be signed by the members giving the notice.

(3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.



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(4) The percentage of the votes that members have is to be worked out as at the midnight before the members give the notice.

## 252M Responsible entity giving notice of members' resolutions

(1) If a responsible entity has been given notice of a resolution under section 252L, the resolution is to be considered at the next meeting of the scheme's members that occurs more than 2 months after the notice is given.

(2) The responsible entity must give all the members of the scheme notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(3) The responsible entity is responsible for the cost of giving members notice of the resolution if the responsible entity receives the notice in time to send it out to members with the notice of meeting.

(4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the responsible entity in giving members notice of the resolution if the responsible entity does not receive the members' notice in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the scheme's members that the responsible entity is to meet the expenses out of the scheme's assets.

(5) The responsible entity need not give notice of the resolution:
   (a) if it is more than 1,000 words long or defamatory; or
   (b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the responsible entity a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

## 252N Members' statements to be distributed

(1) Members may request a responsible entity to give to all its members a statement provided by the members making the request about:



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(a) a resolution that is proposed to be moved at a meeting of the scheme's members; or
(b) any other matter that may be properly considered at a meeting of the scheme's members.

(2) The request must be made by:
(a) members with at least 5% of the votes that may be cast on the resolution; or
(b) at least 100 members who are entitled to vote at the meeting.

(2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:
(a) a particular scheme; or
(b) a particular class of scheme.
Without limiting this, the regulations may specify the number as a percentage of the total number of members of the scheme.

(3) The request must be:
(a) in writing; and
(b) signed by the members making the request; and
(c) given to the responsible entity.

(4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

(5) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the responsible entity.

(6) After receiving the request, the responsible entity must distribute to all the members of the scheme a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

(7) The responsible entity is responsible for the cost of making the distribution if the responsible entity receives the statement in time to send it out to members with the notice of meeting.



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(8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the responsible entity in making the distribution if the responsible entity does not receive the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the scheme's members that the responsible entity is to meet the expenses out of the scheme's assets.

(9) The responsible entity need not comply with the request:

(a) if the statement is more than 1,000 words long or defamatory; or

(b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.



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# Division 4—Holding meetings of members

## 252P Time and place for meetings of members

A meeting of a registered scheme's members must be held at a reasonable time and place.

## 252Q Technology

A responsible entity of a registered scheme may hold a meeting of the scheme's members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 1322 for the consequences of members not being given a reasonable opportunity to participate.

## 252R Quorum

(1) This section applies to a registered scheme subject to the provisions of the scheme's constitution.

(2) The quorum for a meeting of a registered scheme's members is 2 members and the quorum must be present at all times during the meeting.

(3) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 252V.

Note 2: For body corporate representatives, see section 253B.

(4) A meeting of the scheme's members that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and



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place the responsible entity specifies. If the responsible entity does not specify 1 or more of those things, the meeting is adjourned to:

(a) if the date is not specified—the same day in the next week; and

(b) if the time is not specified—the same time; and

(c) if the place is not specified—the same place.

(5) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

## 252S Chairing meetings of members

(1) The responsible entity may, in writing, appoint an individual to chair a meeting called under section 252A or 252B.

(2) The members present at a meeting called under section 252A or 252B must elect a member present to chair the meeting (or part of it) if:

(a) a chair has not previously been appointed to chair the meeting; or

(b) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).

(3) The members present at a meeting called under section 252C, 252D or 252E must elect a member present to chair the meeting. This is not so if the meeting is called under section 252E and the Court has directed otherwise under section 1319.

## 252T Auditors' right to be heard at meetings of members

(1) The auditor of a registered scheme and the auditor of the scheme compliance plan are entitled to attend any meeting of the scheme's members.

(2) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.



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(3) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the scheme's members.

## 252U Adjourned meetings

(1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(2) Only unfinished business is to be transacted at a meeting resumed after an adjournment.



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## Division 5—Proxies and body corporate representatives

### 252V Who can appoint a proxy

(1) A member of a registered scheme who is entitled to attend and cast a vote at a meeting of the scheme's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

(2) The appointment may specify the proportion or number of votes that the proxy may exercise.

(3) A member may appoint 1 or 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

(4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

### 252W Rights of proxies

*Rights of proxies*

(1) A proxy appointed to attend and vote for a member has the same rights as the member:
   (a) to speak at the meeting; and
   (b) to vote (but only to the extent allowed by the appointment).

*Proxy's right to vote*

(2) A registered scheme's constitution (if any) may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll (see section 253L).



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*Effect of member's presence on proxy's authority*

(3) A registered scheme's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not make such provision, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

## 252X Responsible entity sending appointment forms or lists of proxies must send to all members

(1) If the responsible entity of a registered scheme sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
   (a) if the member requested the form or list—the responsible entity must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
   (b) otherwise—the responsible entity must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

(2) An offence based on subsection (1) is an offence of strict liability.

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

## 252Y Appointing a proxy

(1) An appointment of a proxy is valid if it is signed by the member of the registered scheme making the appointment and contains the following information:
   (a) the member's name and address;
   (b) the scheme's name;
   (c) the proxy's name or the name of the office held by the proxy;
   (d) the meetings at which the appointment may be used.



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*An appointment may be a standing one*

(2) A registered scheme's constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).

(3) An undated appointment is taken to have been dated on the day it is given to the responsible entity.

(4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

(a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and

(b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and

(c) if the proxy is the chair—the proxy must vote on a poll, and must vote that way; and

(d) if the proxy is not the chair—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: The scheme's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 252W(2)).

(5) A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the responsible entity sending to members:

(a) a list of persons willing to act as proxies; or

(b) a proxy appointment form holding the person out as being willing to act as a proxy.

(5A) An offence based on subsection (5) is an offence of strict liability.

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

(6) An appointment does not have to be witnessed.

(7) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.



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## 252Z Proxy documents

*Section applies subject to scheme's constitution*

(1) Subsections (2), (3) and (4) apply to a registered scheme subject to the provisions of the scheme's constitution.

*Documents to be received by responsible entity before meeting*

(2) For an appointment of a proxy for a meeting of the scheme's members to be effective, the following documents must be received by the responsible entity at least 48 hours before the meeting:
  (a) the proxy's appointment
  (b) if the appointment is signed by the appointor's attorney—the authority under which the appointment was signed or a certified copy of the authority.

*Documents received following adjournment of meeting*

(3) If a meeting of the scheme's members has been adjourned, an appointment and any authority received by the responsible entity at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

*Receipt of documents*

(3A) A responsible entity receives an appointment authority when it is received at any of the following:
  (a) the responsible entity's registered office;
  (b) a fax number at the responsible entity's registered office;
  (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

*Ineffective appointments of fax or electronic notification*

(4) An appointment of a proxy is ineffective if:
  (a) the responsible entity receives either or both the appointment or authority at a fax number or electronic address; and



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(b) a requirement (if any) in the notice of meeting that:
  (i) the transmission be verified in a way specified in the notice; or
  (ii) the proxy produce the appointment and authority (if any) at the meeting;
is not complied with.

*Constitution or notice of meeting may provide for different notification period*

(5) The scheme's constitution or the notice of meeting may reduce the period of 48 hours referred to in subsection (2) or (3).

## 253A Validity of proxy vote

*Proxy vote valid even if member dies, revokes appointment etc.*

(1) Unless the responsible entity has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
  (a) the appointing member dies; or
  (b) the member is mentally incapacitated; or
  (c) the member revokes the proxy's appointment; or
  (d) the member revokes the authority under which the proxy was appointed by a third party; or
  (e) the member transfers the interest in respect of which the proxy was given.

This subsection applies to a registered scheme subject to the provisions of the scheme's constitution.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 252W(3)).

*Proxy vote valid even if proxy cannot vote as member*

(2) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their



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appointment specifies the way they are to vote on the resolution and they vote that way.

## 253B Body corporate representative

(1) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of a registered scheme's members. The appointment may be a standing one.

(2) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

(3) A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

(4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.



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## Division 6—Voting at meetings of members

### 253C How many votes a member has

(1) On a show of hands, each member of a registered scheme has 1 vote.

(2) On a poll, each member of the scheme has 1 vote for each dollar of the value of the total interests they have in the scheme.

Note 1: For rights to appoint proxies, see section 252V.

Note 2: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

### 253D Jointly held interests

If an interest in a registered scheme is held jointly and more than 1 member votes in respect of that interest, only the vote of the member whose name appears first in the register of members counts.

### 253E Responsible entity and associates cannot vote if interested in resolution

The responsible entity of a registered scheme and its associates are not entitled to vote their interest on a resolution at a meeting of the scheme's members if they have an interest in the resolution or matter other than as a member. However, if the scheme is listed, the responsible entity and its associates are entitled to vote their interest on resolutions to remove the responsible entity and choose a new responsible entity.

Note: The responsible entity and its associates may vote as proxies if their appointments specify the way they are to vote and they vote that way (see subsection 253A(2)).



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## 253F How to work out the value of an interest

The value of an interest in a registered scheme is:

(a) if it is quoted on a prescribed financial market—the last sale price on that market on the trading day immediately before the day on which the poll is taken; or

(b) if it is not quoted on a prescribed financial market and the scheme is liquid and has a withdrawal provision in its constitution—the amount that would be paid for the interest under that provision on the business day immediately before the day on which the poll is taken; or

(c) in any other case—the amount that the responsible entity determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

## 253G Objections to a right to vote

A challenge to a right to vote at a meeting of members of a registered scheme:

(a) may only be made at the meeting; and

(b) must be determined by the chair, whose decision is final.

## 253H Votes need not all be cast in the same way

On a poll a person voting who is entitled to 2 or more votes:

(a) need not cast all their votes; and

(b) may cast their votes in different ways.

Note: For proxy appointments that specify the proxy is to vote on a particular resolution, see subsection 252Y(4).

## 253J How voting is carried out

(1) A special or extraordinary resolution put to the vote at a meeting of a registered scheme's members must be decided on a poll.



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(2) Any other resolution put to the vote at a meeting of the scheme's members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by members entitled to vote on the resolution.

(3) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 253L(3)(c)).

## 253K Matters on which a poll may be demanded

(1) A poll may be demanded on any resolution.

(2) A registered scheme's constitution may provide that a poll cannot be demanded on any resolution concerning:
   (a) the election of the chair of a meeting; or
   (b) the adjournment of a meeting.

(3) A demand for a poll may be withdrawn.

## 253L When a poll is effectively demanded

(1) At a meeting of a registered scheme's members, a poll may be demanded by:
   (a) at least 5 members present entitled to vote on the resolution; or
   (b) members present with at least 5% of the votes that may be cast on the resolution on a poll; or
   (c) the chair.

(2) A registered scheme's constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.

(3) The poll may be demanded:



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(a) before a vote is taken; or
(b) before the voting results on a show of hands are declared; or
(c) immediately after the voting results on a show of hands are declared.

(4) The percentage of votes that members have is to be worked out as at close of business on the day before the poll is demanded.



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## Division 7—Minutes and members' access to minutes

### 253M Minutes

(1) A responsible entity of a registered scheme must keep minute books in which it records within 1 month:
  (a) proceedings of meetings of the scheme's members; and
  (b) resolutions of meetings of the scheme's members.

(2) The responsible entity must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting.

(3) The responsible entity must keep the minute books at:
  (a) its registered office; or
  (b) its principal place of business in this jurisdiction; or
  (c) another place in this jurisdiction approved by ASIC.

(3A) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

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

(4) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

### 253N Members' access to minutes

(1) The responsible entity of a registered scheme must ensure that the minute books for the meetings of the scheme's members are open for inspection by members free of charge.

(2) A member of a registered scheme may ask the responsible entity in writing for a copy of any minutes of a meeting of the scheme's members or an extract of the minutes.

(3) If the responsible entity does not require the member to pay for the copy, the responsible entity must send it:



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(a) within 14 days after the member asks for it; or
(b) within any longer period that ASIC approves.

(4) If the responsible entity requires payment for the copy, the responsible entity must send it:
(a) within 14 days after the responsible entity receives the payment; or
(b) within any longer period that ASIC approves.

The amount of any payment the responsible entity requires cannot exceed the prescribed amount.

(5) An offence based on subsection (1), (3) or (4) is an offence of strict liability.

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



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# Chapter 2H—Shares

## Part 2H.1—Issuing and converting shares

### 254A Power to issue bonus, partly-paid, preference and redeemable preference shares

(1) A company's power under section 124 to issue shares includes the power to issue:

(a) bonus shares (shares for whose issue no consideration is payable to the issuing company); and

(b) preference shares (including redeemable preference shares); and

(c) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).

Note 1: Subsections 246C(5) and (6) provide that in certain circumstances the issue of preference shares is taken to be a variation of class rights.

Note 2: Partly-paid shares are dealt with in sections 254M-254N.

Note 3: On the issue of a bonus share there need not be any increase in the company's share capital.

(2) A company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:

(a) repayment of capital;

(b) participation in surplus assets and profits;

(c) cumulative and non-cumulative dividends;

(d) voting;

(e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

(3) Redeemable preference shares are preference shares that are issued on the terms that they are liable to be redeemed. They may be redeemable:



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(a) at a fixed time or on the happening of a particular event; or
(b) at the company's option; or
(c) at the shareholder's option.

Note: Redeemable preference shares are dealt with in sections 254J-254L.

## 254B Terms of issue

(1) A company may determine:
(a) the terms on which its shares are issued; and
(b) the rights and restrictions attaching to the shares.

Note 1: Details of any division of shares into classes or conversion of classes of shares must be given to ASIC by a notice in the prescribed form (see subsection 246F(1)).

Note 2: For public companies, any document or resolution that attaches rights to shares or varies or cancels rights attaching to shares must be lodged with ASIC (see subsection 246F(3)).

Note 3: Sections 246B-246G provide safeguards in cases where class rights are cancelled or varied.

Note 4: The company cannot issue par value shares (see section 254C) or bearer shares (see section 254F).

*No liability companies—special terms of issue*

(2) A share in a no liability company is issued on the following terms:
(a) if a no liability company is wound up and a surplus remains, it must be distributed among the parties entitled to it in proportion to the number of shares held by them, irrespective of the amounts paid up on the shares; and
(b) a member who is in arrears in payment of a call on a share, but whose share has not been forfeited, is not entitled to participate in the distribution on the basis of holding that share until the amount owing in respect of the call has been fully paid and satisfied.



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*Companies incorporated as no liability companies—special terms of issue*

(3) If a company:
  (a) either:
    (i) is a no liability company; or
    (ii) was initially registered as a no liability company and has changed its status under section 162 to another type of company; and
  (b) ceases to carry on business within 12 months after its registration and is wound up;

shares issued for cash rank (to the extent of the capital contributed by subscribing shareholders) in the winding up in priority to shares issued to vendors or promoters, or both, for consideration other than cash.

(4) The holders of shares issued to vendors or promoters are not entitled to preference on the winding up of a company that:
  (a) is a no liability company; or
  (b) was initially registered as a no liability company and has changed its status under section 162 to another type of company.

This is so despite anything in the company's constitution or the terms on which the shares are on issue.

## 254C No par value shares

Shares of a company have no par value.

Note: The Part 10.1 transitional provisions contain provisions that deal with the introduction of no par value shares. See also subsection 169(4).

## 254D Pre-emption for existing shareholders on issue of shares in proprietary company *(replaceable rule—see section 135)*

(1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares



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offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

(2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
  (a) the number of shares offered; and
  (b) the period for which it will remain open.

(3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.

(4) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

## 254E Court validation of issue

(1) On application by a company, a shareholder, a creditor or any other person whose interests have been or may be affected, the Court may make an order validating, or confirming the terms of, a purported issue of shares if:
  (a) the issue is or may be invalid for any reason; or
  (b) the terms of the issue are inconsistent with or not authorised by:
    (i) this Act; or
    (ii) another law of a State or Territory; or
    (iii) the company's constitution (if any).

(2) On lodgment of a copy of the order with ASIC, the order has effect from the time of the purported issue.

## 254F Bearer shares and stock must not be issued

A company does not have the power to:
  (a) issue bearer shares; or
  (b) issue stock or convert shares into stock.

Note: The Part 10.1 transitionals contain provisions for the conversion of existing stock into shares.



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## 254G Conversion of shares

(1) A company may:
  (a) convert an ordinary share into a preference share; and
  (b) convert a preference share into an ordinary share.

Note: The variation of class rights provisions (sections 246B-246G) will apply to the conversion.

(2) A company can convert ordinary shares into preference shares only if the holders' rights with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:
  (a) repayment of capital;
  (b) participation in surplus assets and profits;
  (c) cumulative and non-cumulative dividends;
  (d) voting;
  (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

(3) A share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

## 254H Resolution to convert shares into larger or smaller number

(1) A company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

Note: The variation of class rights provisions (sections 246B-246G) may apply to the conversion.

(2) The conversion takes effect on:
  (a) the day the resolution is passed; or
  (b) a later date specified in the resolution.

(3) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.



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## Section 254H

(4) The company must lodge a copy of the resolution with ASIC within 1 month after it is passed.

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

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



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# Part 2H.2—Redemption of redeemable preference shares

## 254J Redemption must be in accordance with terms of issue

(1) A company may redeem redeemable preference shares only on the terms on which they are on issue. On redemption, the shares are cancelled.

Note 1: For the power to issue redeemable preference shares see paragraph 254A(1)(b) and subsections 254A(2) and (3).

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 254L(3). Section 79 defines ***involved***.

(2) This section does not affect the terms on which redeemable preference shares may be cancelled under a reduction of capital or a share buy-back under Part 2J.1.

## 254K Other requirements about redemption

A company may only redeem redeemable preference shares:

(a) if the shares are fully paid-up; and

(b) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

Note 1: For a director's duty to prevent insolvent trading on redeeming redeemable preference shares, see section 588G.

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 254L(3). Section 79 defines ***involved***.

## 254L Consequences of contravening section 254J or 254K

(1) If a company redeems shares in contravention of section 254J or 254K:



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## Section 254L

(a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and

(b) the company is not guilty of an offence.

(2) Any person who is involved in a company's contravention of section 254J or 254K contravenes this subsection.

Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines ***involved***.

(3) A person commits an offence if they are involved in a company's contravention of section 254J or 254K and the involvement is dishonest.



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# Part 2H.3—Partly-paid shares

## 254M Liability on partly-paid shares

*General rule about shareholder's liability for calls*

(1) If shares in a company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue. This subsection does not apply to a no liability company.

Note: The shareholder may also be liable as a contributory under sections 514-529 if the company is wound up.

*No liability companies*

(2) The acceptance by a person of a share in a no liability company, whether by issue or transfer, does not constitute a contract by the person to pay:
  (a) calls in respect of the share; or
  (b) any contribution to the debts and liabilities of the company.

## 254N Calls may be limited to when company is externally-administered

(1) A limited company may provide by special resolution that the whole or a part of its unpaid share capital may be called up only if the company becomes a Chapter 5 body corporate.

(2) The company must lodge with ASIC a copy of the special resolution within 14 days after it is passed.

(3) An offence based on subsection (2) is an offence of strict liability.

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



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## 254P No liability companies—calls on shares

*Making calls*

(1) A call on a share in a no liability company is not effective unless it is made payable at least 14 days after the call is made.

*Notice of call*

(2) At least 7 days before a call on shares in a no liability company becomes payable, the company must give the holders of the shares notice of:
   (a) the amount of the call; and
   (b) the day when it is payable; and
   (c) the place for payment.

   The notice must be sent by post. If the notice is not given, the call is not payable.

(3) A call does not have any effect on a forfeited share that is held by or in trust for the company under subsection 254Q(6). However, when the share is re-issued or sold by the company, the share may be credited as paid up to the amount determined by the company in accordance with its constitution or by resolution.

## 254Q No liability companies—forfeiture and sale of shares for failure to meet call

*Forfeiture and sale of shares*

(1) A share in a no liability company is immediately forfeited if:
   (a) a call is made on the share; and
   (b) the call is unpaid at the end of 14 days after it became payable.

   Note: The holder of the share may redeem it under section 254R.

(2) The forfeited share must then be offered for sale by public auction within 6 weeks after the call became payable.



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*Advertisement of sale*

(3) At least 14 days, and not more than 21 days, before the day of the sale, the sale must be advertised in a daily newspaper circulating generally throughout Australia. The specific number of shares to be offered need not be specified in the advertisement and it is sufficient to give notice of the sale by advertising to the effect that all shares on which a call remains unpaid will be sold.

*Postponement of sale*

(4) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale. The date to which the sale is postponed must be advertised in a daily newspaper circulating generally in Australia.

(5) There may be more than 1 postponement but the sale cannot be postponed to a date more than 90 days from the first date fixed for the intended sale.

*Shares may be offered as credited to a particular amount*

(6) The share may be sold credited as paid up to the sum of:
   (a) the amount paid upon the share at the time of forfeiture; and
   (b) the amount of the call; and
   (c) the amount of any other calls becoming payable on or before the day of the sale;

   if the company in accordance with its constitution or by ordinary resolution so determines.

*Reserve price*

(7) The directors may fix a reserve price for the share that does not exceed the sum of:
   (a) the amount of the call due and unpaid on the share at the time of forfeiture; and
   (b) the amount of any other calls that become payable on or before the date of the sale.



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*Withdrawal from sale*

(8) The share may be withdrawn from sale if no bid at least equal to the reserve price is made at the sale.

*Disposal of shares withdrawn from sale*

(9) If:
  (a) no bid for the share is received at the sale; or
  (b) the share is withdrawn from sale;

the share must be held by the directors in trust for the company. It must be then disposed of in the manner determined by the company in accordance with its constitution or by resolution. Unless otherwise specifically provided by resolution, the share must first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

*Suspension of voting rights attached to share held in trust*

(10) At any meeting of the company, no person is entitled to any vote in respect of the shares held by the directors in trust under subsection (9).

*Application of proceeds of sale*

(11) The proceeds of the sale under subsection (2) or the disposal under subsection (9) must be applied to pay:
  (a) first, the expenses of the sale; and
  (b) then, any expenses necessarily incurred in respect of the forfeiture; and
  (c) then, the calls on the share that are due and unpaid.

The balance (if any) must be paid to the member whose share has been sold. If there is a share certificate that relates to the share, the balance does not have to be paid until the member delivers the certificate to the company.



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*Validity of sale*

(12) If a sale is not held in time because of error or inadvertence, a late sale is not invalid if it is held as soon as practicable after the discovery of the error or inadvertence.

*Failure to comply an offence*

(13) If there is failure to comply with subsection (2) or (3), the company is guilty of an offence.

*Strict liability offences*

(14) An offence by the company based on subsection (13) is an offence of strict liability.

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

## 254R No liability companies—redemption of forfeited shares

(1) Despite section 254Q, if a person's share has been forfeited, the person may redeem the share, at any time up to or on the last business day before the proposed sale, by paying the company:

(a) all calls due on the share; and

(b) if the company so requires:

(i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the company in respect of the forfeiture; and

(ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

On payment, the person is entitled to the share as if the forfeiture had not occurred.

(2) On the last business day before the proposed sale, the registered office of the company must be open during the hours for which it is by this Act required to be open and accessible to the public.



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# Part 2H.4—Capitalisation of profits

## 254S Capitalisation of profits

A company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.



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# Part 2H.5—Dividends

## 254SA Companies limited by guarantee not to pay dividends

A company limited by guarantee must not pay a dividend to its members.

## 254T Circumstances in which a dividend may be paid

(1) A company must not pay a dividend unless:
  (a) the company's assets exceed its liabilities immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
  (b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
  (c) the payment of the dividend does not materially prejudice the company's ability to pay its creditors.

Note 1: As an example, the payment of a dividend would materially prejudice the company's ability to pay its creditors if the company would become insolvent as a result of the payment.

Note 2: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

(2) Assets and liabilities are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).

## 254U Other provisions about paying dividends *(replaceable rule—see section 135)*

(1) The directors may determine that a dividend is payable and fix:
  (a) the amount; and
  (b) the time for payment; and
  (c) the method of payment.



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The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

(2) Interest is not payable on a dividend.

## 254V When does the company incur a debt?

(1) A company does not incur a debt merely by fixing the amount or time for payment of a dividend. The debt arises only when the time fixed for payment arrives and the decision to pay the dividend may be revoked at any time before then.

(2) However, if the company has a constitution and it provides for the declaration of dividends, the company incurs a debt when the dividend is declared.

## 254W Dividend rights

*Shares in public companies*

(1) Each share in a class of shares in a public company has the same dividend rights unless:
   (a) the company has a constitution and it provides for the shares to have different dividend rights; or
   (b) different dividend rights are provided for by special resolution of the company.

*Shares in proprietary companies (replaceable rule—see section 135)*

(2) Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

*No liability companies*

(3) A person is not entitled to a dividend on a share in a no liability company if a call:
   (a) has been made on the share; and
   (b) is due and unpaid.



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(4) Dividends are payable to the shareholders in a no liability company in proportion to the number of shares held by them, irrespective of the amount paid up, or credited as paid up, on the shares. This subsection has effect subject to any provisions in the company's constitution relating to shares that are not ordinary shares.

## 254WA Application of this Part to MCI mutual entities

(1) Section 254SA does not prevent an MCI mutual entity that is a company limited by guarantee paying a dividend in respect of an MCI.

(2) Without limiting section 254T, an MCI mutual entity must not pay a dividend unless the payment of the dividend is fair and reasonable to the entity's members as a whole.



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# Part 2H.6—Notice requirements

## 254X Notice to ASIC of share issue

(1) Within 28 days after issuing shares, a company must lodge with ASIC a notice in the prescribed form that sets out:

(a) the number of shares that were issued; and

(b) if the company has different classes of shares—the class to which each of those shares belongs; and

(c) the amount (if any) paid, or agreed to be considered as paid, on each of those shares; and

(d) the amount unpaid (if any) on each of those shares; and

(e) if the company is a public company and the shares were issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares were issued under a written contract and a copy of the contract is lodged with the notice; and

(f) if the company is a proprietary company and the shares are issued pursuant to a CSF offer—that the company has one or more CSF shareholders as a result of the issuing of the shares.

Note 1: The company must lodge information when rights attached to the shares change, or when the shares are divided or converted into new classes (see section 246F).

Note 2: A proprietary company may also have to notify certain particulars under Part 2C.2.

(2) If the shares were issued for non-cash consideration under a contract, the company must also lodge with ASIC a certificate stating that all stamp duty payable on the contract under any applicable law relating to stamp duty has been paid. This certificate must be lodged with the subsection (1) notice or at a later time permitted by the regulations or by ASIC.

(2A) An offence based on subsection (1) or (2) is an offence of strict liability.



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

(3) The company does not have to lodge a subsection (1) notice about the issue of shares to a person on the registration of the company or on the company changing its type from a company limited by guarantee to a company limited by shares.

Note: Information about shares issued in these situations will come to ASIC under subsections 5H(2), 117(2), 163(3) and 601BC(2).

## 254Y Notice to ASIC of share cancellation

(1) Within 1 month after shares are cancelled, the company must lodge with ASIC a notice in the prescribed form that sets out:

(a) the number of shares cancelled; and

(b) any amount paid by the company (in cash or otherwise) on the cancellation of the shares; and

(c) if the shares are cancelled following a share buy-back—the amount paid by the company (in cash or otherwise) on the buy-back; and

(d) if the company has different classes of shares—the class to which each cancelled share belonged; and

(e) if the company is a proprietary company that has made one or more CSF offers—whether the cancellation has resulted in the company ceasing to have any CSF shareholders.

Note: Provisions under which shares are cancelled include section 254J (redeemable preference shares), section 256B (capital reductions), subsection 257H(3) (shares a company has bought back), section 258D (forfeited shares), and subsections 258E(2) and (3) (shares returned to a company).

(2) An offence based on subsection (1) is an offence of strict liability.

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



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# Chapter 2J—Transactions affecting share capital

## Part 2J.1—Share capital reductions and share buy-backs

### 256A Purpose

This Part states the rules to be followed by a company for reductions in share capital and for share buy-backs. The rules are designed to protect the interests of shareholders and creditors by:

(a) addressing the risk of these transactions leading to the company's insolvency

(b) seeking to ensure fairness between the company's shareholders

(c) requiring the company to disclose all material information.



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# Division 1—Reductions in share capital not otherwise authorised by law

## 256B Company may make reduction not otherwise authorised

(1) A company may reduce its share capital in a way that is not otherwise authorised by law if the reduction:

(a) is fair and reasonable to the company's shareholders as a whole; and

(b) does not materially prejudice the company's ability to pay its creditors; and

(c) is approved by shareholders under section 256C.

A cancellation of a share for no consideration is a reduction of share capital, but paragraph (b) does not apply to this kind of reduction.

Note 1: One of the ways in which a company might reduce its share capital is cancelling uncalled capital.

Note 2: Sections 258A-258F deal with some of the other situations in which reductions of share capital are authorised. Subsection 254K(2) authorises capital reductions involved in the redemption of redeemable preference shares and subsection 257A(2) authorises reductions involved in share buy-backs.

Note 3: For a director's duty to prevent insolvent trading on reductions of share capital, see section 588G.

Note 4: For the criminal liability of a person dishonestly involved in a contravention of subsection 256D(1) based on this subsection, see subsection 256D(4). Section 79 defines ***involved***.

Note 5: A company may reduce its share capital for the purposes of the conversion and write-off provisions determined by APRA despite this Division (see Subdivision B of Division 1A of Part II of the *Banking Act 1959*, Division 2 of Part IIIA of the *Insurance Act 1973* and Division 1A of Part 10A of the *Life Insurance Act 1995*).

(1A) To avoid doubt, a cancellation of a partly-paid share is taken to be for consideration.



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(2) The reduction is either an equal reduction or a selective reduction. The reduction is an ***equal reduction*** if:
   (a) it relates only to ordinary shares; and
   (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
   (c) the terms of the reduction are the same for each holder of ordinary shares.

   Otherwise, the reduction is a ***selective reduction***.

(3) In applying subsection (2), ignore differences in the terms of the reduction that are:
   (a) attributable to the fact that shares have different accrued dividend entitlements; or
   (b) attributable to the fact that shares have different amounts unpaid on them; or
   (c) introduced solely to ensure that each shareholder is left with a whole number of shares.

## 256C Shareholder approval

*Ordinary resolution required for equal reduction*

(1) If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.

*Special shareholder approval for selective reduction*

(2) If the reduction is a selective reduction, it must be approved by either:
   (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
   (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.



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If the reduction involves the cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares are to be cancelled.

(3) The company must lodge with ASIC a copy of any resolution under subsection (2) within 14 days after it is passed. The company must not make the reduction until 14 days after lodgment.

Note: A proprietary company may also have to notify certain particulars under Part 2C.2.

*Information to accompany the notice of meeting*

(4) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

*Documents to be lodged with ASIC*

(5) Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:
  (a) the notice of the meeting; and
  (b) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

## 256D Consequences of failing to comply with section 256B

(1) The company must not make the reduction unless it complies with subsection 256B(1).

(2) If the company contravenes subsection (1):
  (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
  (b) the company is not guilty of an offence.

(3) Any person who is involved in a company's contravention of subsection (1) contravenes this subsection.



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Note 1: Subsection (3) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines ***involved***.

(4) A person commits an offence if they are involved in a company's contravention of subsection (1) and the involvement is dishonest.

## 256E Signposts to other relevant provisions

The following table lists other provisions of this Act that are relevant to reductions in share capital.

| Other provisions relevant to reductions in share capital | | |
|---|---|---|
| 1 | section 588G<br>section 1317H | **liability of directors on insolvency**<br>Under the combined operation of these sections the directors may have to compensate the company if the company is, or becomes, insolvent when the company reduces its share capital. |
| 2 | section 1324 | **injunctions to restrain contravention**<br>Under this section the Court may grant an injunction against conduct that constitutes or would constitute a contravention of this Act. |
| 4 | Chapter 6CA | **continuous disclosure provisions**<br>Under this Chapter a disclosing entity is required to disclose information about its securities that is material and not generally available. |
| 5 | Chapter 2E | **benefits to related parties to be disclosed**<br>Under this Chapter a financial benefit to a director or other related party that could adversely affect the interests of a public company's members as a whole must be approved at a general meeting before it can be given. |
| 6 | section 125 | **provisions in constitution**<br>This section deals with the way in which a company's constitution may restrict the exercise of the company's powers and the consequences of a failure to observe these restrictions. |



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| **Other provisions relevant to reductions in share capital** | | |
|---|---|---|
| 7 | sections 246B-246G | **variation of class rights**<br>These sections deal with the variation of rights attached to a class of shares. This variation may be governed by the provisions of the company's constitution. |



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# Division 2—Share buy-backs

## 257A The company's power to buy back its own shares

A company may buy back its own shares if:

(a) the buy-back does not materially prejudice the company's ability to pay its creditors; and

(b) the company follows the procedures laid down in this Division.

Note 1: If a company has a constitution, it may include provisions in the constitution that preclude the company buying back its own shares or impose restrictions on the exercise of the company's power to buy back its own shares.

Note 2: A company may buy-back redeemable preference shares and may do so on terms other than the terms on which they could be redeemed. For the redemption of redeemable preference shares, see sections 254J-254L.

## 257B Buy-back procedure—general

(1) The following table specifies the steps required for, and the sections that apply to, the different types of buy-back.

| **Procedures [and sections applied]** | **minimum holding** | **employee share scheme** | | **on-market** | | **equal access scheme** | | **selective buy-back** |
|---|---|---|---|---|---|---|---|---|
| | | **within 10/12 limit** | **over 10/12 limit** | **within 10/12 limit** | **over 10/12 limit** | **within 10/12 limit** | **over 10/12 limit** | |
| ordinary resolution **[257C]** | — | — | yes | — | yes | — | yes | — |
| special/unanimous resolution **[257D]** | — | — | — | — | — | — | — | yes |
| lodge offer documents with **ASIC [257E]** | — | — | — | — | — | yes | yes | yes |
| 14 days notice **[257F]** | — | yes | yes | yes | yes | yes | yes | yes |



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| **Procedures**<br><br>**[and sections applied]** | **minimum holding** | **employee share scheme** | | **on-market** | | **equal access scheme** | | **selective buy-back** |
|---|---|---|---|---|---|---|---|---|
| | | **within 10/12 limit** | **over 10/12 limit** | **within 10/12 limit** | **over 10/12 limit** | **within 10/12 limit** | **over 10/12 limit** | |
| disclose relevant information when offer made **[257G]** | — | — | — | — | — | yes | yes | yes |
| cancel shares **[257H]** | yes | yes | yes | yes | yes | yes | yes | yes |
| notify cancellation to ASIC **[254Y]** | yes | yes | yes | yes | yes | yes | yes | yes |

Note: Subsections (2) and (3) of this section explain what an equal access scheme is. The 10/12 limit is the 10% in 12 months limit laid down in subsections (4) and (5). Subsections (6) and (7) of this section explain what an on-market buy-back is. See section 9 for definitions of ***minimum holding buy-back***, ***employee share scheme buy-back*** and ***selective buy-back***.

*Equal access scheme*

(2) An equal access scheme is a scheme that satisfies all the following conditions:
  (a) the offers under the scheme relate only to ordinary shares;
  (b) the offers are to be made to every person who holds ordinary shares to buy back the same percentage of their ordinary shares;
  (c) all of those persons have a reasonable opportunity to accept the offers made to them;
  (d) buy-back agreements are not entered into until a specified time for acceptances of offers has closed;
  (e) the terms of all the offers are the same.

(3) In applying subsection (2), ignore:
  (a) differences in consideration attributable to the fact that the offers relate to shares having different accrued dividend entitlements;



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(b) differences in consideration attributable to the fact that the offers relate to shares on which different amounts remain unpaid;

(c) differences in the offers introduced solely to ensure that each shareholder is left with a whole number of shares.

*10/12 limit*

(4) The 10/12 limit for a company proposing to make a buy-back is 10% of the smallest number, at any time during the last 12 months, of votes attaching to voting shares of the company.

*Exceeding the 10/12 limit*

(5) A proposed buy-back would exceed the 10/12 limit if the number of votes attaching to:

(a) all the voting shares in the company that have been bought back during the last 12 months; and

(b) the voting shares that will be bought back if the proposed buy-back is made;

would exceed the 10/12 limit.

*On-market buy-backs*

(6) A buy-back is an on-market buy-back if it results from an offer made by a listed corporation on a prescribed financial market in the ordinary course of trading on that market.

(7) A buy-back by a company (whether listed or not) is also an on-market buy-back if it results from an offer made in the ordinary course of trading in a financial market outside Australia which ASIC declares in writing to be an approved overseas financial market for the purposes of this subsection. A buy-back by a listed company is an on-market buy-back under this subsection only if an offer to buy-back those shares is also made on a prescribed financial market at the same time.



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(8) A declaration under subsection (7) may be subject to conditions. Notice of the making of the declaration must be published in the *Gazette*.

## 257C Buy-back procedure—shareholder approval if the 10/12 limit exceeded

*Ordinary resolution required*

(1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by a resolution passed at a general meeting of the company, or the agreement must be conditional on such an approval.

*Information to accompany the notice of meeting*

(2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

*Documents to be lodged with the ASIC*

(3) Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:
   (a) the notice of the meeting; and
   (b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.



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## 257D Buy-back procedure—special shareholder approval for selective buy-back

*Selective buy-back requires special or unanimous resolution*

(1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by either:
   (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or by their associates; or
   (b) a resolution agreed to, at a general meeting, by all ordinary shareholders;

   or the agreement must be conditional on such an approval.

*Information to accompany the notice of meeting*

(2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

*Documents to be lodged with the ASIC*

(3) Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:
   (a) the notice of the meeting; and
   (b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.

(4) ASIC may exempt a company from the operation of this section. The exemption:
   (a) must be in writing; and
   (b) must be granted before the buy-back agreement is entered into; and



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(c) may be granted subject to conditions.

## 257E Buy-back procedure—lodgment of offer documents with ASIC

If section 257B applies this section to a buy-back, the company must lodge with ASIC, before the buy-back agreement is entered into, a copy of:

(a) a document setting out the terms of the offer; and

(b) any document that is to accompany the offer.

## 257F Notice of intended buy-back

(1) If section 257B applies this section to a buy-back, the company must satisfy the lodgment requirement in subsection (2) at least 14 days before:

(a) if the buy-back agreement is conditional on the passing of a resolution under subsection 257C(1) or 257D(1)—the resolution is passed; or

(b) if it is not—the agreement is entered into.

(2) The company satisfies the lodgment requirement when it lodges with ASIC:

(a) documents under subsection 257C(3) or 257D(3) or section 257E; or

(b) a notice that the company intends to carry out the buy-back.

Note 1: A company that has to lodge documents under section 257C, 257D or 257E needs to lodge a notice under paragraph (2)(b) of this section only if it wants for some reason to enter into the agreement or pass the resolution less than 14 days after lodging the section 257C, 257D or 257E documents.

Note 2: The company may specify a buy-back under paragraph (2)(b) in any way. It may, for instance, choose to lodge a notice covering buy-backs to be carried out:

- under a particular scheme; or
- as part of particular on-market buy-back activity.



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## 257G Buy-back procedure—disclosure of relevant information when offer made

If section 257B applies this section to a buy-back, the company must include with the offer to buy back shares a statement setting out all information known to the company that is material to the decision whether to accept the offer.

## 257H Acceptance of offer and transfer of shares to the company

*Effect of acceptance of the buy-back offer on share rights*

(1) Once a company has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.

*Shares transferred to the company and cancelled*

(2) A company must not dispose of shares it buys back. An agreement entered into in contravention of this subsection is void.

(3) Immediately after the registration of the transfer to the company of the shares bought back, the shares are cancelled.

Note: ASIC must be notified of the cancellation under section 254Y.

## 257J Signposts to other relevant provisions

The following table sets out other provisions of this Act that are relevant to buy-backs.

**Other provisions relevant to buy-backs**

| | provision | comment |
|---|---|---|
| 1 | section 588G<br>section 1317H | **liability of directors on insolvency**<br>The directors may have to compensate the company if the company is, or becomes, insolvent when the company enters into the buy-back agreement. |



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**Other provisions relevant to buy-backs**

| | provision | comment |
|---|---|---|
| 2 | section 1324 | **injunctions to restrain contravention**<br>The Court may grant an injunction against conduct that constitutes, or would constitute, a contravention of this Act. |
| 4 | subsection 609(4)<br>section 611 (item 19 of the table) | **application of takeover provisions**<br>These sections deal with the application of Chapter 6 to buy-backs. |
| 5 | section 259A | **consequences of failure to follow procedures—the company and the officers**<br>If a company fails to follow the procedure in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence. |
| 6 | section 256D | **consequences of failure to follow procedures if reduction in share capital involved—the company and the officers**<br>If the buy-back involves a reduction in share capital and the company fails to follow the procedures in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence. |
| 7 | section 256D | **consequences of failure to follow procedures if reduction in share capital involved—the transaction**<br>This section provides that a failure to follow the procedures for share capital reductions does not affect the validity of the buy-back transaction itself. |
| 8 | Chapter 6CA | **continuous disclosure provisions**<br>Under this Chapter a disclosing entity is required to disclose information about its securities that is material and not generally available. |



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| **Other provisions relevant to buy-backs** | | |
|---|---|---|
| | **provision** | **comment** |
| 9 | Chapter 2E | **benefits to related parties to be disclosed**<br>Under this Chapter, a financial benefit to a director or other related party may need to be approved at a general meeting before it is given. |
| 10 | section 125 | **provisions in constitution**<br>This section deals with the way in which a company's constitution may restrict the exercise of the company's powers and the consequences of a failure to observe these restrictions. |
| 11 | sections 246B-246G | **variation of class rights**<br>These sections deal with the variation of rights attached to a class of shares. This variation may be governed by the provisions of a company's constitution. |



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## Division 3—Other share capital reductions

### 258A Unlimited companies

An unlimited company may reduce its share capital in any way.

### 258B Right to occupy or use real property

(1) If a company has a constitution, under it the company may grant to a shareholder, as a shareholder, a right to occupy or use real property that the company owns or holds under lease, whether the right is a lease or licence or a contractual right.

Note: Before the introduction of strata or unit titles systems, rights to occupy real property were sometimes based on a holding of shares in a company.

(2) A company may transfer to a person an interest in land in exchange for, or in satisfaction of, a right to occupy or use the land of the kind referred to in subsection (1).

Example: A person has a right to occupy an apartment in a block of units because they hold shares in a company. As part of converting the block of units to strata title, the person surrenders the shares in return for a transfer of strata title over the apartment. The capital reduction involved in the transfer is authorised under this subsection.

### 258C Brokerage or commission

A company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the company.

### 258D Cancellation of forfeited shares

A company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.



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## 258E Other share cancellations

(1) Any reduction in share capital involved in:
  (a) the redemption of redeemable preference shares out of the proceeds of a new issue of shares made for the purpose of the redemption (see section 254K); or
  (b) a company's buying-back of its own shares under sections 257A to 257J if the shares are paid for out of share capital.

is authorised by this section.

(2) A company may cancel shares returned to it under section 651C, 724(2), 737 or 738 and any reduction in the company's share capital that is involved is authorised by this subsection.

(3) Any reduction in a company's share capital because of an order under section 1325A is authorised by this subsection.

## 258F Reductions because of lost capital

(1) A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets.

(2) This power does not apply if:
  (a) the company also cancels shares; or
  (b) the cancellation of paid-up share capital is inconsistent with the requirements of any accounting standard.



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# Division 4—Application of this Part to MCI mutual entities

## 258G Application of this Part to MCI mutual entities

(1) For the purposes of applying this Part to an MCI mutual entity, a reference (other than in section 258B) to a shareholder of the entity is taken to include a non-shareholder mutual member of the entity.

(2) For the purposes of applying Division 1 to an MCI mutual entity:
  (a) any reduction of the entity's share capital that relates to MCIs is taken to be a selective reduction; and
  (b) the reference to all ordinary shareholders in paragraph 256C(2)(b) is taken to be a reference to all members of the entity.

(3) For the purposes of applying Division 2 to an MCI mutual entity:
  (a) any scheme to buy back MCIs is taken not to be an equal access scheme; and
  (b) subsections 257B(4) and (5) (the 10/12 limit) have effect in relation to MCIs issued by a mutual entity as if each MCI were a voting share with one vote attached to it; and
  (c) the reference to all ordinary shareholders in paragraph 257D(1)(b) is taken to be a reference to all members of the entity.

(4) To avoid doubt, this section does not have the effect of treating a non-shareholder mutual member's membership of an MCI mutual entity as a share.



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# Part 2J.2—Self-acquisition and control of shares

## 259A Directly acquiring own shares

A company must not acquire shares (or units of shares) in itself except:

(a) in buying back shares under section 257A; or

(b) in acquiring an interest (other than a legal interest) in fully-paid shares in the company if no consideration is given for the acquisition by the company or an entity it controls; or

(c) under a court order; or

(d) in circumstances covered by subsection 259B(2) or (3).

Note: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 259F(3). Section 79 defines ***involved***.

## 259B Taking security over own shares or shares in holding company

(1) A company must not take security over shares (or units of shares) in itself or in a company that controls it, except as permitted by subsection (2) or (3).

Note: For the criminal liability of a person dishonestly involved in a contravention of this subsection, see subsection 259F(3). Section 79 defines ***involved***.

(2) A company may take security over shares in itself under an employee share scheme that has been approved by:

(a) a resolution passed at a general meeting of the company; and

(b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general meeting of the listed domestic corporation; and

(c) if paragraph (b) does not apply but the company has a holding company that is a domestic corporation and that is not itself a subsidiary of a domestic corporation—a



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resolution passed at a general meeting of that holding company.

*Special exemptions for financial institutions*

(3) A company's taking security over shares (or units of shares) in itself or in a company that controls it is exempted from subsection (1) if:
  (a) the company's ordinary business includes providing finance; and
  (b) the security is taken in the ordinary course of that business and on ordinary commercial terms.

(4) If a company acquires shares (or units of shares) in itself because it exercises rights under a security permitted by subsection (2) or (3), then, within the following 12 months, the company must cease to hold those shares (or units of shares). ASIC may extend this period of 12 months if the company applies for the extension before the end of the period.

(5) Any voting rights attached to the shares (or units of shares) cannot be exercised while the company continues to hold them.

(6) If, at the end of the 12 months (or extended period), the company still holds any of the shares (or units of shares), the company commits an offence for each day while that situation continues.

(7) An offence based on subsection (6) is an offence of strict liability.

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

## 259C Issuing or transferring shares to controlled entity

(1) The issue or transfer of shares (or units of shares) of a company to an entity it controls is void unless:
  (a) the issue or transfer is to the entity as a personal representative; or
  (b) the issue or transfer is to the entity as trustee and neither the company nor any entity it controls has a beneficial interest in



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the trust, other than a beneficial interest that satisfies these conditions:

(i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and

(ii) that transaction was not entered into with an associate of the company or an entity it controls; or

(c) the issue to the entity is made as a result of an offer to all the members of the company who hold shares of the class being issued and is made on a basis that does not discriminate unfairly, either directly or indirectly, in favour of the entity; or

(d) the transfer to the entity is by a wholly-owned subsidiary of a body corporate and the entity is also a wholly-owned subsidiary of that body corporate.

(2) ASIC may exempt a company from the operation of this section. The exemption:

(a) must be in writing; and

(b) may be granted subject to conditions.

(3) If paragraph (1)(c) or (d) applies to an issue or transfer of shares (or units of shares), section 259D applies.

## 259D Company controlling entity that holds shares in it

(1) If any of the following occur:

(a) a company obtains control of an entity that holds shares (or units of shares) in the company;

(b) a company's control over an entity that holds shares (or units of shares) in the company increases;

(c) a company issues shares (or units of shares) to an entity it controls in the situation covered by paragraph 259C(1)(c);

(d) shares (or units of shares) in the company are transferred to an entity it controls in the situation covered by paragraph 259C(1)(d);

then, within 12 months after it occurs either:



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(e) the entity must cease to hold the shares (or units); or

(f) the company must cease to control the entity.

ASIC may extend this period of 12 months if the company applies for the extension before the end of the period.

(2) If this section applies to shares (or units of shares), it also applies to bonus shares issued in respect of those shares (or units of shares). Within the same period that applies to the shares themselves under subsection (1), either:

(a) the entity must cease to hold the bonus shares; or

(b) the company must cease to control the entity.

(3) Any voting rights attached to the shares (or units of shares) cannot be exercised while the company continues to control the entity.

(4) If, at the end of the 12 months (or extended period), the company still controls the entity and the entity still holds the shares (or units of shares), the company commits an offence for each day while that situation continues.

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

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

(5) This section does not apply to shares (or units of shares) if:

(a) they are held by the entity as a personal representative; or

(b) they are held by the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:

(i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and

(ii) that transaction was not entered into with an associate of the company or an entity it controls.

(6) A contravention of this section does not affect the validity of any transaction.



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## 259E When a company controls an entity

(1) For the purposes of this Part, a company controls an entity if the company has the capacity to determine the outcome of decisions about the entity's financial and operating policies.

(2) In determining whether a company has this capacity:
  (a) the practical influence the company can exert (rather than the rights it can enforce) is the issue to be addressed; and
  (b) any practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).

(3) Merely because the company and an unrelated entity jointly have the capacity to determine the outcome of decisions about another entity's financial and operating policies, the company does not control the other entity.

(4) A company is not taken to control an entity merely because of a capacity that it is under a legal obligation to exercise for the benefit of someone other than its shareholders.

Note: This situation could arise, for example, if the company holds shares as a trustee or is performing duties as a liquidator.

## 259F Consequences of failing to comply with section 259A or 259B

(1) If a company contravenes section 259A or subsection 259B(1):
  (a) the contravention does not affect the validity of the acquisition or security or of any contract or transaction connected with it; and
  (b) the company is not guilty of an offence.

(2) Any person who is involved in a company's contravention of section 259A or subsection 259B(1) contravenes this subsection.

Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines ***involved***.



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(3) A person commits an offence if they are involved in a company's contravention of section 259A or subsection 259B(1) and the involvement is dishonest.



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# Part 2J.3—Financial assistance

## 260A Financial assistance by a company for acquiring shares in the company or a holding company

(1) A company may financially assist a person to acquire shares (or units of shares) in the company or a holding company of the company only if:

(a) giving the assistance does not materially prejudice:

(i) the interests of the company or its shareholders; or

(ii) the company's ability to pay its creditors; or

(b) the assistance is approved by shareholders under section 260B (that section also requires advance notice to ASIC); or

(c) the assistance is exempted under section 260C.

Note: For the criminal liability of a person dishonestly involved in a contravention of this section, see subsection 260D(3). Section 79 defines ***involved***.

(2) Without limiting subsection (1), financial assistance may:

(a) be given before or after the acquisition of shares (or units of shares); and

(b) take the form of paying a dividend.

(3) Subsection (1) extends to the acquisition of shares (or units of shares) by:

(a) issue; or

(b) transfer; or

(c) any other means.



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## 260B Shareholder approval

*Approval by company's own shareholders*

(1) Shareholder approval for financial assistance by a company must be given by:
   (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by the person acquiring the shares (or units of shares) or by their associates; or
   (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.

*Approval by shareholders of listed holding corporation*

(2) If the company will be a subsidiary of a listed domestic corporation immediately after the acquisition referred to in section 260A occurs, the financial assistance must also be approved by a special resolution passed at a general meeting of that corporation.

*Approval by shareholders in ultimate Australian holding company*

(3) If, immediately after the acquisition, the company will have a holding company that:
   (a) is a domestic corporation but not listed; and
   (b) is not itself a subsidiary of a domestic corporation;

   the financial assistance must also be approved by a special resolution passed at a general meeting of the body corporate that will be the holding company.

*Information to accompany the notice of meeting*

(4) A company or other body that calls a meeting for the purpose of subsection (1), (2) or (3) must include with the notice of the meeting a statement setting out all the information known to the company or body that is material to the decision on how to vote on the resolution. However, the company or body does not have to disclose information if it would be unreasonable to require the



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company or body to do so because the company or body had previously disclosed the information to its members.

*Documents to be lodged with the ASIC before notice of meeting is sent out*

(5) Before the notice of a meeting for the purpose of subsection (1), (2) or (3) is sent to members of a company or other body, the company or body must lodge with ASIC a copy of:
  (a) the notice of the meeting; and
  (b) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.

(6) The company must lodge with ASIC, at least 14 days before giving the financial assistance, a notice in the prescribed form stating that the assistance has been approved under this section.

*Lodgment of special resolutions*

(7) A special resolution passed for the purpose of subsection (1), (2) or (3) must be lodged with ASIC by the company, listed domestic corporation or holding company within 14 days after it is passed.

## 260C Exempted financial assistance

*General exemptions based on ordinary course of commercial dealing*

(1) Financial assistance is exempted from section 260A if it is given in the ordinary course of commercial dealing and consists of:
  (a) acquiring or creating a lien on partly-paid shares in the company for amounts payable to the company on the shares; or
  (b) entering into an agreement with a person under which the person may make payments to the company on shares by instalments.



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*Special exemptions for financial institutions*

(2) Financial assistance is exempted from section 260A if:
  (a) the company's ordinary business includes providing finance; and
  (b) the financial assistance is given in the ordinary course of that business and on ordinary commercial terms.

*Special exemptions for subsidiaries of debenture issuers*

(3) Financial assistance is exempted from section 260A if:
  (a) the company is a subsidiary of a borrower in relation to debentures; and
  (b) the financial assistance is a guarantee or other security given by the company for the repayment by the borrower of money that it is or will be liable to repay; and
  (c) the borrower is a borrower in relation to the debentures because it is or will be liable to repay the money; and
  (d) the guarantee or security is given by the company in the ordinary course of commercial dealing.

*Special exemption for approved employee share schemes*

(4) Financial assistance is exempted from section 260A if it is given under an employee share scheme that has been approved by:
  (a) a resolution passed at a general meeting of the company; and
  (b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general meeting of the listed domestic corporation; and
  (c) if paragraph (b) does not apply but the company has a holding company that is a domestic corporation and that is not itself a subsidiary of a domestic corporation—a resolution passed at a general meeting of that holding company.



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*Other exemptions*

(5) The following types of financial assistance are exempted from section 260A:
  (a) a reduction of share capital in accordance with Division 1 of Part 2J.1;
  (b) a share buy-back in accordance with Division 2 of Part 2J.1;
  (c) assistance given under a court order;
  (d) a discharge on ordinary commercial terms of a liability that the company incurred as a result of a transaction entered into on ordinary commercial terms.

## 260D Consequences of failing to comply with section 260A

(1) If a company provides financial assistance in contravention of section 260A:
  (a) the contravention does not affect the validity of the financial assistance or of any contract or transaction connected with it; and
  (b) the company is not guilty of an offence.

(2) Any person who is involved in a company's contravention of section 260A contravenes this subsection.

Note 1: Subsection (2) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines ***involved***.

(3) A person commits an offence if they are involved in a company's contravention of section 260A and the involvement is dishonest.

## 260DA Application of this Part to MCI mutual entities

(1) For the purposes of applying this Part to an MCI mutual entity:
  (a) a reference to a shareholder of the entity is taken to include a non-shareholder mutual member of the entity; and
  (b) the reference to all ordinary shareholders in paragraph 260B(1)(b) is taken to be a reference to all members of the entity.



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(2) To avoid doubt, this section does not have the effect of treating a non-shareholder mutual member's membership of an MCI mutual entity as a share.



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# Part 2J.4—Interaction with general directors' duties

## 260E General duties still apply

A director is not relieved from any of their duties under this Act (including sections 180, 181, 182, 183 and 184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter.



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