Corporations Act 2001

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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 1370–1669
	Schedules
	Endnotes

Each volume has its own contents

This compilation includes commenced amendments made by Act No. 64, 2020. Amendments made by Act No. 69, 2020 have not commenced but are noted in the endnotes.

Prepared by the Office of Parliamentary Counsel, Canberra

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 23 June 2020 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Chapter 7—Financial services and markets

Part 7.9—Financial product disclosure and other provisions relating to issue, sale and purchase of financial products

Division 1—Preliminary

1010A Part generally does not apply to securities

(1) Apart from section 1017F and Divisions 5A, 5B, 5C and 6 (and provisions of Division 7 that apply in relation to that section or provisions of those Divisions), nothing in this Part applies in relation to securities.

Note: Chapters 6CA and 6D provide for disclosure in relation to securities.

(2) Apart from section 1017F and Divisions 5A, 5B and 6, nothing in this Part applies in relation to debentures, stocks or bonds issued or proposed to be issued by a government.

Note: These financial products are not ***securities*** within the meaning of section 761A.

1010B Part does not apply to financial products not issued in the course of a business

(1) Apart from Division 5A, nothing in this Part applies in relation to a financial product that is not or was not issued, or that will not be issued, in the course of a business of issuing financial products.

(2) For this purpose, the issue of:

(a) any managed investment product; or

(aa) any foreign passport fund product; or

(b) any superannuation product;

is taken to occur in the course of a business of issuing financial products.

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1010BA Part does not apply to contribution plans

Apart from section 1017F and Divisions 5A and 6 (and provisions of Division 7 that apply in relation to that section or provisions of those Divisions), nothing in this Part applies in relation to contribution plans.

1010C Special provisions about meaning of *sale* and *offer*

(1) For the purposes of this Part, a reference to a ***sale*** or ***purchase*** of a financial product is a reference to a sale of the product by, or a purchase of the product from, a person who has (whether by issue or otherwise) acquired the product. The issue of a financial product is not a sale of the financial product.

(2) For the purposes of this Part:
  (a) a reference to offering to issue a financial product includes a reference to inviting an application for the issue of the financial product; and
  (b) a reference to offering to sell a financial product includes a reference to inviting an offer to purchase the financial product.

1010D General approach to offence provisions

Division 7 contains provisions creating offences by reference to various rules contained in Divisions of this Part. However, it does not create all the offences relating to those rules, as some offences are created by subsection 1311(1). Where offences are created by subsection 1311(1) in relation to a rule, this is indicated by a note at the end of the provision containing the rule.

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Division 2—Product Disclosure Statements

Subdivision A—Preliminary

1011A Jurisdictional scope of Division

(1) Subject to subsection (2), sections 1012A, 1012B and 1012C only apply in relation to offers and recommendations referred to in those sections that are received in this jurisdiction.

(2) Section 1012B also applies in relation to issues referred to in subparagraph 1012B(3)(a)(iii) that are made in this jurisdiction.

(3) The regulations may make provision dealing with the jurisdictional scope of some or all of the other provisions of this Division. The other provisions of this Division have effect subject to any such regulations.

1011B Definitions

In this Division:

issue Statement has the meaning given by subsection 1013A(1).

offer has a meaning affected by sections 1010C and 1011C.

regulated person, in relation to a financial product, means:

(a) an issuer of the financial product; or

(b) a seller of the financial product if the sale takes place in circumstances described in subsection 1012C(5), (6) or (8) (secondary sales that require a Product Disclosure Statement); or

(c) any financial services licensee; or

(d) any authorised representative of a financial services licensee; or

(f) any person who is not required to hold an Australian financial services licence because the person is covered by:

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(i) paragraph 911A(2)(j); or
(ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or
(iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l); or

(g) any person who is required to hold an Australian financial services licence but who does not hold such a licence.

responsible person for a Product Disclosure Statement has the meaning given by subsection 1013A(3).

sale has a meaning affected by section 1010C.

sale Statement has the meaning given by subsection 1013A(2).

1011C Treatment of offers of options over financial products

For the purposes of this Division:

(a) an offer of an option over a financial product is not to be taken to be an offer of the underlying financial product; and
(b) the grant of an option without an offer of the option is taken to be an offer of the option; and
(c) an offer to grant an option is taken to be an offer to issue the financial product constituted by the option.

Subdivision B—Requirement for a Product Disclosure Statement to be given

1012A Obligation to give Product Disclosure Statement—personal advice recommending particular financial product

Section sets out recommendation situation in which Product Disclosure Statement required

(1) This section sets out the situations in which giving financial product advice that consists of, or includes, a recommendation to acquire a financial product gives rise to an obligation on a

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regulated person to give another person a Product Disclosure Statement for the product.

(2) For the purposes of this Division:
  (a) each of the situations is a ***recommendation situation***; and
  (b) the ***relevant conduct*** for that situation is the making of the recommendation; and
  (c) the ***client*** for that situation is the person to whom the advice is provided.

Personal advice recommending a particular financial product

(3) A regulated person must give a person a Product Disclosure Statement for a financial product if:
  (a) the regulated person provides financial product advice to the person that consists of, or includes, a recommendation that the person acquire the financial product; and
  (b) the person would acquire the financial product by way of:
    (i) the issue of the product to the person (rather than the transfer of the product to the person); or
    (ii) the transfer of the product to the person in circumstances described in subsection 1012C(5), (6) or (8) (secondary sales that require a Product Disclosure Statement); and
  (c) the financial product advice is provided to the client as a retail client; and
  (d) the financial product advice is personal advice to the client.

The Product Disclosure Statement must be given at or before the time when the regulated person provides the advice and must be given in accordance with this Division.

This section has effect subject to other provisions

(4) This section has effect subject to sections 1012D, 1012DA, 1012E, 1012F, 1012G and 1014E.

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Civil liability

(5) A person contravenes this subsection if the person contravenes this section.

Note: This subsection is a civil penalty provision (see section 1317E).

1012B Obligation to give Product Disclosure Statement—situations related to issue of financial products

Section sets out issue situations in which Product Disclosure Statement required

(1) This section sets out situations in which:
(a) an offer relating to the issue of a financial product; or
(b) the issue of a financial product;
gives rise to an obligation on a regulated person to give another person a Product Disclosure Statement for the product.

(2) For the purposes of this Division:
(a) each of the situations is an ***issue situation***; and
(b) the ***relevant conduct*** for that situation is the conduct by the regulated person that gives rise to the obligation to give the Product Disclosure Statement; and
(c) the ***client*** for that situation is the person to whom the financial product is to be or is issued.

The main issue situations

(3) A regulated person must give a person a Product Disclosure Statement for a financial product if:
(a) the regulated person:
(i) offers to issue the financial product to the person; or
(ii) offers to arrange for the issue of the financial product to the person; or
(iii) issues the financial product to the person in circumstances in which there are reasonable grounds to

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believe that the person has not been given a Product Disclosure Statement for the product; and

(b) the financial product is, or is to be, issued to the person as a retail client.

The Product Disclosure Statement must be given at or before the time when the regulated person makes the offer, or issues the financial product, to the person and must be given in accordance with this Division.

Note: If a Product Disclosure Statement is given when the offer is made, it will not need to be given again when the product is issued to the person (see subsection 1012D(1)) unless the Product Disclosure Statement that was given is no longer up to date.

Receiving offer to acquire financial product

(4) A regulated person must give a person a Product Disclosure Statement for a financial product if:

(a) the person makes an offer to the regulated person to acquire the financial product; and

(b) the person would acquire the financial product by way of the issue of the product to the person (rather than the transfer of the product to the person); and

(c) the financial product is to be issued to the person as a retail client.

The Product Disclosure Statement must be given to the person before the person becomes bound by a legal obligation to acquire the financial product pursuant to the offer and must be given in accordance with this Division.

This section has effect subject to other provisions

(5) This section has effect subject to sections 1012D, 1012DAA, 1012E, 1012F, 1012G and 1014E.

Civil liability

(6) A person contravenes this subsection if the person contravenes this section.

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Note: This subsection is a civil penalty provision (see section 1317E).

1012C Obligation to give Product Disclosure Statement—offers related to sale of financial products

Section sets out sale situations in which Product Disclosure Statement required

(1) This section sets out situations in which an offer relating to the sale of a financial product gives rise to an obligation on a regulated person to give another person a Product Disclosure Statement for the product.

(2) For the purposes of this Division:
  (a) each of the situations is a ***sale situation***; and
  (b) the ***relevant conduct*** for that situation is the offer; and
  (c) the ***client*** for that situation is the person to whom the product is to be sold.

Sale offers that require a Product Disclosure Statement

(3) A regulated person must give a person a Product Disclosure Statement for a financial product if:
  (a) the regulated person offers to sell the financial product to the person; and
  (b) a sale of the product to the person pursuant to the offer would take place in circumstances covered by subsection (5), (6) or (8); and
  (c) the financial product is to be sold to the person as a retail client.

The Product Disclosure Statement must be given at or before the time when the regulated person makes the offer and must be given in accordance with this Division.

(4) A regulated person must give a person a Product Disclosure Statement for a financial product if:
  (a) the person makes an offer to the regulated person to acquire the financial product; and

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(b) the person would acquire the financial product by way of the transfer of the product to the person; and

(c) a sale of the product to the person pursuant to the offer would take place in the circumstances described in subsection (5), (6) or (8); and

(d) the financial product is to be sold to the person as a retail client.

The Product Disclosure Statement must be given to the person before the person becomes bound by a legal obligation to acquire the financial product pursuant to the offer and must be given in accordance with this Division.

Off-market sale by controller

(5) This subsection covers the circumstances in which:

(a) the seller controls the issuer of the financial product; and

(b) either:

(i) the product is not able to be traded on any licensed market; or

(ii) although the product is able to be traded on a licensed market, the offer is not made in the ordinary course of trading on a licensed market.

Note: See section 50AA for when a person controls a body.

Sale amounting to indirect issue

(6) This subsection covers the circumstances in which:

(a) the offer is made within 12 months after the issue of the financial product; and

(b) the product was issued without a Product Disclosure Statement for the product being prepared; and

(c) either:

(i) the issuer issued the product with the purpose of the person to whom it was issued selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product; or

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(ii) the person to whom the product was issued acquired it with the purpose of selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product.

The purpose test in subsection (6)

(7) For the purposes of subsection (6):

(a) a financial product is taken to be:

(i) issued with the purpose referred to in subparagraph (6)(c)(i); or

(ii) acquired with the purpose referred to in subparagraph (6)(c)(ii);

if there are reasonable grounds for concluding that the product was issued or acquired with that purpose (whether or not there were or may have been other purposes for the issue or acquisition); and

(b) without limiting paragraph (a), a financial product is taken to be:

(i) issued with the purpose referred to in subparagraph (6)(c)(i); or

(ii) acquired with the purpose referred to in subparagraph (6)(c)(ii);

if the financial product, or any financial product of the same kind that was issued at the same time, is subsequently sold, or offered for sale, within 12 months after issue, unless it is proved that the circumstances of the issue and the subsequent sale or offer are not such as to give rise to reasonable grounds for concluding that the product was issued or acquired with that purpose.

Sale amounting to indirect off-market sale by controller

(8) This subsection covers the circumstances in which:

(a) the offer is made within 12 months after the sale of the financial product by a person (the ***controller***) who controlled the issuer of the product at the time of the sale; and

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(b) either:

(i) at the time of the sale by the controller, the product was not able to be traded on any licensed market; or

(ii) although the product was able to be traded on a licensed market at that time, the sale by the controller did not occur in the ordinary course of trading on a licensed market; and

(c) a Product Disclosure Statement was not prepared by, or on behalf of, the controller before the sale of the product by the controller; and

(d) either:

(i) the controller sold the product with the purpose of the person to whom it was sold selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product; or

(ii) the person to whom the controller sold the product acquired it with the purpose of selling or transferring the product, or granting, issuing or transferring interests in, or options or warrants over, the product.

Note: See section 50AA for when a person controls a body.

The purpose test in subsection (8)

(9) For the purposes of subsection (8):

(a) a financial product is taken to be:

(i) sold with the purpose referred to in subparagraph (8)(d)(i); or

(ii) acquired with the purpose referred to in subparagraph (8)(d)(ii);

if there are reasonable grounds for concluding that the product was sold or acquired with that purpose (whether or not there were or may have been other purposes for the sale or acquisition); and

(b) without limiting paragraph (a), a financial product is taken to be:

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(i) sold with the purpose referred to in subparagraph (8)(d)(i); or

(ii) acquired with the purpose referred to in subparagraph (8)(d)(ii);

if the financial product, or any financial product of the same kind that was sold by the controller at the same time, is subsequently sold, or offered for sale, within 12 months after issue, unless it is proved that the circumstances of the initial sale and the subsequent sale or offer are not such as to give rise to reasonable grounds for concluding that the product was sold or acquired (in the initial sale) with that purpose.

This section has effect subject to other provisions

(10) This section has effect subject to sections 1012D, 1012DA, 1012E and 1014E.

Civil liability

(11) A person contravenes this subsection if the person contravenes this section.

Note: This subsection is a civil penalty provision (see section 1317E).

1012D Situations in which Product Disclosure Statement is not required

Recommendation, issue or sale situation—client has already received an up to date Product Disclosure Statement

(1) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the client has already received a Product Disclosure Statement that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or

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(b) the regulated person believes on reasonable grounds that paragraph (a) applies.

Recommendation, issue or sale situation—client has or has access to up to date information

(2) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:

(a) the client already holds a financial product of the same kind; and

(b) the regulated person believes on reasonable grounds that the client has received, or has, and knows that they have, access to, all of the information that the first-mentioned Product Disclosure Statement would be required to contain through:

(i) a Product Disclosure Statement; and

(ii) information provided to the client under section 1017B, 1017C or 1017D or through continuous disclosure under Chapter 6CA.

Note: Paragraph (a)—see subsection (10).

Recommendation or issue situation—interests in self managed superannuation funds

(2A) In a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:

(a) the financial product is an interest in a self managed superannuation fund; and

(b) the regulated person believes on reasonable grounds that the client has received, or has, and knows that they have, access to, all of the information that the Product Disclosure Statement would be required to contain.

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Recommendation, issue or sale situation—no information required to be in Product Disclosure Statement

(2B) In a recommendation situation, issue situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if, because of section 1013F, no information would be required to be included in the Statement.

Recommendation or issue situation—certain offers to present holders

(3) In a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement for the financial product if:

(a) the client already holds a financial product of the same kind; and

(b) either:

(i) in a recommendation situation—the advice that constitutes the relevant conduct relates to an offer made under a distribution reinvestment plan or switching facility; or

(ii) in an issue situation—the offer or issue that constitutes the relevant conduct is made under a distribution reinvestment plan or switching facility.

Note: Paragraph (a)—see subsection (10).

Recommendation, issue or sale situation—no consideration to be provided

(5) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) no consideration is to be provided for the issue or sale of the financial product; and

(b) the financial product is not an option and is:

(i) a managed investment product; or

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(ia) a foreign passport fund product; or

(ii) a financial product of a kind prescribed by regulations made for the purposes of this subparagraph.

(6) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is an option; and

(b) no consideration is to be provided for the issue or sale of the financial product; and

(c) no consideration is to be provided for the underlying financial product on the exercise of the option.

Issue or sale situation—takeovers

(7) In an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is:

(i) a managed investment product; or

(ia) a foreign passport fund product; or

(ii) an option to acquire, by way of transfer, a share in a body, a debenture of a body or a legal or equitable right or interest in a share in a body or a debenture of a body; and

(b) the offer that constitutes the relevant conduct is made as consideration for an offer made under a takeover bid under Chapter 6; and

(c) the offer is accompanied by a bidder's statement.

Note: Although a Product Disclosure Statement is not needed, disclosures must be made in the bidder's document under section 636.

Recommendation, issue or sale situation—responsible entity an exempt body

(8) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

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(a) the financial product is a financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes); and

(b) the holder of the office (by whatever name it is known), in relation to the managed investment scheme, that corresponds most closely to the office of responsible entity of a registered scheme is an exempt body; and

(c) in the case of a recommendation situation or an issue situation—either:

(i) the recommendation that constitutes the relevant conduct relates to an offer made by the office holder referred to in paragraph (b); or

(ii) the offer that constitutes the relevant conduct is made by or to the office holder referred to in paragraph (b).

Note 1: Section 66A defines ***exempt body***.

Note 2: In the case of a sale situation, there is no additional requirement equivalent to paragraph (c).

Recommendation or issue situation—interim contracts of insurance

(9) In a recommendation situation or an issue situation, the regulated person does not have to give the client a Product Disclosure Statement if the financial product is an interim contract of insurance (as defined in subsection 11(2) of the *Insurance Contracts Act 1984*).

Note: This does not detract from the obligation to give a Product Disclosure Statement relating to any contract of insurance that replaces or supersedes the interim contract.

Recommendation, issue or sale situation—client is associated with registered scheme

(9A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is a managed investment product; and

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(b) the client is associated (within the meaning of subsection (9B)) with the scheme's responsible entity.

(9B) For the purposes of subsection (9A), the client is associated with the scheme's responsible entity if the client is:

(a) a senior manager of the responsible entity or of a related body corporate; or

(b) a spouse, parent, child, brother or sister of a person who is a senior manager of the responsible entity or a related body corporate; or

(c) a body corporate controlled by a person referred to in paragraph (a) or (b).

Recommendation, issue or sale situation—client is associated with a notified foreign passport fund

(9C) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) the financial product is a foreign passport fund product; and

(b) the client is associated (within the meaning of subsection (9D)) with the fund's operator.

(9D) For the purposes of subsection (9C), the client is associated with the fund's operator if the client is:

(a) a senior manager of the operator or of a related body corporate; or

(b) a spouse, parent, child, brother or sister of a person who is a senior manager of the operator or a related body corporate; or

(c) a body corporate controlled by a person referred to in paragraph (a) or (b).

Interpretation

(10) For the purposes of this section:

(a) a financial product (other than a managed investment product, a foreign passport fund product or a superannuation

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product) is of the same kind as another financial product only if they are both issued:

(i) by the same issuer; and

(ii) on the same terms and conditions (other than price); and

(b) a managed investment product, a foreign passport fund product or a superannuation product is of the same kind as another product only if the other product is an interest in the same scheme or fund; and

(c) a reference to information that a Product Disclosure Statement would be required to contain includes a reference to information that would be required to be in any statement that the Product Disclosure Statement would be required to contain.

1012DAA Rights issues for which Product Disclosure Statement is not required

(1) In a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) but for subsection (2), the regulated person would be required by section 1012B to give a Product Disclosure Statement for the transfer or issue of a financial product (the ***relevant product***); and

(b) a determination under subsection (3) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

Conditions required for rights issue

(2) The regulated person does not have to give the client a Product Disclosure Statement if:

(a) the relevant product is being offered under a rights issue; and

(b) the class of the relevant product are quoted securities at the time at which the offer is made; and

(c) trading in that class of the relevant product on a prescribed financial market on which they are quoted was not suspended

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for more than a total of 5 days during the shorter of the following periods:

(i) the period during which the class of the relevant product is quoted;

(ii) the period of 12 months before the day on which the offer is made; and

(d) no exemption under section 111AS or 111AT covered the issuer of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (c); and

(e) no order under section 340, 340A, 341 or 341A covered the issuer of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (c); and

(f) the issuer of the relevant product gives the relevant market operator for the issuer a written notice that complies with subsection (7) within the 24 hour period before the relevant conduct occurs.

Determination by ASIC

(3) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the issuer of the relevant product contravened any of the following provisions:

(a) the provisions of Chapter 2M as they apply to the registered scheme in which the relevant product is an interest;

(aa) the provisions of Chapter 2M as they apply to the notified foreign passport fund in which the relevant product is an interest;

(b) section 674 or 675 as it applies to the registered scheme in which the relevant product is an interest;

(ba) section 674 or 675 as it applies to the notified foreign passport fund in which the relevant product is an interest;

(c) section 1016E, 1021D, 1021E or 1021J;

(d) subsection (10) of this section;

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(e) section 1308 as it applies to a notice under subsection (2) of this section.

(4) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.

(5) The determination made under subsection (3) is not a legislative instrument.

(6) A failure to publish a copy of the determination does not affect the validity of the determination.

Requirements for notice

(7) A notice complies with this subsection if the notice:

(a) states that the relevant product was issued without a Product Disclosure Statement for the relevant product being prepared; and

(b) states that the notice is being given under paragraph (2)(f); and

(c) states that, as a disclosing entity, the issuer of the relevant product is subject to regular reporting and disclosure obligations; and

(d) if the relevant product is a managed investment product—states that, as at the date of the notice, the issuer of the relevant product has complied with:

(i) the provisions of Chapter 2M as they apply to the registered scheme in which the relevant product is an interest; and

(ii) section 674 as it applies to that registered scheme; and

(da) if the relevant product is a foreign passport fund product—states that, as at the date of the notice, the issuer of the relevant product has complied with:

(i) the provisions of Chapter 2M as they apply to the fund in which the relevant product is an interest; and

(ii) section 674 as it applies to that fund; and

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(e) sets out any information that is excluded information as at the date of the notice (see subsections (8) and (9)); and

(f) states:

(i) the potential effect the issue of the relevant product will have on the control of the body; and

(ii) the consequences of that effect.

Note 1: A person is taken not to contravene section 1021C if a notice purports to comply with this subsection but does not actually comply with this subsection: see subsection 1021C(5).

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The issuer has an obligation to correct a defective notice: see subsection (10) of this section.

(8) For the purposes of subsection (7), excluded information is information:

(a) that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and

(b) that a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the relevant product.

(9) The notice given under subsection (2) must contain any excluded information only to the extent to which it is reasonable for a person considering, as a retail client, whether to acquire the relevant product to expect to find the information in a Product Disclosure Statement.

Obligation to correct defective notice

(10) The issuer of the relevant product contravenes this subsection if:

(a) the notice given under subsection (2) is defective; and

(b) the issuer becomes aware of the defect in the notice within 12 months after the relevant product is issued; and

(c) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a

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notice that sets out the information necessary to correct the defect.

(11) For the purposes of subsection (10), the notice under subsection (2) is ***defective*** if the notice:

(a) does not comply with paragraph (2)(f); or

(b) is false or misleading in a material particular; or

(c) has omitted from it a matter or thing, the omission of which renders the notice misleading in a material respect.

1012DA Product Disclosure Statement not required for sale amounting to indirect issue

Product Disclosure Statement not required

(1) In a recommendation situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) but for subsection (5), (11) or (12), the regulated person would be required by section 1012A or 1012C to give a Product Disclosure Statement for the relevant product; and

(b) the transfer or sale of the financial product (the ***relevant product***) to the client would take place in circumstances covered by subsection 1012C(6); and

(c) the relevant product was not issued by the issuer with the purpose referred to in subparagraph 1012C(6)(c)(i); and

(d) a determination under subsection (2) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

(1A) In a recommendation situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

(a) but for subsection (5), the regulated person would be required by section 1012C to give a Product Disclosure Statement for the transfer or sale of the financial product (the ***relevant product***); and

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(b) the transfer or sale of the relevant product to the client would take place in circumstances covered by subsection 1012C(8); and

(c) the relevant product was not sold by the controller with the purpose referred to in subparagraph 1012C(8)(d)(i); and

(d) a determination under subsection (2) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

Determination by ASIC

(2) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the issuer of the relevant product contravened any of the following provisions:

(a) the provisions of Chapter 2M as they apply to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest in a notified foreign passport fund—the fund;

(b) section 674 or 675 as it applies to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest in a notified foreign passport fund—the fund;

(c) section 1016E, 1021D, 1021E or 1021J;

(d) subsection (9) of this section;

(e) section 1308 as it applies to a notice under subsection (5) of this section.

(3) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.

(4) A failure to publish a copy of the determination does not affect the validity of the determination.

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Transfer or sale of quoted securities—case 1

(5) The regulated person does not have to give the client a Product Disclosure Statement if:

(a) the relevant product is in a class of financial products that were quoted securities at all times in the 3 months before the day on which the relevant product was issued; and

(b) trading in that class of financial products on a prescribed financial market on which they were quoted was not suspended for more than a total of 5 days during the shorter of the period during which the class of financial product was quoted, and the period of 12 months before the day on which the relevant product was issued; and

(c) no exemption under section 111AS or 111AT covered the issue of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (b); and

(d) no order under section 340, 340A, 341 or 341A covered the issue of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (b); and

(e) either:

(i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the issuer of the relevant product gives the relevant market operator for the issuer a written notice that complies with subsection (6) before the relevant conduct occurs; or

(ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—both the issuer of the relevant product, and the controller, give the relevant market operator for the issuer a written notice that complies with subsection (6) before the relevant conduct occurs.

(6) A notice complies with this subsection if the notice:

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(a) is given within 5 business days after the day on which the relevant product was issued; and

(b) states that the relevant product was issued without a Product Disclosure Statement for the relevant product being prepared; and

(c) states that the notice is being given under paragraph (5)(e); and

(d) states that, as a disclosing entity, the issuer of the relevant product is subject to regular reporting and disclosure obligations; and

(e) states that, as at the date of the notice, the issuer of the relevant product has complied with the provisions of Chapter 2M, and of section 674, as those provisions apply to:

(i) the issuer; or

(ii) if the relevant product is an interest in a registered scheme—the scheme; or

(iii) if the relevant product is an interest is a notified foreign passport fund—the fund; and

(f) sets out any information that is excluded information as at the date of the notice (see subsections (7) and (8)).

Note 1: A person is taken not to contravene section 1021C if a notice purports to comply with this subsection but does not actually comply with this subsection: see subsection 1021C(5).

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The issuer has an obligation to correct a defective notice: see subsection (9) of this section.

(7) For the purposes of subsection (6), excluded information is information:

(a) that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and

(b) that a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the relevant product.

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(8) The notice given under subsection (5) must contain any excluded information only to the extent to which it is reasonable for a person considering, as a retail client, whether to acquire the relevant product to expect to find the information in a Product Disclosure Statement.

Obligation to correct defective notice

(9) The issuer of the relevant product contravenes this subsection if:
  (a) the notice given under subsection (5) is defective; and
  (b) the issuer becomes aware of the defect in the notice within 12 months after the relevant product is issued; and
  (c) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect.

(10) For the purposes of subsection (9), the notice under subsection (5) is ***defective*** if the notice:
  (a) does not comply with paragraph (6)(f); or
  (b) is false or misleading in a material particular; or
  (c) has omitted from it a matter or thing the omission of which renders the notice misleading in a material respect.

Transfer or sale of quoted securities—case 2

(11) The regulated person does not have to give the client a Product Disclosure Statement if:
  (a) the relevant product is in a class of financial products that are quoted securities of the issuer; and
  (b) either:
    (i) a Product Disclosure Statement required to be given by section 1012B is lodged with ASIC on or after the day on which the relevant product is issued but before the day on which the relevant conduct occurs; or
    (ii) a Product Disclosure Statement required to be given by section 1012B is lodged with ASIC before the day on

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which the relevant product is issued and, on the day on which the relevant product is issued, the Product Disclosure Statement is still being used by the issuer of the relevant product for offers of financial products in the same class of financial products as the relevant product; and

(c) the Product Disclosure Statement is for a financial product of the issuer of the relevant product that is in the same class of financial products as the relevant product.

Transfer or sale of quoted securities—case 3

(12) The regulated person does not have to give the client a Product Disclosure Statement if:

(a) a Product Disclosure Statement for a financial product was given under section 1012B; and

(b) the relevant product was issued to:

(i) a person (the ***underwriter***) named in that Product Disclosure Statement as an underwriter of the issue of the financial product; or

(ii) a person nominated by the underwriter; and

(c) the relevant product was issued to the underwriter, or the person nominated by the underwriter, at or about the time that persons who applied for the financial product under that Product Disclosure Statement were issued with that product; and

(d) the relevant product is in a class of financial products that were quoted securities of the issuer.

1012E Small scale offerings of managed investment and other prescribed financial products (20 issues or sales in 12 months)

(1) This section applies only to financial products that are:

(a) managed investment products; or

(b) financial products of a kind prescribed by regulations made for the purposes of this paragraph.

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(2) Personal offers of financial products do not need a Product Disclosure Statement under this Part if:

(a) all of the financial products are issued by the same person (the ***issuer***); and

(b) none of the offers results in a breach of the 20 purchasers ceiling (see subsections (6) and (7)); and

(c) none of the offers results in a breach of the $2 million ceiling (see subsections (6) and (7)).

(3) Subsection (2) does not apply to an offer to which subsection 1012C(6) (sale amounting to indirect issue) or (8) (sale amounting to indirect sale by controller) applies.

Note: Under section 1012K, ASIC may make a determination aggregating the transactions of bodies that ASIC considers to be closely related.

(4) If subsection (2) applies to an offer of a financial product, a recommendation to a person to acquire a financial product in response to a personal offer of that kind does not need a Product Disclosure Statement under this Part.

(5) For the purposes of subsections (2) and (4), a ***personal offer*** is one that:

(a) may only be accepted by the person to whom it is made; and

(b) is made to a person who is likely to be interested in the offer, having regard to:

(i) previous contact between the person making the offer and that person; or

(ii) some professional or other connection between the person making the offer and that person; or

(iii) statements or actions by that person that indicate that they are interested in offers of that kind.

(6) An offer to issue, or arrange for the issue of, a financial product:

(a) results in a breach of the 20 purchasers ceiling if it results in the number of people to whom the issuer has issued financial products exceeding 20 in any 12 month period; and

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(b) results in a breach of the $2 million ceiling if it results in the amount raised by the issuer from issuing financial products exceeding $2 million in any 12 month period.

(7) An offer by a person to sell a financial product:

(a) results in a breach of the 20 purchasers ceiling if it results in the number of people to whom the person sells financial products issued by the issuer of that financial product exceeding 20 in any 12 month period; and

(b) results in a breach of the $2 million ceiling if it results in the amount raised by the person from selling financial products issued by the issuer of that financial product exceeding $2 million in any 12 month period.

(8) In counting issues and sales of the financial products issued by the issuer, and the amount raised from issues and sales, for the purposes of subsection (2), disregard issues and sales that result from offers that:

(a) do not need a Product Disclosure Statement (otherwise than because of this section); or

(b) are made under a Product Disclosure Statement.

Note: Also see provisions on restrictions on advertising (section 1018A) and the anti-hawking provisions in section 992A.

(9) In counting issues and sales of the financial products issued by the issuer, and the amount raised from issues and sales, for the purposes of subsection (2), disregard any issues and sales made by a body if:

(a) the body was a managed investment scheme (but not a registered scheme) at the time that the offer of interests in the scheme that resulted in the issues or sales was made; and

(b) the body became a registered scheme within 12 months after that offer was made; and

(c) the offer would not have required a Product Disclosure Statement (otherwise than because of this section) if the managed investment scheme had been a registered scheme at the time that the offer was made.

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(10) In working out the amount of money raised by the issuer from issuing financial products, include the following:

(a) the amount payable for the financial products at the time when they are issued;

(b) if the financial product is an option—any amount payable on the exercise of the option;

(c) if the financial products carry a right to convert the financial product into other financial products—any amount payable on the exercise of that right.

(11) If a person relies on subsection (2) to make offers of financial products without a Product Disclosure Statement under this Part, the person must not issue, arrange for the issue of, or transfer, financial products without a Product Disclosure Statement under this Part if the issue or transfer would result in a breach of the 20 purchasers ceiling or the $2 million ceiling (see subsections (6), (7), (8), (9) and (10)).

(12) For the purposes of this section, an ***offer of a financial product*** is an offer to:

(a) issue the financial product; or

(b) arrange for the issue of the financial product; or

(c) sell the financial product.

1012F Product Disclosure Statement for certain superannuation products may be provided later

In a recommendation situation or an issue situation in which the financial product is a superannuation product of a kind specified in regulations made for the purposes of this section, the regulated person:

(a) need not give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given; and

(b) must give the client the Product Disclosure Statement as soon as is reasonably practicable and in any event within 3 months after the product is issued to the client; and

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(c) need not give the client the Product Disclosure Statement at all if the client ceases to be a member of the superannuation fund concerned before the regulated person is required to give the Product Disclosure Statement under paragraph (b).

1012G Product Disclosure Statement may sometimes be provided later

(1) The regulated person may deal with a financial product under this section only if:

(a) the financial product is one for which an application form is not required under section 1016A and section 1019B (cooling off period) will apply if the client enters into a legal obligation to acquire the product pursuant to the recommendation or offer that constitutes the relevant conduct; or

(b) the financial product is:

(i) a basic deposit product; or

(ii) a facility for making non-cash payments (see section 763D) that is related to a basic deposit product; or

(iii) a financial product of a kind prescribed by regulations made for the purposes of this subparagraph.

(2) In a recommendation situation or an issue situation, the regulated person need not give the client a Product Disclosure Statement for the financial product at or before the time when it would otherwise be required to be given if:

(a) the client expressly instructs the regulated person that they require:

(i) in a recommendation situation—the advice constituting the recommendation; or

(ii) in an issue situation—the financial product;

to be provided or issued immediately, or by a specified time; and

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(b) it is not reasonably practicable, while complying with the client's instructions, to give the client the Product Disclosure Statement at or before the time when it would otherwise be required to be given.

The regulated person must comply with subsection (3) instead.

(3) The regulated person must:

(a) at or before the time referred to in paragraph (2)(b), orally communicate the following information to the client:

(i) the name and contact details of the issuer of the financial product; and

(ii) information about the essential features of the financial product; and

(iii) the information that would be required to be in a Product Disclosure Statement for the financial product by paragraphs 1013D(1)(c), (d), (g) and (i); and

(b) give the client the Product Disclosure Statement as soon as practicable after that time, and in any event not later than:

(i) the time when the confirmation requirement (if applicable) is complied with; or

(ii) the end of the fifth day after the day on which the financial product was issued or sold to the client.

(3A) The information referred to in paragraph (3)(a) must be communicated in a clear, concise and effective manner.

(4) For the purposes of paragraph (3)(b), the confirmation requirement is complied with when:

(a) the client receives confirmation, as mentioned in paragraph 1017F(5)(a), of the transaction by which they acquired the financial product; or

(b) confirmation of that transaction is available to the client by a facility as mentioned in paragraph 1017F(5)(b).

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1012H Obligation to take reasonable steps to ensure that Product Disclosure Statement is given to person electing to be covered by group financial product

(1) This section covers the situation in which a financial product:
  (a) is issued to a person; and
  (b) covers, or is designed to cover, a group of people; and
  (c) may cover a particular person (the ***new group member***) if the person elects to be covered by the financial product.

(2) The issuer must take reasonable steps to ensure that the new group member is given a Product Disclosure Statement for the financial product in accordance with this Division before the new group member makes an election to be covered by the financial product.

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

(3) For the purposes of this section, a person is covered by a financial product if benefits are, or may be, provided under the financial product directly to:
  (a) the person; or
  (b) a relative of the person; or
  (c) a person nominated by the person.

1012I Obligation to give employer a Product Disclosure Statement in relation to certain superannuation products and RSA products

(1) At or before the time when a person (the ***applicant***) becomes a standard employer-sponsor of a superannuation entity, the person (the ***issuer***) who is to provide the superannuation products to the applicant's employees must give the applicant a Product Disclosure Statement in accordance with this Division for each of those superannuation products.

(2) If:

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(a) a person (the ***applicant***) applies for the issue of an RSA product to the employee; and

(b) the applicant has not previously applied to the RSA provider for the issue to any employee of an RSA product of the same kind;

the person (the ***issuer***) who is to issue the RSA product to the employee must, at or before the time when the RSA product is issued to the employee, give the applicant a Product Disclosure Statement in accordance with this Division for the RSA product.

(2A) If:

(a) a trustee (the ***applicant***), under Part 24 of the *Superannuation Industry (Supervision) Act 1993*, applies on behalf of a person for the issue of an interest in a relevant superannuation entity; and

(b) the applicant has not previously applied under that Part for the issue of an interest in that entity on behalf of any person;

the person (the ***issuer***) who is to issue the interest to the person must, at or before the time when the interest is issued to the person, give the applicant a Product Disclosure Statement in accordance with this Division for the interest.

(2B) If:

(a) a trustee (the ***applicant***), under Part 9 of the *Retirement Savings Accounts Act 1997*, applies on behalf of a person for the issue of an interest in a relevant superannuation entity; and

(b) the applicant has not previously applied under that Part for the issue of an interest in that entity on behalf of any person;

the person (the ***issuer***) who is to issue the interest to the person must, at or before the time when the interest is issued to the person, give the applicant a Product Disclosure Statement in accordance with this Division for the interest.

(3) The issuer does not have to give the applicant a Product Disclosure Statement under subsection (1), (2), (2A) or (2B) for a financial product if:

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(a) the applicant has already received a Product Disclosure Statement for that financial product that contains all of the information that the first-mentioned Product Disclosure Statement would be required to contain; or

(b) the issuer believes on reasonable grounds that paragraph (a) applies.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

(4) The issuer need not give the applicant a Product Disclosure Statement under subsection (1), (2), (2A) or (2B) in the circumstances specified in the regulations.

(5) In this section:

(a) terms used in subsection (1) that are defined for the purposes of the *Superannuation Industry (Supervision) Act 1993* have the same meanings as in that Act; and

(b) terms used in subsection (2) that are defined for the purposes of the *Retirement Savings Accounts Act 1997* have the same meanings as in that Act; and

(c) ***relevant superannuation entity*** has the same meaning as in section 1016A of this Act.

1012IA Treatment of arrangements under which a person can instruct another person to acquire a financial product

Definitions

(1) In this section:

acquirer, in relation to a custodial arrangement, has the meaning given by the definition of ***custodial arrangement***.

client, in relation to a custodial arrangement, has the meaning given by the definition of ***custodial arrangement***.

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custodial arrangement means an arrangement between a person (the ***provider***) and another person (the ***client***) (whether or not there are also other parties to the arrangement) under which:

(a) the client is, or is entitled, to give an instruction that a particular financial product, or a financial product of a particular kind, is to be acquired; and

(b) if the client gives such an instruction, a person (the ***acquirer***), being the provider or a person with whom the provider has or will have an arrangement, must (subject to any discretion they have to refuse) acquire the financial product, or a financial product of that kind; and

(c) if the acquirer acquires the financial product, or a financial product of that kind, pursuant to an instruction given by the client, either:

(i) the product is to be held on trust for the client or another person nominated by the client; or

(ii) the client, or another person nominated by the client, is to have rights or benefits in relation to the product or a beneficial interest in the product, or in relation to, or calculated by reference to, dividends or other benefits derived from the product.

instruction includes a direction or request.

provider, in relation to a custodial arrangement, has the meaning given by the definition of ***custodial arrangement***.

regulated acquisition means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:

(a) by way of issue by the issuer (the ***regulated person***); or

(b) pursuant to a sale by a person (the ***regulated person***) in circumstances described in subsection 1012C(5), (6) or (8).

regulated person, in relation to a regulated acquisition of a financial product, has the meaning given by paragraph (a) or (b) (as the case requires) of the definition of ***regulated acquisition***.

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Obligation on provider to give client a PDS

(2) Before a regulated acquisition of a financial product occurs pursuant to an instruction given by the client under a custodial arrangement, the provider must give the client a Product Disclosure Statement for the product if a Product Disclosure Statement for the product would, if there were an equivalent direct acquisition by the client, be required by subsection 1012B(3) or 1012C(3) (see subsection (3) of this section) to be given to the client by the regulated person before that acquisition occurred. For this purpose, an ***equivalent direct acquisition*** is an acquisition that would occur if:

(a) the product were instead being offered for issue or sale direct to the client by the regulated person for the same price (or for the appropriate proportion of that price, if the transaction for the regulated acquisition also covers other products); and

(b) the circumstances of that issue or sale to the client were otherwise the same as those in which the regulated acquisition will occur.

Determining whether a PDS would have to be given for an equivalent direct acquisition

(3) The following provisions apply for the purpose of determining whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product:

(a) the effect of the provisions referred to in subsection 1012B(5) or 1012C(10), as the case requires, as they have effect subject to the following paragraphs, must be taken into account;

(b) subsections 1012D(1), (2) and (2A) apply as if references in those subsections to the regulated person's belief in relation to a matter were instead references to the provider's belief in relation to that matter;

(c) subsections 1012D(2) and (3) apply as if references to the client already holding a financial product of the same kind also included a reference to a person already holding a

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financial product of the same kind as a result of an instruction given by the client under a custodial arrangement;

(d) sections 1012E and 1012F are to be disregarded;

(e) section 1012G has effect in accordance with subsection (4).

Modification of section 1012G

(4) The following provisions apply in relation to section 1012G:

(a) in determining for the purposes of subsection (2) whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product, subsection 1012G(2) applies as if the reference to the client instructing the regulated person (in an issue situation) that they require the financial product to be provided or issued immediately, or by a specified time, were instead a reference to the client instructing the provider that they require the financial product to be acquired immediately, or by a specified time;

(b) if, because of subsection 1012G(2) as it applies because of paragraph (a) of this subsection, the provider does not have to give the client a Product Disclosure Statement for a financial product before a regulated acquisition of the financial product occurs pursuant to an instruction given by the client under a custodial arrangement:

(i) subsection 1012G(2) applies in relation to the provider, the client and the regulated acquisition as if the obligation it imposes to comply with subsection 1012G(3) were imposed on the provider; and

(ii) subsection 1012G(3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G(3)(b)(i) were omitted and as if the reference in subparagraph 1012G(3)(b)(ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs.

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Modification of section 1013A

(5) Section 1013A applies in relation to a regulated acquisition as if:

(a) paragraph 1013A(1)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (a) of the definition of ***regulated acquisition*** in subsection (1) of this section; and

(b) paragraph 1013A(2)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (b) of the definition of ***regulated acquisition*** in subsection (1) of this section.

Provider is not an agent for the purposes of section 1015C

(6) For the purposes of the application of section 1015C in relation to a regulated acquisition, the provider in relation to the relevant custodial arrangement is taken not to be an agent of the client.

Provider is covered by sections 1015E, 1021F and 1021I

(7) Sections 1015E, 1021F and 1021I apply in relation to a regulated acquisition as if the references to a regulated person were instead references to the provider in relation to the relevant custodial arrangement.

Regulations may provide for other modifications

(8) The regulations may provide for other modifications of provisions of this Part that are to have effect in relation to regulated acquisitions.

1012J Information must be up to date

The information in a Product Disclosure Statement must be up to date as at the time when it is given.

Note: A Supplementary Product Disclosure Statement containing updated information may be given with a Product Disclosure Statement that

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has become out of date. The updated information is taken to be included in the Product Disclosure Statement (see section 1014D).

1012K Anti-avoidance determinations

(1) ASIC may determine in writing that a number of different bodies are closely related and that their transactions should be aggregated for the purposes of this Subdivision. If ASIC does so:

(a) an issue, sale or transfer of financial products of any other bodies is taken to also be an issue, sale or transfer of the financial products of each of the other bodies by those bodies; and

(b) any money received from an issue, sale or transfer of financial products of any of the bodies is taken to also be received by each of the other bodies from an issue, sale or transfer of its own financial products.

ASIC must give written notice of the determination to each of the bodies.

(2) ASIC may determine in writing that the transactions of a body and of a person who controls the body should be aggregated for the purposes of this Subdivision. If ASIC does so:

(a) an issue of financial products of the body is taken to also be the transfer of the financial products by the controller; and

(b) any money received from an issue of financial products of the body is taken to also be received by the controller from a transfer of the financial products; and

(c) a sale or transfer of financial products of the body by the controller is taken to also be the issue of the financial products by the body; and

(d) any money received from a sale or transfer of financial products of the body by the controller is taken to also be received by the body from an issue of the financial products.

ASIC must give written notice of the determination to the body and the controller.

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Subdivision C—Preparation and content of Product Disclosure Statements

1013A Who must prepare Product Disclosure Statement

(1) A Product Disclosure Statement that:

(a) is required to be given by section 1012A (otherwise than in a situation in which the recommendation concerned relates to an offer described in subsection 1012C(3) or (4)); or

(b) is required to be given by section 1012B; or

(c) section 1012H requires an issuer to take reasonable steps to ensure is given to a new group member; or

(d) is required to be given by section 1012I;

must be a document that has been prepared by the issuer of the financial product. A Product Disclosure Statement of this kind is in this Division referred to as an ***issue Statement***.

(2) A Product Disclosure Statement that:

(a) is required to be given by section 1012A in a situation in which the recommendation concerned relates to an offer described in subsection 1012C(3) or (4)); or

(b) is required to be given by section 1012C;

must be a document that has been prepared by the person making the offer to sell the financial product. A Product Disclosure Statement of this kind is in this Division referred to as a ***sale Statement***.

(3) The person by whom, or on whose behalf, a Product Disclosure Statement for a financial product is required to be prepared is, in this Division, referred to as the ***responsible person*** for the financial product.

(4) For the purposes of this Part, a Product Disclosure Statement prepared on behalf of a person is taken to be prepared by the person.

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1013B Title of Product Disclosure Statement

(1) The title "Product Disclosure Statement" must be used on the cover of, or at or near the front of, a Product Disclosure Statement.

(2) In any other part of a Product Disclosure Statement, "Product Disclosure Statement" may be abbreviated to "PDS".

1013C Product Disclosure Statement content requirements

(1) A Product Disclosure Statement:
  (a) must include the following statements and information required by this Subdivision:
    (i) the statements and information required by section 1013D; and
    (ii) the information required by section 1013E; and
    (iii) the information required by the other provisions of this Subdivision; and
  (b) may also:
    (i) include other information; or
    (ii) refer to other information that is set out in another document.

Note: A Supplementary Product Disclosure Statement containing additional information may be given with a Product Disclosure Statement that does not contain all the required information. The additional information is taken to be included in the Product Disclosure Statement (see section 1014D).

(2) The information required by sections 1013D and 1013E need only be included in the Product Disclosure Statement to the extent to which it is actually known to:
  (a) the responsible person; and
  (b) in the case of a sale Statement—the issuer of the financial product; and
  (c) any person named in the Statement as an underwriter of the issue or sale of the financial product; and
  (d) any person:

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(i) named in the Statement as a financial services licensee providing services in relation to the issue or sale of the financial product; and

(ii) who participated in any way in the preparation of the Statement; and

(e) any person who has given a consent referred to in section 1013K in relation to a statement included in the Statement; and

(f) any person named in the Statement with their consent as having performed a particular professional or advisory function; and

(g) if any of the above persons is a body corporate—any director of that body corporate.

(3) The information included in the Product Disclosure Statement must be worded and presented in a clear, concise and effective manner.

(4) The responsible person may include in the Product Disclosure Statement a statement about the association between the financial product and another person.

(5) The responsible person must not include a statement about the association between the financial product and a person if:

(a) the statement creates the impression that the financial product is issued or sold by that other person; and

(b) the person has not issued or sold the product.

(6) The responsible person must not include a statement about the association between the financial product and a person if:

(a) the statement creates the impression that the financial product is guaranteed or underwritten by that other person; and

(b) the person has not guaranteed or underwritten the product.

(7) If the Product Disclosure Statement states that a person provides, or is to provide, services in relation to the financial product, the Product Disclosure Statement must clearly distinguish between the respective roles of that person and the issuer or seller of the financial product.

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Section 1013D

1013D Product Disclosure Statement content—main requirements

(1) Subject to this section, subsection 1013C(2) and sections 1013F and 1013FA, a Product Disclosure Statement must include the following statements, and such of the following information as a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the financial product:

(a) a statement setting out the name and contact details of:

(i) the issuer of the financial product; and

(ii) if the Statement is a sale Statement—the seller; and

(b) information about any significant benefits to which a holder of the product will or may become entitled, the circumstances in which and times at which those benefits will or may be provided, and the way in which those benefits will or may be provided; and

(c) information about any significant risks associated with holding the product; and

(d) information about:

(i) the cost of the product; and

(ii) any amounts that will or may be payable by a holder of the product in respect of the product after its acquisition, and the times at which those amounts will or may be payable; and

(iii) if the amounts paid in respect of the financial product and the amounts paid in respect of other financial products are paid into a common fund—any amounts that will or may be deducted from the fund by way of fees, expenses or charges; and

(e) if the product will or may generate a return to a holder of the product—information about any commission, or other similar payments, that will or may impact on the amount of such a return; and

(f) information about any other significant characteristics or features of the product or of the rights, terms, conditions and obligations attaching to the product; and

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(g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed; and

(h) general information about any significant taxation implications of financial products of that kind; and

(i) information about any cooling-off regime that applies in respect of acquisitions of the product (whether the regime is provided for by a law or otherwise); and

(j) if the product issuer (in the case of an issue Statement) or the seller (in the case of a sale Statement) makes other information relating to the product available to holders or prospective holders of the product, or to people more generally—a statement of how that information may be accessed; and

(k) any other statements or information required by the regulations; and

(l) if the product has an investment component—the extent to which labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment; and

(m) unless in accordance with the regulations, for information to be disclosed in accordance with paragraphs (b), (d) and (e), any amounts are to be stated in dollars.

(2) For the purposes of paragraph (1)(d), an amount will or may be payable in respect of a financial product by the holder of the financial product if:

(a) the holder will or may have to pay an amount in respect of the product; or

(b) an amount will or may be deducted from:

(i) a payment to be made by the holder; or

(ii) a payment to be made to the holder; or

(iii) an amount held on the holder's behalf under the financial product; or

(c) an account representing the holder's interest in the financial product will or may be debited with an amount.

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It includes an amount that the holder will or may have to pay, or that will or may be deducted or debited, as a fee, expense or charge in relation to a particular transaction in relation to the financial product.

(2A) For the purposes of paragraph (1)(l), products which have an investment component include superannuation products, managed investment products, foreign passport fund products and investment life insurance products.

(3) Subsection (1) requires information to be included in the Product Disclosure Statement only to the extent to which the requirement is applicable to the financial product. The Product Disclosure Statement does not need to indicate that a particular requirement is not applicable to the financial product.

(4) The regulations may:

(a) provide that a provision of subsection (1) does not apply in a particular situation; or

(b) provide that particular information is not required by a provision of subsection (1), either in a particular situation or generally; or

(c) provide a more detailed statement of the information that is required by a provision of subsection (1), either in a particular situation or generally.

1013DA Information about ethical considerations etc.

ASIC may develop guidelines that must be complied with where a Product Disclosure Statement makes any claim that labour standards or environmental, social or ethical considerations are taken into account in the selection, retention or realisation of the investment.

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1013E General obligation to include other information that might influence a decision to acquire

Subject to subsection 1013C(2) and sections 1013F and 1013FA, a Product Disclosure Statement must also contain any other information that might reasonably be expected to have a material influence on the decision of a reasonable person, as a retail client, whether to acquire the product.

1013F General limitations on extent to which information is required to be included

(1) Despite anything in section 1013D or 1013E, information, or a statement containing information, is not required to be included in a Product Disclosure Statement if it would not be reasonable for a person considering, as a retail client, whether to acquire the product to expect to find the information in the Statement.

(2) In considering whether it would not be reasonable for a person considering, as a retail client, whether to acquire the product to expect to find particular information in the Statement, the matters that may be taken into account include, but are not limited to:

(a) the nature of the product (including its risk profile); and

(b) the extent to which the product is well understood by the kinds of person who commonly acquire products of that kind as retail clients; and

(c) the kinds of things such persons may reasonably be expected to know; and

(d) if the product is an ED security that is not a continuously quoted security—the effect of the following provisions:

(i) Chapter 2M as it applies to disclosing entities;

(ii) sections 674 and 675; and

(e) the way in which the product is promoted, sold or distributed; and

(f) any other matters specified in the regulations.

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Section 1013FA

1013FA Information not required to be included in PDS for continuously quoted securities

(1) This section applies to a Product Disclosure Statement that relates to a continuously quoted security.

(2) Despite anything in section 1013D, 1013E or 1013F, information is not required to be included in the Product Disclosure Statement if:

(a) for a continuously quoted security that is not a security of a notified foreign passport fund—the information is included in any of the following documents:

(i) the annual financial report most recently lodged with ASIC by the issuer of the product;

(ii) any half-year financial report lodged with ASIC by the issuer of the product after the lodgment of that annual financial report and before the date of the Product Disclosure Statement;

(iii) any continuous disclosure notices given by the issuer of the product after the lodgment of that annual financial report and before the date of the Product Disclosure Statement; and

(aa) for a continuously quoted security of a notified foreign passport fund—the information is included in any of the following documents:

(i) a copy of a report for the fund for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(ii) a copy of an auditor's report that relates to the report mentioned in subparagraph (i);

(iii) any continuous disclosure notices given by the issuer of the product after the lodgment of the report mentioned in subparagraph (i) and before the date of the Product Disclosure Statement; and

(b) the Product Disclosure Statement:

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(i) states that as a disclosing entity, the issuer of the product is subject to regular reporting and disclosure obligations; and

(ii) informs people of their right to obtain a copy of any of the documents referred to in paragraph (a) or (aa) (as the case requires).

If the Product Disclosure Statement informs people of their right to obtain a copy of the document, the issuer of the product must give a copy of the document free of charge to anyone who asks for it.

(3) ASIC may determine that this section does not apply to Product Disclosure Statements for continuously quoted securities if ASIC is satisfied that in the previous 12 months:

(a) the issuer of the continuously quoted securities contravened:

(i) the provisions of Chapter 2M; or

(ii) subsection 674(2) or 675(2); or

(iii) subsection 1012DAA(10) or 1012DA(9); or

(iv) section 1308 as it applies to a notice under subsection 1012DAA(2) or 1012DA(5); or

(b) the responsible person for the Product Disclosure Statement contravened section 1016E, 1021D, 1021E or 1021J.

(4) The determination must be made in writing and ASIC must publish a copy of the determination in the *Gazette*.

1013G Product Disclosure Statement must be dated

A Product Disclosure Statement must be dated. The date must be:

(a) if a copy of the Product Disclosure Statement has been lodged with ASIC (see section 1015B)—the date on which it was so lodged; or

(b) in any other case—the date on which the Product Disclosure Statement was prepared or its preparation was completed.

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1013GA Extra requirements if Product Disclosure Statement relates to foreign passport fund products

(1) This section applies to a Product Disclosure Statement that relates to foreign passport fund products.

(2) The Product Disclosure Statement must:

(a) identify the home economy for the notified foreign passport fund to which the foreign passport fund products relate; and

(b) include a statement that:

(i) the operation of the fund is regulated by the law of the home economy for the fund; and

(ii) the operator of the fund and the custodian of the assets of the fund are regulated under the law of the home economy for the fund; and

(iii) the rights and remedies available to a person who acquires the foreign passport fund product may differ from the rights and remedies available in relation to a registered scheme; and

(iv) information made available to members of the fund in the home economy will from time to time be made available to Australian members of the fund by posting the information on the fund's website; and

(c) include an outline of the main rights and remedies available under the law of the home economy for the fund to persons who acquire the foreign passport fund product in this jurisdiction; and

(d) include an outline of how information mentioned in subparagraph (b)(iv) may be accessed by Australian members of the fund; and

(e) include a statement that the rights of a member of the fund on the fund being wound up are mainly determined under the constitution for the fund and the law of the home economy for the fund.

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1013H Requirements if Product Disclosure Statement states or implies that financial product will be able to be traded

If a Product Disclosure Statement states or implies that the financial product will be able to be traded on a financial market (whether in Australia or elsewhere), the Statement must state that:

(a) the product is able to be traded on that market; or

(b) an application has been made to the operator of that market for the taking of such action as is necessary to enable the product to be traded on that market; or

(c) an application of a kind referred to in paragraph (b) will be made to the operator of that market within 7 days after the date of the Statement.

1013I Extra requirements if Product Disclosure Statement relates to managed investment products that are ED securities

(1) This section applies to a Product Disclosure Statement that relates to managed investment products that are ED securities.

(2) The Product Disclosure Statement must include a statement that:

(a) as a disclosing entity, the scheme is subject to regular reporting and disclosure obligations; and

(b) copies of documents lodged with ASIC in relation to the scheme may be obtained from, or inspected at, an ASIC office.

(3) The Product Disclosure Statement must either:

(a) inform people of their right to obtain a copy of the following documents:

(i) the annual financial report most recently lodged with ASIC by the scheme;

(ii) any half-year financial report lodged with ASIC by the scheme after the lodgment of that annual financial report and before the date of the Product Disclosure Statement;

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(iii) any continuous disclosure notices given by the scheme after the lodgment of that annual report and before the date of the Product Disclosure Statement; or

(b) include, or be accompanied by, a copy of the relevant document or documents.

(4) If:

(a) the Product Disclosure Statement informs people of their right to obtain a copy of a document referred to in subsection (3); and

(b) a person asks the issuer (in the case of an issue Statement) or the seller (in the case of a sale Statement) for a copy of the document;

the issuer or seller must give (see subsection (5)) the person a copy of the document free of charge as soon as practicable, and in any event within 5 days, after receiving the person's request.

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

(5) In subsection (4), ***give*** means give in a way that would satisfy the requirements of section 1015C if the copy of the document were a Statement to which that section applied.

1013IA Extra requirements if Product Disclosure Statement relates to foreign passport fund products that are ED securities

(1) This section applies to a Product Disclosure Statement that relates to foreign passport fund products that are ED securities.

(2) The Product Disclosure Statement must include a statement that:

(a) as a disclosing entity, the fund is subject to regular reporting and disclosure obligations; and

(b) copies of documents lodged with ASIC in relation to the fund may be obtained from, or inspected at, an ASIC office.

(3) The Product Disclosure Statement must either:

(a) inform people of their right to obtain a copy of the following documents:

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(i) a copy of a report for the most recent financial year for the fund, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund;

(ii) a copy of each auditor's report that relates to the report mentioned in subparagraph (i); or

(b) include, or be accompanied by, a copy of that document or those documents.

(4) Subsections (5) and (6) apply if:

(a) the Product Disclosure Statement informs people of their right to obtain a copy of a document referred to in subsection (3); and

(b) a person asks the issuer (in the case of an issue Statement) or the seller (in the case of a sale Statement) for a copy of the document.

(5) The issuer or seller must give (see subsection (6)) the person a copy of the document:

(a) free of charge; and

(b) as soon as practicable, and in any event within 5 days, after receiving the person's request; and

(c) if the person asks the issuer or seller for a copy of the document in English—in English.

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

(6) In subsection (5), ***give*** means give in a way that would satisfy requirements of section 1015C if the copy of the document were a Statement to which that section applied.

1013J Requirements if Statement has been lodged with ASIC

A Product Disclosure Statement, a copy of which has been lodged with ASIC (see section 1015B), must include a statement that:

(a) a copy of the document has been lodged with ASIC; and

(b) ASIC takes no responsibility for the content of the document.

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1013K Requirements relating to consents to certain statements

(1) A Product Disclosure Statement must only include a statement made by a person, or a statement said in the Product Disclosure Statement to be based on a statement made by a person, if:

(a) the person has consented to the statement being included in the Product Disclosure Statement in the form and context in which it is included; and

(b) the Product Disclosure Statement states that the person has given this consent; and

(c) the person has not withdrawn this consent before the date of the Product Disclosure Statement.

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

(2) The person who prepared the Product Disclosure Statement must not, without reasonable excuse, fail to keep the consent, or a copy of it, for the period, and in the manner, required by the regulations.

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

1013L Product Disclosure Statement may consist of 2 or more separate documents given at same time

(1) Subject to this section, a Product Disclosure Statement may be made up of 2 or more separate documents that are given at the same time.

(2) Each of the documents must have on the cover of the document, or at or near the front of the document, a statement:

(a) to the effect that the document is part of a Product Disclosure Statement; and

(b) that (subject to subsection (3)) identifies the other documents that make up the Product Disclosure Statement.

(3) If there are or may be different versions of a document referred to in paragraph (2)(b), the statement required by subsection (2) does

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not have to identify any particular one of those versions and may instead identify the document generically.

Note: For example, if a Product Disclosure Statement is made up of a core document that is not updated very frequently, and a separate document providing information about remuneration that is updated more frequently:

(a) the statement in the core document need only refer to the fact that it, and a separate document about remuneration, make up the Product Disclosure Statement; and

(b) the statement in the document about remuneration need only refer to the fact that it, and a separate document about all other required matters, make up the Product Disclosure Statement.

(4) The requirement of section 1013B (title of Product Disclosure Statement) is taken to be satisfied if the title "Product Disclosure Statement" is used on the cover of, or at or near the front of, at least one of the documents that make up the Product Disclosure Statement.

(5) The requirement of section 1013G (dating of Product Disclosure Statement) must be separately complied with in relation to each of the documents. If, for any purpose, a single date needs to be determined as the date of the Product Disclosure Statement as a whole, that date is the most recent of the dates of those documents.

(6) Section 1015E applies to an alteration to one of the documents as though the reference in that section to the date specified in the Product Disclosure Statement were a reference to the date specified in the document.

(7) The regulations may impose additional requirements to be complied with if a Product Disclosure Statement is made up of 2 or more documents.

1013M Combining a Product Disclosure Statement and a Financial Services Guide in a single document

For provisions about combining a Product Disclosure Statement and a Financial Services Guide in a single document, see

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section 942DA and regulations made for the purposes of that section.

Subdivision D—Supplementary Product Disclosure Statements

1014A What a Supplementary Product Disclosure Statement is

A ***Supplementary Product Disclosure Statement*** is a document by which a person who has prepared a Product Disclosure Statement (the ***PDS***) can:

(a) correct a misleading or deceptive statement in the PDS; or

(b) correct an omission from the PDS of information it is required to contain; or

(c) update, or add to, the information contained in the PDS; or

(d) change a statement of a kind referred to in paragraph 1016E(1)(a) or (b).

Note: In certain circumstances a Replacement Product Disclosure Statement may be prepared instead of a Supplementary Product Disclosure Statement (see Subdivision DA).

1014B Title of Supplementary Product Disclosure Statement

(1) The title "Supplementary Product Disclosure Statement" must be used on the cover of, or at or near the front of, a Supplementary Product Disclosure Statement.

(2) In any other part of a Supplementary Product Disclosure Statement, "Supplementary Product Disclosure Statement" may be abbreviated to "SPDS".

1014C Form of Supplementary Product Disclosure Statement

At the beginning of a Supplementary Product Disclosure Statement there must be:

(a) a statement that it is a Supplementary Product Disclosure Statement; and

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(b) an identification of the Product Disclosure Statement that it supplements; and

(c) a statement that it is to be read together with that Product Disclosure Statement and any other specified Supplementary Disclosure Statements.

1014D Effect of giving person a Supplementary Product Disclosure Statement

If:

(a) a person is given a Product Disclosure Statement (the ***PDS***); and

(b) at the same time, or later, they are given a Supplementary Product Disclosure Statement (the ***SPDS***) that supplements the PDS;

the PDS is taken, from when the SPDS is given to the person, to include the information and statements contained in the SPDS.

1014E Situation in which only a Supplementary Product Disclosure Statement need be given

If:

(a) apart from this section, a person would be required to give another person (the ***client***) a Product Disclosure Statement (the ***new PDS***) relating to a financial product; and

(b) the client has, because of some previous conduct, already received a Product Disclosure Statement (the ***earlier PDS***) relating to the financial product; and

(c) the earlier PDS contains some, but not all, of the information that the new PDS is required to contain;

the person may, instead of giving the client the new PDS, give the client a Supplementary Product Disclosure Statement that contains the additional information.

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1014F Application of other provisions in relation to Supplementary Product Disclosure Statements

Sections 1013A, 1013G, 1013H, 1013J and 1013K, and subsections 1013C(3) to (7), apply in relation to a Supplementary Product Disclosure Statement in the same way as they apply to a Product Disclosure Statement.

Subdivision DA—Replacement Product Disclosure Statements

1014G Application of this Subdivision—stapled securities

This Subdivision applies if:

(a) a Product Disclosure Statement has been lodged in relation to an offer for the issue or sale of an interest in a managed investment scheme; and

(b) the interest can only be transferred together with one or more securities; and

(c) a disclosure document has been lodged in relation to an offer for the issue or sale of the security (or securities).

1014H What a Replacement Product Disclosure Statement is

A ***Replacement Product Disclosure Statement*** is a document that replaces the Product Disclosure Statement (the ***earlier PDS***) mentioned in paragraph 1014G(a) in order to:

(a) correct a misleading or deceptive statement in the earlier PDS; or

(b) correct an omission from the earlier PDS of information it is required to contain; or

(c) update, or add to, the information contained in the earlier PDS; or

(d) change a statement of a kind referred to in paragraph 1016E(1)(a) or (b).

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1014J Consequences of lodging a Replacement Product Disclosure Statement

If a Replacement Product Disclosure Statement is prepared in accordance with section 1014K and lodged with ASIC as provided by Subdivision E (in its application under section 1014L), a reference to a Product Disclosure Statement is taken to be a reference to the Replacement Product Disclosure Statement for the purposes of the application of this Act to events that occur after the lodgment.

Note: This section means, for example, that offers made after lodgment of the Replacement Product Disclosure Statement must be accompanied by copies of the Replacement Product Disclosure Statement and not the earlier PDS.

1014K Form, content and preparation of Replacement Product Disclosure Statements

(1) At the beginning of a Replacement Product Disclosure Statement, there must be:

(a) a statement that it is a Replacement Product Disclosure Statement; and

(b) an identification of the Product Disclosure Statement it replaces.

(2) The title "Replacement Product Disclosure Statement" must be used on the cover of, or at or near the front of, a Replacement Product Disclosure Statement.

(3) In any other part of a Replacement Product Disclosure Statement, "Replacement Product Disclosure Statement" may be abbreviated to "RPDS".

(4) Otherwise, section 1012J and Subdivision C (apart from section 1013B) apply in relation to a Replacement Product Disclosure Statement in the same way as they apply to a Product Disclosure Statement.

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Note: Section 1012J provides that the information in a Product Disclosure Statement must be up to date at the time it is given. Subdivision C deals with the preparation and content of Product Disclosure Statements.

1014L Giving, lodgment and notice of Replacement Product Disclosure Statements

Subdivision E applies in relation to a Replacement Product Disclosure Statement in the same way as it applies to a Product Disclosure Statement that is required to be lodged with ASIC under section 1015B.

Subdivision E—Other requirements relating to Product Disclosure Statements and Supplementary Product Disclosure Statements

1015A Subdivision applies to Product Disclosure Statements and Supplementary Product Disclosure Statements

This Subdivision applies to Product Disclosure Statements and to Supplementary Product Disclosure Statements. Both kinds of document are referred to in this Subdivision as a ***Statement***.

1015B Some Statements must be lodged with ASIC

(1) A copy of a Statement must have been lodged with ASIC (in accordance with the requirements of subsection (2) for consents) before the Statement is given to a person for the purposes of a provision of this Part if:

(a) the following subparagraphs apply:

(i) the financial product is a managed investment product; and

(ii) the Statement states or implies that the product will be able to be traded on a financial market; and

(iii) the Statement meets the requirements set out in section 1013H; or

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(b) the financial product is a managed investment product that can be traded on a financial market; or

(ba) the financial product is:

(i) a managed investment product of an Australian passport fund; or

(ii) a foreign passport fund product; or

(c) the financial product is a financial product of a kind specified in regulations made for the purposes of this paragraph.

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

(2) The lodgment of a Statement in relation to a managed investment product with ASIC requires the consent of:

(a) whether it is an issue Statement or a sale Statement:

(i) if the responsible person is a body corporate—every director of the responsible person; or

(ii) otherwise—the responsible person; and

(b) if it is a sale Statement:

(i) if the issuer of the financial product concerned is a body corporate—every director of the issuer; or

(ii) otherwise—the issuer of the financial product concerned.

(3) The lodgment of a Statement in relation to a foreign passport fund product with ASIC requires the consent of:

(a) if the operator of the fund is a body corporate—every director of the operator; or

(b) otherwise—the responsible person.

1015C How a Statement is to be given

(1) A Statement:

(a) must be:

(i) given to a person, or the person's agent, personally; or

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

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

(2) For the purposes of this section, the Statement is sent to a person at an address if, and only if:

(a) the Statement is sent to the address; and

(b) either:

(i) the envelope or other container in which the Statement is sent; or

(ii) the message that accompanies the Statement;

is addressed to the person.

(3) The Statement may be given or sent to the person's agent only if the agent is not acting as the person's agent in one of the following capacities:

(a) a financial services licensee;

(b) an authorised representative of a financial services licensee;

(d) a person who is not required to hold an Australian financial services licence because the person is covered by:

(i) paragraph 911A(2)(j); or

(ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or

(iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l);

(e) a person who is required to hold an Australian financial services licence but who does not hold such a licence;

(f) an employee, director or other representative of a person referred to in paragraph (a), (b), (d) or (e).

(4) The regulations may provide for alternative ways of giving a Statement to a person.

(5) The regulations may specify requirements as to:

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(a) the manner in which a Statement may be given to a person; and

(b) the presentation, structure and format for a Statement that is to be given in electronic form.

The giving of the Statement is not effective unless those requirements are satisfied.

1015D Notice, retention and access requirements for Statement that does not need to be lodged

(1) This section applies to a Statement if section 1015B does not require a copy of the Statement to be lodged with ASIC.

(2) The responsible person for the Statement (other than the trustee of a self managed superannuation fund) must lodge a notice with ASIC, in electronic form, advising of the occurrence of any of the following events as soon as practicable, and in any event within 5 business days, after the occurrence of the event:

(a) except in the case of a Supplementary Product Disclosure Statement—a copy of the Statement is first given to someone in a recommendation, issue or sale situation;

(b) a change is made to fees and charges set out in the Statement;

(c) the financial product to which the Statement relates ceases to be available to be recommended or offered to new clients in a recommendation, issue or sale situation.

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

Note 2: The fees and charges set out in a Product Disclosure Statement may be changed by a Supplementary Product Disclosure Statement (see section 1014A).

(3) The responsible person for the Statement must keep a copy of the Statement for the period of 7 years after the date of the Statement.

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

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(4) During that period the responsible person:

(a) must make a copy of the Statement available to ASIC if asked to do so by ASIC; and

(b) must comply with any reasonable request from any other person for a copy of the Statement.

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

1015E Altering a Statement after its preparation and before giving it to a person

(1) A regulated person must not, in purported compliance with a provision of this Part, give a person a Statement that has been altered (otherwise than pursuant to paragraph (b)) after the date of the Statement if either or both of the following paragraphs applies:

(a) the alteration was not made by, or with the authority of, the issuer or seller, as the case requires, of the financial products;

(b) the alteration is a material alteration and the date of the Statement has not been changed to:

(i) if a copy of the altered Statement has been lodged with ASIC (see subsection (2))—the date on which it was so lodged; or

(ii) in any other case—the date on which the alteration was made.

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

(2) If the alteration is a material alteration to a Statement that has been lodged with ASIC under section 1015B, that section applies to the altered Statement as if it were a new Statement.

Subdivision F—Other rights and obligations related to Product Disclosure Statements

1016A Provisions relating to use of application forms

(1) In this section:

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defective, in relation to a Product Disclosure Statement as at a particular time, means that the Product Disclosure Statement, if it had been given to a person at that time, would have been ***defective*** as defined in Subdivision A of Division 7.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

eligible application, in relation to a restricted issue or restricted sale of a relevant financial product, means an application that satisfies the following requirements:

(a) the application is made using an application form; and

(b) the application form used to apply for the product:

(i) was included in, or accompanied, a Product Disclosure Statement (relating to the product) that was given to the applicant and that was not defective as at the time when the application was made; or

(ii) was copied, or directly derived, by the applicant from a form referred to in subparagraph (i); and

(c) all other applicable requirements (if any) in regulations made for the purposes of this paragraph are satisfied in relation to the application.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

relevant financial product means:

(a) a managed investment product; or

(aa) a foreign passport fund product; or

(b) a superannuation product; or

(c) an investment life insurance product; or

(d) an RSA product; or

(db) a margin lending facility; or

(e) a financial product of a kind specified in regulations made for the purposes of this paragraph.

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relevant superannuation entity means a superannuation entity of a kind specified in regulations made for the purposes of this definition.

restricted issue means an issue of a relevant financial product to a person as a retail client, other than an issue covered by either of the following paragraphs:

(a) an issue in a situation, or pursuant to an offer made in a situation, to which a subsection, other than subsection (1), of section 1012D applies; or

(b) an issue in a situation, or pursuant to an offer made in a situation, to which section 1012E or 1012F applies.

restricted sale means a sale of a relevant financial product pursuant to an offer that:

(a) is of a kind described in subsection 1012C(3) or (4); and

(b) is not made in a situation to which a subsection, other than subsection (1), of section 1012D applies.

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

standard employer-sponsor has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

standard employer-sponsored fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

standard employer-sponsored member has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

(2) A person (the ***issuer*** or ***seller***) must only make a restricted issue or a restricted sale of a relevant financial product to a person (the ***recipient***) if:

(a) the issue or sale is made pursuant to an eligible application made to the issuer or seller by the recipient; or

(b) it is a restricted issue in relation to which the following conditions are satisfied:

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(i) the financial product is an interest in a relevant superannuation entity;

(ii) the interest is issued pursuant to an application made to the issuer by a standard employer-sponsor of the entity on the recipient's behalf;

(iii) if the application is the first application for the issue of a superannuation interest made to the issuer by the standard employer-sponsor on behalf of any person—the application is an eligible application; or

(c) it is a restricted issue in relation to which the following conditions are satisfied:

(i) the financial product is an interest in a relevant superannuation entity;

(ii) the interest is issued pursuant to an application made to the issuer by another trustee under Part 24 of the *Superannuation Industry (Supervision) Act 1993* on the recipient's behalf;

(iii) if the application is the first application under Part 24 of that Act made to the issuer by the other trustee on behalf of any person—the application is an eligible application; or

(d) it is a restricted issue in relation to which the following conditions are satisfied:

(i) the financial product is an interest in a relevant superannuation entity;

(ii) the interest is issued pursuant to an application made to the issuer by an RSA provider under Part 9 of the *Retirement Savings Accounts Act 1997* on the recipient's behalf;

(iii) if the application is the first application under Part 9 of that Act made to the issuer by the RSA provider on behalf of any person—the application is an eligible application; or

(e) it is a restricted issue in relation to which the following conditions are satisfied:

(i) the financial product is an RSA product;

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(ii) the interest is issued pursuant to an application made to the issuer by an employer (within the meaning of the *Retirement Savings Accounts Act 1997*) of the recipient;

(iii) if the application is the first application for the issue of an RSA product of that kind made to the issuer by the employer on behalf of any person—the application is an eligible application;

(iv) all other applicable requirements (if any) in regulations made for the purposes of this subparagraph are satisfied in relation to the application; or

(f) the issue or sale occurs in a situation covered by regulations made for the purposes of this paragraph.

Note 1: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(3) The trustee of a relevant superannuation entity must only permit a person to become a standard employer-sponsor of the entity if:

(a) the person applied to become a standard employer-sponsor of the entity using an application form; and

(b) the application form used to apply to become a standard employer-sponsor:

(i) was included in, or accompanied, a Product Disclosure Statement (relating to an interest in the entity) that was given to the person and that was not defective as at the time when the application was made; or

(ii) was copied, or directly derived, by the person from a form referred to in subparagraph (i).

Note 1: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(4) The regulations may:

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(a) provide for defences to offences based on subsection (2) or (3); and

(b) provide for additional offences relating to the receipt or non-receipt of applications or application forms.

Note 1: A defendant bears an evidential burden in relation to a defence. See subsection 13.3(3) of the *Criminal Code*.

Note 2: For the limit on penalties for offences against the regulations, see paragraph 1364(2)(w).

1016B If Statement lodged with ASIC, financial product is not to be issued or sold before specified period

(1) If:

(a) a copy of a Product Disclosure Statement has been lodged with ASIC; and

(b) the financial product to which the Statement relates is not able to be traded on any financial market (whether in Australia or elsewhere);

the responsible person must not issue or sell a financial product, pursuant to an application made in response to the Statement, until the period of 7 days (or that period as extended under subsection (2)) after lodgment of the Statement has ended.

Note 1: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2) ASIC may extend the period by notice in writing to the responsible person. The period as extended must end no more than 14 days after lodgment.

(3) This section does not apply if the financial product to which the Product Disclosure Statement relates is:

(a) a managed investment product of an Australian passport fund; or

(b) a foreign passport fund product.

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1016C Minimum subscription condition must be fulfilled before issue or sale

If a Product Disclosure Statement for a financial product states that a financial product to which the Statement relates will not be issued or sold unless:

(a) applications for a minimum number of financial products of that kind are received; or

(b) a minimum amount is raised;

the responsible person must not issue or sell a financial product of that kind, pursuant to an application made in response to the Statement, if that condition has not been satisfied. For the purpose of working out whether the condition has been satisfied, a person who has agreed to take a financial product as underwriter is taken to have applied for that product.

Note 1: Statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

Note 1A: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

Note 2: Failure to comply with this section is an offence (see subsection 1311(1)).

1016D Condition about ability to trade on a market must be fulfilled before issue or sale

(1) If a Product Disclosure Statement for a financial product states or implies that a financial product to which the Statement relates will be able to be traded on a financial market (whether in Australia or elsewhere), the responsible person must only issue or sell a financial product of that kind, pursuant to an application made in response to the Statement, if:

(a) the product is able to be traded on that market; or

(b) an application has, within 7 days after the relevant date (see subsection (3)), been made to the operator of that market for the taking of such action as is necessary to enable financial products of that kind to be traded on that market.

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Paragraph (b) ceases to apply to the financial product at the end of the period of 3 months starting on the relevant date.

Note 1: Statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

Note 1A: This subsection does not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Issue or transfer void if quotation condition not fulfilled

(2) If a Product Disclosure Statement for a financial product states or implies that the financial product is to be quoted on a financial market (whether in Australia or elsewhere) and:

(a) an application has not, within 7 days after the relevant date (see subsection (3)), been made to the operator of that market for the taking of such action as is necessary to enable financial products of that kind to be traded on that market; or

(b) the product is not able to be traded on that market at the end of 3 months after the relevant date;

then:

(c) an issue or transfer to a person of a financial product of that kind is void if:

(i) the issue or transfer is pursuant to an application made in response to the Statement; or

(ii) the person should have been given the Statement; and

(d) if:

(i) an issue or transfer of a financial product to a person is void because of paragraph (c); and

(ii) the responsible person received money from that person on account of the issue or transfer—the responsible person must, as soon as practicable, return the money to that person.

Note 1: Paragraphs (c) and (d) do not apply to an issue or sale pursuant to paragraph 1016E(2)(c) (see subsection 1016E(2C)).

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Note 2: Failure to comply with paragraph (d) is an offence (see subsection 1311(1)).

The relevant date

(3) For the purposes of this section, the ***relevant date*** in relation to an express or implied statement is:

(a) if the statement is express or implied in a Product Disclosure Statement, disregarding the effect of section 1014D—the date of the Product Disclosure Statement; or

(b) if the statement is express or implied in a Supplementary Product Disclosure Statement—the date of the Supplementary Product Disclosure Statement; or

(c) if the statement is express or implied in a Replacement Product Disclosure Statement (whether or not it is express or implied in the earlier Product Disclosure Statement it replaces)—the date of the Replacement Product Disclosure Statement.

1016E Choices open to person making the offer if disclosure condition not met or Product Disclosure Statement defective

(1) This section applies if:

(a) a Product Disclosure Statement for a financial product states that a financial product to which the Statement relates will not be issued or sold unless:

(i) applications for a minimum number of financial products of that kind are received; or

(ii) a minimum amount is raised;

and that condition is not satisfied within 4 months after the relevant date (see subsections (3) and (4)); or

(b) a Product Disclosure Statement for a financial product states or implies that a financial product to which the Statement relates will be able to be traded on a financial market (whether in Australia or elsewhere) and:

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(i) an application has not, within 7 days after the relevant date (see subsection (4)), been made to the operator of that market for the taking of such action as is necessary to enable financial products of that kind to be traded on that market; or

(ii) at the end of the period of 3 months starting on the relevant date, financial products of that kind are not able to be traded on that market; or

(c) in relation to a Product Disclosure Statement for a financial product, the responsible person becomes aware that the Product Disclosure Statement was defective as at the time when it was prepared, or that it became or has become defective as at some later time.

Note: Information and statements in a Supplementary Product Disclosure Statement are taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

(2) If this section applies, the responsible person must, in relation to any application for financial products of the relevant kind that is made in response to the Product Disclosure Statement (the ***first Product Disclosure Statement***) and that has not resulted in an issue or sale of financial products of that kind, comply with one of the following paragraphs:

(a) the responsible person must repay the money they received from the applicant; or

(aa) the responsible person must give the applicant:

(i) a new Product Disclosure Statement for the financial products, and an additional statement that identifies the respects in which the new Product Disclosure Statement is materially different from the first Product Disclosure Statement; and

(ii) 1 month to withdraw their application and be repaid; or

(b) the responsible person must give the applicant:

(i) a Supplementary Product Disclosure Statement that changes the statement referred to in paragraph (1)(a) or (b), or that corrects the deficiency referred to in paragraph (1)(c); and

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(ii) 1 month to withdraw their applications and be repaid; or

(ba) the responsible person must issue or sell the financial products to the applicant and give them:

(i) a new Product Disclosure Statement for the financial products, and an additional statement that identifies the respects in which the new Product Disclosure Statement is materially different from the first Product Disclosure Statement; and

(ii) 1 month to return the financial products and be repaid; or

(c) the responsible person must issue or sell the financial products to the applicant and give them:

(i) a Supplementary Product Disclosure Statement that changes the statement referred to in paragraph (1)(a) or (b), or that corrects the deficiency referred to in paragraph (1)(c); and

(ii) 1 month to return the financial products and be repaid.

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

Note 2: If the responsible person chooses the option given by paragraph (aa) or (b), that option does not require the responsible person to wait until the end of the month referred to in subparagraph (aa)(ii) or (b)(ii) before going ahead and issuing or selling the financial products to the applicant if the applicant indicates before then that they still wish to proceed with the application.

Note 3: However, if the responsible person chooses the option given by paragraph (aa) or (b), whether the responsible person may go ahead and issue or sell the financial products to the applicant at the end of the month referred to in subparagraph (aa)(ii) or (b)(ii) (or earlier, as mentioned in note 2) is affected by this subsection and sections 1016A to 1016E (including as those provisions are affected by subsections (2A) and (2B) of this section).

Note 4: If the responsible person chooses the option given by paragraph (c), sections 1016A to 1016D do not prohibit the issue or sale of the financial products under that paragraph (see subsection (2C) of this section).

(2A) If, in accordance with paragraph (2)(aa), the responsible person gives the applicant a new Product Disclosure Statement for the

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financial products and the additional statement referred to in subparagraph (2)(aa)(i):

(a) subsection (2), and sections 1016B, 1016C, 1016D and 1016E, apply in relation to the application, from the time when the applicant is given the new Product Disclosure Statement (the ***correction time***), as if the application had been made in response to the new Product Disclosure Statement; and

(b) if:

(i) the reason for giving the new Product Disclosure Statement was that the responsible person became aware that the first Product Disclosure Statement was defective as at the time when it was prepared, or had become defective by the time the application was made; and

(ii) the financial products are ***relevant financial products*** as defined in section 1016A;

section 1016A applies in relation to the application, from the correction time, as if the first Product Disclosure Statement had instead contained the content of the new Product Disclosure Statement.

Note 1: Because of paragraph (a):

(a) if this section applies to the new Product Disclosure Statement, the responsible person's ability to proceed to issue or sell the financial products pursuant to the application will be affected by subsection (2), and by sections 1016B, 1016C and 1016D, as those provisions apply in relation to the new Product Disclosure Statement (even though the application was actually made in response to the first Product Disclosure Statement); and

(b) sections 1016B, 1016C and 1016D, as they relate to the first Product Disclosure Statement, cease to apply in relation to the application.

Note 2: Because of paragraph (b), the application may be an ***eligible application*** as defined in section 1016A, even though the first Product Disclosure Statement was actually defective as at the time when the application was made.

(2B) If:

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(a) in accordance with paragraph (2)(b), the responsible person gives the applicant a Supplementary Product Disclosure Statement that relates to the financial products; and

(b) the reason for giving the Supplementary Product Disclosure Statement was that the responsible person became aware that the first Product Disclosure Statement was defective as at the time when it was prepared, or had become defective by the time the application was made; and

(c) the financial products are ***relevant financial products*** as defined in section 1016A;

section 1016A applies in relation to the application, from the time when the applicant is given the Supplementary Product Disclosure Statement, as if the Supplementary Product Disclosure Statement had been given to the applicant before the application was made.

Note 1: Because of this subsection and section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements), the application may be an ***eligible application*** as defined in section 1016A, even though the Supplementary Product Disclosure Statement was not actually given until after the time when the application was made.

Note 2: The responsible person's ability to proceed to issue or sell the financial products pursuant to the application will be affected by subsection (2), and by sections 1016B, 1016C and 1016D, as those provisions apply in relation to the first Product Disclosure Statement as affected by the Supplementary Product Disclosure Statement and any other Supplementary Product Disclosure Statements.

(2BA) If Subdivision DA applies:

(a) for the purposes of subsection (2), instead of giving the applicant a Supplementary Product Disclosure Statement, the responsible person may give the applicant a Replacement Product Disclosure Statement; and

(b) if the responsible person gives the applicant a Replacement Product Disclosure Statement, subsection (2B) applies as if references in that subsection to a Supplementary Product Disclosure Statement were references to the Replacement Product Disclosure Statement.

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(2C) If the responsible person chooses to comply with paragraph (2)(c), nothing in sections 1016A to 1016D applies to the issue or sale of the financial products under that paragraph.

Note: This subsection affects the elements of the offences under sections 1016A to 1016D, and so it is not an exception in relation to which a defendant bears an evidential burden under subsection 13.3(3) of the *Criminal Code*.

(3) For the purpose of working out whether the condition referred to in paragraph (1)(a) has been satisfied, a person who has agreed to take a financial product as an underwriter is taken to have applied for that financial product.

(4) For the purposes of paragraphs (1)(a) and (b), the ***relevant date*** in relation to an express or implied statement is:

(a) if the statement is express or implied in a Product Disclosure Statement, disregarding the effect of section 1014D—the date of the Product Disclosure Statement; or

(b) if the statement is express or implied in a Supplementary Product Disclosure Statement—the date of the Supplementary Product Disclosure Statement; or

(c) if the statement is express or implied in a Replacement Product Disclosure Statement (whether or not it is express or implied in the earlier Product Disclosure Statement it replaces)—the date of the Replacement Product Disclosure Statement.

(5) For the purposes of this section, ***defective***, when used in relation to a Product Disclosure Statement at a particular time, means that the Product Disclosure Statement, if it had been given to a person at that time, would have been ***defective*** as defined in Subdivision A of Division 7.

Note: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

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1016F Remedies for person acquiring financial product under defective Product Disclosure Document

(1) Subject to this section, if a financial product is issued or sold to a person (the ***client***) in contravention of section 1016E, the client has the right to return the product and to have the money they paid to acquire the product repaid. This is so even if the responsible person is being wound up.

(2) If the responsible person:
  (a) is a body corporate; and
  (b) does not repay the money as required by subsection (1);
the directors of the responsible person are personally liable to repay the money.

(3) The right to return the product must be exercised by notifying the responsible person in one of the following ways:
  (a) in writing; or
  (b) electronically; or
  (c) in any other way specified in the regulations.
Also, if the regulations require the client to comply with other requirements in order to exercise the right to return the product, those other requirements must be complied with.

(4) The right to return the product can only be exercised during the period of 1 month starting on the date of the issue or sale of the product to the client.

(5) On the exercise of the right to return the product:
  (a) if the product is constituted by a legal relationship between the client and the issuer of the product—that relationship is, by force of this section, terminated with effect from that time without penalty to the client; and
  (b) any contract for the acquisition of the product by the client is, by force of this section, terminated with effect from that time without penalty to the client.

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(6) The regulations may provide for consequences and obligations (in addition to those provided for by subsection (5)) to apply if the right to return a financial product is exercised.

(7) The regulations may do any or all of the following:

(a) provide that a specified subclass of financial products that would otherwise be covered by this section is excluded from this section;

(b) provide additional requirements to be satisfied before this section applies in relation to a class or subclass of financial products;

(c) provide that this section does not apply in relation to the provision of a financial product in specified circumstances.

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Division 3—Other disclosure obligations of the issuer of a financial product

1017A Obligation to give additional information on request

Obligation to give information

(1) The following people may request the person who is the responsible person for a Product Disclosure Statement for a financial product under Division 2 to provide further information about the product:

(a) a person who:

(i) has been or should have been given, or who has obtained, the Product Disclosure Statement for the financial product; and

(ii) is not a holder of the financial product;

(b) a financial services licensee;

(c) an authorised representative of a financial services licensee;

(e) a person who is not required to hold an Australian financial services licence because the person is covered by:

(i) paragraph 911A(2)(j); or

(ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or

(iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l).

(2) The responsible person must give the person the information if:

(a) the financial product is offered in this jurisdiction or the Product Disclosure Statement is given or obtained in this jurisdiction; and

(b) the responsible person has previously made the information generally available to the public; and

(c) the information might reasonably influence a person's decision, as a retail client, whether to acquire a financial product to which the Statement relates; and

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(d) it is reasonably practicable for the responsible person to give the person the information; and

(e) the person pays any charge payable under subsection (5).

The responsible person does not need to give information that is contained in the Product Disclosure Statement.

Note 1: Paragraph (b)—This requirement means that the responsible person does not have to disclose material that is confidential because it is:

(a) an internal working document; or

(b) personal information about another person; or

(c) a trade secret or other information that has a commercial value that would be reduced or destroyed by the disclosure; or

(d) material that the responsible person owes another a person a duty not to disclose.

Note 2: Information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements (see section 1014D).

(3) The responsible person must take reasonable steps to ensure that, as soon as practicable after receiving the request, and in any event within one month, subsection (2) is complied with.

Manner of giving information

(4) The responsible person may give the person making the request the information:

(a) by making a document containing the information available for inspection by the person:

(i) at a suitable place in this jurisdiction (having adequate facilities for the person to inspect and photocopy the document); and

(ii) during normal business hours; or

(b) in some other way that is agreed between the responsible person and the person making the request.

Issuer or seller may charge for giving information

(5) The responsible person may require the person making the request to pay a charge for obtaining the information.

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(6) The amount of the charge must not exceed the reasonable costs that the responsible person incurs that are reasonably related to giving the information (including any costs incurred in photocopying the document containing the information).

Note: This would include the costs of searching for, obtaining and collating the information.

1017B Ongoing disclosure of material changes and significant events

Issuer to notify holders of changes and events

(1) If:

(a) a person (the ***holder***) acquired a financial product as a retail client (whether or not it was acquired from the issuer); and

(b) either:

(i) the financial product was offered in this jurisdiction; or

(ii) the holder applied for the financial product in this jurisdiction; and

(c) the product is not specified in regulations made for the purposes of this paragraph; and

(d) the circumstances in which the product was acquired are not specified in regulations made for the purposes of this paragraph;

the issuer must, in accordance with subsections (3) to (8), notify the holder of changes and events referred to in subsection (1A).

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

The changes and events that must be notified

(1A) The changes and events that must be notified are:

(a) any material change to a matter, or significant event that affects a matter, being a matter that would have been required to be specified in a Product Disclosure Statement for the financial product prepared on the day before the change or event occurs; and

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(b) any other change, event or other matter of a kind specified in regulations made for the purposes of this paragraph; and

(c) without limiting paragraph (a) or (b)—any replacement of a kind specified in regulations made for the purposes of this paragraph of a beneficial interest of a class that is a MySuper product with a beneficial interest of another class in a superannuation entity.

Note: Paragraph (a) applies whether or not a Product Disclosure Statement for the financial product was in fact prepared (or required to be prepared) on the day before the change or event occurs.

(2) The issuer does not need to give the notice if the financial product is a managed investment product or foreign passport fund product that is an ED security.

Note 1: The continuous disclosure provisions in Chapter 6CA (sections 674-677) apply to managed investment products and foreign passport fund products that are ED securities.

Note 2: A defendant bears an evidential burden in relation to the matters in this subsection.

(3) The issuer must notify the holder in one of the following ways:

(a) in writing; or

(b) electronically; or

(c) in a way specified in the regulations.

(4) The notice must give the holder the information that is reasonably necessary for the holder to understand the nature and effect of the change or event.

Time for notifying holders

(5) The time within which the issuer must give the notice is set out in the following table:

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Time for giving notice of change or event

	Nature of change or event	Time for giving notice
1	Change or event is not an increase in fees or charges	Subject to subsection (6), before the change or event occurs or as soon as practicable after, but not more than 3 months after, the change or event occurs
2	Change is an increase in fees or charges	30 days before the change takes effect

(6) If the change or event is not an increase in fees or charges, the notice may be given more than 3 months after the change or event occurs if:

(a) the issuer reasonably believes that the event is not adverse to the holder's interests and accordingly the holder would not be expected to be concerned about the delay in receiving the information; and

(b) the notice is given no later than 12 months after the change or event occurs.

(7) If the change or event might result in an increase in fees or charges, this section applies to the change or event as if it would result in an increase in fees or charges.

(8) In any proceedings against the issuer for an offence based on subsection (1), it is a defence if the issuer took reasonable steps to ensure that the other person would be notified of the matters required by subsection (1) in accordance with subsections (3) to (8).

Note: A defendant bears an evidential burden in relation to the matters in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

(9) In this section:

fees or charges does not include fees or charges payable under a law of the Commonwealth or of a State or Territory.

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MySuper product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

1017BA Trustees of regulated superannuation funds—obligation to make product dashboard publicly available

(1) The trustee, or the trustees, of a regulated superannuation fund that has 5 or more members must ensure:

(a) that a product dashboard for each of the fund's MySuper products and choice products is publicly available at all times on the fund's website; and

(b) that each product dashboard sets out the information required by subsection (2) or (3); and

(c) that the information set out in each product dashboard about fees and other costs is updated within 14 days after the end of a period prescribed by the regulations; and

(d) that the other information set out in each product dashboard is updated within 14 days after any change to the information; and

(e) if the regulations prescribe the way in which information is to be set out in a product dashboard—that each product dashboard sets out the information in accordance with the regulations.

(2) The product dashboard for a MySuper product must set out:

(a) the following, worked out in accordance with the regulations in relation to the period or periods prescribed by the regulations:

(i) a return target or return targets for the product;

(ii) a return or returns for the product;

(iii) a comparison or comparisons between return targets and returns for the product;

(iv) the level of investment risk that applies to the product;

(v) a statement of fees and other costs in relation to the product; and

(b) any other information prescribed by the regulations.

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(3) Subject to subsection (4), the product dashboard for a choice product must set out:

(a) the following for each investment option offered within the choice product, worked out in accordance with the regulations in relation to the period or periods prescribed by the regulations:

(i) a return target or return targets for the investment option;

(ii) a return or returns for the investment option;

(iii) a comparison or comparisons between return targets and returns for the investment option;

(iv) the level of investment risk that applies to the investment option;

(v) a statement of fees and other costs in relation to the investment option; and

(b) any other information prescribed by the regulations.

(4) Subsection (3) does not apply to an investment option within a choice product if:

(a) the assets of the fund that are invested under the option are invested only in one or more of the following:

(i) a life policy under which contributions and accumulated earnings may not be reduced by negative investment returns or any reduction in the value of assets in which the policy is invested;

(ii) a life policy under which the benefit to a member (or a relative or dependant of a member) is based only on the realisation of a risk, not the performance of an investment;

(iii) an investment account contract the only beneficiaries of which are a member, and relatives and dependants of a member; or

(b) the sole purpose of the investment option is the payment of a pension to members who have satisfied a condition of release of benefits specified in a standard made under

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paragraph 31(2)(h) of the *Superannuation Industry (Supervision) Act 1993*; or

(c) the assets of the fund that are invested under the option are invested only in another single asset.

(4A) The regulations may prescribe circumstances in which assets of a regulated superannuation fund are, or are not, to be treated as invested in a single asset for the purposes of paragraph (4)(c).

Civil liability

(4B) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

(5) In this section:

choice product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

fee, in relation to a MySuper product or a choice product offered by a regulated superannuation fund, means a fee (other than an activity fee, an advice fee or an insurance fee within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that may be charged by the trustee, or the trustees, of the regulated superannuation fund in relation to the product under that Act.

investment account contract has the same meaning as in the *Life Insurance Act 1995*.

life policy has the same meaning as in the *Life Insurance Act 1995*.

member, in relation to a regulated superannuation fund, has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

MySuper product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

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pension has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

regulated superannuation fund has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

1017BB Trustees of registrable superannuation entities—obligation to make information relating to investment of assets publicly available

Obligation to publicise investment information

(1) The trustee, or the trustees, of a registrable superannuation entity (the ***reporting entity***) must make the following information about each of the entity's investment options publicly available on the entity's website no later than 90 days after each reporting day:

(a) sufficient information to identify each investment item (a ***disclosable item***) allocated to the investment option at the end of the reporting day that:

(i) is held by the reporting entity, an associated entity of the reporting entity or a pooled superannuation trust; and

(ii) is neither an investment in an associated entity of the reporting entity, nor an investment in a pooled superannuation trust;

(b) sufficient information to identify the value, and the weighting or exposure, at the end of the reporting day of each disclosable item;

(c) the total value, and the total weighting or exposure, at the end of the reporting day of all disclosable items.

(1A) However, the regulations may provide that subsection (1) applies for a prescribed kind of disclosable item so that:

(a) paragraphs (1)(a) and (b) need not be complied with for each item of that kind; and

(b) instead, only the following need be disclosed:

(i) the name of that kind of item;

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(ii) the total value, and the total weighting or exposure, at the end of the reporting day of all items of that kind.

(2) Information made publicly available under subsection (1) in respect of a reporting day must continue to be made publicly available on the registrable superannuation entity's website until information relating to the next reporting day is made publicly available under subsection (1).

(3) If the regulations prescribe the way in which information made publicly available under subsection (1) must be organised, the information must be organised in accordance with the regulations.

Full exemption

(4) Subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity if the entity is:

(a) a pooled superannuation trust; or

(b) a single member fund; or

(c) a small APRA fund.

Partial exemptions

(5) Subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity for:

(a) an investment option of the entity that has been closed to new members for at least 5 years; or

(b) an investment item that is not a material investment in accordance with regulations prescribed for the purposes of this paragraph; or

(c) an investment item invested solely to support a defined benefit interest (within the meaning of the *Income Tax Assessment Act 1997*); or

(d) an investment item invested in a life policy, or investment account contract, of a kind described in subparagraph 1017BA(4)(a)(i), (ii) or (iii); or

(e) an investment item of a kind prescribed by the regulations for the purposes of this paragraph.

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Note: An investment item covered by any of paragraphs (b) to (e) will not be a disclosable item.

(5A) Subject to subsection (1A), subsection (1) does not apply to the trustee, or the trustees, of a registrable superannuation entity for up to 5% of the investment items (other than derivatives) referred to in paragraph (1)(a) for the investment option if:

(a) those investment items are commercially sensitive; and

(b) making information publicly available about those investment items would be detrimental to the interests of the entity's members.

The trustee, or the trustees, of the entity may determine which investment items make up that 5%.

Note: Regulations under subsection (1A) may require the disclosure of the total value of all investment items of this kind.

Definitions

(5AA) A person contravenes this subsection if the person contravenes subsection (1) or (2), or regulations made for the purposes of subsection (3).

Note: This subsection is a civil penalty provision (see section 1317E).

(6) In this section:

investment item means an asset or a derivative.

investment option, for a registrable superannuation entity, means:

(a) an investment pool maintained within the entity; or

(b) a financial product made available to a member of the entity:

(i) that is a managed investment scheme or other pooled investment; and

(ii) in respect of which section 1012IA applies if there is, or will be, a regulated acquisition of the product (within the meaning of that section).

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member, in relation to a superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), has the same meaning as in that Act.

MySuper product has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

pooled superannuation trust has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

reporting day means 30 June and 31 December each year.

small APRA fund means a regulated superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) with less than 5 members.

1017C Information for existing holders of superannuation products and RSA products

Application

(1) This section applies to the issuer of a financial product if the product is:
  (a) a superannuation product; or
  (b) an RSA product.

Information for concerned person related to a superannuation product

(2) If the financial product is a superannuation product, then, subject to subsection (4), the issuer must, on request by a concerned person, give the concerned person information that the concerned person reasonably requires for the purposes of:
  (a) understanding any benefit entitlements that the concerned person may have, has or used to have under the superannuation product; or
  (b) understanding the main features of:
    (i) the relevant sub-plan; or

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(ii) if there is no relevant sub-plan—the superannuation entity; or

(c) making an informed judgment about the management and financial condition of:

(i) the superannuation entity; and

(ii) the relevant sub-plan (if any); or

(d) making an informed judgment about the investment performance of:

(i) the relevant sub-plan; or

(ii) if there is no relevant sub-plan—the superannuation entity; or

(e) understanding the particular investments of:

(i) the superannuation entity; and

(ii) the relevant sub-plan (if any).

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines ***concerned person*** and ***relevant sub-plan***.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Information for concerned person related to an RSA product

(2A) If the financial product is an RSA product, then, subject to subsection (4), the issuer must, on request by a concerned person, give the concerned person information that the concerned person reasonably requires for the purposes of:

(a) understanding any benefit entitlements that the concerned person may have, has or used to have under the RSA product; or

(b) understanding the main features of the RSA product.

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines ***concerned person***.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

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Information for employer-sponsor related to a superannuation product

(3) If the financial product is a superannuation product, then, subject to subsection (4), the issuer must, on request by an employer-sponsor, give the employer-sponsor information that the employer-sponsor reasonably requires for the purposes of:

(a) understanding the kinds of benefits to which the employer-sponsor's employees are entitled or will or may become entitled; or

(b) understanding the main features of:

(i) the relevant sub-plan; or

(ii) if there is no relevant sub-plan—the superannuation entity; or

(c) making an informed judgment about the management and financial condition of:

(i) the superannuation entity; and

(ii) the relevant sub-plan (if any); or

(d) making an informed judgment about the investment performance of:

(i) the relevant sub-plan; or

(ii) if there is no relevant sub-plan—the superannuation entity; or

(e) a matter related to the *Superannuation Guarantee (Administration) Act 1992*.

The information must be given in accordance with the other requirements of this section.

Note 1: Subsection (9) defines ***relevant sub-plan***.

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Information for employer related to an RSA product

(3A) If the financial product is an RSA product, then, subject to subsection (4), the issuer must, on request by an employer who made an application to acquire the RSA product on behalf of an

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employee, give the employer information that the employer reasonably requires for the purposes of:

(a) understanding the kinds of benefits to which the employer's employees are entitled or will or may become entitled; or

(b) understanding the main features of the RSA product; or

(c) a matter related to the *Superannuation Guarantee (Administration) Act 1992*.

The information must be given in accordance with the other requirements of this section.

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

Exceptions

(4) This section does not require (and does not, by implication, authorise) the disclosure of:

(a) internal working documents of the issuer; or

(b) information or documents that would disclose, or tend to disclose:

(i) personal information of another person if, in the circumstances, the disclosure would be unreasonable; or

(ii) trade secrets or other information having a commercial value that would be reduced or destroyed by the disclosure; or

(c) information or documents in relation to which the issuer owes to another person a duty of non-disclosure.

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

Specific requirements

(5) The issuer must, on request in writing by a person who is a concerned person, an employer-sponsor (if the financial product is a superannuation product) or an employer referred to in subsection (3A) (if the financial product is an RSA product), give the person:

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(a) a copy of a prescribed document (to the extent the issuer has access to the document) specified in the request; or

(b) prescribed information (to the extent to which the issuer has or has access to the information) specified in the request.

The document or information must be given in accordance with the other requirements of this section.

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

(6) Subsection (5) does not apply if the issuer is the trustee of a self managed superannuation fund.

Documents may be made available for inspection

(7) It is sufficient compliance with a requirement imposed by this section on the issuer to give information, or to give a copy of a document, to a person (the ***client***) if:

(a) a document containing the information; or

(b) a copy of the document;

is made available for inspection by the issuer:

(c) at a suitable place (having adequate facilities for the person to inspect and photocopy the document); and

(d) during normal business hours;

or as otherwise agreed between the issuer for the financial product and the client.

Time for compliance

(8) The issuer must comply with a request to give information, or a copy of a document, as soon as practicable. The issuer must, in any event, make reasonable efforts to comply with the request within 1 month of receiving the request.

Definitions

(9) In this section:

concerned person:

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(a) in relation to a superannuation product—means a person who:
  (i) is, or was within the preceding 12 months, a member of the superannuation entity; or
  (ii) is a beneficiary of the superannuation entity; or
(b) in relation to an RSA product—means a person who:
  (i) is, or was within the preceding 12 months, a holder of the RSA product; or
  (ii) has a right or a claim under the RSA product.

relevant sub-plan, in relation to a superannuation product, has the meaning given by the regulations.

1017D Periodic statements for retail clients for financial products that have an investment component

(1) If:
(a) a person (the ***holder***) of a financial product acquired the financial product as a retail client (whether or not it was acquired from the issuer); and
(b) the product is:
  (i) a managed investment product; or
  (ia) a foreign passport fund product; or
  (ii) a superannuation product; or
  (iii) an RSA product; or
  (iv) an investment life insurance product; or
  (v) a deposit product; or
  (va) a margin lending facility; or
  (vi) specified in regulations made for the purposes of this paragraph; and
(c) either:
  (i) the financial product was offered in this jurisdiction; or
  (ii) the holder applied for the financial product in this jurisdiction;

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the issuer of the product must, in accordance with subsections (2) to (6), give the holder a periodic statement for each reporting period during which the holder holds the product.

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

(2) The following provisions apply in relation to reporting periods:

(a) each reporting period lasts for a period, not exceeding 1 year, determined by the issuer;

(b) the first reporting period starts when the holder acquired the product;

(c) each subsequent reporting period starts at the end of the preceding reporting period;

(d) if the holder ceases to hold the product, the period starting at the end of the preceding reporting period and ending when the holder ceases to hold the product is a reporting period.

(3) The periodic statement must be given as soon as practicable after, and in any event within 6 months after, the end of the reporting period to which it relates.

(4) The periodic statement must give the holder the information that the issuer reasonably believes the holder needs to understand his or her investment in the financial product.

(5) The periodic statement must include the following if they are relevant to the financial product:

(a) opening and closing balances for the reporting period;

(b) the termination value of the investment at the end of the reporting period (to the extent to which it is reasonably practicable to calculate that value for the investment or a component of the investment);

(c) details of transactions in relation to the product during the reporting period as required by regulations made for the purposes of this paragraph;

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(d) any increases in contributions in relation to the financial product by the holder or another person during the reporting period;

(e) return on investment during the reporting period (on an individual basis if reasonably practicable to do so and otherwise on a fund basis);

(f) details of any change in circumstances affecting the investment that has not been notified since the previous periodic statement;

(g) details prescribed by regulations made for the purposes of this paragraph.

(5A) Unless in accordance with the regulations:

(a) for information to be disclosed in accordance with paragraphs (5)(a), (b), (c), (d) and (e), any amounts are to be stated in dollars; and

(b) for any other information in relation to amounts paid by the holder of the financial product during the period, any amounts are to be stated in dollars.

(6) The periodic statement must be given in one of the following ways:

(a) in writing; or

(b) electronically; or

(c) in a way specified in the regulations.

(7) The periodic statement need not be given if the issuer has already given the holder all the information that would be included in the periodic statement if it were to be given.

Note: A defendant bears an evidential burden in relation to the matters in this subsection.

1017DA Trustees of superannuation entities—regulations may specify additional obligations to provide information

(1) The regulations may:

(a) require the trustee of a superannuation entity to do all or any of the following:

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(i) provide the holder of a superannuation product (being an interest in that entity) with information relating to the management, financial condition and investment performance of the entity and/or of any relevant sub-plan (within the meaning of section 1017C);

(ii) provide the holder or former holder of a superannuation product (being an interest in that entity), or any other person to whom benefits under the product are payable, with information relating to his or her benefit entitlements;

(iii) provide the holder of a superannuation product (being an interest in the entity) with information about arrangements for dealing with inquiries and/or complaints relating to the product; or

(b) require an RSA provider to do either or both of the following:

(i) provide the holder or former holder of an RSA product provided by the RSA provider, or any other person to whom benefits under the product are payable, with information relating to his or her benefit entitlements;

(ii) provide the holder of an RSA product provided by the RSA provider with information about arrangements for dealing with inquiries and/or complaints relating to the product.

(2) Without limiting subsection (1), regulations made for the purposes of that subsection may deal with all or any of the following:

(a) what information is to be provided;

(b) when information is to be provided;

(c) how information is to be provided.

(3) The trustee of a superannuation entity, or an RSA provider, must provide information in accordance with any applicable requirements of regulations made for the purposes of subsection (1).

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

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(4) In this section:

RSA provider has the same meaning as in the *Retirement Savings Accounts Act 1997*.

superannuation entity has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.

1017E Dealing with money received for financial product before the product is issued

(1) This section applies to money paid to:

(a) an issuer (the ***product provider***) of financial products; or

(b) a seller (the ***product provider***) of financial products in relation to which the seller has prepared a Product Disclosure Statement;

if:

(c) the money is paid to acquire, or acquire an increased interest in, one or more of those financial products from the product provider (whether or not the acquisition would be by a person as a retail client); and

(d) the product provider does not, for whatever reason, issue or transfer the product or products, or the increased interest, immediately after receiving the money; and

(e) either:

(i) the financial product or increased interest was offered in this jurisdiction; or

(ii) the application for the financial product or increased interest was made in this jurisdiction; or

(iii) the money was received in this jurisdiction.

(1A) However, this section does not apply in relation to money paid to an issuer (the ***product provider***) of foreign passport fund products if the money is paid to acquire, or acquire an increased interest in, one or more of those foreign passport fund products from the product provider (whether or not the acquisition would be by a person as a retail client).

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(2) The product provider must ensure that the money is paid into an account that satisfies these requirements:

(a) the account is:

(i) with an Australian ADI; or

(ii) of a kind prescribed by regulations made for the purposes of this paragraph;

and is designated as an account for the purposes of this section of this Act; and

(b) the only money paid into the account is:

(i) money to which this section applies; or

(ii) interest on the amount from time to time standing to the credit of the account; and

(c) if regulations made for the purposes of this paragraph impose additional requirements—the requirements so imposed by the regulations.

The money must be paid into the account on the day it is received by the product provider, or on the next business day.

Note: See section 1021O for related offences.

(2A) Subject to subsection (2C), the money is taken to be held in trust by the product provider for the benefit of the person who paid the money.

(2C) The regulations may:

(a) provide that subsection (2A) does not apply in relation to money in specified circumstances; and

(b) provide for matters relating to the taking of money to be held in trust (including, for example, terms on which the money is taken to be held in trust and circumstances in which it is no longer taken to be held in trust).

(3) The money must only be taken out of the account if:

(a) it is taken out for the purpose of return to the person by whom it was paid; or

(b) the product is issued or transferred to, or in accordance with the instructions of, that person; or

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(c) it is taken out for a purpose specified by regulations made for the purposes of this paragraph; or

(d) it is taken out in a situation specified by regulations made for the purposes of this paragraph.

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

(4) The product provider must:

(a) return the money; or

(b) issue or transfer the product to, or in accordance with the instructions of, the person who paid the money; or

(c) if the money is taken out:

(i) for a purpose specified by regulations made for the purposes of paragraph (3)(c); or

(ii) in a situation specified by regulations made for the purposes of paragraph (3)(d);

do any action required, by regulations made for the purposes of this paragraph, after taking out that money;

either:

(d) before the end of one month starting on the day on which the money was received; or

(e) if it is not reasonably practicable to do so before the end of that month—by the end of such longer period as is reasonable in the circumstances.

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

(5) The product provider may, for the purposes of this section, maintain a single account or 2 or more accounts.

(6) Nothing in this section, or in regulations made for the purposes of this section, makes the body (not being the product provider) that the account is with under paragraph (2)(a) subject to any liability merely because of a failure by the product provider to comply with any of the provisions of this section or those regulations.

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1017F Confirming transactions

Transactions to which this section applies

(1) This section applies in relation to a transaction involving a financial product if:

(a) a person (the ***holder***) acquired the product as a retail client; and

(b) the transaction is:

(i) the transaction by which the holder acquired the product; or

(ii) a transaction that occurs while the holder holds the product, including a transaction by which the holder disposes of all or part of the product (and see also subsection (3)); and

(c) the transaction is not one that does not require confirmation because of subsection (4); and

(d) the holder has not, in accordance with regulations made for the purposes of paragraph (9)(d), waived their right to be provided with confirmation of the transaction; and

(e) either:

(i) the financial product was offered to, or acquired by, the holder in this jurisdiction; or

(ii) the transaction takes place in this jurisdiction.

Note: This section extends to financial products that are securities (see section 1010A).

Obligation to confirm transactions

(2) The person (the ***responsible person***) specified in column 3 of an item in the following table must provide the holder with confirmation of the transaction specified in column 2 of the same item. The confirmation must be provided in accordance with subsections (5) to (8).

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Who bears the obligation to confirm a transaction

Item	Transaction	Whose obligation?
1	transaction by which the holder acquired the financial product, unless that transaction was a sale pursuant to an offer to which section 1012C applies	the issuer of the product
2	transaction by which the holder acquired the financial product, where that transaction was a sale pursuant to an offer to which section 1012C applies	the seller of the product
3	any other transaction in relation to the financial product that occurs while the holder holds the product, other than a disposal of all or part of the product	the issuer of the product
4	transaction by which the holder disposes of all or part of the financial product	the person specified in the regulations made for the purposes of this item

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

Examples of transactions that are covered by subparagraph (1)(b)(ii)

(3) Without limiting the generality of subparagraph (1)(b)(ii), the transactions that are covered by that subparagraph include:

(a) varying the terms of the financial product while the holder holds the product (unless subsection (4) provides that the variation does not require confirmation); and

(b) the redemption or surrender of the financial product from or by the holder.

Transactions that do not require confirmation

(4) The following transactions do not require confirmation:

(a) a transaction consisting solely of an additional contribution towards the financial product in either of the following circumstances:

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(i) the timing and amount, or method of calculating the amount, of the additional contribution was agreed on when the product was acquired by the holder;

(ii) the additional contribution is an amount that is payable under the terms of the product because of an increase in an external factor, such as a person's salary, an inflation index or a rate of a tax or levy;

(b) if the financial product is a security—a transaction consisting solely of a variation of the rights attaching to the security;

(c) if the financial product is a deposit product—any of the following transactions:

(i) a withdrawal from the deposit product pursuant to a cheque drawn on the account;

(ii) a deposit to, or withdrawal from, the deposit product under a direct credit arrangement or a direct debit arrangement;

(iii) crediting interest to the deposit product;

(iv) debiting the deposit product for fees or charges in respect of the product or transactions involving the product;

(v) debiting the deposit product for charges or duties on deposits into, or withdrawals from, the product that are payable under a law of the Commonwealth or of a State or Territory;

(vi) a transaction of a kind specified in regulations made for the purposes of this subparagraph;

(d) a variation of the terms of all financial products in the class to which the financial product belongs;

(e) a transaction of a kind specified in regulations made for the purposes of this paragraph.

Note 1: Because of subparagraph (a)(i), confirmation is not required, e.g., for regular monthly contributions to a superannuation fund.

Note 2: A defendant bears an evidential burden in relation to the matters in this subsection.

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Confirmation may be provided on a transaction-by-transaction basis or by means of a standing facility

(5) Confirmation of a transaction must be provided:

(a) by confirming the transaction in accordance with subsections (6) to (8), to the holder as soon as is reasonably practicable after the transaction occurs; or

(b) subject to subsection (5A), by providing the holder with access to a facility through which they can, for themselves, get a confirmation of the transaction in accordance with subsections (6) to (8) as soon as is reasonably practicable after the transaction occurs.

An arrangement under which the holder may request or require another person to provide a confirmation does not count as a facility that satisfies paragraph (b).

When confirmation may be provided by means of a standing facility

(5A) Confirmation may only be provided by means of a facility as mentioned in paragraph (5)(b) if:

(a) the holder concerned has agreed that confirmation of transactions involving the product may be provided by means of the facility; or

(b) the holder concerned:

(i) has, in accordance with the applicable requirements (if any) in regulations made for the purposes of this subparagraph, been informed, by or on behalf of the responsible person, about the facility and its availability to the holder as a means of obtaining confirmation of transactions involving the product; and

(ii) has not advised the responsible person that the holder does not agree to use the facility as a means of obtaining such confirmations.

Means of confirmation

(6) The confirmation of the transaction:

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(a) must be:
  (i) in writing; or
  (ii) electronic; or
  (iii) in some other form applicable under regulations made for the purposes of this paragraph; and
(b) may be provided:
  (i) in a case to which paragraph (5)(a) applies—directly by the responsible person or through another person (such as a financial services licensee); or
  (ii) in a case to which paragraph (5)(b) applies—through a facility provided directly by the responsible person, or provided on behalf of the responsible person by someone else.

Content of confirmation

(7) The confirmation of the transaction must give the holder the information that the responsible person reasonably believes the holder needs (having regard to the information the holder has received before the transaction) to understand the nature of the transaction.

(8) Without limiting subsection (7), the confirmation of the transaction must:
(a) identify the issuer and the holder; and
(b) if required to be given by a person other than the issuer—identify that person; and
(c) give details of the transaction, including:
  (i) the date of the transaction; and
  (ii) a description of the transaction; and
  (iii) subject to regulations made for the purposes of this subparagraph—any amount paid or payable by the holder in relation to the transaction; and
  (iv) subject to any regulations made for the purposes of this subparagraph—any taxes and stamp duties payable in relation to the transaction; and

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(d) give any other details prescribed by regulations made for the purposes of this paragraph.

Regulations may provide for modification or waiver of confirmation obligation

(9) The regulations may do all or any of the following:

(a) modify subsection (2) to change the person required to provide confirmation of a transaction;

(b) modify subsections (5) and (6) to expand on or change the way in which confirmation of a transaction must be provided in particular circumstances;

(c) modify subsections (7) and (8) to expand on or change the information that must be included in the confirmation of a transaction in particular circumstances;

(d) specify the circumstances in which a person may waive the right to be provided with confirmation of a transaction, and specify how such a waiver may be made.

1017G Certain product issuers and regulated persons must meet appropriate dispute resolution requirements

(1) If:

(a) particular financial products are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and

(b) the issue or sale of those products is not covered by an Australian financial services licence;

both the issuer, and any regulated person obliged under subsection 1012C(5), (6) or (8) to give a retail client a Product Disclosure Statement for one or more of those financial products, must each:

(c) have a dispute resolution system complying with subsection (2); and

(d) give to ASIC the same information as the issuer or regulated person would be required to give under

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subparagraph 912A(1)(g)(ii) of that Act if the issuer or regulated person were a financial services licensee.

Note 1: If the issue of particular financial products is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the products is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2) To comply with this subsection, a dispute resolution system must consist of:

(a) an internal dispute resolution procedure that:

(i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and

(ii) covers complaints, against the person required to have the system, made by retail clients in relation to financial services provided in relation to any of those products or, if any of those products are foreign passport fund products, the operation of the relevant notified foreign passport fund; and

(c) membership of the AFCA scheme.

(3) Regulations made for the purposes of subparagraph (2)(a)(i) may also deal with the variation or revocation of:

(a) standards or requirements made by ASIC; or

(b) approvals given by ASIC.

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Division 4—Advertising for financial products

1018A Advertising or other promotional material for financial product must refer to Product Disclosure Statement

Advertisements and promotional material must identify issuer (or issuer and seller) and refer to Product Disclosure Statement

(1) Subject to this section, if a particular financial product is available for acquisition by persons as retail clients (whether or not it is also available for acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C applies or will apply, a person must only:

(a) advertise the product; or

(b) publish a statement that is reasonably likely to induce people to acquire the product;

if the advertisement or statement:

(c) identifies:

(i) if the product is available by way of issue—the issuer of the product; or

(ii) if the product is available pursuant to sale offers to which section 1012C applies or will apply—the issuer of the product and the seller of the product; and

(d) indicates that a Product Disclosure Statement for the product is available and where it can be obtained; and

(e) indicates that a person should consider the Product Disclosure Statement in deciding whether to acquire, or to continue to hold, the product.

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

(2) Subject to this section, if a particular financial product, or proposed financial product, is not available for acquisition by persons as retail clients but it is reasonably likely that the product will become so available (whether or not it is, or will also become, available for

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acquisition by persons as wholesale clients) by way of issue, or pursuant to sale offers to which section 1012C will apply, a person must only:

(a) advertise the product; or

(b) publish a statement that is reasonably likely to induce people to acquire the product;

if the advertisement or statement:

(c) identifies:

(i) if the product is likely to be so available by way of issue—the issuer of the product; or

(ii) if the product is likely to be so available pursuant to sale offers to which section 1012C will apply—the issuer of the product and the seller of the product; and

(d) indicates that a Product Disclosure Statement for the product will be made available when the product is released or otherwise becomes available; and

(e) indicates when and where the Product Disclosure Statement is expected to be made available; and

(f) indicates that a person should consider the Product Disclosure Statement in deciding whether to acquire, or continue to hold, the product.

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

Note 2: Subsection (2) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(4)).

Distribution of disclosure document

(3) A person may distribute a Product Disclosure Statement without contravening subsection (1) or (2). This does not apply if an order under section 1020E is in force in relation to the product.

Note 1: A defendant bears an evidential burden in relation to the matters in this section. See subsection 13.3(3) of the *Criminal Code.*

Note 2: Subsection (3) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(5)).

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General exceptions

(4) An advertisement or publication does not contravene subsection (1) or (2) if it:

(a) relates to a financial product that is able to be traded on a financial market and consists of a notice or report by the issuer of the product, or one of its officers, about its affairs to the market operator; or

(b) consists solely of a notice or report of a general meeting of the issuer; or

(c) consists solely of a report about the issuer that is published by the issuer and:

(i) does not contain information that materially affects affairs of the issuer, other than information previously made available in a Product Disclosure Statement that has been distributed, a disclosure document that has been lodged with ASIC, a CSF offer document that has been published on a platform of a CSF intermediary, an annual report or a notice or report referred to in paragraph (a) or (b); and

(ii) does not refer (whether directly or indirectly) to the offer of the financial product; or

(d) is a news report, or is genuine comment, in the media relating to:

(i) a Product Disclosure Statement that has been distributed, a disclosure document that has been lodged with ASIC or a CSF offer document that has been published on a platform of a CSF intermediary; or

(ii) information contained in such a Statement or document; or

(iii) a notice or report covered by paragraph (a), (b) or (c); or

(e) is a report about the financial products of the issuer published by someone who is not:

(i) the issuer; or

(ii) acting at the instigation of, or by arrangement with, the issuer; or

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(iii) a director of the issuer; or

(iv) a person who has an interest in the success of the issue or sale of the financial product.

Paragraphs (d) and (e) do not apply if anyone gives consideration or another benefit for publishing the report.

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

Liability of publishers

(5) A person does not contravene subsection (1) or (2) by publishing an advertisement or statement if the person:

(a) publishes it in the ordinary course of a media business; and

(b) did not know, and had no reason to suspect, that its publication would amount to a contravention of a provision of this section.

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

*Meaning of **media***

(6) For the purposes of this section, the ***media*** consists of:

(a) newspapers and magazines; and

(b) radio and television broadcasting services; and

(c) electronic services (including services provided through the internet) that:

(i) are operated on a commercial basis; and

(ii) are similar to newspapers, magazines or radio or television broadcasts.

1018B Prohibition on advertising personal offers covered by section 1012E

(1) A person must not advertise an offer, or intended offer, of financial products that would not need a Product Disclosure Statement because of section 1012E.

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

(2) A person does not contravene subsection (1) by publishing an advertisement or statement if the person:

(a) publishes it in the ordinary course of a media business; and

(b) did not know, and had no reason to suspect, that a Product Disclosure Statement was needed.

For this purpose, ***media*** has the same meaning as it has in section 1018A.

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

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Division 5—Cooling-off periods

1019A Situations in which this Division applies

(1) Subject to subsection (2), this Division applies if:

(a) a financial product of one of the following classes is provided in this jurisdiction to a person as a retail client after the commencement of this Chapter:

(i) risk insurance products;

(ii) investment life insurance products;

(iii) managed investment products;

(iiia) foreign passport fund products;

(iv) superannuation products;

(v) RSA products; and

(b) the product is provided to the person:

(i) by way of issue; or

(ii) by way of sale pursuant to an offer to which section 1012C applies.

(2) The regulations may do any or all of the following:

(a) provide that a specified subclass of financial products that would otherwise be covered by a subparagraph of paragraph (1)(a) are excluded from that subparagraph;

(b) provide additional requirements to be satisfied before this Division applies in relation to a class or subclass of financial products;

(c) provide that this Division does not apply in relation to the provision of a financial product in specified circumstances.

(3) In this Division:

(a) the person referred to in paragraph (1)(a) is the ***client***; and

(b) the person who issues or sells the product to the client is the ***responsible person***.

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Section 1019B

1019B Cooling-off period for return of financial product

(1) Subject to this section, the client has the right to return the financial product to the responsible person and to have the money they paid to acquire the product repaid. This is so even if the responsible person is being wound up.

(2) The right to return the product must be exercised by notifying the responsible person in one of the following ways:
   (a) in writing; or
   (b) electronically; or
   (c) in any other way specified in the regulations.

   Also, if the regulations require the client to comply with other requirements in order to exercise the right to return the product, those other requirements must be complied with.

(3) The right to return the product can only be exercised during the period of 14 days starting on the earlier of:
   (a) the time when the confirmation requirement (if applicable) is complied with; or
   (b) the end of the 5th day after the day on which the product was issued or sold to the client.

(4) For the purposes of subsection (3), the confirmation requirement is complied with when:
   (a) the client receives confirmation, as mentioned in paragraph 1017F(5)(a), of the transaction by which they acquired the product; or
   (b) confirmation of that transaction is available to the client by a facility as mentioned in paragraph 1017F(5)(b).

(5) The right to return the product (and have money paid to acquire it repaid) cannot be exercised at any time after:
   (a) the client has (whether before or after the start of the period referred to in subsection (3)) exercised a right or power that they have under the terms applicable to the product; or

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(b) the time (whether before or after the start of the period referred to in subsection (3)) at which, under the terms applicable to the product, the client's rights or powers in respect of the product end.

Note: So, e.g.:

(a) if the product is a contract of insurance, the right to return cannot be exercised after the client has made a claim under the contract of insurance; and

(b) if the product is a contract of insurance covering a period of only one week, the right to return cannot be exercised after the end of that week.

(5A) The regulations may specify other circumstances in which the right to return the product (and have money paid to acquire it repaid) cannot be exercised.

(6) On the exercise of the right to return the product:

(a) if the product is constituted by a legal relationship between the client and the issuer of the product—that relationship is, by force of this section, terminated with effect from that time without penalty to the client; and

(b) any contract for the acquisition of the product by the client is, by force of this section, terminated with effect from that time without penalty to the client.

(7) The regulations may provide for consequences and obligations (in addition to those provided for by subsection (6)) to apply if the right to return a financial product is exercised.

(8) The regulations may provide that, in specified circumstances, the amount to be repaid on exercise of the right to return a financial product is to be increased or reduced in accordance with the regulations.

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Division 5A—Unsolicited offers to purchase financial products off-market

1019C Definitions

In this Division:

date of offer has the meaning given by subsection 1019I(1).

offeree, in relation to an offer to which this Division applies, has the meaning given by subsection 1019D(1).

offeror, in relation to an offer to which this Division applies, has the meaning given by subsection 1019D(1).

offer to which this Division applies means an offer to which this Division applies because of section 1019D.

1019D Offers to which this Division applies

(1) This Division applies to an offer in relation to which the following paragraphs are satisfied:

(a) the offer is an unsolicited offer to purchase a financial product made by a person (the ***offeror***) to another person (the ***offeree***);

(b) the offer is made otherwise than on a licensed market;

(c) one or more of the following apply:

(i) the offer is made in the course of a business of purchasing financial products;

(ii) the offeror was not in a personal or business relationship with the offeree before the making of the offer;

(iii) the offer is made in circumstances specified in regulations made for the purposes of this subparagraph;

(d) the offer is not:

(i) made to the issuer of the financial products; or

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(ii) to buy back shares under a buy-back authorised by section 257A; or

(iii) made under a compromise or arrangement approved at a meeting held as a result of an order under subsection 411(1) or (1A); or

(iv) to acquire securities under an off-market bid; or

(v) to compulsorily acquire or buy out securities under Chapter 6A; or

(vi) to acquire shares from a dissenting shareholder under section 414; or

(vii) made in relation to particular financial products that are specified in regulations made for the purposes of this subparagraph; or

(viii) made in circumstances that are specified in regulations made for the purposes of this subparagraph;

(e) the offer is made or received in this jurisdiction.

(2) The regulations may clarify:

(a) when an offer is, or is not, made in the course of a business of purchasing financial products; or

(b) when an offeror was, or was not, in a previous personal or business relationship with an offeree.

Regulations made for the purposes of this subsection have effect despite anything else in this section.

1019E How offers are to be made

(1) An offer to which this Division applies must not be made otherwise than by sending an offer document in printed or electronic form to the offeree in accordance with the following requirements:

(a) the document must be sent to an address of the offeree (which may be an electronic address);

(b) either the envelope or the container in which it is sent, or the message that accompanies it, must be addressed to the offeree.

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(2) The offer document must be sent to the offeree as soon as practicable after the date of offer.

1019F Prohibition on inviting offers to sell

A person must not invite another person to make an offer to sell a financial product in circumstances in which, if the invitation were instead an offer to purchase the financial product, that offer would be an offer to which this Division applies.

1019G Duration and withdrawal of offers

(1) An offer to which this Division applies:
  (a) must remain open for at least 1 month after the date of offer; and
  (b) cannot remain open for more than 12 months after the date of offer.

(2) The offer may be withdrawn by the offeror at any time, but not within 1 month of the date of offer.

(3) The offer may only be withdrawn by the offeror by sending a withdrawal document in printed or electronic form to the offeree in accordance with paragraphs 1019E(1)(a) and (b). The withdrawal document must identify the offeror and be dated.

(4) A purported withdrawal of the offer contrary to subsection (2) or (3) is ineffective.

1019H Terms of offer cannot be varied

(1) The terms of an offer to which this Division applies, as set out in the offer document, cannot be varied.

(2) A purported variation of the terms of the offer is ineffective.

(3) This section does not:

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(a) affect the offeror's obligation under section 1019J to update the market value of the financial product to which the offer relates; or

(b) prevent the offeror from withdrawing the offer in accordance with section 1019G or paragraph 1019J(2)(a) and making another offer on different terms; or

(c) prevent the offeree from making a counter-offer on different terms.

1019I Contents of offer document

(1) The offer document by which an offer to which this Division applies is made must identify the offeror and be dated (this date is the ***date of offer***).

(2) The offer document must also contain the following:

(a) the price at which the offeror wishes to purchase the financial products;

(b) if the financial product is able to be traded on a licensed market and there is a market value for the product as traded on that market—the market value of the product as at the date of offer;

(c) if paragraph (b) does not apply—a fair estimate of the value of the product as at the date of offer, and an explanation of the basis on which that estimate was made;

(d) the period during which the offer remains open (which must be consistent with subsection 1019G(1));

(e) a statement to the effect that the offer may be withdrawn by sending a withdrawal document to the offeree, but generally not within 1 month of the date of offer;

(f) any other information specified in regulations made for the purposes of this paragraph.

(3) The regulations may clarify:

(a) the manner in which a fair estimate of the value of a financial product (see paragraph (2)(c)) is to be worked out; and

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(b) the level of detail required in the explanation of the basis on which the estimate was made.

Regulations made for the purposes of this subsection have effect despite anything else in this section.

(4) The offer document must be worded and presented in a clear, concise and effective manner.

1019J Obligation to update market value

(1) This section applies if:

(a) the offer document by which an offer to which this Division applies is made states the market value of the financial product to which the offer relates as at the date of the offer; and

(b) while the offer remains open, there is an increase or decrease in the market value of the product when compared to:

(i) unless subparagraph (ii) applies—the market value (the ***currently stated value***) stated as mentioned in paragraph (a); or

(ii) if this section has previously applied in relation to the offer and one or more supplementary offer documents have been sent to the offeree—the market value (the ***currently stated value***) stated as mentioned in paragraph (3)(c) in the supplementary offer document most recently sent to the offeree; and

(c) the increase or decrease, expressed as a percentage of the currently stated value, exceeds the percentage specified in the regulations for the purposes of this paragraph.

(2) The offeror must, within 10 business days of this section applying because of a particular increase or decrease in value:

(a) withdraw the offer by sending a withdrawal document, in printed or electronic form, to the offeree in accordance with paragraphs 1019E(1)(a) and (b):

(i) that identifies the offeror and that is dated; and

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(ii) that contains a statement to the effect that the offer is withdrawn because of a change in the market value of the product, and that withdrawal for this reason is permitted even within 1 month of the date of offer; or

(b) send a supplementary offer document (see subsection (3)) in printed or electronic form to the offeree in accordance with paragraphs 1019E(1)(a) and (b).

Nothing in section 1019G affects the effectiveness of a withdrawal of the offer under paragraph (a) of this subsection.

(3) A supplementary offer document must:

(a) identify the offer to which it relates; and

(b) be dated; and

(c) state the market value of the financial product to which the offer relates as at that date; and

(d) state the price that was stated in the offer document as required by paragraph 1019I(2)(a), and contain a statement to the effect that this is still the price at which the offeror wishes to purchase the product and that the terms of the offer remain unchanged; and

(e) contain a statement to the effect that the document has been prepared because the market value of the product has changed.

(4) A supplementary offer document must be worded and presented in a clear, concise and effective manner.

(5) In this section, a reference to stating a market value of a financial product includes a reference to purporting to state the market value of the product.

1019K Rights if requirements of Division not complied with

First situation covered by this section—offers to which this Division applies

(1) This section applies if, in relation to an offer to which this Division applies, the offeree (the ***seller***) accepts the offer and enters into a

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contract for the sale of the financial product to the offeror (the ***buyer***), and one or more of the following paragraphs applies:

(a) section 1019E was not complied with in relation to the offer;

(b) the offer was accepted after the period referred to in paragraph 1019G(1)(b);

(c) the offeror gave the offeree an offer document and either:

(i) the offer document did not comply with section 1019I; or

(ii) there was a misleading or deceptive statement in the offer document;

(d) in a situation to which section 1019J applies, either:

(i) subsection 1019J(2) was not complied with; or

(ii) subsection 1019J(2) was complied with, but the offeree did not receive the withdrawal document, or the supplementary offer document, as the case requires, until after the offeree had accepted the offer;

(e) in a situation to which section 1019J applies, the offeror gave the offeree a supplementary offer document and either:

(i) the supplementary offer document did not comply with subsection 1019J(3); or

(ii) there was a misleading or deceptive statement in the supplementary offer document.

Second situation covered by this section—invitations prohibited by section 1019F

(2) This section applies if, in response to an invitation prohibited by section 1019F, a person (the ***seller***) makes an offer to sell a financial product to the person who made the invitation (the ***buyer***), and that person accepts the offer and enters into a contract for the purchase of that financial product from the seller.

Seller's right to refuse to transfer, or to seek the return of, the financial product

(3) The seller has:

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(a) the right to refuse to transfer the financial product to the buyer; or

(b) if the seller has already transferred the financial product to the buyer—the right to have the financial product returned to the seller, if the buyer still holds the product.

The seller's right under paragraph (a) or (b) is conditional on the seller repaying any money that has been paid to the seller for the purchase of the financial product.

How the seller's right is to be exercised

(4) The seller's right under subsection (3) must be exercised by notifying the buyer in one of the following ways:

(a) in writing;

(b) electronically;

(c) in any other way specified in regulations made for the purposes of this paragraph.

Also, if the regulations require the seller to comply with other requirements in order to exercise that right, those other requirements must be complied with.

(5) The seller's right under subsection (3) can only be exercised during the period of 30 days starting on the day the contract was entered into.

Effect of exercise of seller's right

(6) On the exercise of the seller's right under subsection (3), the contract referred to in subsection (1) or (2) is, by force of this section, terminated from that time without penalty to the seller.

Regulations may provide for certain matters

(7) The regulations may provide for consequences and obligations (in addition to those provided for by subsection (6)) to apply if the seller's right under subsection (3) is exercised.

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(8) The regulations may provide that, in specified circumstances, the amount to be repaid as mentioned in subsection (3) is to be increased or reduced in accordance with the regulations.

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Division 5B—Disclosure etc. in relation to short sales covered by securities lending arrangement of listed section 1020B products

Note: Section 1020B prohibits certain short sales of section 1020B products.

1020AA Definitions

(1) In this Division:

crossing: a ***crossing*** of section 1020B products is a sale of section 1020B products made by a financial services licensee:

(a) on behalf of both the buyer and the seller of the products; or

(b) on behalf of the buyer of the products and on its own behalf as seller of the products; or

(c) on behalf of the seller of the products and on its own behalf as buyer of the products.

section 1020B products has the meaning given by subsection 1020B(1).

securities lending arrangement means an arrangement under which:

(a) one entity (the ***lender***) agrees that it will:

(i) deliver particular securities, managed investment products, foreign passport fund products or other financial products to another entity (the ***borrower***) or to an entity nominated by the borrower; and

(ii) vest title in those products in the entity to which they are delivered; and

(b) the borrower agrees that it will, after the lender does the things mentioned in paragraph (a):

(i) deliver the products (or equivalent products) to the lender or to an entity nominated by the lender; and

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(ii) vest title in those products (or those equivalent products) in the entity to which they are delivered.

(2) To avoid doubt, for the purposes of this Division, treat the entering into of an agreement to sell section 1020B products as the sale of the products.

(3) To avoid doubt, for the purposes of this Division, treat a financial services licensee as making a sale on behalf of a person if the sale is, in economic substance, made by the licensee for the person.

Example: A request that the sale be made is passed from the person to the financial services licensee through a chain of intermediaries.

(4) For the purposes of this Division, treat a crossing of section 1020B products as being made on a licensed market.

1020AB Seller disclosure

(1) Subsection (3) applies if:

(a) either:

(i) a financial services licensee, on behalf of a person (the ***seller***), makes a sale in this jurisdiction of section 1020B products on a licensed market to a buyer; or

(ii) a financial services licensee (the ***seller***), on its own behalf, makes a sale in this jurisdiction of section 1020B products on a licensed market to a buyer; and

(b) before the time of the sale, the seller had entered into or gained the benefit of a securities lending arrangement; and

(c) at the time of the sale, the seller intends that the securities lending arrangement will ensure that some or all the section 1020B products can be vested in the buyer; and

(d) the following requirements are satisfied (if applicable):

(i) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are of that kind;

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(ii) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are not of that kind;

(iii) if regulations made for the purposes of this subparagraph specify circumstances in which the sale is made—the sale is made in those circumstances.

(2) Subsection (3) applies regardless of whether the seller is inside or outside Australia.

Offence

(3) The seller must:

(a) give the entity mentioned in subsection (4) particulars specified in the regulations in relation to the circumstances mentioned in paragraphs (1)(a), (b) and (c); and

(b) do so:

(i) on or before the time specified in the regulations; and

(ii) in the manner specified in the regulations.

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

(4) The entity is:

(a) if subparagraph (1)(a)(i) applies:

(i) the financial services licensee mentioned in that subparagraph; or

(ii) if the regulations specify another entity—that entity; or

(b) if subparagraph (1)(a)(ii) applies:

(i) the operator of the licensed market mentioned in that subparagraph; or

(ii) if the regulations specify another entity—that entity.

1020AC Licensee disclosure

(1) Subsection (2) applies if:

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(a) the seller mentioned in subparagraph 1020AB(1)(a)(i) gives a financial services licensee information in accordance with section 1020AB in relation to a sale of section 1020B products on a licensed market; and

(b) the following requirements are satisfied (if applicable):

(i) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are of that kind;

(ii) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are not of that kind;

(iii) if regulations made for the purposes of this subparagraph specify circumstances in which the sale is made—the sale is made in those circumstances.

Offence

(2) The financial services licensee must:

(a) give the entity mentioned in subsection (3) particulars specified in the regulations in relation to the circumstances mentioned in paragraph (1)(a); and

(b) do so:

(i) on or before the time specified in the regulations; and

(ii) in the manner specified in the regulations.

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

(3) The entity is:

(a) the operator of the licensed market mentioned in paragraph (1)(a); or

(b) if the regulations specify another entity—that entity.

1020AD Public disclosure of information

(1) Subsection (2) applies if:

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(a) any of the following apply, in relation to a sale of section 1020B products on a licensed market:
  (i) the seller mentioned in subparagraph 1020AB(1)(a)(ii) gives information to the operator of a licensed market (or to another entity) in accordance with section 1020AB;
  (ii) the financial services licensee mentioned in paragraph 1020AC(1)(a) gives information to the operator of a licensed market (or to another entity) in accordance with section 1020AC;
  (iii) if regulations for the purposes of subparagraph 1020AB(4)(a)(ii) provide that the entity to which information is to be given in accordance with section 1020AB is the operator of a licensed market (or another entity)—the seller mentioned in subparagraph 1020AB(1)(a)(i) gives information to the operator (or other entity) in accordance with that section; and

(b) the following requirements are satisfied (if applicable):
  (i) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are of that kind;
  (ii) if regulations made for the purposes of this subparagraph specify a kind of section 1020B product—the section 1020B products are not of that kind;
  (iii) if regulations made for the purposes of this subparagraph specify circumstances in which the sale is made—the sale is made in those circumstances.

Offence

(2) The operator (or the other entity) must:
  (a) make a public disclosure of particulars specified in the regulations in relation to the information mentioned in paragraph (1)(a); and
  (b) do so:

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(i) on or before the time specified in the regulations; and
(ii) in the manner specified in the regulations.

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

1020AE Licensee's obligation to ask seller about short sale

The financial services licensee must not make a sale in this jurisdiction of section 1020B products on a licensed market if:

(a) the sale is on behalf of a person (the ***seller***); and
(b) the seller will be obliged under section 1020AB to give the financial services licensee information in relation to the sale; and
(c) either or both of the following apply:
(i) before making the sale, the financial services licensee failed to ask the seller, orally or in writing, whether the seller will be obliged under section 1020AB to give the financial services licensee information in relation to the sale;
(ii) before making the sale, the financial services licensee failed to record, in writing, the seller's answer.

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

Note 2: For the definition of ***writing***, see section 25 of the *Acts Interpretation Act 1901*. For the application of the *Acts Interpretation Act 1901* to this Act, see section 5C of this Act.

1020AF Regulations

(1) Regulations made for the purposes of this Division may specify a matter or thing differently for different kinds of persons, things or circumstances. For example, the regulations may:
(a) specify a matter or thing differently for different kinds of sellers mentioned in subsection 1020AB(1) or 1020AC(1); and

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(b) specify a time differently for different kinds of circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(2) Subsection (1) does not limit the regulations that may be made for the purposes of this Division.

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Division 5C—Information about CGS depository interests

1020AG Jurisdictional scope of Division

(1) Section 1020AI applies only in relation to recommendations received in this jurisdiction.

(2) The regulations may make provision dealing with the jurisdictional scope of some or all of the other provisions of this Division. The other provisions of this Division have effect subject to any such regulations.

1020AH Definitions

In this Division:

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

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

(a) contains a statement that the document is an information statement for that class for the purposes of this Division; and

(b) contains information about all CGS depository interests of that class (whether or not it also contains information about CGS depository interests of another class); and

(c) is prepared by the Commonwealth; and

(d) is published on the CGS depository interest information website.

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

(a) an issuer of the CGS depository interest; or

(b) any financial services licensee; or

(c) any authorised representative of a financial services licensee; or

(d) any person who is not required to hold an Australian financial services licence because the person is covered by:

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(i) paragraph 911A(2)(j); or

(ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or

(iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l); or

(e) any person who is required to hold an Australian financial services licence but who does not hold such a licence.

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

(1) A regulated person must give a person (the ***client***) each information statement for a class of CGS depository interests if:

(a) the regulated person provides financial product advice to the client that consists of, or includes, a recommendation that the client acquire a CGS depository interest of that class; and

(b) the financial product advice is provided to the client as a retail client; and

(c) the financial product advice is personal advice to the client.

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

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

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

(a) the client has already received that statement; or

(b) the regulated person reasonably believes that the client has received that statement.

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Strict liability offence of failing to give statement

(3) A regulated person commits an offence if:

(a) the regulated person is required by this section to give another person an information statement for a class of CGS depository interests; and

(b) the regulated person does not give the other person, in accordance with section 1020AK, that statement by the time the regulated person is required to do so.

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

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

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

Ordinary offence of failing to give statement

(5) A regulated person commits an offence if:

(a) the regulated person is required by this section to give another person an information statement for a class of CGS depository interests; and

(b) the regulated person does not give the other person, in accordance with section 1020AK, that statement by the time the regulated person is required to do so.

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

Defence for authorised representative

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

(a) the licensee had provided the representative with information or instructions about the giving of information statements for a class of CGS depository interests; and

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(b) the representative's failure to give an information statement for that class occurred because the representative was acting in reliance on that information or those instructions; and

(c) the representative's reliance on that information or those instructions was reasonable.

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

Offence of failing to ensure authorised representative gives statement

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

1020AJ Information statement given must be up to date

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

(a) purports to be an information statement for a class of CGS depository interests; and

(b) is not an information statement for that class published at that time on the CGS depository interest information website.

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

1020AK How an information statement is to be given

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

(a) must be:

(i) given to a person, or the person's agent, personally; or

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

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

(2) For the purposes of this section, the information statement is sent to a person at an address if, and only if:

(a) the information statement is sent to the address; and

(b) either:

(i) the envelope or other container in which the information statement is sent; or

(ii) the message that accompanies the information statement;

is addressed to the person.

(3) The information statement may be given or sent to the person's agent only if the agent is not acting as the person's agent in one of the following capacities:

(a) a financial services licensee;

(b) an authorised representative of a financial services licensee;

(c) a person who is not required to hold an Australian financial services licence because the person is covered by:

(i) paragraph 911A(2)(j); or

(ii) an exemption in regulations made for the purposes of paragraph 911A(2)(k); or

(iii) an exemption specified by ASIC for the purposes of paragraph 911A(2)(l);

(d) a person who is required to hold an Australian financial services licence but who does not hold such a licence;

(e) an employee, director or other representative of a person referred to in paragraph (a), (b), (c) or (d).

(4) The regulations may provide for other ways of giving an information statement for a class of CGS depository interests.

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

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1020AL Civil action for loss or damage

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

Recovery of amount of loss or damage

	Column 1 **Reason for loss or damage**	**Column 2** **Person amount may be recovered from**
1	The client was not given an information statement for a class of CGS depository interests as and when required by this Division	The person required to give the statement or, if that person was an authorised representative of a financial services licensee, each such licensee responsible for the person's conduct (see subsection (2))
2	The client was given at a time, in purported compliance with this Division, a document that: (a) purported to be an information statement for a class of CGS depository interests; and (b) was not an information statement for that class that was published at that time on the CGS depository interest information website	Each person who: (a) directly or indirectly caused or contributed to the giving of the document; and (b) did not take reasonable steps to ensure that the document given would be an information statement published at that time on the CGS depository interest information website

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

(a) the authorised representative is not an authorised representative of any other financial services licensee; or

(b) the licensee is responsible (alone or jointly and severally with other financial services licensees) for the authorised

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representative's conduct under section 917C, disregarding sections 917D and 917F.

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

Other orders

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

(a) make an order declaring void a contract entered into by the client referred to in that subsection for or relating to a financial product or a financial service; and

(b) if it makes an order under paragraph (a)—make such other order or orders as it thinks are necessary or desirable because of that order.

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

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Division 6—Miscellaneous

1020A Offers etc. relating to certain managed investment schemes not to be made in certain circumstances

Obligation

(1) A person must not engage in conduct of a kind referred to in subsection (2) in relation to a financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes) if the managed investment scheme concerned needs to be, or will need to be, registered and has not been registered. This is so even if it is proposed to register the scheme.

(2) Subject to subsection (3), the kinds of conduct that must not be engaged in in relation to such a managed investment product are as follows:

(a) making a recommendation, as described in subsection 1012A(3), that is received in this jurisdiction;

(b) making an offer, as described in subsection 1012B(3) or 1012C(3), that is received in this jurisdiction;

(c) accepting an offer, made as described in subsection 1012B(3) or (4), that was received in this jurisdiction.

Exceptions

(3) Subsection (2) does not apply to a recommendation or offer made in a situation to which a subsection of section 1012D, other than subsection 1012D(1), applies.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code.*

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Fault-based offence

(4) A person commits an offence if the person contravenes subsection (1).

Civil liability

(5) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

1020BAA Offers etc. relating to foreign passport funds not to be made in certain circumstances

(1) A person must not engage in conduct of a kind referred to in subsection (2) in relation to an interest in a foreign passport fund if the fund is not:

(a) a notified foreign passport fund; or

(b) a registered scheme.

This is so even if it is proposed that the fund will become a notified foreign passport fund or a registered scheme.

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

(2) Subject to subsection (3), the kinds of conduct that must not be engaged in in relation to an interest in such a foreign passport fund are as follows:

(a) making a recommendation, as described in subsection 1012A(3), that is received in this jurisdiction;

(b) making an offer, as described in subsection 1012B(3) or 1012C(3), that is received in this jurisdiction;

(c) accepting an offer, made as described in subsection 1012B(3) or (4), that was received in this jurisdiction.

(3) Subsection (2) does not apply to:

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(a) a recommendation or offer made in a situation to which a subsection of section 1012D, other than subsection 1012D(1), applies; or

(b) a recognised offer.

1020B Prohibition of certain short sales of securities, managed investment products, foreign passport fund products and certain other financial products

(1) In this section and in Division 5B:

section 1020B products means:

(a) securities; or

(b) managed investment products; or

(ba) foreign passport fund products; or

(c) financial products referred to in paragraph 764A(1)(j); or

(d) financial products of any other kind prescribed by regulations made for the purposes of this definition.

(2) Subject to this section and the regulations, a person must only, in this jurisdiction, sell section 1020B products to a buyer if, at the time of the sale:

(a) the person has or, if the person is selling on behalf of another person, that other person has; or

(b) the person believes on reasonable grounds that the person has, or if the person is selling on behalf of another person, that other person has;

a presently exercisable and unconditional right to vest the products in the buyer.

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

(3) For the purposes of subsection (2):

(a) a person who, at a particular time, has a presently exercisable and unconditional right to have section 1020B products vested in the person, or in accordance with the directions of the person, has at that time a presently exercisable and

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unconditional right to vest the products in another person; and

(b) a right of a person to vest section 1020B products in another person is not conditional merely because the products are subject to a security interest in favour of another person to secure the repayment of money.

(4) Subsection (2) does not apply in relation to a sale of section 1020B products by a person who, before the time of sale, has entered into a contract to buy those products and who has a right to have those products vested in the person that is conditional only upon all or any of the following:

(a) payment of the consideration in respect of the purchase;

(b) the receipt by the person of a proper instrument of transfer in respect of the products;

(c) the receipt by the person of the documents that are, or are documents of title to, the products.

(7) For the purposes of this section, a person who:

(a) purports to sell section 1020B products; or

(b) offers to sell section 1020B products; or

(c) holds himself, herself or itself out as entitled to sell section 1020B products; or

(d) instructs a financial services licensee to sell section 1020B products;

is taken to sell the products.

1020D Part cannot be contracted out of

A condition of a contract for the acquisition of a financial product is void if it provides that a party to the contract is:

(a) required or bound to waive compliance with any requirement of this Part (or of regulations made for the purposes of this Part); or

(b) if the acquisition occurs in circumstances in which the party is required by a provision of this Part to have been given a Product Disclosure Statement for the product—taken to have

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notice of any contract, document or matter not specifically referred to in a Product Disclosure Statement or Supplementary Product Disclosure Statement given to the party.

1020E Stop orders by ASIC

(1) This section applies if:

(a) either:

(i) a disclosure document or statement is defective (see subsection (11)); or

(ia) a disclosure document or statement does not comply with a requirement of this Part that it be worded and presented in a clear, concise and effective manner; or

(ii) an advertisement or statement of a kind referred to in subsection 1018A(1) or (2) that relates to financial products is defective (see subsection (11)); or

(b) an issuer of financial products is in breach of section 1017G; or

(c) information made publicly available under section 1017BA or 1017BB is defective (see subsection (11)).

(2) ASIC may order that:

(a) if paragraph (1)(a) applies—specified conduct in respect of the financial products to which the document, advertisement or statement relates; or

(b) if paragraph (1)(b) applies—specified conduct in respect of financial products issued by that issuer; or

(c) if paragraph (1)(c) applies—specified conduct in respect of the financial products or other property to which the information relates;

must not be engaged in while the order is in force.

(3) The order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Part.

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(4) Before making an order under subsection (2), ASIC must:
  (a) hold a hearing; and
  (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

(5) If ASIC considers that any delay in making an order under subsection (2) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order under that subsection. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

(6) At any time during the hearing, ASIC may make an interim order under subsection (2). The interim order lasts until:
  (a) ASIC makes an order under subsection (2) after the conclusion of the hearing; or
  (b) the interim order is revoked;
whichever happens first.

(7) The order under subsection (2) must be in writing and must be served on:
  (a) unless paragraph (b), (c) or (d) applies—the issuer of the financial products concerned; or
  (b) if paragraph (1)(a) applies and the document, advertisement or statement relates to a sale or proposed sale of the financial products—the seller of the financial products; or
  (c) if subparagraph (1)(a)(i) applies and the disclosure document or statement is an offer document of a kind referred to in section 1019E or a supplementary offer document of a kind referred to in section 1019J—the offeror referred to in subsection 1019D(1); or
  (d) if paragraph (1)(c) applies—the person who made the information publicly available or who provided the information.

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(8) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.

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

(9) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.

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

(10) If the person on whom the order is served, or a person who is aware of the order, engages in conduct contrary to the order, any relevant statement included in the order under subsection (3) has effect accordingly. This applies in addition to any other consequence that is provided for by this Act.

(11) In this section:

defective:

(a) in relation to a disclosure document or statement—has the same meaning as in Subdivision B of Division 7; and

(b) in relation to an advertisement or statement of a kind referred to in subsection 1018A(1) or (2) that relates to financial products—means:

(i) there is a misleading or deceptive statement in the advertisement or statement; or

(ii) there is an omission from the advertisement or statement of material required by paragraph 1018A(1)(c), (d) or (e), or paragraph 1018A(2)(c), (d), (e) or (f), to be included in the advertisement or statement; and

(c) in relation to information made publicly available under section 1017BA—means:

(i) the information has not been updated as required by that section; or

(ii) the information is otherwise misleading or deceptive; or

(iii) there is an omission from the information; and

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(d) in relation to information made publicly available under section 1017BB—means:

(i) the information is misleading or deceptive; or

(ii) there is an omission from the information.

disclosure document or statement has the same meaning as it has in Subdivision B of Division 7.

1020F Exemptions and modifications by ASIC

(1) ASIC may:

(a) exempt a person or class of persons from all or specified provisions of this Part; or

(b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or

(c) declare that this Part applies in relation to a person or a financial product, or a class of persons or financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

(5) An exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

(6) If conduct (including an omission) of a person would not have constituted an offence if a particular declaration under paragraph (1)(c) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the gazettal requirement of subsection (5)):

(a) the text of the declaration was made available by ASIC on the internet; or

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(b) ASIC gave written notice setting out the text of the declaration to the person.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.

(7) For the purpose of this section, the ***provisions of this Part*** include:

(a) definitions in this Act, or in the regulations, as they apply to references in this Part; and

(b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

(8) To avoid doubt, a declaration under paragraph (1)(c) may specify omissions, modifications or variations that have any or all of the following effects:

(a) suspending, prohibiting or limiting:

(i) any form of short selling of financial products; or

(ii) any transaction that has the same or substantially similar market effect as a short sale of financial products;

(b) varying requirements under this Part that apply to:

(i) any form of short selling of financial products; or

(ii) any transaction that has the same or substantially similar market effect as a short sale of financial products;

(c) removing some or all requirements under this Part that apply to:

(i) any form of short selling of financial products; or

(ii) any transaction that has the same or substantially similar market effect as a short sale of financial products;

(d) imposing requirements that apply to:

(i) any form of short selling of financial products; or

(ii) any transaction that has the same or substantially similar market effect as a short sale of financial products.

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Section 1020G

1020G Exemptions and modifications by regulations

(1) The regulations may:

(a) exempt a person or class of persons from all or specified provisions of this Part; or

(b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or

(c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.

(3) For the purpose of this section, the ***provisions of this Part*** include:

(a) definitions in this Act, or in the regulations, as they apply to references in this Part; and

(b) any provisions of Part 10.2 (transitional provisions) that relates to provisions of this Part.

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Division 7—Enforcement

Subdivision A—Offences

1021A Overview

This Subdivision contains provisions creating offences by reference to various rules contained in preceding Divisions of this Part. However, it does not create all the offences relating to those rules, as some offences are created by subsection 1311(1). Where offences are created by subsection 1311(1) in relation to a rule, this is indicated by a note at the end of the provision containing the rule.

1021B Definitions

(1) In this Subdivision:

defective, in relation to a disclosure document or statement, means:

(a) there is a misleading or deceptive statement in the disclosure document or statement; or

(b) if it is a Product Disclosure Statement—there is an omission from the Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or

(c) if it is a Supplementary Product Disclosure Statement that is given for the purposes of section 1014E—there is an omission from the Supplementary Product Disclosure Statement of material required by that section; or

(d) if it is information required by paragraph 1012G(3)(a)—there is an omission from the information of material required by that paragraph;

being a statement, or an omission, that is or would be materially adverse from the point of view of a reasonable person considering whether to proceed to acquire the financial product concerned.

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Note: In determining whether a Product Disclosure Statement is defective, the effect of section 1014D must be taken into account (section 1014D takes information and statements in a Supplementary Product Disclosure Statement to be included in the Product Disclosure Statement it supplements).

disclosure document or statement means:

(a) a Product Disclosure Statement; or

(b) a Supplementary Product Disclosure Statement; or

(c) information required by paragraph 1012G(3)(a).

regulated person has the same meaning as it has in Division 2.

(1A) For the avoidance of doubt, if section 1012J (information must be up to date) is not complied with in relation to a Product Disclosure Statement, then, for the purposes of the definition of ***defective*** in subsection (1):

(a) if the circumstance constituting the non-compliance is that particular information included in the Product Disclosure Statement is not as up to date as section 1012J requires it to be—the information so included constitutes a misleading statement in the Product Disclosure Statement; and

(b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Product Disclosure Statement—the failure to include the information constitutes an omission from the Statement of material required by section 1013C.

Note 1: The effect of section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements) must be taken into account in determining whether section 1012J is complied with in relation to a Product Disclosure Statement.

Note 2: Whether the inclusion of out of date information, or the failure to include information, results in the Product Disclosure Statement being ***defective*** as defined in subsection (1) depends on whether the materiality test set out in that definition is satisfied.

(2) In this Subdivision, a reference (including in the definitions in subsection (1)) to a document or statement, or to information, of a

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kind referred to in a paragraph of the definition of ***disclosure document or statement*** in subsection (1) includes a reference to something purporting to be a document or statement, or to be information, of that kind.

1021C Offence of failing to give etc. a disclosure document or statement

Strict liability offence

(1) A person (the ***providing entity***) commits an offence if:

(a) the providing entity:

(i) is required by a provision of this Part to give another person a Product Disclosure Statement or a Supplementary Product Disclosure Statement (the ***required disclosure document or statement***); or

(ii) is required by paragraph 1012G(3)(a) to orally communicate information (the ***required disclosure document or statement***) to another person; and

(b) the providing entity does not:

(i) if subparagraph (a)(i) applies—give (in accordance with section 1015C) the other person anything purporting to be the required disclosure document or statement by the time they are required to do so; or

(ii) if subparagraph (a)(ii) applies—orally communicate to the other person anything purporting to be the information required by paragraph 1012G(3)(a) by the time they are required to do so.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(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*.

Ordinary offence

(3) A person (the ***providing entity***) commits an offence if:

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(a) the providing entity:

(i) is required by a provision of this Part to give another person a Product Disclosure Statement or a Supplementary Product Disclosure Statement (the ***required disclosure document or statement***); or

(ii) is required by paragraph 1012G(3)(a) to orally communicate information (the ***required disclosure document or statement***) to another person; and

(b) the providing entity does not:

(i) if subparagraph (a)(i) applies—give (in accordance with section 1015C) the other person anything purporting to be the required disclosure document or statement by the time they are required to do so; or

(ii) if subparagraph (a)(ii) applies—orally communicate to the other person anything purporting to be the information required by paragraph 1012G(3)(a) by the time they are required to do so.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

Defence for authorised representative

(4) In any proceedings against an authorised representative of a financial services licensee for an offence based on subsection (1) or (3), it is a defence if:

(a) the licensee had provided the representative with information or instructions about the giving or communication of disclosure documents or statements; and

(b) the representative's failure to give or communicate the required disclosure document or statement occurred because the representative was acting in reliance on that information or those instructions; and

(c) the representative's reliance on that information or those instructions was reasonable.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

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Circumstances in which a person is taken not to contravene this section

(5) If:

(a) a person does not give another person a Product Disclosure Statement for a financial product because of section 1012DAA or 1012DA; and

(b) a notice was given under subsection 1012DAA(2) or 1012DA(5); and

(c) the notice purported to comply with subsection 1012DAA(7) or 1012DA(6) but did not actually comply with that subsection;

the person is taken not to contravene this section.

1021D Offence of preparer of defective disclosure document or statement giving the document or statement knowing it to be defective

(1) A person commits an offence if:

(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and

(b) the person knows that the disclosure document or statement is defective; and

(c) the person:

(i) gives (see subsection (3)) another person the disclosure document or statement in circumstances in which it is required by a provision of this Part to be given to the other person; or

(ii) gives (see subsection (3)), or makes available to, another person the disclosure document or statement reckless as to whether the other person will or may rely on the information in it.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(2) A person commits an offence if:

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(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and
(b) the person knows that the disclosure document or statement is defective; and
(c) the person gives (see subsection (3)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person, or someone else, will or may give it, or make it available, to another person as mentioned in subparagraph (1)(c)(i) or (ii).

(3) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

1021E Preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)

Obligations

(1) A person contravenes this subsection if:
(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and
(b) the disclosure document or statement is defective; and
(c) the person:
(i) gives (see subsection (4)) another person the disclosure document or statement in circumstances in which it is required by a provision of this Part to be given to the other person; or
(ii) gives (see subsection (4)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person will or may rely on the information in it.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

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(2) A person contravenes this subsection if:

(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and

(b) the disclosure document or statement is defective; and

(c) the person gives (see subsection (4)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person, or someone else, will or may give it, or make it available, to another person as mentioned in subparagraph (1)(c)(i) or (ii).

Exception

(3) A person does not contravene subsection (1) or (2) if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

*Meaning of **give***

(4) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

Fault-based offence

(5) A person commits an offence if the person contravenes subsection (1) or (2).

(6) For the purposes of an offence based on subsection (1), strict liability applies to the physical element of the offence specified in paragraph (1)(b).

(7) For the purposes of an offence based on subsection (2), strict liability applies to the physical element of the offence specified in paragraph (2)(b).

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Civil liability

(8) A person contravenes this subsection if the person contravenes subsection (1) or (2).

Note: This subsection is a civil penalty provision (see section 1317E).

1021F Offence of regulated person (other than preparer) giving disclosure document or statement knowing it to be defective

(1) A regulated person commits an offence if:

(a) another person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and

(b) the regulated person knows that the disclosure document or statement is defective; and

(c) the regulated person:

(i) gives (see subsection (2)) another person the disclosure document or statement in circumstances in which it is required by a provision of this Part to be given to the other person; or

(ii) gives (see subsection (2)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person will or may rely on the information in it.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(2) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

1021FA Paragraph 1012G(3)(a) obligation—offences relating to communication of information

Offence where information known to be defective

(1) A person (the ***providing entity***) commits an offence if:

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(a) the providing entity communicates information required by paragraph 1012G(3)(a) to another person in circumstances in which the providing entity is required to do so; and

(b) the providing entity knows that the information is defective.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D and 1012E.

Offence whether or not information known to be defective

(2) A person (the ***providing entity***) commits an offence if:

(a) the providing entity communicates information required by paragraph 1012G(3)(a) to another person in circumstances in which the providing entity is required to do so; and

(b) the information is defective.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D and 1012E.

(3) For the purposes of an offence based on subsection (2), strict liability applies to the physical element of the offence specified in paragraph (2)(b).

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

Defences

(4) In any proceedings against a person for an offence based on subsection (1) or (2), it is a defence if the person took reasonable steps to ensure that the information communicated would not be defective.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

(5) In any proceedings against a person for an offence based on subsection (2), it is a defence if the information communicated was defective because of information, or an omission from information, provided to the person (whether in a document or otherwise) by the issuer of the financial product concerned.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

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1021FB Paragraph 1012G(3)(a) obligation—offences relating to information provided by product issuer for communication by another person

Product issuer knows information is defective

(1) The issuer of a financial product commits an offence if:

(a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:

(i) for the purpose of the information being communicated under paragraph 1012G(3)(a); or

(ii) knowing that it is likely that the information will be so communicated; and

(b) the issuer knows that, if the person communicates the provided information for the purpose of paragraph 1012G(3)(a), the information communicated will be defective.

Product issuer knows information is not all the required information

(2) The issuer of a financial product commits an offence if:

(a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:

(i) for the purpose of it being communicated under paragraph 1012G(3)(a); or

(ii) knowing that it is likely that it will be so communicated; and

(b) the provided information relates to a matter or matters, but the issuer knows that it is not all of the information relating to the matter or matters that is required to be so communicated; and

(c) the issuer is reckless as to whether the person will or may communicate information for the purposes of paragraph 1012G(3)(a) on the basis that the provided information is all the information relating to the matter or matters that is required to be so communicated.

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Product issuer provides information that results in information required by paragraph 1012G(3)(a) being defective

(3) The issuer of a financial product commits an offence if:

(a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:

(i) for the purpose of it being communicated under paragraph 1012G(3)(a); or

(ii) knowing that it is likely that it will be so communicated; and

(b) the person communicates the information for the purpose of paragraph 1012G(3)(a); and

(c) the information communicated is defective because it includes the provided information (whether or not it is defective for other reasons).

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in paragraph (3)(c).

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

Defence to subsection (3) offence

(5) In any proceedings against the issuer of a financial product for an offence based on subsection (3), it is a defence if the issuer took reasonable steps to ensure that the information they provided would not be such as to make the information communicated for the purpose of paragraph 1012G(3)(a) defective.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

Product issuer does not provide all the required information

(6) The issuer of a financial product commits an offence if:

(a) the issuer provides information (whether in a document or otherwise) relating to the product to a person:

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(i) for the purpose of it being communicated under paragraph 1012G(3)(a); or

(ii) knowing that it is likely that it will be so communicated; and

(b) the provided information relates to a matter or matters, but it is not all of the information relating to the matter or matters that is required to be so communicated; and

(c) the person communicates information for the purpose of paragraph 1012G(3)(a) on the basis that the provided information is all the information relating to the matter or matters that is required to be so communicated; and

(d) the information communicated is defective because it includes only that information about the matter or matters (whether or not it is also defective for other reasons).

(7) For the purposes of an offence based on subsection (6), strict liability applies to the physical elements of the offence specified in paragraphs (6)(b) and (d).

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

Defence to subsection (6) offence

(8) In any proceedings against the issuer of a financial product for an offence based on subsection (6), it is a defence if the issuer took reasonable steps to ensure that the information they provided about the matter or matters would be all the information about the matter or matters that would be required by paragraph 1012G(3)(a) to be communicated.

Note: A defendant bears an evidential burden in relation to the matters in subsection (8). See subsection 13.3(3) of the *Criminal Code*.

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1021G Financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required

Financial services licensee must ensure authorised representative gives etc. disclosure documents or statements as required

(1) A financial services licensee contravenes this subsection if the licensee does not take reasonable steps to ensure that an authorised representative of the licensee complies with their obligations under this Part to give or communicate disclosure documents or statements as and when required by this Part.

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Civil liability

(3) A person contravenes this subsection if the person contravenes subsection (1).

Note: This subsection is a civil penalty provision (see section 1317E).

1021H Offences if a Product Disclosure Statement (or Supplementary PDS) does not comply with certain requirements

(1) A person commits an offence if:

(a) the person prepares (or has someone else prepare for them) a Product Disclosure Statement, a Supplementary Product Disclosure Statement or a Replacement Product Disclosure Statement (the ***disclosure document***); and

(b) the disclosure document does not comply with:

(i) if it is a Product Disclosure Statement—section 1013B or 1013G or subsection 942DA(3); or

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(ii) if it is a Supplementary Product Disclosure Statement—section 1013G, 1014B or 1014C; or

(iii) if it is a Replacement Product Disclosure Statement—subsection 942DA(3), section 1013G or subsection 1014K(1), (2) or (3); and

(c) the person:

(i) gives (see subsection (3)) another person the disclosure document in circumstances in which it is required by a provision of this Part to be given to the other person; or

(ii) gives (see subsection (3)), or makes available to, another person the disclosure document, reckless as to whether the other person will or may rely on the information in it; or

(iii) gives (see subsection (3)), or makes available to, another person the disclosure document, reckless as to whether the other person, or someone else, will or may give it, or make it available, to another person as mentioned in subparagraph (i) or (ii).

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(2) For the purposes of an offence based on subsection (1), strict liability applies to paragraph (b) of that subsection.

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

(3) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

1021I Offence of giving disclosure document or statement that has not been prepared by the appropriate person

(1) A regulated person commits an offence if:

(a) the regulated person:

(i) gives (see subsection (2)) another person a disclosure document or statement (not being information required by paragraph 1012G(3)(a)) in circumstances in which it

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is required by a provision of this Part to be given to the other person; or

(ii) gives (see subsection (2)), or makes available to, another person a disclosure document or statement (not being information required by paragraph 1012G(3)(a)), reckless as to whether the other person will or may rely on the information in it; and

(b) the disclosure document or statement has not been prepared by, or on behalf of, the person required by section 1013A to prepare it.

Note: A defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(2) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

1021J Offences if preparer etc. of disclosure document or statement becomes aware that it is defective

(1) A person commits an offence if:

(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and

(b) the person becomes aware that the disclosure document or statement is defective; and

(c) the person does not, as soon as practicable, take reasonable steps to ensure that any regulated person to whom the disclosure document or statement has been provided for further distribution is given a direction that satisfies one of more of the following subparagraphs:

(i) a direction not to distribute the disclosure document or statement;

(ii) if it is a Product Disclosure Statement—a direction not to distribute the Product Disclosure Statement unless it is accompanied by a Supplementary Product Disclosure Statement that corrects the deficiency;

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(iii) if it is a Product Disclosure Statement or a Supplementary Product Disclosure Statement—a direction not to distribute the Product Disclosure Statement or Supplementary Product Disclosure Statement without first altering it in a way that is specified in the direction, being a way that corrects the deficiency and that complies with section 1015E.

(2) A regulated person commits an offence if:
(a) the person is given a direction referred to in paragraph (1)(c); and
(b) the person does not comply with the direction.

(3) A regulated person commits an offence if:
(a) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)) has been provided to the person for distribution; and
(b) the person becomes aware that the disclosure document or statement is defective; and
(c) the person does not take reasonable steps to notify the person by whom, or on whose behalf, the disclosure document or statement was prepared of the particulars of the deficiency.

(4) In this section, a reference to ***distributing*** a disclosure document or statement includes (but is not limited to) giving the document or statement to another person in purported compliance with a requirement of this Part.

1021K Offence of unauthorised alteration of Product Disclosure Statement (or Supplementary PDS)

(1) A person commits an offence if:
(a) the person engages in conduct that results in an alteration of a Product Disclosure Statement or a Supplementary Product Disclosure Statement that has been prepared by or on behalf of another person (the ***responsible person***); and

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(b) the alteration results in the Product Disclosure Statement or Supplementary Product Disclosure Statement becoming defective, or more defective than it previously was; and

(c) the alteration is not made with the authority of the responsible person; and

(d) either:

(i) the person, in purported compliance with a provision of this Part, gives (see subsection (2)) the altered Product Disclosure Statement or Supplementary Product Disclosure Statement to another person; or

(ii) the person gives (see subsection (2)), or makes available to, another person the altered Product Disclosure Statement or Supplementary Product Disclosure Statement, reckless as to whether the other person will or may rely on the information in it; or

(iii) the person gives (see subsection (2)), or makes available to, another person the altered Product Disclosure Statement or Supplementary Product Disclosure Statement, reckless as to whether the other person, or someone else, will or may give it, or make it available, to another person as mentioned in subparagraph (i) or (ii).

(2) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

1021L Offences of giving, or failing to withdraw, consent to inclusion of defective statement

(1) A person commits an offence if:

(a) they consent to the inclusion of a statement (the ***consented material***) in a Product Disclosure Statement or a Supplementary Product Disclosure Statement as mentioned in paragraph 1013K(1)(a); and

(b) either:

(i) there is a misleading or deceptive statement in the consented material; or

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(ii) there is an omission of information from the consented material; and

(c) the statement or omission is or would be materially adverse from the point of view of a reasonable person considering whether to proceed to acquire the financial product concerned.

(2) A person commits an offence if:

(a) they consent to the inclusion of a statement (the ***consented material***) in a Product Disclosure Statement or a Supplementary Product Disclosure Statement as mentioned in paragraph 1013K(1)(a); and

(b) they become aware that either:

(i) there is a misleading or deceptive statement in the consented material; or

(ii) there is an omission of information from the consented material;

being a statement, or an omission, that:

(iii) is or would be materially adverse from the point of view of a reasonable person considering whether to proceed to acquire the financial product concerned; or

(iv) results in the Product Disclosure Statement or the Supplementary Product Disclosure Statement being defective, or more defective than it would otherwise be; and

(c) they do not withdraw their consent after becoming aware of the matter mentioned in paragraph (b).

1021M Offences relating to keeping and providing copies of Product Disclosure Statements (or Supplementary PDSs)

Strict liability offence

(1) A person commits an offence if:

(a) the person is required by section 1015D:

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(i) to notify ASIC that a Product Disclosure Statement or a Supplementary Product Disclosure Statement is in use; or

(ii) to keep a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a particular period; or

(iii) to make a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement available to ASIC; or

(iv) to comply with a request from a person for a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement; and

(b) the person does not comply with that requirement.

(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*.

Ordinary offence

(3) A person commits an offence if:

(a) the person is required by section 1015D:

(i) to notify ASIC that a Product Disclosure Statement or a Supplementary Product Disclosure Statement is in use; or

(ii) to keep a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement for a particular period; or

(iii) to make a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement available to ASIC; or

(iv) to comply with a request from a person for a copy of a Product Disclosure Statement or a Supplementary Product Disclosure Statement; and

(b) the person does not comply with that requirement.

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1021N Offence of failing to provide additional information requested under section 1017A

A person (the ***responsible person***) commits an offence if:

(a) a request is made to them by another person, in accordance with subsection 1017A(1), to provide further information about a financial product; and

(b) the responsible person is required by subsection 1017A(2) to give the other person the information; and

(c) the other person has paid any charge in respect of the request, being a charge that is in accordance with subsections 1017A(5) and (6); and

(d) the responsible person does not take reasonable steps to ensure that, as soon as practicable after receiving the request, and in any event within one month, the information is provided to the other person in accordance with subsection 1017A(4).

1021NA Offences relating to obligation to make product dashboard publicly available

Failure to comply with obligation to make product dashboard publicly available

(1) A person commits an offence if:

(a) the person is a trustee of a regulated superannuation fund; and

(b) as trustee, the person is required, under section 1017BA, to ensure that a product dashboard for each of the fund's MySuper products and choice products is made publicly available on the fund's website; and

(c) a product dashboard for each of the fund's MySuper products and choice products is not made publicly available as required by that section.

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Offence where information known to be defective

(2) A person commits an offence if:

(a) the person is a trustee of a regulated superannuation fund; and

(b) a product dashboard is made publicly available on the fund's website in purported compliance with section 1017BA; and

(c) the person knows that:

(i) the information set out in the product dashboard has not been updated as required by that section; or

(ii) the information set out in the product dashboard is otherwise misleading or deceptive; or

(iii) there is an omission from the information set out in the product dashboard.

Offence whether or not information known to be defective

(3) A person commits an offence if:

(a) the person is a trustee of a regulated superannuation fund; and

(b) a product dashboard is made publicly available on the fund's website in purported compliance with section 1017BA; and

(c) either:

(i) the information set out in the product dashboard has not been updated as required by that section; or

(ii) the information set out in the product dashboard is otherwise misleading or deceptive; or

(iii) there is an omission from the information set out in the product dashboard.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in any of subparagraphs (3)(c)(i) to (iii).

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

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Defences

(5) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (2)(c)(iii) or (3)(c)(iii), it is a defence if:

(a) the trustee or another trustee of the fund took reasonable steps to ensure that there would not be an omission from the information set out in the product dashboard; or

(b) both of the following apply:

(i) the information was omitted because it was not up to date;

(ii) the trustee or another trustee of the fund took reasonable steps to obtain up-to-date information; or

(c) both of the following apply:

(i) the information was omitted because it would have been misleading or deceptive;

(ii) the trustee or another trustee of the fund took reasonable steps to obtain information that would not have been misleading or deceptive.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (3)(c)(i), it is a defence if the trustee or another trustee of the fund took reasonable steps to ensure that the information set out in the product dashboard was updated as required by section 1017BA.

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

(7) In any proceedings against a trustee of a regulated superannuation fund for an offence based on subparagraph (3)(c)(ii), it is a defence if the trustee or another trustee of the fund took reasonable steps to ensure that the information set out in the product dashboard would not be misleading or deceptive.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

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1021NB Offences relating to obligation to make superannuation investment information publicly available

Failure to comply with obligation to make information publicly available

(1) A person commits an offence if:
  (a) the person is a trustee of a registrable superannuation entity; and
  (b) as trustee, the person is required, under section 1017BB, to make information publicly available on the entity's website; and
  (c) the information is not made publicly available as required by that section.

Offence where information known to be defective

(2) A person commits an offence if:
  (a) the person is a trustee of a registrable superannuation entity; and
  (b) as trustee, the person is required, under section 1017BB, to make information publicly available; and
  (c) information is made publicly available in purported compliance with that requirement; and
  (d) the trustee knows that:
    (i) the information is misleading or deceptive; or
    (ii) there is an omission from the information.

Offence whether or not information known to be defective

(3) A person commits an offence if:
  (a) the person is a trustee of a registrable superannuation entity; and
  (b) as trustee, the person is required, under section 1017BB, to make information publicly available; and
  (c) information is made publicly available in purported compliance with that requirement; and

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(d) either:
(i) the information is misleading or deceptive; or
(ii) there is an omission from the information.

(4) For the purposes of an offence based on subsection (3), strict liability applies to the physical element of the offence specified in subparagraph (3)(d)(i) or (ii).

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

Defences

(5) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subsection (1), it is a defence if the information would have been made publicly available but for the fact that the trustee or another trustee of the entity was unable to obtain the information after taking reasonable steps to do so.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

(6) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subparagraph (2)(d)(ii) or (3)(d)(ii), it is a defence if:
(a) there was an omission from the information made publicly available because the trustee or another trustee of the entity was unable to obtain the information after taking reasonable steps to do so; or
(b) both of the following apply:
(i) the information was omitted because it would have been misleading or deceptive;
(ii) the trustee or another trustee of the entity took reasonable steps to obtain information that would not have been misleading or deceptive.

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

(7) In any proceedings against a trustee of a registrable superannuation entity for an offence based on subparagraph (3)(d)(i), it is a

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defence if the trustee or another trustee of the entity took reasonable steps to ensure that the information made publicly available would not be misleading or deceptive.

Note: A defendant bears an evidential burden in relation to the matters in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

1021O Offences of issuer or seller of financial product failing to pay money into an account as required

Strict liability offence

(1) An issuer or seller of financial products commits an offence if:
   (a) the issuer or seller is required by subsection 1017E(2) to pay particular money into an account in accordance with that subsection; and
   (b) the issuer or seller does not pay the money into an account in accordance with that subsection.

(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*.

Ordinary offence

(3) An issuer or seller of financial products commits an offence if:
   (a) the issuer or seller is required by subsection 1017E(2) to pay particular money into an account in accordance with that subsection; and
   (b) the issuer or seller does not pay the money into an account in accordance with that subsection.

1021P Offences relating to offers to which Division 5A applies

Failure to comply with requirements of section 1019E relating to how offers are made

(1) A person commits an offence if:
   (a) the person makes an offer; and

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(b) the offer is an offer to which Division 5A applies (see section 1019D); and
(c) in making the offer, the person fails to comply with a requirement of section 1019E.

Contravening section 1019F by inviting offers to sell

(2) A person commits an offence if:
(a) the person invites another person to make an offer to sell a financial product; and
(b) in making the invitation, the person contravenes section 1019F.

Failure to comply with requirements of section 1019G relating to duration and withdrawal of offers

(3) A person commits an offence if:
(a) the person makes an offer; and
(b) the offer is an offer to which Division 5A applies (see section 1019D); and
(c) any of the following apply:
(i) the offer does not remain open for the period required by paragraph 1019G(1)(a);
(ii) the offer remains open for longer than is permitted by paragraph 1019G(1)(b);
(iii) in purporting to withdraw the offer, the person fails to comply with a requirement of subsection 1019G(2) or (3).

Failure to comply with requirements of section 1019I relating to price or value

(4) A person commits an offence if:
(a) the person makes an offer; and
(b) the offer is an offer to which Division 5A applies (see section 1019D); and
(c) the person gives the offeree an offer document; and

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(d) either:
(i) the offer document does not comply with paragraph 1019I(2)(a), (b) or (c); or
(ii) material of a kind referred to in paragraph 1019I(2)(a), (b) or (c) that is included in the offer document is misleading or deceptive.

Failure to comply with other requirements of section 1019I

(5) A person commits an offence if:
(a) the person makes an offer; and
(b) the offer is an offer to which Division 5A applies (see section 1019D); and
(c) the person gives the offeree an offer document; and
(d) either:
(i) the offer document does not comply with subsection 1019I(1), or paragraph 1019I(2)(d), (e) or (f); or
(ii) material of a kind referred to in subsection 1019I(1), or paragraph 1019I(2)(d), (e) or (f), that is included in the offer document is misleading or deceptive.

Failure to comply with requirements of section 1019J

(6) A person commits an offence if:
(a) the person makes an offer; and
(b) the offer is an offer to which Division 5A applies (see section 1019D); and
(c) section 1019J applies because of an increase or decrease in the market value of the financial product to which the offer relates; and
(d) one of the following subparagraphs applies:
(i) the person fails to comply with subsection 1019J(2) in relation to that increase or decrease; or
(ii) the person gives the offeree a supplementary offer document in relation to that increase or decrease, but

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that document does not comply with subsection 1019J(3); or

(iii) the person gives the offeree a supplementary offer document in relation to that increase or decrease, but material of a kind referred to in subsection 1019J(3) that is included in that document is misleading or deceptive.

Subdivision B—Civil liability

1022A Definitions

(1) In this Subdivision:

defective, in relation to a disclosure document or statement, means:

(a) there is a misleading or deceptive statement in the disclosure document or statement; or

(b) if it is a Product Disclosure Statement—there is an omission from the Product Disclosure Statement of material required by section 1013C, other than material required by section 1013B or 1013G; or

(c) if it is a Supplementary Product Disclosure Statement that is given for the purposes of section 1014E—there is an omission from the Supplementary Product Disclosure Statement of material required by that section; or

(d) if it is information required by paragraph 1012G(3)(a)—there is an omission from the information of material required by that paragraph; or

(e) if it is an offer document of a kind referred to in section 1019E—there is an omission from the document of material required by section 1019I; or

(f) if it is a supplementary offer document of a kind referred to in section 1019J—there is an omission from the document of material required by subsection 1019J(3).

Note: In determining whether a Product Disclosure Statement is defective, the effect of section 1014D must be taken into account (section 1014D takes information and statements in a Supplementary Product

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Disclosure Statement to be included in the Product Disclosure Statement it supplements).

disclosure document or statement means:

(a) a Product Disclosure Statement; or

(b) a Supplementary Product Disclosure Statement; or

(c) information required by paragraph 1012G(3)(a); or

(d) an offer document of a kind referred to in section 1019E; or

(e) a supplementary offer document of a kind referred to in section 1019J.

regulated person has the same meaning as it has in Division 2.

(1A) For the avoidance of doubt, if section 1012J (information must be up to date) is not complied with in relation to a Product Disclosure Statement, then, for the purposes of the definition of ***defective*** in subsection (1):

(a) if the circumstance constituting the non-compliance is that particular information included in the Product Disclosure Statement is not as up to date as section 1012J requires it to be—the information so included constitutes a misleading statement in the Product Disclosure Statement; and

(b) if the circumstance constituting the non-compliance is a failure to include particular information that was not previously required to be included in the Product Disclosure Statement—the failure to include the information constitutes an omission from the Statement of material required by section 1013C.

Note: The effect of section 1014D (information in a Supplementary Product Disclosure Statement is taken to be contained in the Product Disclosure Statement it supplements) must be taken into account in determining whether section 1012J is complied with in relation to a Product Disclosure Statement.

(2) In this Subdivision, a reference (including in the definitions in subsection (1)) to a document or statement, or to information, of a kind referred to in a paragraph of the definition of ***disclosure document or statement*** in subsection (1) includes a reference to

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something purporting to be a document or statement, or to be information, of that kind.

1022B Civil action for loss or damage

(1) This section applies in the following situations:

(a) a person:

(i) is required by a provision of this Part to give another person (the ***client***) a Product Disclosure Statement or a Supplementary Product Disclosure Statement (the ***required disclosure document or statement***); and

(ii) does not give (in accordance with section 1015C) the client anything purporting to be the required disclosure document or statement by the time they are required to do so; or

(aa) a person makes an offer to which Division 5A applies (see section 1019D) to another person (the ***client***) otherwise than by sending the client an offer document in accordance with section 1019E; or

(ab) a person makes an invitation prohibited by section 1019F to another person (the ***client***); or

(ac) a person:

(i) is required by subsection 1019J(2), in relation to an offer made to another person (the ***client***), to send the client a withdrawal document or a supplementary offer document; and

(ii) does not send (in accordance with paragraphs 1019E(1)(a) and (b)) the client anything purporting to be either of those things by the time they are required to do so; or

(b) a person:

(i) is required by paragraph 1012G(3)(a) to orally communicate information (the ***required disclosure document or statement***) to another person (the ***client***); and

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(ii) does not orally communicate to the other person anything purporting to be the information required by that paragraph by the time they are required to do so; or

(c) a person:

(i) gives another person (the ***client***) a disclosure document or statement (other than an offer document of a kind referred to in section 1019E or a supplementary offer document of a kind referred to in section 1019J) that is defective in circumstances in which a disclosure document or statement is required by a provision of this Part to be given to the client; or

(ia) makes an offer to which Division 5A applies (see section 1019D) by sending another person (the ***client***) an offer document in accordance with section 1019E, but that offer document is defective; or

(ib) in a situation to which section 1019J applies, sends a person (the ***client***) a supplementary offer document in accordance with that section but that supplementary offer document is defective; or

(ii) is a regulated person and gives, or makes available to, another person (the ***client***) a disclosure document or statement, being a Product Disclosure Statement or a Supplementary Product Disclosure Statement, that is defective, reckless as to whether the client will or may rely on the information in it; or

(d) a person:

(i) gives consent to the inclusion of a statement in a Product Disclosure Statement or a Supplementary Product Disclosure Statement as mentioned in subsection 1021L(1), disregarding paragraph 1021L(1)(c); or

(ii) does not take reasonable steps to withdraw such a statement as mentioned in subsection 1021L(2), disregarding subparagraphs 1021L(2)(b)(iii) and (iv); or

(e) a person contravenes section 1017B or 1017D; or

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(f) a person is required by section 1017BA to make information publicly available on a regulated superannuation fund's website and any of the following circumstances apply:
  (i) the information is not made publicly available as required by that section;
  (ii) the information made publicly available is not updated as required by that section;
  (iii) the information made publicly available is misleading or deceptive;
  (iv) there is an omission from the information made publicly available; or

(g) a person is required by section 1017BB to make information publicly available on a registrable superannuation entity's website and any of the following circumstances apply:
  (i) the information is not made publicly available as required by that section;
  (ii) the information made publicly available is misleading or deceptive;
  (iii) there is an omission from the information made publicly available.

In paragraph (c), ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C or paragraph 1012G(3)(a).

(2) In a situation to which this section applies, if a person suffers loss or damage:
  (a) if paragraph (1)(a) applies—because the client was not given the disclosure document or statement that they should have been given; or
  (aa) if paragraph (1)(aa) applies—because the client was not sent an offer document in accordance with section 1019E; or
  (ab) if paragraph (1)(ab) applies—because the client received an invitation prohibited by section 1019F rather than being sent an offer document in accordance with section 1019E; or

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(ac) if paragraph (1)(ac) applies—because the client was not sent a withdrawal document or a supplementary offer document as required by subsection 1019J(2); or

(b) if paragraph (1)(b) applies—because the information required by paragraph 1012G(3)(a) was not communicated to the client; or

(c) if paragraph (1)(c) applies—because the disclosure document or statement the client was given or sent was defective; or

(d) if paragraph (1)(d) applies—because the consent referred to in that paragraph was given, or was not withdrawn, as the case requires; or

(e) if paragraph (1)(e) applies—because of the contravention referred to in that paragraph; or

(f) if paragraph (1)(f) or (g) apply—because of any of the circumstances mentioned in those paragraphs;

the person may recover the amount of the loss or damage by action against the, or a, liable person (see subsections (3) to (5)), whether or not that person (or anyone else) has been convicted of an offence in respect of the matter referred to in paragraph (a), (aa), (ab), (ac), (b), (c), (d), (e) or (f).

(3) For the purposes of subsection (2), the, or a, ***liable person*** is:

(a) if paragraph (1)(a), (aa), (ab), (ac) or (b) applies—subject to subsection (4), the person first-referred to in that paragraph; or

(aa) if paragraph (1)(c) applies and the disclosure document or statement is information required by paragraph 1012G(3)(a)—subject to subsection (5A), the person first-referred to in paragraph (1)(c) of this section; or

(b) if paragraph (1)(c) (other than subparagraph (1)(c)(ia) or (ib)) applies and the disclosure document or statement is not information required by paragraph 1012G(3)(a)—subject to subsection (5):

(i) the person by whom, or on whose behalf, the disclosure document or statement was prepared; and

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(ii) each other person involved in the preparation of the disclosure document or statement who, directly or indirectly, caused the disclosure document or statement to be defective or contributed to it being defective; or

(ba) if subparagraph (1)(c)(ia) or (ib) applies—the person who made the offer; or

(c) if paragraph (1)(d) applies—the person who gave the consent; or

(d) if paragraph (1)(e) applies—the person who contravened the provision concerned; or

(e) if paragraph (1)(f) applies—the trustee, or the trustees, of the regulated superannuation fund on whose website the information was required to be made publicly available; or

(f) if paragraph (1)(g) applies—the trustee, or the trustees, of the registrable superannuation entity on whose website the information was required to be made publicly available.

(4) If paragraph (1)(a) or (b) applies, or paragraph (1)(c) applies so far as it relates to information required by paragraph 1012G(3)(a), and the person who would, but for this subsection, be the liable person is an authorised representative, the authorised representative is not the liable person and the following paragraphs apply:

(a) if the authorised representative is an authorised representative of only one financial services licensee—that financial services licensee is the liable person;

(b) if the authorised representative is an authorised representative of more than one financial services licensee:

(i) if, under the rules in section 917C, one of those licensees is responsible for the person's conduct—that licensee is the (or a) liable person; or

(ii) if, under the rules in section 917C, 2 or more of those licensees are jointly and severally responsible for the person's conduct—each of those licensees is a liable person.

(4A) For the purposes of paragraph (4)(b):

(a) section 917C is taken to apply, despite section 917F; and

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(b) section 917D is taken not to apply.

(5) If:

(a) paragraph (1)(c) (other than subparagraph (1)(c)(ia) or (ib)) applies; and

(b) an alteration was made to the disclosure document or statement (not being information required by paragraph 1012G(3)(a)) before it was given to the client; and

(c) the alteration made the disclosure document or statement defective, or more defective than it would otherwise have been; and

(d) the alteration was not made by, or with the authority of, the person who would, but for this subsection, be a liable person because of subparagraph (3)(b)(i);

then, so far as a person has suffered loss or damage because the disclosure document or statement was defective because of the alteration, the person who made the alteration is a liable person, rather than the person referred to in paragraph (d).

(5A) If:

(a) paragraph (3)(aa) applies; and

(b) the person referred to in that paragraph is not the issuer, or an authorised representative of the issuer, of the financial product to which the required disclosure document or statement relates; and

(c) the required disclosure document or statement was defective because of information, or an omission from information, provided to that person (whether in a document or otherwise) by the issuer of the product;

the issuer of the product is the liable person, rather than the person who would otherwise be the liable person because of paragraph (3)(aa) or subsection (4).

(6) An action under subsection (2) may be begun at any time within 6 years after the day on which the cause of action arose.

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(7) A person is not liable under subsection (2) in a situation described in paragraph (1)(c) if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.

(7A) If subsection (5A) applies, the issuer of the financial product is not liable under subsection (2) if the issuer took reasonable steps to ensure that the information provided as mentioned in paragraph (5A)(c) would not be such as to make the required disclosure document or statement defective.

(7B) A person is not liable under subsection (2) in a situation described in subparagraph (1)(f)(iii) or (g)(ii) if the person took reasonable steps to ensure that the information would not be misleading or deceptive.

(7C) A person is not liable under subsection (2) in a situation described in subparagraph (1)(f)(iv) or (g)(iii) if the person took reasonable steps to ensure that there would not be an omission from the information.

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

1022C Additional powers of court to make orders

(1) The court dealing with an action under subsection 1022B(2) may, in addition to awarding loss or damage under that subsection and if it thinks it necessary in order to do justice between the parties:

(a) make an order declaring void a contract entered into by the client referred to in that subsection for or relating to a financial product or a financial service; and

(b) if it makes an order under paragraph (a)—make such other order or orders as it thinks are necessary or desirable because of that order.

(2) Without limiting paragraph (1)(b), the orders that may be made under that paragraph include (but are not limited to) an order for the return of money paid by a person, and/or an order for payment

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of an amount of interest specified in, or calculated in accordance with, the order.

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Part 7.9A—Product intervention orders

1023A Object

The object of this Part is to provide ASIC with powers that it can use proactively to reduce the risk of significant detriment to retail clients resulting from financial products.

1023B Definitions

In this Part:

ASIC Act financial product means a financial product within the meaning of Division 2 of Part 2 of the ASIC Act.

financial product includes an ASIC Act financial product but does not include:

(a) a financial product issued, or offered for regulated sale, by an exempt body or an exempt public authority; or

(b) a financial product specified in regulations made for the purposes of this paragraph.

product intervention order means an order made under subsection 1023D(1) or (3).

regulated sale has the meaning given by subsection 994A(1).

1023C Application of product intervention orders

(1) A product intervention order does not apply to a financial product held by a person if the person acquired, or entered into a contract for the acquisition of, the product before the order comes into force.

(2) A product intervention order does not apply to a person:

(a) in the person's capacity as a retail client; or

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(b) who is in a class of persons specified in regulations made for the purposes of this paragraph.

(3) The regulations may provide that this Part does not apply to a financial product specified in the regulations.

Note: In a prosecution for an offence, the defendant bears an evidential burden in relation to the matters in this section (see subsection 13.3(3) of the *Criminal Code*).

1023D ASIC may make product intervention orders

Making product intervention orders

(1) Subject to subsection (5), if ASIC is satisfied that a financial product:

(a) is, or is likely to be, available for acquisition by issue, or for regulated sale, to persons as retail clients (whether or not it also is, or is likely to be, available for acquisition by persons as wholesale clients); and

(b) has resulted in, or will or is likely to result in, significant detriment to retail clients;

ASIC may, in accordance with this Part, order that a specified person must not engage in specified conduct in relation to the product, either entirely or except in accordance with conditions specified in the order.

Note 1: An example of conditions that may be specified in a product intervention order include that the product not be issued to a retail client unless the retail client has received personal advice.

Note 2: Section 1023E specifies matters to be taken into account in considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients.

Note 3: Section 1023N also provides that product intervention orders may include requirements for notifying retail clients.

(2) An order under subsection (1) is not a legislative instrument.

(3) Subject to subsection (5), if ASIC is satisfied that a class of financial products:

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(a) is, or is likely to be, available for acquisition by issue, or for regulated sale, to persons as retail clients (whether or not it also is, or is likely to be, available for acquisition by persons as wholesale clients); and

(b) has resulted in, or will or is likely to result in, significant detriment to retail clients;

ASIC may, in accordance with this Part and by legislative instrument, order that a person must not engage in specified conduct in relation to the class of products, either entirely or except in accordance with conditions specified in the order.

Note 1: An example of conditions that may be specified in a product intervention order include that a product in a class of products not be issued to a retail client unless the retail client has received personal advice.

Note 2: Section 1023E specifies matters to be taken into account in considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients.

Note 3: Section 1023N also provides that product intervention orders may include requirements for notifying retail clients.

Restrictions on product intervention orders

(4) A product intervention order must not specify any of the following for subsection (1) or (3):

(a) a condition that a person satisfy a standard of training, or meet a professional standard, other than a standard otherwise prescribed for the person by or under this Act;

(b) a condition that a person who is not required to hold an Australian financial services licence become a member of an external dispute resolution scheme;

(c) a condition related to a person's remuneration, other than a condition related to so much of the person's remuneration as is conditional on the achievement of objectives directly related to the financial product.

(5) Conduct covered by a product intervention order must be limited to conduct in relation to a retail client.

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1023E Significant detriment to retail clients

(1) In considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients for the purposes of this Part, the following must be taken into account:

(a) the nature and extent of the detriment;

(b) without limiting paragraph (a), the actual or potential financial loss to retail clients resulting from the product;

(c) the impact that the detriment has had, or will or is likely to have, on retail clients;

(d) any other matter prescribed by regulations made for the purposes of this paragraph.

(2) Subsection (1) does not limit the matters to be taken into account in considering whether a financial product has resulted in, or will or is likely to result in, significant detriment to retail clients for the purposes of this Part.

(3) A financial product may result in significant detriment to retail clients even if a person has complied with the disclosure requirements in Chapter 6D or this Chapter, and with the person's obligations under Part 7.8A, in relation to the product.

1023F ASIC to consult before making product intervention orders

(1) ASIC must not make a product intervention order unless ASIC has:

(a) consulted persons who are reasonably likely to be affected by the proposed order; and

(b) if the proposed order will apply to a body that is regulated by APRA—consulted APRA; and

(c) complied with any other requirements as to consultation prescribed by regulations made for the purposes of this paragraph.

(2) Without limiting paragraph (1)(a), ASIC is taken to comply with that paragraph if ASIC, on its website:

(a) makes the proposed order, or a description of the content of the proposed order, available; and

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(b) invites the public to comment on the proposed order.

(3) A failure to comply with subsection (1) does not invalidate a product intervention order.

(4) Section 17 of the *Legislation Act 2003* (rule-makers should consult before making legislative instruments) does not apply to the making of a product intervention order.

1023G Commencement and duration of product intervention orders

Commencement of product intervention orders

(1) A product intervention order comes into force:

(a) for an order that is a legislative instrument—on the day after the instrument is registered under the *Legislation Act 2003*; or

(b) otherwise—on the day after the notice under subsection 1023L(3) in relation to the order is published;

or a later day specified in the order.

Duration of product intervention orders

(2) A product intervention order remains in force for:

(a) 18 months, or any shorter period specified by the regulations; or

(b) any shorter period specified in the order.

However, if the Court makes an order staying or otherwise affecting the operation or enforcement of a product intervention order, then, in determining when the period referred to in paragraph (a) or (b) ends, disregard the period during which the Court's order has that effect.

(3) Subsection (2) does not apply to a product intervention order if a declaration under section 1023H (which relates to extensions of product intervention orders) is in force in relation to the order.

(4) Subsection (2) does not prevent the revocation of a product intervention order.

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Repeal of product intervention orders

(5) A product intervention order that is a legislative instrument that ceases to be in force is repealed by force of this subsection.

1023H Extension of product intervention orders

(1) ASIC may, in accordance with an approval under subsection (4), by legislative instrument, declare that a product intervention order that is in force:

(a) remains in force until it is revoked; or

(b) remains in force for a specified period, unless it is revoked earlier.

Note: A declaration under this subsection has the effect of overriding any provisions in a product intervention order about the duration of the order: see subsection 1023G(3).

(2) ASIC may make more than one declaration under subsection (1) in relation to a product intervention order that is in force.

Approval of Minister

(3) ASIC may, at any time before the order ceases to be in force, give the Minister a report on whether the declaration should be made.

(4) After considering the report, the Minister may give an approval in writing for the purposes of subsection (1).

1023J Amendment of product intervention orders

(1) Subject to this section, ASIC may, in writing, amend a product intervention order that is in force.

Requirements before amending product intervention orders

(2) If a declaration under section 1023H is in force in relation to a product intervention order, ASIC must not amend the order without the Minister's approval, given after considering a report from ASIC on whether the amendment should be made.

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(3) ASIC may, at any time before the order ceases to be in force, give the Minister a report on whether the amendment should be made.

Amendments of product intervention orders

(4) An amendment of a product intervention order must not be such that the order remains in force for a period longer than the maximum period determined for the order in accordance with subsection 1023G(2) or 1023H(1).

(5) An amendment of a product intervention order comes into force:

(a) for an amendment of an order that is a legislative instrument—on the day after the amendment is registered under the *Legislation Act 2003*; or

(b) otherwise—on the day after the day on which the notice under subsection 1023L(6) in relation to the amendment is published;

or a later day specified in the amendment.

Amendments of orders that are legislative instruments

(6) An amendment of a product intervention order that is a legislative instrument must be by legislative instrument.

1023K Revocation of product intervention orders

(1) Subject to this section, ASIC may, in writing, revoke a product intervention order.

Requirements for revocation of product intervention orders

(2) If a declaration under section 1023H is in force in relation to a product intervention order, ASIC must not revoke the order without the Minister's approval, given after considering a report from ASIC on whether the order should be revoked.

(3) ASIC may, at any time before the order ceases to be in force, give the Minister a report on whether the order should be revoked.

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Revocation of orders that are legislative instruments

(4) A revocation of a product intervention order that is a legislative instrument must be by legislative instrument.

1023L ASIC to issue public notice of product intervention orders

Product intervention orders

(1) ASIC must serve a copy of a product intervention order that is not a legislative instrument on any person to whom ASIC considers the order applies. Failure to comply with this subsection does not invalidate the order.

(2) ASIC must publish each product intervention order, as in force for the time being, on its website.

Note: The *Legislation Act 2003* requires legislative instruments to be registered on the Federal Register of Legislation and provides for compilations of legislative instruments.

(3) ASIC must also publish on its website, with the product intervention order, a notice that:

(a) describes the significant detriment to retail clients that has resulted from, or will or is likely to result from, the financial product or class of financial products to which the order relates, and sets out why the order is an appropriate way of reducing the detriment; and

(b) describes the consultation that ASIC undertook in relation to the order; and

(c) if the order comes into force after it is published—specifies the day it comes into force.

(4) ASIC must publish on its website, with the product intervention order, each declaration under section 1023H (which relates to extensions of product intervention orders) that relates to the order.

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Amendments of product intervention orders

(5) ASIC must serve a copy of the instrument amending a product intervention order that is not a legislative instrument on any person to whom ASIC considers the order applies. Failure to comply with this subsection does not invalidate the order.

(6) ASIC must publish on its website, with the product intervention order, each amendment of the product intervention order.

(7) ASIC must also publish on its website, with the amendment, a notice that:
  (a) sets out why the amendment is appropriate; and
  (b) describes the consultation that ASIC undertook in relation to the amendment; and
  (c) if the day the amendment is to take effect is later than the day after the day of publication of the amendment—specifies the day the amendment is to take effect.

Revocation of product intervention orders

(8) If a product intervention order is revoked, ASIC must publish notice of the revocation on its website.

1023M Remaking product intervention orders

If a product intervention order ceases to be in force or is revoked, ASIC must not remake the order, or make an order in substantially the same terms, unless:
  (a) ASIC is satisfied the circumstances have materially changed since the order was made; or
  (b) the Minister approves, in writing, the remaking or making of the order.

1023N Product intervention orders may require notification

(1) A product intervention order in relation to a financial product may:
  (a) require that a specified person who has:

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(i) dealt in, or dealt in a specified way in, a financial product in relation to a retail client; or

(ii) provided financial product advice, or a specified kind of financial product advice, to a retail client in relation to a financial product;

take reasonable steps to notify the retail client:

(iii) of the terms of the order; and

(iv) of any other matter specified in regulations made for the purposes of this subparagraph; and

(b) specify requirements in relation to giving those notifications (including requirements as to the periods within which to give those notifications).

(2) In this section, ***dealing*** in a financial product has the meaning given by subsection 994A(1).

1023P Enforcement of product intervention orders

(1) A person must not engage in conduct contrary to a product intervention order that is in force in relation to the person.

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(2) A person who is required by a product intervention order to take reasonable steps to notify a retail client must comply with the requirement.

Note 1: For this requirement, see subsection 1023N(1).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 3: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(3) Subsections (1) and (2) do not apply if:

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(a) the product intervention order is not a legislative instrument; and

(b) the person was not aware, and could not reasonably have been aware, of the order.

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

(4) If a product intervention order has been served on a person, the person must take all reasonable steps as soon as practicable to ensure that other persons who engage in conduct to which the order applies are aware of the order.

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

1023Q Civil liability

(1) If:

(a) a person (the ***first person***) contravenes a product intervention order; and

(b) a retail client suffers loss or damage because of the contravention;

the retail client may recover the amount of the loss or damage by action against the first person, whether or not:

(c) the first person (or anyone else) has been convicted of an offence in relation to the contravention; or

(d) a Court has made a declaration of contravention under subsection 1317E(1) in relation to the contravention; or

(e) a Court has ordered the first person (or anyone else) to pay the Commonwealth a pecuniary penalty under section 1317G in relation to the contravention.

(2) An action under subsection (1) may be begun at any time within 6 years after the day on which the cause of action arose.

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

1023R Additional powers of court to make orders

(1) The Court dealing with an action under subsection 1023Q(1) may, in addition to awarding loss or damage under that subsection and if it thinks it necessary in order to do justice between the parties:

(a) make an order declaring void a contract relating to the financial product that was entered into by the retail client who suffered the loss or damage; and

(b) if it makes an order under paragraph (a)—make such other order or orders as it thinks are necessary or desirable because of that order.

(2) Without limiting paragraph (1)(b), an order under that paragraph may include either or both of the following:

(a) an order for the return of money paid by a person;

(b) an order for payment of an amount of interest specified in, or calculated in accordance with, the order.

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Part 7.10—Market misconduct and other prohibited conduct relating to financial products and financial services

Division 1—Preliminary

1040A Content of Part

This Part deals in Division 2 with various kinds of prohibited conduct, other than insider trading. The insider trading prohibitions are contained in Division 3.

1040B Treat certain instruments as if they were financial products and Division 3 financial products

(1) This Part applies to bank accepted bills, and to negotiable certificates of deposit, as if they were:
  (a) financial products; and
  (b) Division 3 financial products (within the meaning of Division 3).

(2) If a term used in this Part is defined outside of this Part by reference to financial products, treat that term when used in this Part as if that reference to financial products included a reference to each of the following:
  (a) bank accepted bills;
  (b) negotiable certificates of deposit.

(3) Subsections (1) and (2) do not, by implication, affect the interpretation of any other provision:
  (a) of this Act; or
  (b) of an instrument made under this Act.

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Division 2—The prohibited conduct (other than insider trading prohibitions)

1041A Market manipulation

A person must not take part in, or carry out (whether directly or indirectly and whether in this jurisdiction or elsewhere):

(a) a transaction that has or is likely to have; or

(b) 2 or more transactions that have or are likely to have;

the effect of:

(c) creating an artificial price for trading in financial products on a financial market operated in this jurisdiction; or

(d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for trading in financial products on a financial market operated in this jurisdiction.

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

Note 2: This section is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this section, see section 1317S.

1041B False trading and market rigging—creating a false or misleading appearance of active trading etc.

(1) A person must not do, or omit to do, an act (whether in this jurisdiction or elsewhere) if that act or omission has or is likely to have the effect of creating, or causing the creation of, a false or misleading appearance:

(a) of active trading in financial products on a financial market operated in this jurisdiction; or

(b) with respect to the market for, or the price for trading in, financial products on a financial market operated in this jurisdiction.

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Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see Division 4.

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see Division 4 and section 1317S.

(1A) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1):

(a) intention is the fault element for the physical element consisting of doing or omitting to do an act as mentioned in that subsection; and

(b) recklessness is the fault element for the physical element consisting of having, or being likely to have, the effect of creating, or causing the creation of, a false or misleading appearance as mentioned in that subsection.

Note 1: For ***intention***, see section 5.2 of the *Criminal Code*.

Note 2: For ***recklessness***, see section 5.4 of the *Criminal Code*.

(2) For the purposes of subsection (1), a person is taken to have created a false or misleading appearance of active trading in particular financial products on a financial market if the person:

(a) enters into, or carries out, either directly or indirectly, any transaction of acquisition or disposal of any of those financial products that does not involve any change in the beneficial ownership of the products; or

(b) makes an offer (the ***regulated offer*****)** to acquire or to dispose of any of those financial products in the following circumstances:

(i) the offer is to acquire or to dispose of at a specified price; and

(ii) the person has made or proposes to make, or knows that an associate of the person has made or proposes to make:

(A) if the regulated offer is an offer to acquire—an offer to dispose of; or

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(B) if the regulated offer is an offer to dispose of—an offer to acquire;

the same number, or substantially the same number, of those financial products at a price that is substantially the same as the price referred to in subparagraph (i).

Note: The circumstances in which a person creates a false or misleading appearance of active trading in particular financial products on a financial market are not limited to the circumstances set out in this subsection.

(3) For the purposes of paragraph (2)(a), an acquisition or disposal of financial products does not involve a change in the beneficial ownership if:

(a) a person who had an interest in the financial products before the acquisition or disposal; or

(b) an associate of such a person;

has an interest in the financial products after the acquisition or disposal.

(4) The reference in paragraph (2)(a) to a transaction of acquisition or disposal of financial products includes:

(a) a reference to the making of an offer to acquire or dispose of financial products; and

(b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to acquire or dispose of financial products.

1041C False trading and market rigging—artificially maintaining etc. trading price

(1) A person must not (whether in this jurisdiction or elsewhere) enter into, or engage in, a fictitious or artificial transaction or device if that transaction or device results in:

(a) the price for trading in financial products on a financial market operated in this jurisdiction being maintained, inflated or depressed; or

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(b) fluctuations in the price for trading in financial products on a financial market operated in this jurisdiction.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see Division 4.

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see Division 4 and section 1317S.

(2) In determining whether a transaction is fictitious or artificial for the purposes of subsection (1), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

1041D Dissemination of information about illegal transactions

A person must not (whether in this jurisdiction or elsewhere) circulate or disseminate, or be involved in the circulation or dissemination of, any statement or information to the effect that the price for trading in financial products on a financial market operated in this jurisdiction will, or is likely to, rise or fall, or be maintained, because of a transaction, or other act or thing done, in relation to those financial products, if:

(a) the transaction, or thing done, constitutes or would constitute a contravention of section 1041A, 1041B, 1041C, 1041E or 1041F; and

(b) the person, or an associate of the person:

(i) has entered into such a transaction or done such an act or thing; or

(ii) has received, or may receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising the circulation or dissemination of, the statement or information.

Note 1: Failure to comply with this section is an offence (see subsection 1311(1)). For defences to a prosecution based on this section, see Division 4.

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Note 2: This section is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this section, see Division 4 and section 1317S.

1041E False or misleading statements

(1) A person must not (whether in this jurisdiction or elsewhere) make a statement, or disseminate information, if:

(a) the statement or information is false in a material particular or is materially misleading; and

(b) the statement or information is likely:

(i) to induce persons in this jurisdiction to apply for financial products; or

(ii) to induce persons in this jurisdiction to dispose of or acquire financial products; or

(iii) to have the effect of increasing, reducing, maintaining or stabilising the price for trading in financial products on a financial market operated in this jurisdiction; and

(c) when the person makes the statement, or disseminates the information:

(i) the person does not care whether the statement or information is true or false; or

(ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see Division 4.

Note 2: Failure to comply with this subsection may also lead to civil liability under section 1041I. For relief from liability under that section, see Division 4.

(2) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1), paragraph (1)(a) is a physical element, the fault element for which is as specified in paragraph (1)(c).

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(3) For the purposes of an offence based on subsection (1), strict liability applies to subparagraphs (1)(b)(i), (ii) and (iii).

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

1041F Inducing persons to deal

(1) A person must not, in this jurisdiction, induce another person to deal in financial products:

(a) by making or publishing a statement, promise or forecast if the person knows, or is reckless as to whether, the statement is misleading, false or deceptive; or

(b) by a dishonest concealment of material facts; or

(c) by recording or storing information that the person knows to be false or misleading in a material particular or materially misleading if:

(i) the information is recorded or stored in, or by means of, a mechanical, electronic or other device; and

(ii) when the information was so recorded or stored, the person had reasonable grounds for expecting that it would be available to the other person, or a class of persons that includes the other person.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see Division 4.

Note 2: Failure to comply with this subsection may also lead to civil liability under section 1041I. For relief from liability under that section, see Division 4.

(3) This section applies in relation to the following conduct as if that conduct were dealing in financial products:

(a) applying to become a standard employer-sponsor (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity (within the meaning of that Act);

(b) permitting a person to become a standard employer-sponsor (within the meaning of the *Superannuation Industry*

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(Supervision) Act 1993) of a superannuation entity (within the meaning of that Act);

(c) applying, on behalf of an employee (within the meaning of the *Retirement Savings Accounts Act 1997*), for the employee to become the holder of an RSA product.

1041G Dishonest conduct

A person must not, in the course of carrying on a financial services business in this jurisdiction, engage in dishonest conduct in relation to a financial product or financial service.

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

Note 2: Failure to comply with this subsection may also lead to civil liability under section 1041I.

1041H Misleading or deceptive conduct (civil liability only)

(1) A person must not, in this jurisdiction, engage in conduct, in relation to a financial product or a financial service, that is misleading or deceptive or is likely to mislead or deceive.

Note 1: Failure to comply with this subsection is not an offence.

Note 2: Failure to comply with this subsection may lead to civil liability under section 1041I. For limits on, and relief from, liability under that section, see Division 4.

(2) The reference in subsection (1) to engaging in conduct in relation to a financial product includes (but is not limited to) any of the following:

(a) dealing in a financial product;

(b) without limiting paragraph (a):

(i) issuing a financial product;

(ii) publishing a notice in relation to a financial product;

(iii) making, or making an evaluation of, an offer under a takeover bid or a recommendation relating to such an offer;

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(iv) applying to become a standard employer-sponsor (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity (within the meaning of that Act);

(v) permitting a person to become a standard employer-sponsor (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity (within the meaning of that Act);

(vi) a trustee of a superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) dealing with a beneficiary of that entity as such a beneficiary;

(vii) a trustee of a superannuation entity (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) dealing with an employer-sponsor (within the meaning of that Act), or an associate (within the meaning of that Act) of an employer-sponsor, of that entity as such an employer-sponsor or associate;

(viii) applying, on behalf of an employee (within the meaning of the *Retirement Savings Accounts Act 1997*), for the employee to become the holder of an RSA product;

(ix) an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*) dealing with an employer (within the meaning of that Act), or an associate (within the meaning of that Act) of an employer, who makes an application, on behalf of an employee (within the meaning of that Act) of the employer, for the employee to become the holder of an RSA product, as such an employer;

(x) carrying on negotiations, or making arrangements, or doing any other act, preparatory to, or in any way related to, an activity covered by any of subparagraphs (i) to (ix).

(3) Conduct:

(a) that contravenes:

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(i) section 670A (misleading or deceptive takeover document); or

(ii) section 728 (misleading or deceptive fundraising document); or

(iia) section 738Y (other liabilities relating to defective CSF offer documents); or

(iii) section 1021NA or 1021NB; or

(b) in relation to a disclosure document or statement within the meaning of section 953A; or

(c) in relation to a disclosure document or statement within the meaning of section 1022A;

does not contravene subsection (1). For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

1041I Civil action for loss or damage for contravention of sections 1041E to 1041H

(1) A person who suffers loss or damage by conduct of another person that was engaged in in contravention of section 1041E, 1041F, 1041G or 1041H may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention, whether or not that other person or any person involved in the contravention has been convicted of an offence in respect of the contravention.

(1A) Subsection (1) has effect subject to section 1044B.

Note: Section 1044B may limit the amount that the person may recover for a contravention of section 1041H (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

(1B) Despite subsection (1), if:

(a) a person (the ***claimant***) makes a claim under subsection (1) in relation to:

(i) economic loss; or

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(ii) damage to property;

caused by conduct of another person (the ***defendant***) that was done in contravention of section 1041H; and

(b) the claimant suffered the loss or damage:

(i) as a result partly of the claimant's failure to take reasonable care; and

(ii) as a result partly of the conduct referred to in paragraph (a); and

(c) the defendant:

(i) did not intend to cause the loss or damage; and

(ii) did not fraudulently cause the loss or damage;

the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Division 2A also applies proportionate liability to a claim for damages under this section for a contravention of section 1041H.

(2) An action under subsection (1) may be begun at any time within 6 years after the day on which the cause of action arose.

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

(4) Section 1317S (which provides for relief from liability) applies in relation to liability under subsection (1) as if:

(a) the sections referred to in subsection (1) were civil penalty provisions; and

(b) proceedings under subsection (1) were eligible proceedings.

Note: Relief from liability under this section may also be available (depending on the circumstances) under Division 4.

1041J Sections of this Division have effect independently of each other

Subject to any express provision to the contrary, the various sections in this Division have effect independently of each other,

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and nothing in any of the sections limits the scope or application of any of the other sections.

1041K Division applies to certain conduct to the exclusion of State Fair Trading Acts provisions

(1) This section applies to conduct:

(a) that contravenes:

(i) section 670A (misleading or deceptive takeover document); or

(ii) section 728 (misleading or deceptive fundraising document); or

(iia) section 738Y (other liabilities relating to defective CSF offer documents); or

(iii) section 1021NA or 1021NB; or

(b) that relates to a disclosure document or statement within the meaning of section 953A; or

(c) that relates to a disclosure document or statement within the meaning of section 1022A.

For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.

(2) This Division operates in relation to conduct to which this section applies to the exclusion of the provisions of the State Fair Trading Act of any State or Territory.

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Division 2A—Proportionate liability for misleading and deceptive conduct

1041L Application of Division

(1) This Division applies to a claim (an ***apportionable claim***) if the claim is a claim for damages made under section 1041I for:

(a) economic loss; or

(b) damage to property;

caused by conduct that was done in a contravention of section 1041H.

(2) For the purposes of this Division, there is a single apportionable claim in proceedings in respect of the same loss or damage even if the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

(3) In this Division, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.

(4) For the purposes of this Division, apportionable claims are limited to those claims specified in subsection (1).

(5) For the purposes of this Division, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

1041M Certain concurrent wrongdoers not to have benefit of apportionment

(1) Nothing in this Division operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:

(a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or

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(b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.

(2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Division) are relevant.

(3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Division.

1041N Proportionate liability for apportionable claims

(1) In any proceedings involving an apportionable claim:
(a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court considers just having regard to the extent of the defendant's responsibility for the damage or loss; and
(b) the court may give judgment against the defendant for not more than that amount.

(2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:
(a) liability for the apportionable claim is to be determined in accordance with the provisions of this Division; and
(b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Division) are relevant.

(3) In apportioning responsibility between defendants in the proceedings:
(a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and
(b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.

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(4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.

(5) A reference in this Division to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Division, under rules of court or otherwise.

1041O Defendant to notify plaintiff of concurrent wrongdoer of whom defendant aware

(1) If:

(a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the ***other person***) may be a concurrent wrongdoer in relation to the claim; and

(b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:

(i) the identity of the other person; and

(ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and

(c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;

the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.

(2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

1041P Contribution not recoverable from defendant

A defendant against whom judgment is given under this Division as a concurrent wrongdoer in relation to an apportionable claim:

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(a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and

(b) cannot be required to indemnify any such wrongdoer.

1041Q Subsequent actions

(1) In relation to an apportionable claim, nothing in this Division or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.

(2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

1041R Joining non-party concurrent wrongdoer in the action

(1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.

(2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

1041S Application of Division

Nothing in this Division:

(a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or

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(b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or

(c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

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Division 3—The insider trading prohibitions

Subdivision A—Preliminary

1042A Definitions

In this Division:

able to be traded has a meaning affected by section 1042E.

Division 3 financial products means:

(a) securities; or

(b) derivatives; or

(c) interests in a managed investment scheme; or

(ca) debentures, stocks or bonds issued or proposed to be issued by a government; or

(d) superannuation products, other than those prescribed by regulations made for the purposes of this paragraph; or

(e) any other financial products that are able to be traded on a financial market.

generally available, in relation to information, has the meaning given by section 1042C.

information includes:

(a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and

(b) matters relating to the intentions, or likely intentions, of a person.

inside information means information in relation to which the following paragraphs are satisfied:

(a) the information is not generally available;

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(b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of particular Division 3 financial products.

material effect, in relation to a reasonable person's expectations of the effect of information on the price or value of Division 3 financial products, has the meaning given by section 1042D.

procure has a meaning affected by section 1042F.

relevant Division 3 financial products, in relation to particular inside information, means the Division 3 financial products referred to in paragraph (b) of the definition of ***inside information***.

1042B Application of Division

This Division applies to:

(a) acts and omissions within this jurisdiction in relation to Division 3 financial products (regardless of where the issuer of the products is formed, resides or located and of where the issuer carries on business); and

(b) acts and omissions outside this jurisdiction (and whether in Australia or not) in relation to Division 3 financial products issued by:

(i) a person who carries on business in this jurisdiction; or

(ii) a body corporate that is formed in this jurisdiction.

1042C When information is *generally available*

(1) For the purposes of this Division, information is ***generally available*** if:

(a) it consists of readily observable matter; or

(b) both of the following subparagraphs apply:

(i) it has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in Division 3 financial products of a kind whose price might be affected by the information; and

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(ii) since it was made known, a reasonable period for it to be disseminated among such persons has elapsed; or

(c) it consists of deductions, conclusions or inferences made or drawn from either or both of the following:

(i) information referred to in paragraph (a);

(ii) information made known as mentioned in subparagraph (b)(i).

(2) None of the paragraphs of subsection (1) limits the generality of any of the other paragraphs of that subsection.

1042D When a reasonable person would take information to have a *material effect* on price or value of Division 3 financial products

For the purposes of this Division, a reasonable person would be taken to expect information to have a ***material effect*** on the price or value of particular Division 3 financial products if (and only if) the information would, or would be likely to, influence persons who commonly acquire Division 3 financial products in deciding whether or not to acquire or dispose of the first-mentioned financial products.

1042E Division 3 financial products taken to be *able to be traded* despite suspensions or section 794D directions

Particular Division 3 financial products that are ordinarily able to be traded on a licensed market are taken, for the purposes of this Division, to be ***able to be traded*** on that market even though trading in those products on that market is suspended by action taken by the market licensee, or is contrary to a direction given to the market licensee by ASIC under subsection 794D(2) or 798J(2).

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1042F Inciting, inducing or encouraging an act or omission constitutes *procuring* the omission

(1) For the purposes of this Division, but without limiting the meaning that the expression ***procure*** has apart from this section, if a person incites, induces, or encourages an act or omission by another person, the first-mentioned person is taken to ***procure*** the act or omission by the other person.

(2) Subsection (1) does not limit the application in relation to provisions in this Division of:
  (a) section 6 of the *Crimes Act 1914*; or
  (b) section 11.1, 11.2, 11.2A, 11.4 or 11.5 of the *Criminal Code*.

1042G Information in possession of officer of body corporate

(1) For the purposes of this Division:
  (a) a body corporate is taken to possess any information which an officer of the body corporate possesses and which came into his or her possession in the course of the performance of duties as such an officer; and
  (b) if an officer of a body corporate knows any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate knows that matter or thing; and
  (c) if an officer of a body corporate, in that capacity, is reckless as to a circumstance or result, it is to be presumed that the body corporate is reckless as to that circumstance or result; and
  (d) for the purposes of paragraph 1043M(2)(b), if an officer of a body corporate ought reasonably to know any matter or thing because he or she is an officer of the body corporate, it is to be presumed that the body corporate ought reasonably to know that matter or thing.

(2) This section does not limit the application of section 769B in relation to this Division.

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1042H Information in possession of partner or employee of partnership

(1) For the purposes of this Division:

(a) a member of a partnership is taken to possess any information:

(i) which another member of the partnership possesses and which came into the other member's possession in the other member's capacity as a member of the partnership; or

(ii) which an employee of the partnership possesses and which came into his or her possession in the course of the performance of duties as such an employee; and

(b) if a member or employee of a partnership knows any matter or thing because the member or employee is such a member or employee, it is to be presumed that every member of the partnership knows that matter or thing; and

(c) if a member or employee of a partnership, in that capacity, is reckless as to a circumstance or result, it is to be presumed that every member of the partnership is reckless as to that circumstance or result; and

(d) for the purposes of paragraph 1043M(2)(b), if a member or employee of a partnership ought reasonably to know any matter or thing because he or she is such a member or employee, it is to be presumed that every member of the partnership ought reasonably to know that matter or thing.

(2) This section does not limit the application of section 769B in relation to this Division.

Subdivision B—The prohibited conduct

1043A Prohibited conduct by person in possession of inside information

(1) Subject to this Subdivision, if:

(a) a person (the ***insider***) possesses inside information; and

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(b) the insider knows, or ought reasonably to know, that the matters specified in paragraphs (a) and (b) of the definition of ***inside information*** in section 1042A are satisfied in relation to the information;

the insider must not (whether as principal or agent):

(c) apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products; or

(d) procure another person to apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see section 1043M.

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see sections 1043N and 1317S.

(2) Subject to this Subdivision, if:

(a) a person (the ***insider***) possesses inside information; and

(b) the insider knows, or ought reasonably to know, that the matters specified in paragraphs (a) and (b) of the definition of ***inside information*** in section 1042A are satisfied in relation to the information; and

(c) relevant Division 3 financial products are able to be traded on a financial market operated in this jurisdiction;

the insider must not, directly or indirectly, communicate the information, or cause the information to be communicated, to another person if the insider knows, or ought reasonably to know, that the other person would or would be likely to:

(d) apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an agreement to apply for, acquire, or dispose of, relevant Division 3 financial products; or

(e) procure another person to apply for, acquire, or dispose of, relevant Division 3 financial products, or enter into an

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agreement to apply for, acquire, or dispose of, relevant Division 3 financial products.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)). For defences to a prosecution based on this subsection, see section 1043M.

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see sections 1043N and 1317S.

(3) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1) or (2):

(a) paragraph (1)(a) is a physical element, the fault element for which is as specified in paragraph (1)(b); and

(b) paragraph (2)(a) is a physical element, the fault element for which is as specified in paragraph (2)(b).

1043B Exception for withdrawal from registered scheme or notified foreign passport fund

Subsection 1043A(1) does not apply in respect of a member's withdrawal from a registered scheme or a notified foreign passport fund if the amount paid to the member on withdrawal is calculated (so far as is reasonably practicable) by reference to the underlying value of the assets of the financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme to which the member's interest relates, less any reasonable charge for acquiring the member's interest.

1043C Exception for underwriters

(1) Subsection 1043A(1) does not apply in respect of:

(a) applying for or acquiring securities, managed investment products or foreign passport fund products under an underwriting agreement or a sub-underwriting agreement; or

(b) entering into an agreement referred to in paragraph (a); or

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(c) disposing of securities, managed investment products or foreign passport fund products acquired under an agreement referred to in paragraph (a).

(2) Subsection 1043A(2) does not apply in respect of:

(a) the communication of information in relation to securities, managed investment products or foreign passport fund products to a person solely for the purpose of procuring the person to enter into an underwriting agreement in relation to any such securities, managed investment products or foreign passport fund products; or

(b) the communication of information in relation to securities, managed investment products or foreign passport fund products by a person who may be required under an underwriting agreement to apply for or acquire any such securities, managed investment products or foreign passport fund products if the communication is made to another person solely for the purpose of procuring the other person to do either or both of the following:

(i) enter into a sub-underwriting agreement in relation to any such securities, managed investment products or foreign passport fund products;

(ii) apply for any such securities, managed investment products or foreign passport fund products.

1043D Exception for acquisition pursuant to legal requirement

Subsection 1043A(1) does not apply in respect of the acquisition of financial products pursuant to a requirement imposed by this Act.

1043E Exception for information communicated pursuant to a legal requirement

Subsection 1043A(2) does not apply in respect of the communication of information pursuant to a requirement imposed by the Commonwealth, a State, a Territory or any regulatory authority.

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1043F Chinese wall arrangements by bodies corporate

A body corporate does not contravene subsection 1043A(1) by entering into a transaction or agreement at any time merely because of information in the possession of an officer or employee of the body corporate if:

(a) the decision to enter into the transaction or agreement was taken on its behalf by a person or persons other than that officer or employee; and

(b) it had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(c) the information was not so communicated and no such advice was so given.

1043G Chinese wall arrangements by partnerships etc.

(1) The members of a partnership do not contravene subsection 1043A(1) by entering into a transaction or agreement at any time merely because one or more (but not all) of the members, or an employee or employees of the partnership, are in actual possession of information if:

(a) the decision to enter into the transaction or agreement was taken on behalf of the partnership by any one or more of the following persons:

(i) a member or members who are taken to have possessed the information merely because another member or other members, or an employee or employees of the partnership, were in possession of the information;

(ii) an employee or employees of the partnership who was not or were not in possession of the information; and

(b) the partnership had in operation at that time arrangements that could reasonably be expected to ensure that the information was not communicated to the person or persons

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who made the decision and that no advice with respect to the transaction or agreement was given to that person or any of those persons by a person in possession of the information; and

(c) the information was not so communicated and no such advice was so given.

(2) A member of a partnership does not contravene subsection 1043A(1) by entering into a transaction or agreement otherwise than on behalf of the partnership merely because the member is taken to possess information that is in the possession of another member or an employee of the partnership.

1043H Exception for knowledge of person's own intentions or activities

A natural person does not contravene subsection 1043A(1) by entering into a transaction or agreement in relation to financial products issued by another person merely because the person is aware that he or she proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person.

1043I Exception for bodies corporate

(1) A body corporate does not contravene subsection 1043A(1) by entering into a transaction or agreement in relation to financial products issued by another person merely because the body corporate is aware that it proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person.

(2) Subject to subsection (3), a body corporate does not contravene subsection 1043A(1) by entering into a transaction or agreement in relation to financial products issued by another person merely because an officer or employee of the body corporate is aware that

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the body corporate proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the other person or by a third person.

(3) Subsection (2) does not apply unless the officer or employee of the body corporate became aware of the matters referred to in that subsection in the course of the performance of duties as such an officer or employee.

1043J Exception for officers or agents of body corporate

(1) Subject to subsection (2), a person (the ***first person***) does not contravene subsection 1043A(1) by entering into a transaction or agreement on behalf of a person (the ***second person***) in relation to financial products issued by another person (the ***third person***) merely because the first person is aware that the second person proposes to enter into, or has previously entered into or proposed to enter into, one or more transactions or agreements in relation to financial products issued by the third person or by a fourth person.

(2) Subsection (1) does not apply unless the first person became aware of the matters referred to in that subsection in the course of the performance of duties as an officer or employee of the second person or in the course of acting as an agent of the second person.

1043K Transactions by holder of financial services licence or a representative of the holder of such a licence

A person (the ***agent***) does not contravene subsection 1043A(1) by applying for, acquiring, or disposing of, or entering into an agreement to apply for, acquire, or dispose of, financial products that are able to be traded on a licensed market if:

(a) the agent is a financial services licensee or a representative of a financial services licensee; and

(b) the agent entered into the transaction or agreement concerned on behalf of another person (the ***principal***) under a specific

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instruction by the principal to enter into that transaction or agreement; and

(c) the licensee had in operation, at the time when that transaction or agreement was entered into, arrangements that could reasonably be expected to ensure that any information in the possession of the licensee, or of any representative of the licensee, as a result of which the person in possession of the information would be prohibited by subsection 1043A(1) from entering into that transaction or agreement was not communicated to the agent and that no advice with respect to the transaction or agreement was given to the principal or to the agent by a person in possession of the information; and

(d) the information was not so communicated and no such advice was so given; and

(e) the principal is not an associate of the licensee or of any representative of the licensee;

but nothing in this section affects the application of subsection 1043A(1) in relation to the principal.

1043L A specific situation in which a compensation order under section 1317HA may be made

Situation to which this section applies

(1) If:

(a) a person (the ***insider***) possesses information that is not generally available but, if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of Division 3 financial products (other than derivatives); and

(b) the insider knows that, or is reckless as to whether:

(i) the information is not generally available; and

(ii) if the information were generally available, it might have a material effect on the price or value of those Division 3 financial products; and

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(c) the insider (whether as principal or agent) in contravention of subsection 1043A(1):

(i) applies for, acquires, or disposes of, or enters into an agreement to apply for, acquire, or dispose of, any such Division 3 financial products; or

(ii) procures another person to apply for, acquire, or dispose of, or to enter into an agreement to apply for, acquire, or dispose of, any such Division 3 financial products;

the following subsections apply.

Compensation for damage suffered by person applying for the Division 3 financial products

(2) If the insider applied for or agreed to apply for, or procured another person to apply for or to agree to apply for, the Division 3 financial products, the issuer of the products may, by action under section 1317HA, recover as compensation for damage suffered by the issuer, the amount (if any) by which the price described in the first of the following paragraphs was less than the price described in the second of those paragraphs:

(a) the price at which the products were applied for, or agreed to be applied for, by the insider or the other person;

(b) the price at which they would have been likely to have been disposed of in a disposal made at the time of the application or the time of the agreement, as the case may be, if the information had been generally available.

The action may be taken against the insider, the other person or any other person involved in the contravention.

Compensation for damage suffered by person disposing of the Division 3 financial products

(3) If the insider acquired or agreed to acquire, or procured another person to acquire or to agree to acquire, the Division 3 financial products from a person (in this subsection and subsection (5) called the ***disposer***) who did not possess the information, the disposer may, by action under section 1317HA, recover, as compensation

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for damage suffered by the disposer, the amount (if any) by which the price described in the first of the following paragraphs was less than the price described in the second of those paragraphs:

(a) the price at which the financial products were acquired, or agreed to be acquired, by the insider or the other person from the disposer;

(b) the price at which they would have been likely to have been acquired in an acquisition made at the time of the first-mentioned acquisition or the time of the agreement, as the case may be, if the information had been generally available.

The action may be taken against the insider, the other person or any other person involved in the contravention.

Compensation for damage suffered by person acquiring the Division 3 financial products

(4) If the insider disposed of or agreed to dispose of, or procured another person to dispose of or to agree to dispose of, the Division 3 financial products to a person (in this subsection and subsection (5) called the ***acquirer***) who did not possess the information, the acquirer may, by action under section 1317HA, recover, as compensation for damage suffered by the acquirer, the amount (if any) by which the price described in the first of the following paragraphs was greater than the price described in the second of those paragraphs:

(a) the price at which the financial products were disposed of, or agreed to be disposed of, by the insider or the other person to the acquirer;

(b) the price at which they would have been likely to have been disposed of in a disposal made at the time of the first-mentioned disposal or the time of the agreement, as the case may be, if the information had been generally available.

The action may be taken against the insider, the other person or any other person involved in the contravention.

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Additional situations in which issuer may recover

(5) In addition to any action that may be brought as provided by subsection (3) or (4), the issuer of the financial products may, in the case of an acquisition or disposal of, or an agreement to acquire or dispose of, the financial products by the insider or another person in the circumstances mentioned in that subsection, by action under section 1317HA, recover, as compensation for damage suffered by the issuer:

(a) in the case of an acquisition or agreement to acquire the financial products—the amount (if any) by which the price described in the first of the following subparagraphs was less than the price described in the second of those subparagraphs:

(i) the price at which the financial products were acquired, or agreed to be acquired, by the insider or other person from the disposer;

(ii) the price at which they were likely to have been acquired in an acquisition made at the time of the first-mentioned acquisition or the time of the agreement, as the case may be, if the information had been generally available; or

(b) in the case of a disposal or an agreement to dispose of financial products—the amount (if any) by which the price described in the first of the following subparagraphs was greater than the price described in the second of those subparagraphs:

(i) the price at which the financial products were disposed of, or agreed to be disposed of, by the insider or other person to the acquirer;

(ii) the price at which they would have been likely to have been disposed of at the time of the first-mentioned disposal or the time of the agreement, as the case may be, if the information had been generally available.

The action may be taken against the insider, the other person or any other person involved in the contravention.

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ASIC may take action for benefit of issuer

(6) ASIC may, if it considers that it is in the public interest to do so, bring an action in accordance with subsection (2) or (5) in the name of, and for the benefit of, an issuer of Division 3 financial products for the recovery of an amount that the issuer is entitled to recover by virtue of that subsection.

Relief from liability

(7) In an action brought against a person in accordance with this section because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession, the court may relieve the person wholly or partly from liability if it appears to the court that the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1042C(1)(b)(i).

Special provision for registered schemes and notified foreign passport funds—treatment of amount recovered in respect of subsection (2) loss

(8) If:

(a) the responsible entity for a registered scheme or the operator of a notified foreign passport fund; or

(b) ASIC in the name of, and for the benefit of, the responsible entity for a registered scheme or the operator of a notified foreign passport fund;

brings an action in accordance with subsection (2) in respect of a subscription for, or any agreement to subscribe for, any interests in the scheme or fund, any amount recovered in the action:

(c) is to be held:

(i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and

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(ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the subscription or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

(d) is to be held on their behalf in the respective proportions that, at that time, their individual rights or interests bore to the total of all those rights or interests.

Special provision for registered schemes and notified foreign passport funds—treatment of amount recovered in respect of subsection (5) loss

(9) If:

(a) the responsible entity for a registered scheme or the operator of a notified foreign passport fund; or

(b) ASIC in the name of, and for the benefit of, the responsible entity for a registered scheme or the operator of a notified foreign passport fund;

brings an action in accordance with subsection (5) in respect of an acquisition or disposal of, or an agreement to acquire or dispose of, interests in the scheme or fund, any amount recovered in the action:

(c) is to be held:

(i) in the case of a registered scheme other than an Australian passport fund—by the responsible entity; and

(ii) in the case of an Australian passport fund or a notified foreign passport fund—by the responsible holding party for the fund;

on behalf of the persons who, at the time of the disposal, acquisition or agreement, had rights or interests in the relevant financial or business undertaking or scheme, common enterprise, investment contract or time-sharing scheme; and

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(d) is to be held on their behalf in the respective proportions that, at that time, their individual rights or interests bore to the total of all those rights or interests.

(10) Any right of action that a person has by virtue of this section is in addition to any right that any other person has under section 1317HA.

1043M Defences to prosecution for an offence

(1) In a prosecution of a person for an offence based on subsection 1043A(1) or (2), it is not necessary for the prosecution to prove the non-existence of facts or circumstances which, if they existed, would, by virtue of section 1043B, 1043C, 1043D, 1043E, 1043F, 1043G, 1043H, 1043I, 1043J or 1043K, preclude the act or omission from constituting a contravention of subsection 1043A(1) or (2), as the case may be, but it is a defence if the facts or circumstances existed.

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

(2) In a prosecution brought against a person for an offence based on subsection 1043A(1) because the person entered into, or procured another person to enter into, a transaction or agreement at a time when certain information was in the first-mentioned person's possession:

(a) it is a defence if the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1042C(1)(b)(i); and

(b) it is a defence if the other party to the transaction or agreement knew, or ought reasonably to have known, of the information before entering into the transaction or agreement.

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

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(3) In a prosecution against a person for an offence based on subsection 1043A(2) because the person communicated information, or caused information to be communicated, to another person:

(a) it is a defence if the information came into the first-mentioned person's possession solely as a result of the information having been made known as mentioned in subparagraph 1042C(1)(b)(i); and

(b) it is a defence if the other person knew, or ought reasonably to have known, of the information before the information was communicated.

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

1043N Relief from civil liability

In proceedings against a person under Part 9.4B (including under section 1317HA) relating to a contravention of subsection 1043A(1) or (2), the court may relieve the person wholly or partly from liability if it appears to the court that:

(a) in any case—the circumstances in any of the sections referred to in subsection 1043M(1) applied; or

(b) in the case of subsection 1043A(1)—the circumstance referred to in paragraph 1043M(2)(a) or (b) applied; or

(c) in the case of subsection 1043A(2)—the circumstance referred to in paragraph 1043M(3)(a) or (b) applied.

1043O Powers of Court

If, in a proceeding instituted under this Act, the Court finds that a contravention of section 1043A has occurred, the Court may, in addition to any other orders that it may make under any other provision of this Act, make such order or orders as it thinks just, including, but without limiting the generality of the above, any one or more of the following orders:

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(a) an order restraining the exercise of rights attached to Division 3 financial products;
(b) an order restraining the issue of Division 3 financial products;
(c) an order restraining the acquisition or disposal of Division 3 financial products;
(d) an order directing the disposal of Division 3 financial products;
(e) an order vesting Division 3 financial products in ASIC;
(f) an order cancelling an agreement for the acquisition or disposal of Division 3 financial products;
(g) an order cancelling an Australian financial services licence;
(h) for the purpose of securing compliance with any other order made under this section, an order directing a person to do or refrain from doing a specified act.

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Division 4—Defences, relief and limits on liability

1044A General defence or relief for publishers

(1) It is a defence to a prosecution for an offence based on a provision of this Part committed by the publication of an advertisement if:

(a) the defendant was, at that time, a person whose business it was to publish or arrange for the publication of advertisements; and

(b) they received the advertisement for publication in the ordinary course of that business and did not know, and had no reason to believe, that its publication would amount to an offence against that provision.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1). See subsection 13.3(3) of the *Criminal Code*.

(2) In proceedings against a person under:

(a) Part 9.4B (including under section 1317H or 1317HA) relating to a contravention of a civil penalty provision that is in this Part; or

(b) section 1041I relating to a contravention of a provision to which that section applies;

the court may relieve the person wholly or partly from liability if it appears to the court that the circumstances mentioned in paragraphs (1)(a) and (b) applied.

1044B Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

(1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 1041H in the same way as it limits occupational liability arising under a law of the State or Territory.

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Note: Section 1041H prohibits misleading or deceptive conduct by a person in relation to a financial product or financial service.

(2) However, the professional standards law applies for that purpose:

(a) only in relation to a scheme that was prescribed by the regulations at the time (the ***contravention time***) of the contravention; and

(b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:

(i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and

(ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

(3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 1041H, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

(4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

(a) that represents the interests of persons who have the same occupation; and

(b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

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professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

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Division 5—Miscellaneous

1045A Exemptions and modifications by regulations

(1) The regulations may:

(a) exempt a person or class of persons from all or specified provisions of this Part; or

(b) exempt a financial product or a class of financial products from all or specified provisions of this Part; or

(c) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.

(2) For the purpose of this section, the ***provisions of this Part*** include:

(a) definitions in this Act, or in the regulations, as they apply to references in this Part; and

(b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

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Part 7.10A—External dispute resolution

Division 1—Authorisation of an external dispute resolution scheme

Subdivision A—Minister may authorise an external dispute resolution scheme

1050 Minister may authorise an external dispute resolution scheme

(1) The Minister may, by notifiable instrument, authorise an external dispute resolution scheme if the Minister is satisfied that the mandatory requirements under section 1051 will be met.

(2) In considering whether to authorise an external dispute resolution scheme, the Minister:
  (a) must take into account the general considerations for an external dispute resolution scheme under section 1051A; and
  (b) may take into account any other matter the Minister considers relevant (whether or not those other matters are consistent with those general considerations).

(3) An authorisation of an external dispute resolution scheme must not come into force while an authorisation of another external dispute resolution scheme is in force.

(4) The Minister may, by notifiable instrument, vary or revoke an authorisation of an external dispute resolution scheme.

(5) In an instrument under subsection (1) or (4), the Minister:
  (a) must specify the day the authorisation, variation or revocation comes into force; and
  (b) may specify, vary or revoke conditions relating to the authorisation.

Note: Once the authorisation of an external dispute resolution scheme comes into force, the scheme is known as the AFCA scheme and the operator

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is known as AFCA (AFCA is short for Australian Financial Complaints Authority): see the definitions of ***AFCA*** and ***AFCA scheme*** in section 761A.

Subdivision B—Mandatory requirements and general considerations

1051 Mandatory requirements

(1) The mandatory requirements for an external dispute resolution scheme are:

(a) the organisational requirements under subsection (2); and

(b) the operator requirements under subsection (3); and

(c) the operational requirements under subsection (4); and

(d) the compliance requirements under subsection (5).

Organisational requirements

(2) The organisational requirements are that:

(a) the membership of the scheme is open to every entity that is required, under:

(i) a law of the Commonwealth; or

(ii) an instrument made under such a law; or

(iii) the conditions of a licence or permission issued under such a law;

to be a member of an external dispute resolution scheme authorised under this Part; and

(b) the operations of the scheme are financed through contributions made by members of the scheme; and

(c) the scheme has an independent assessor; and

(d) complainants are exempt from payment of any fee or charge, to the operator of the scheme or to any other entity, in relation to a complaint.

Operator requirements

(3) The operator requirements are that:

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(a) the operator of the scheme commissions the conducting of independent reviews of the scheme's operations and procedures; and

(b) the operator of the scheme is a company limited by guarantee; and

(c) the operator's constitution provides that the operator must not be operated for profit; and

(d) the operator's constitution provides that the number of directors of the operator who have experience in carrying on the kinds of businesses operated by members of the scheme must equal the number of directors who have experience in representing consumers; and

(da) the operator's constitution provides that the Chair of the board of the operator must be an independent person; and

(e) the operator's constitution provides that, within 6 months after the scheme is authorised under section 1050, the Minister:

(i) may appoint an independent person as the Chair of the board of the operator; and

(ii) may appoint any director, if the total number of directors (including that director) whom the Minister has appointed, as mentioned in subparagraph (i) and this subparagraph, is less than half the total number of directors.

Operational requirements

(4) The operational requirements are that:

(a) the complaints mechanism under the scheme is appropriately accessible to persons dissatisfied with members of the scheme; and

(b) complaints against members of the scheme are resolved (including by making determinations relating to such complaints) in a way that is fair, efficient, timely and independent; and

(c) appropriate expertise is available to deal with complaints; and

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(d) reasonable steps are taken to ensure compliance by members of the scheme with those determinations; and

(e) under the scheme, determinations made by the operator of the scheme are:

(i) binding on members of the scheme; but

(ii) not binding on complainants under the scheme; and

(f) for superannuation complaints, there are no limits on:

(i) the value of claims that may be made under the scheme; or

(ii) the value of remedies that may be determined under the scheme.

Note: The complaints may be complaints relating to superannuation or complaints relating to other financial services. Division 3 includes additional provisions relating to superannuation complaints.

Compliance requirements

(5) The compliance requirements are that:

(a) the operator of the scheme is to ensure that the following are complied with:

(i) conditions of the authorisation of the scheme specified under paragraph 1050(5)(b);

(ii) regulatory requirements issued under section 1052A;

(iii) directions given under section 1052B, 1052BA or 1052C;

(iv) the requirements of section 1052E; and

(b) material changes to the scheme are not to be made without the approval of ASIC under section 1052D.

1051A General considerations

The general considerations for an external dispute resolution scheme are the following:

(a) the accessibility of the scheme;

(b) the independence of the scheme;

(c) the fairness of the scheme;

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(d) the accountability of the scheme;
(e) the efficiency of the scheme;
(f) the effectiveness of the scheme.

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Division 2—Regulating the AFCA scheme

1052 Obligation to comply with mandatory requirements

AFCA must ensure that the mandatory requirements for the AFCA scheme under section 1051 are complied with.

1052A ASIC may issue regulatory requirements

ASIC may, by legislative instrument, issue to AFCA regulatory requirements relating to:

(a) compliance with the mandatory requirements for the AFCA scheme under section 1051; or

(b) any of the general considerations for the AFCA scheme under section 1051A.

1052B Directions to increase limits on the value of claims

(1) If, under the AFCA scheme, there are one or more limits on:

(a) the value of claims that may be made under the scheme; or

(b) the value of remedies that AFCA may determine under the scheme;

ASIC may give AFCA a written direction requiring the limit, or some or all of the limits, to be increased.

Note: One of the operational requirements for the scheme is that there are no such limits for superannuation complaints (see paragraph 1051(4)(f)).

(2) However:

(a) ASIC must not give a direction under this section unless ASIC has given AFCA written notice of at least 1 month of ASIC's intention to issue the direction; and

(b) a direction under this section must not apply in relation to complaints AFCA received before ASIC gives the direction.

(3) AFCA must comply with a direction made under this section.

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

(4) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

(5) A direction made under this section is not a legislative instrument.

1052BA Directions to ensure sufficient financing

(1) ASIC may give AFCA a written direction under this section if ASIC considers that AFCA has not done all things reasonably practicable to ensure that the operations of the AFCA scheme are sufficiently financed.

(2) The direction must set out the specific measures that AFCA must take to ensure that the operations of the AFCA scheme are sufficiently financed.

(3) ASIC must not give a direction under this section unless ASIC has given AFCA written notice of at least 1 month of ASIC's intention to issue the direction.

(4) AFCA must comply with a direction made under this section.

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

(5) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

(6) A direction made under this section is not a legislative instrument.

1052C General directions to AFCA

Notice of intention to issue a direction

(1) If ASIC considers that AFCA has not done all things reasonably practicable to ensure compliance with:

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(a) the mandatory requirements for the AFCA scheme under section 1051; or
(b) a condition of the authorisation of the AFCA scheme imposed by the Minister under paragraph 1050(5)(b); or
(c) regulatory requirements issued under section 1052A;

ASIC may give AFCA written notice that it intends to give AFCA a specified direction under this section.

(2) The notice must set out:
(a) the specific measures that the direction will require AFCA to take to comply with the requirements or condition; and
(b) the reasons for ASIC's intention to give the direction.

Issuing a direction

(3) If, after receiving the notice:
(a) AFCA does not take those specific measures; and
(b) ASIC still considers that it is appropriate to give the direction to AFCA;

ASIC may give AFCA the direction, in writing, with a statement setting out the reasons for giving the direction.

(4) The direction must deal with the time by which, or the period during which, it is to be complied with. The time or period must be reasonable.

(5) A direction made under this section is not a legislative instrument.

Compliance

(6) AFCA must comply with a direction made under this section.

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

(7) If AFCA fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that AFCA comply with the direction.

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Varying or revoking a direction

(8) ASIC may vary a direction made under this section by giving written notice to AFCA.

(9) The direction has effect until ASIC revokes it by giving written notice to AFCA.

(10) ASIC may revoke the direction, by giving written notice to AFCA, if, at the time of revocation, ASIC considers that the direction is no longer necessary or appropriate.

1052D Approval of material changes to the AFCA scheme

(1) AFCA may request ASIC to approve a material change to the AFCA scheme.

Note: A material change must not be made to the scheme without ASIC's approval (see paragraph 1051(5)(b)).

(2) ASIC may, by written notice given to AFCA, approve the change.

(3) In considering whether to approve the change, ASIC must take into account the following in relation to the scheme as it is proposed to be changed:

(a) the mandatory requirements for the scheme under section 1051;

(b) the general considerations for the scheme under section 1051A;

(c) any conditions imposed by the Minister on the authorisation of the scheme under paragraph 1050(5)(b);

(d) any regulatory requirements issued under section 1052A.

1052E Referring matters to appropriate authorities

Referring contraventions and breaches etc. to appropriate authorities

(1) If AFCA becomes aware, in connection with a complaint under the AFCA scheme, that:

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(a) a serious contravention of any law may have occurred; or
(b) a contravention of the governing rules of a regulated superannuation fund or an approved deposit fund may have occurred; or
(c) a breach of the terms and conditions relating to an annuity policy, a life policy or an RSA may have occurred; or
(d) a party to the complaint may have refused or failed to give effect to a determination made by AFCA;

AFCA must give particulars of the contravention, breach, refusal or failure to one or more of APRA, ASIC or the Commissioner of Taxation.

(2) However, if:
(a) the complaint relates to the scheme provided for by the *Australian Defence Force Cover Act 2015*; and
(b) subsection (1) applies because AFCA becomes aware that:
(i) a serious contravention of any law may have occurred; or
(ii) a party to the complaint may have refused or failed to give effect to a determination made by AFCA;

AFCA must instead give particulars of the contravention, refusal or failure to the Minister administering that Act and the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

Referring settled complaints

(3) If:
(a) the parties to a complaint made under the AFCA scheme agree to a settlement of the complaint; and
(b) AFCA thinks the settlement may require investigation;

AFCA may give particulars of the settlement to one or more of APRA, ASIC or the Commissioner of Taxation.

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Referring systemic issues

(4) If AFCA considers that there is a systemic issue arising from the consideration of complaints under the AFCA scheme, AFCA must give particulars of the issue to one or more of APRA, ASIC or the Commissioner of Taxation.

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Division 3—Additional provisions relating to superannuation complaints

Subdivision A—When complaints relating to superannuation can be made under the AFCA scheme

1053 When complaints relating to superannuation can be made under the AFCA scheme

(1) A person may, subject to section 1056, make a complaint relating to superannuation under the AFCA scheme only if the complaint is a complaint:

(a) that the trustee of a regulated superannuation fund or of an approved deposit fund has made a decision (whether before or after the commencement of this section) relating to:

(i) a particular member or a particular former member of a regulated superannuation fund; or

(ii) a particular beneficiary or a particular former beneficiary of an approved deposit fund;

that is or was unfair or unreasonable; or

(b) that a decision, by a trustee maintaining a life policy that covers a member of a life policy fund, to admit the member to the fund was unfair or unreasonable; or

(c) that the conduct (including any act, omission or representation) of an insurer, or of a representative of an insurer, relating to the sale of an annuity policy was unfair or unreasonable; or

(d) that a decision of an insurer under an annuity policy is or was unfair or unreasonable; or

(e) that a decision of a superannuation provider to set out, in a statement to which subsection (2) applies, an amount or amounts in respect of a person was unfair or unreasonable; or

(f) that the conduct (including any act, omission or representation) of an RSA provider, or of a representative of

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an RSA provider, relating to the opening of an RSA was unfair or unreasonable; or

(g) that a decision of an RSA provider relating to a particular RSA holder or former RSA holder is or was unfair or unreasonable; or

(h) that the conduct (including any act, omission or representation) of an insurer, or of a representative of an insurer, relating to the sale of insurance benefits in relation to a contract of insurance where the premiums are paid from an RSA, was unfair or unreasonable; or

(i) that a decision of an insurer relating to a contract of insurance where the premiums are paid from an RSA is or was unfair or unreasonable; or

(j) that a decision by a death benefit decision-maker relating to the payment of a death benefit is or was unfair or unreasonable.

Note 1: Section 1056 provides further limitations on when a superannuation complaint may be made to AFCA in relation to a decision about the payment of a death benefit.

Note 2: Certain persons are taken to be members of regulated superannuation funds or approved deposit funds, or holders of RSAs (see section 1053A).

(2) This subsection applies to a statement given to the Commissioner of Taxation under:

(a) section 13 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*; or

(b) section 12 of the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*; or

(c) subsection 133-120(2) or 133-140(1) in Schedule 1 to the *Taxation Administration Act 1953*; or

(d) section 390-5 or 390-20 in that Schedule.

(3) A complaint made in accordance with subsection (1) of this section is a ***superannuation complaint***.

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(4) However, a complaint is not a ***superannuation complaint*** to the extent that it is a complaint that:

(a) a decision made by a trustee of a self managed superannuation fund; or

(b) conduct engaged in by an insurer, or by a representative of an insurer, relating to the sale of an annuity policy maintained, or to be maintained, by a trustee of a self managed superannuation fund on behalf of its members; or

(c) a decision made by an insurer, or by a representative of an insurer, under an annuity policy maintained by a trustee of a self managed superannuation fund on behalf of its members;

is unfair or unreasonable.

(5) For the purposes of this section, a trustee, an insurer, an RSA provider or another decision-maker, makes a decision if:

(a) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, makes, or fails to make, a decision; or

(b) the trustee, insurer, RSA provider or other decision-maker, or a person acting for the trustee, insurer, RSA provider or other decision-maker, engages in any conduct, or fails to engage in any conduct, in relation to making a decision;

whether or not the decision or conduct involved the exercise of a discretion.

1053A Persons taken to be members of regulated superannuation funds and approved deposit funds and holders of RSAs

For the purposes of this Division, each of the following persons is taken to be a member of a regulated superannuation fund or an approved deposit fund, or a holder of an RSA, (as the case requires):

(a) a non-member spouse in relation to whom a splitting order under the *Family Law Act 1975* has been made, from the day on which a copy of the order is served on the trustee of the fund;

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(b) a non-member spouse who is a party to a superannuation agreement under the *Family Law Act 1975*, from the day on which a copy of the agreement is served on the trustee of the fund;

(c) a party to a marriage in relation to which an order of a kind referred to in Part VIIIAA of the *Family Law Act 1975* has been made, if the order relates to an interest in the fund;

(d) an eligible person, within the meaning of section 90MZB of the *Family Law Act 1975*, in relation to an interest of the member or holder in the fund;

(e) a covered ADF member within the meaning of the *Australian Defence Force Cover Act 2015*.

Subdivision B—Powers of AFCA

1054 Power to join other parties to superannuation complaint

(1) AFCA may (subject to subsection 1056A(3)) at any time join, as a party to a superannuation complaint made under the AFCA scheme, any of the following persons whom AFCA decides should be a party to the complaint:

(a) a person who has applied to become a party to the complaint;

(b) a trustee of a regulated superannuation fund or an approved deposit fund;

(c) an insurer;

(d) an RSA provider;

(e) a superannuation provider;

(f) a person whom AFCA decides is responsible for determining either or both of the existence and the extent of a disability (whether total and permanent or otherwise), if the subject matter of the complaint relates to a benefit in respect of the disability, whether under a contract of insurance or otherwise.

Note: Section 1056A requires certain procedures to be followed before a person can be joined as a party to a superannuation complaint about a decision relating to the payment of a death benefit.

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(2) If AFCA decides under subsection (1) that a person should be a party to the complaint, AFCA must give the new party, and all of the existing parties to the complaint, written notice of the decision and of the reasons for the decision.

(3) If AFCA decides that a person who has applied to become a party to the complaint should not be a party to the complaint, AFCA must give the person written notice of the decision and of the reasons for the decision.

1054A Power to obtain information and documents

(1) If AFCA has reason to believe that a person is capable of giving information or producing documents relevant to a superannuation complaint, AFCA may, by written notice to the person, require the person:

(a) to give to AFCA, by writing, any such information; or

(b) to produce to AFCA such documents or copies of such documents as are stated in the notice;

at such place, and within such period or on such date and at such time, as are stated in the notice.

Note: A strict liability offence may apply under section 1058 (secrecy) in relation to information acquired under this section.

(2) If documents (whether originals or copies) are so produced, AFCA:

(a) may take possession of, and may make copies of, or take extracts from, the documents; and

(b) may keep the documents for as long as is necessary for the purpose of dealing with the complaint; and

(c) must, while keeping the documents, permit a person who would be entitled to inspect any one or more of them (if the documents were not in the possession of AFCA) to inspect at all reasonable times such of the documents as that person would be so entitled to inspect.

(3) A person must not fail to comply with a requirement made by AFCA under subsection (1).

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Penalty: 30 penalty units.

(4) Subsection (3) is an offence of strict liability.

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

(5) Subsection (3) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

1054B Power to require attendance at conciliation conferences

(1) AFCA may, if AFCA thinks it desirable to do so, by notice in writing given to:

(a) each party to a superannuation complaint; and

(b) any other person:

(i) who, in AFCA's opinion, is likely to be able to provide information relevant to the settlement of the complaint; or

(ii) whose presence at a conciliation conference would, in AFCA's opinion, be likely to be conducive to settling the complaint;

require the party or other person to attend the conference.

Note: A strict liability offence may apply under section 1058 (secrecy) in relation to information acquired during a conference held under this section.

(2) The notice must also fix the date, time and place for the conference.

(3) If the complainant fails to attend the conference, AFCA may deal with the complaint as if it had been withdrawn by the complainant.

(4) A person (other than the complainant) commits an offence if he or she does not attend a conference when required to do so under this section.

Penalty: 30 penalty units.

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1054BA Power to give directions

(1) AFCA may, in connection with, or as part of the process of, determining a superannuation complaint:
  (a) give directions prohibiting or restricting the disclosure of documents or information relating to the complaint; and
  (b) give directions as to who may be present at any meeting held by AFCA relating to the complaint.

(2) In giving directions, AFCA must have regard to the wishes of the parties in relation to the complaint and the need to protect their privacy.

(3) Directions may be made in writing or orally.

(4) A person must not refuse or fail to comply with a direction under this section.

Penalty: 30 penalty units.

1054C Reference of questions of law to Federal Court

(1) AFCA may, on its own initiative or on the request of a party to a superannuation complaint, refer a question of law arising in relation to the making of a determination relating to the complaint to the Federal Court for decision.

(2) The Federal Court has jurisdiction to hear and determine a question of law referred to it under this section.

(3) If a question of law has been so referred to the Federal Court, AFCA must not:
  (a) make the determination to which the question is relevant while the reference is pending; or
  (b) do anything that is inconsistent with the opinion of the Federal Court on the question.

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Subdivision C—Determinations of superannuation complaints

1055 Making a determination

(1) In making a determination of a superannuation complaint, AFCA has, subject to this section, all the powers, obligations and discretions that are conferred on the trustee, insurer, RSA provider or other person who:

(a) made a decision to which the complaint relates; or

(b) engaged in conduct (including any act, omission or representation) to which the complaint relates.

Affirming decisions or conduct

(2) AFCA must affirm a decision or conduct (except a decision relating to the payment of a death benefit) if AFCA is satisfied that:

(a) the decision, in its operation in relation to the complainant; or

(b) the conduct;

was fair and reasonable in all the circumstances.

(3) AFCA must affirm a decision relating to the payment of a death benefit if AFCA is satisfied that the decision, in its operation in relation to:

(a) the complainant; and

(b) any other person joined under subsection 1056A(3) as a party to the complaint;

was fair and reasonable in all the circumstances.

Varying etc. decisions or conduct

(4) If AFCA is satisfied that:

(a) a decision (except a decision relating to the payment of a death benefit), in its operation in relation to the complainant; or

(b) conduct;

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is unfair or unreasonable, or both, AFCA may take any one or more of the actions mentioned in subsection (6), but only for the purpose of placing the complainant, as nearly as practicable, in such a position that the unfairness, unreasonableness, or both, no longer exists.

(5) If AFCA is satisfied that a decision relating to the payment of a death benefit, in its operation in relation to:

(a) the complainant; and

(b) any other person joined under subsection 1056A(3) as a party to the complaint;

is unfair or unreasonable, or both, AFCA may take any one or more of the actions mentioned in subsection (6), but only for the purpose of placing the complainant (and any other person so joined as a party), as nearly as practicable, in such a position that the unfairness, unreasonableness, or both, no longer exists.

(6) AFCA may, under subsection (4) or (5), do any of the following:

(a) vary the decision;

(b) set aside the decision and:

(i) substitute a decision for the decision so set aside; or

(ii) remit the decision to the person who made it for reconsideration in accordance with any directions or recommendations of AFCA;

(c) if the complainant was unfairly or unreasonably admitted into a life policy fund:

(i) require a party to the complaint to repay all money, or particular money, received under the life policy to which the complaint relates; or

(ii) set aside the whole or part of the terms or conditions of the life policy in their application to the complainant; or

(iii) vary the governing rules of the life policy fund in their application to the complainant; or

(iv) cancel the complainant's membership of the life policy fund or of any sub-plan of the fund;

(d) if the complainant was unfairly or unreasonably sold an annuity policy, contract of insurance or RSA:

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(i) require a party to the complaint to repay all money, or particular money, received under the annuity policy, contract or RSA; or

(ii) set aside the whole or part of the terms or conditions of the annuity policy, contract or RSA in their application to the complainant; or

(iii) vary the terms or conditions of the annuity policy, contract or RSA in their application to the complainant.

Limitations on determinations

(7) AFCA must not make a determination of a superannuation complaint that would be contrary to:

(a) law; or

(b) subject to paragraph (6)(c), the governing rules of a regulated superannuation fund or an approved deposit fund to which the complaint relates; or

(c) subject to paragraph (6)(d), the terms and conditions of an annuity policy, contract of insurance or RSA to which the complaint relates.

1055A AFCA to give reasons

AFCA must give written reasons for its determination of a superannuation complaint.

1055B Operation of determination of superannuation complaint

(1) Subject to subsection (2), a determination of a superannuation complaint by AFCA comes into operation immediately upon the making of the determination.

(2) AFCA may specify in the determination that the determination is not to come into operation until a later date specified in the determination and, if a later date is so specified, the determination comes into operation on that date.

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(3) If, under subsection 1055(4) or (5), the determination varies a decision of another person, or substitutes a decision for a decision of another person, that decision as varied or substituted:

(a) is, for all purposes (other than the making of a complaint about the decision) taken to be a decision of the other person; and

(b) on the coming into operation of the determination by AFCA, unless AFCA otherwise orders, has effect, and is taken to have had effect, on and from the day on which the original decision has or had effect.

1055C Evidence of determination of superannuation complaint

(1) A document purporting to be a copy of AFCA's determination of a superannuation complaint, and purporting to be certified, by an AFCA staff member who is authorised to do so, to be a true copy of the determination, is, in any proceeding, prima facie evidence of the determination.

(2) This section does not affect any other method available by law for the proof of determinations of AFCA.

1055D Compliance with determinations under the AFCA scheme

If:

(a) a superannuation complaint has been made concerning a disability benefit (whether under a contract of insurance or otherwise); and

(b) a determination is made by AFCA that a person other than a member of the AFCA scheme is responsible for determining either or both of the existence and the extent of the disability; and

(c) AFCA joins the person under subsection 1054(1) as a party to the complaint;

the person must comply with any determination made in respect of the person by AFCA.

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Subdivision D—Superannuation complaints relating to payment of death benefits

1056 When superannuation complaint cannot be made in relation to decision about the payment of death benefit

(1) A person cannot make a superannuation complaint under the AFCA scheme relating to a decision by a death benefit decision-maker relating to the payment of a death benefit unless the person has an interest in the death benefit.

(2) A person cannot make a superannuation complaint under the AFCA scheme relating to a decision by a death benefit decision-maker relating to the payment of a death benefit if:

(a) the decision-maker gave the person notice:

(i) that the decision-maker proposed to make the decision; and

(ii) that the person may object to the proposed decision within 28 days after being given notice;

and the person did not, by notifying the decision-maker, object to the proposed decision within 28 days after being given notice; and

(b) the decision-maker gave the person notice:

(i) that the decision-maker had made the decision; and

(ii) that the person may make a complaint under the AFCA scheme relating to the decision within 28 days after being given notice;

and the person does not make the complaint to AFCA within 28 days after being given notice.

(3) If a person has not been given either of the notices referred to in subsection (2) relating to a decision by a death benefit decision-maker relating to the payment of a death benefit, the person cannot make a superannuation complaint under the AFCA scheme relating to the decision unless AFCA is satisfied that:

(a) the person has an interest in the death benefit; and

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(b) it was unreasonable for the person not to be given those notices from the decision-maker.

1056A Joining persons to complaints relating to death benefit decisions

(1) If a death benefit decision-maker:

(a) makes a decision relating to the payment of a death benefit; and

(b) is notified by AFCA of a superannuation complaint made in accordance with section 1056 relating to the decision;

the decision-maker must, within 28 days after being so notified, give notice to each person (other than the complainant) whom the decision-maker believes, after reasonable enquiry, may have an interest in the death benefit.

(2) A notice given to a person under subsection (1) must:

(a) state that a complaint has been made to AFCA about the decision; and

(b) set out the details of the complaint; and

(c) state that the person may apply to be joined as a party to the complaint by giving notice to AFCA within 28 days after the person is given notice, or such longer period as AFCA allows.

(3) A person (other than a person referred to in any of paragraphs 1054(1)(b) to (f)) may be joined as a party to the complaint under section 1054 only if:

(a) the person applies in accordance with paragraph (2)(c) of this section; or

(b) AFCA is satisfied that, in all the circumstances, the person should be joined as a party despite not so applying.

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Subdivision E—Appeals to the Federal Court

1057 Appeals to the Federal Court from determination of superannuation complaint

(1) A party to a superannuation complaint may appeal to the Federal Court, on a question of law, from AFCA's determination of the complaint.

(2) An appeal by a person under subsection (1) is to be instituted:
  (a) not later than the 28th day after the day on which a copy of the determination of AFCA is given to the person, or within such further period as the Federal Court (whether before or after the end of that day) allows; and
  (b) in accordance with rules of court made under the *Federal Court of Australia Act 1976*.

(3) The Federal Court is to hear and determine the appeal and may make such order as it thinks appropriate.

(4) Without limiting subsection (3), the orders that may be made by the Federal Court on an appeal include:
  (a) an order affirming or setting aside the determination of AFCA; and
  (b) an order remitting the matter to be determined again by AFCA in accordance with the directions of the Court.

(5) The Federal Court must not make an order awarding costs against a complainant if the complainant does not defend an appeal instituted by another party to the complaint.

1057A Operation and implementation of determination that is subject to appeal

(1) Subject to this section, the institution of an appeal to the Federal Court from AFCA's determination of a superannuation complaint does not affect the operation of the determination or prevent the taking of action to implement the determination.

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(2) If an appeal is brought to the Federal Court from the determination, the Court or a Judge of the Court may make such order or orders staying or otherwise affecting the operation or implementation of either or both of the following:

(a) the determination or a part of the determination;

(b) if the complaint relates to a decision of another person—the whole or part of the decision that is complained of, or of a decision of an insurer or other person who is a party to the complaint;

as the Court thinks appropriate to secure the effectiveness of the hearing and determination of the appeal.

(3) If an order is in force under subsection (2) (including an order that has previously been varied on one or more occasions under this subsection), the Court or a Judge of the Court may make an order varying or revoking the first-mentioned order.

(4) An order in force under subsection (2) (including an order that has previously been varied on one or more occasions under subsection (3)):

(a) is subject to such conditions as are specified in the order; and

(b) has effect until:

(i) if a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or

(ii) if no period is so specified—the giving of a decision on the appeal.

1057B Sending of documents to, and disclosure of documents by, the Federal Court

If an appeal is instituted in the Federal Court from AFCA's determination of a superannuation complaint:

(a) AFCA must send to the Court all documents that were before AFCA in connection with the consideration of the matter to which the appeal relates; and

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(b) at the conclusion of the proceeding before the Court in relation to the appeal, the Court must return the documents to AFCA.

Subdivision F—Secrecy

1058 Secrecy

(1) An AFCA staff member must not directly or indirectly:
  (a) make a record of, or disclose to any person, court or investigating authority, any information acquired by the staff member under section 1054A or during a conference held under section 1054B in connection with a superannuation complaint; or
  (b) produce to any person, court or investigating authority a document so acquired; or
  (c) permit any person, court or investigating authority to have access to a document so acquired.

Penalty: 30 penalty units.

(2) 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 AFCA staff member makes the record of the information, discloses the information, produces the document or permits access to the document for the purposes of this Part.

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

(4) Subsection (1) does not apply to the AFCA staff member disclosing information, producing a document or permitting access to a document:
  (a) to ASIC; or
  (b) to APRA; or
  (c) to the Information Commissioner; or
  (d) to the Commissioner of Taxation; or

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(e) to a particular party to the complaint if the person who provided the information or document to the staff member consents in writing to the disclosure, production or access.

Note: A defendant bears an evidential burden in relation to the matters in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

(5) Subsection (1) does not apply to the AFCA staff member disclosing information if:

(a) the disclosure is made in a way that does not enable the identification of the parties to a complaint; or

(b) the disclosure is made to a police officer (within the meaning of the *Evidence Act 1995*) because:

(i) a threat has been made against an AFCA staff member or another person; or

(ii) the AFCA staff member believes that a party to a complaint may commit an act of self-harm.

Note: A defendant bears an evidential burden in relation to the matters in subsection (5), see subsection 13.3(3) of the *Criminal Code*.

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Part 7.11—Title and transfer

Division 1—Title to certain securities

1070A Nature of shares and certain other interests in a company or registered scheme

(1) A share, other interest of a member in a company or interest of a person in a registered scheme:
  (a) is personal property; and
  (b) is transferable or transmissible as provided by:
    (i) the company's, or scheme's, constitution; or
    (ii) the operating rules of a prescribed CS facility if they are applicable; and
  (c) is capable of devolution by will or by operation of law.

(2) Paragraph (1)(c) has effect subject to:
  (a) in the case of a company:
    (i) the company's constitution (if any); and
    (ii) any replaceable rules that apply to the company; and
    (iii) the operating rules of a prescribed CS facility if they apply to the share or interest; and
  (b) in the case of a scheme:
    (i) the scheme's constitution; and
    (ii) the operating rules of a prescribed CS facility if they apply to the interest.

(3) Subject to subsection (1):
  (a) the laws applicable to ownership of, and dealing with, personal property apply to a share, other interest of a member in a company or interest of a person in a registered scheme as they apply to other property; and
  (b) equitable interests in respect of a share, interest of a member in a company or other interest of a person in a registered

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scheme may be created, dealt with and enforced as in the case of other personal property.

(4) For the purposes of any law, a share, other interest of a member in a company or interest of a person in a registered scheme is taken to be situated:

(a) if the share, interest in a company, or interest in a registered scheme is entered on the register kept under section 169—in the State or Territory where that register is kept; or

(b) if the share or interest in the company is entered on an overseas branch register kept under section 178—in the foreign country where that register is kept.

1070B Numbering of shares

(1) Except as provided in subsection (2), a company must ensure that each share in the company is distinguished by an appropriate number.

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

(2) Despite subsection (1):

(a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class:

(i) are fully paid up; and

(ii) rank equally for all purposes;

none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up, and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; and

(b) if:

(i) all the issued shares in a company are evidenced by certificates in accordance with section 1070C; and

(ii) each certificate is distinguished by an appropriate number; and

(iii) that number is recorded in the register of members;

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none of those shares is required to have a distinguishing number; and

(c) a share need not have a distinguishing number if the operating rules of a prescribed CS facility through which it is able to be transferred provide that the share need not have a distinguishing number.

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

1070C Matters to be specified in share certificate

(1) A company must ensure that a certificate it issues specifying the shares held by a member of the company states:

(a) the name of the company and the fact that it is registered under this Act; and

(b) the class of the shares; and

(c) the amount (if any) unpaid on the shares.

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

(2) A certificate issued in accordance with subsection (1) specifying shares held by a member of a company is prima facie evidence of the title of the member to the shares.

(3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

1070D Loss or destruction of title documents for certain securities

(1) This section applies to the following securities:

(a) shares in a company;

(b) debentures of a company;

(c) interests in a registered scheme.

(2) This section applies to an interest in a registered scheme as if:

(a) references to a company were instead references to the responsible entity of the registered scheme; and

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(b) references to the directors of a company were instead references to the directors of the responsible entity of the registered scheme.

(3) A company must, in accordance with subsection (4), issue a duplicate certificate or other title document for securities if:

(a) the certificate or document is lost or destroyed; and

(b) the owner of the securities applies to the company for the duplicate in accordance with subsection (5); and

(c) the owner complies with any requirements made in accordance with subsection (6).

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

(4) The company must issue the duplicate:

(a) if the company requires the payment of an amount not exceeding the amount prescribed by regulations made for the purposes of this paragraph—within 21 days after the payment is received by the company or within such longer period as ASIC approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as ASIC approves.

(5) The application must be accompanied by:

(a) a statement in writing that the certificate or other document:

(i) has been lost or destroyed; and

(ii) has not been pledged, sold or otherwise disposed of; and

(b) if the certificate or other document has been lost—a statement in writing that proper searches have been made; and

(c) an undertaking in writing that if the certificate or other document is found or received by the owner it will be returned to the company.

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(6) The directors of the company may, before accepting an application for the issue of a duplicate certificate, require the applicant to do either or both of the following:

(a) place an advertisement in a daily newspaper circulating in a place specified by the directors stating that:

(i) the certificate or other document has been lost or destroyed; and

(ii) the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate certificate;

(b) give a bond for an amount equal to at least the current market value of the securities indemnifying the company against loss following the production of the original certificate or other document.

(7) If:

(a) a certificate or other title document for securities is cancelled in reliance on the operating rules of a prescribed CS facility; and

(b) having regard to those provisions, the certificate or other document should not have been cancelled;

this section applies to the certificate or other document as though it were destroyed on its cancellation.

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Division 2—Transfer of certain securities

Subdivision A—General provisions

1071A Application of the Subdivision to certain securities

(1) This Subdivision applies to the following securities:
  (a) shares in a company;
  (b) debentures of a company;
  (c) interests in a registered scheme.

(2) This Subdivision applies to an interest in a registered scheme as if:
  (a) references to a company were instead references to the responsible entity of the registered scheme; and
  (b) references to the constitution of a company were instead references to the constitution of the registered scheme; and
  (c) references to members of a company were instead references to members of the registered scheme.

1071B Instrument of transfer

(1) This section does not apply to a transfer of a security through a prescribed CS facility.

(2) Subject to subsection (5), a company must only register a transfer of securities if a proper instrument of transfer (see subsections (3) and (4)) has been delivered to the company. This is so despite:
  (a) anything in its constitution; or
  (b) anything in a deed relating to debentures.

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

(3) An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (2) if it does not show the details, specified in the regulations, in relation to the company concerned.

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(4) If the transfer of the securities is covered by Division 3 of this Part, then (in addition to subsection (3)), the instrument is not a proper instrument of transfer for the purposes of subsection (2) unless it is a sufficient transfer of the securities under regulations made for the purposes of that Division.

(5) Subsection (2) does not prejudice the power of the company to register, as the holder of securities, a person to whom the right to the securities has devolved by will or by operation of law.

(6) Subsections (7) to (13) deal with a transfer of a security of a dead holder by the dead holder's personal representative. They deal with the transfer differently depending on whether the personal representative is a local representative or not.

(7) The personal representative is a ***local representative*** if the representative is duly constituted as a personal representative under the law of the State or Territory in which the security is situated.

Note: Subsection 1070A(4) provides that the security is situated where the relevant register is kept.

(8) If the personal representative is a local representative, a transfer of the security by the representative is as valid as if the representative had been registered as the holder of the security at the time when the instrument of transfer was executed.

(9) If:

(a) the personal representative is not a local representative; and

(b) the representative:

(i) executes an instrument of transfer of the security to the representative or to another person; and

(ii) delivers the instrument to the company; and

(iii) delivers to the company with the instrument a statement in writing made by the representative to the effect that, to the best of the representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the State or Territory in which the security is

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located and no application for such a grant will be made; and

(c) the statement is made within 3 months immediately before the date on which the statement is delivered to the company;

the company must (subject to subsection (10)) register the transfer and pay to the representative any dividends or other money accrued in respect of the security up to the time when the instrument was executed.

(10) Subsection (9) does not operate so as to require the company to do anything that it would not have been required to do if the personal representative were a local representative.

(11) A transfer or payment made under subsection (9) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were a local representative.

(12) For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a security in place of the dead person is taken to be an instrument of transfer effecting a transfer of the security to the personal representative.

(13) The production to a company of a document that is, under the law of a State or Territory, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person, is sufficient evidence of the grant (for the company's purposes). This is so despite:

(a) anything in its constitution; or

(b) in a deed relating to debentures.

1071C Occupation need not appear in transfer document, register etc.

(1) A document transferring securities need not state the occupation of the transferor or transferee and, if it is signed by a person, the signature need not be witnessed.

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(2) Subsection (1) applies despite anything in:
  (a) the constitution of:
    (i) a company; or
    (ii) a body referred to in paragraph 1073C(a) or (b); or
  (b) the terms and conditions on which securities are created or issued.

(3) The omission from a register, certificate, document transferring securities or other document relating to a security, of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the security does not breach any law, constitution, trust deed or other document relating to the securities.

1071D Registration of transfer at request of transferor

(1) A written application by the transferor of a security of a company for the transferee's name to be entered in the appropriate register is as effective (for the company's purposes) as if it were an application by the transferee. The application is subject to the same conditions as it would be if it had been made by the transferee.

(2) If the transferor of a security of a company requests the company in writing to do so, the company must, by written notice, require a person who has possession, custody or control of either or both of the following:
  (a) any title documents for the security;
  (b) the instrument of transfer of the security;
to bring it or them into the office of the company within a specified period, to have the document cancelled or rectified and the transfer registered or otherwise dealt with.

(3) The period specified under subsection (2) must be not less than 7 and not more than 28 days after the date of the notice.

(4) If a person refuses or fails to comply with a notice given under subsection (2), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show

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cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.

(5) The Court may:

(a) if the person appears:

(i) examine the person upon oath or affirmation; and

(ii) receive other evidence; and

(b) if the person does not appear after being duly served with the summons—receive evidence in the person's absence; and

(c) in either case order the person to deliver up such documents to the company upon such terms or conditions as the Court considers just and reasonable.

The costs of the summons and of proceedings on the summons are in the discretion of the Court.

(6) Lists of documents required to be brought in under subsection (2) but not brought in in accordance with a requirement made under subsection (2) or delivered up in accordance with an order under subsection (5), must be:

(a) exhibited in the office of the company; and

(b) advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

1071E Notice of refusal to register transfer

If a company refuses to register a transfer of a security of the company, it must, within 2 months after the date on which the transfer was lodged with it, give the transferee notice of the refusal.

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

1071F Remedy for refusal to register transfer or transmission

(1) If a relevant authority in relation to a company:

(a) refuses or fails to register; or

(b) refuses or fails to give its consent or approval to the registration of;

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a transfer or transmission of securities of the company, the transferee or transmittee may apply to the Court for an order under this section.

(2) If the Court is satisfied on the application that the refusal or failure was without just cause, the Court may:

(a) order that the transfer or transmission be registered; or

(b) make such other order as it thinks just and reasonable, including:

(i) in the case of a transfer or transmission of shares—an order providing for the purchase of the shares by a specified member of the company or by the company; and

(ii) in the case of a purchase by the company—an order providing for the reduction accordingly of the capital of the company.

(3) In this section:

relevant authority, in relation to a company, means:

(a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of securities of the company; or

(b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of securities of the company is registered.

1071G Certification of transfers

(1) The certification by a company of an instrument of transfer of securities of the company:

(a) is taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show prima facie title to the securities in the transferor named in the instrument of transfer; and

(b) is not taken as a representation that the transferor has any title to the securities.

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(2) If a person acts on the faith of a false certification by a company made negligently, the company is under the same liability to the person as if the certification had been made fraudulently.

(3) A certification may be expressed to be limited to 42 days or any longer period from the date of certification. If it is, the company and its officers and employees are not, in the absence of fraud, liable in respect of the registration of any transfer of securities comprised in the certification after the end of:

(a) the period so limited; or

(b) any extension of that period given by the company;

if the instrument of transfer has not, within that period, been lodged with the company for registration.

(4) For the purposes of this section:

(a) an instrument of transfer is taken to be certified if it bears the words "certificate lodged" or words to the like effect; and

(b) the certification of an instrument of transfer is taken to be made by a company if:

(i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company's behalf; and

(ii) the certification is signed by a person authorised to certify transfers on the company's behalf or by an officer of the company or of a body corporate so authorised; and

(c) a certification that purports to be authenticated by a person's signature or initials (whether handwritten or not) is taken to be signed by the person unless it is shown that the signature or initials:

(i) was not or were not placed there by the person; and

(ii) was not or were not placed there by any other person authorised to use the signature or initials;

for the purpose of certifying transfers on the company's behalf.

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1071H Duties of company with respect to issue of certificates

(1) Subject to subsection (2), within 2 months after a company issues a security, the company must:

(a) complete and have ready for delivery to the holder of the security all the appropriate certificates or other title documents in connection with the issue of the security; and

(b) unless otherwise instructed by the holder, send or deliver the completed certificates or other title documents to:

(i) the holder; or

(ii) if the holder has instructed the company in writing to send them to a nominated person—that person.

Paragraph (a) has effect in relation to shares subject to the conditions on which the shares are issued.

(2) If the operating rules of a prescribed CS facility include a provision to the effect that:

(a) no document is required by subsection (1) to be completed and delivered by a company in relation to the issue of a security in specified circumstances; or

(b) the only document required by subsection (1) to be completed and delivered by a company in relation to the issue of a security in specified circumstances is the document required by the provision;

the provision has effect accordingly.

(3) Within one month after the date on which a transfer of a security is lodged with a company, the company must:

(a) complete and have ready for delivery to the transferee all the appropriate transfer and title documents in connection with the transfer; and

(b) unless otherwise instructed by the transferee, send or deliver the completed documents to:

(i) the transferee; or

(ii) if the transferee has instructed the company in writing to send them to a nominated person—that person.

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This subsection does not apply to a transfer that the company is for any reason entitled to refuse to register and does not register.

(4) The only document required by subsection (3) to be completed and delivered by a company in relation to a transfer covered by the operating rules of a prescribed CS facility is the document (if any) that those rules require to be completed and delivered.

(5) A company need not comply:

(a) with subsection (1) in relation to the issue of a security; or

(b) with subsection (3) in relation to a transfer of a security;

if the person to whom the security is issued, or the transferee, has:

(c) applied to ASIC for the making of a declaration under this subsection; and

(d) been declared by ASIC, by writing published in the *Gazette*, to be a person in relation to whom this section does not apply.

(6) If:

(a) either:

(i) if subsection (1) applies—the holder referred to in that subsection serves a notice on the company requiring the company to remedy a contravention of that subsection; or

(ii) if subsection (3) applies—the transferee referred to in that subsection serves a notice on the company requiring the company to remedy a contravention of that subsection; and

(b) the company fails to remedy the contravention within 10 days after the service of the notice; and

(c) the person entitled to have the documents delivered to him or her applies to the Court for an order under this subsection;

the Court may make an order directing the company and any officer or employee of the company to remedy the contravention within such period as is specified in the order.

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(7) An order under subsection (6) may provide that all costs of, and incidental to, the application are to be borne by:

(a) the company; or

(b) any officer or employee of the company who was involved in the contravention;

in such proportions as the Court thinks just and reasonable.

Subdivision B—Special provisions for shares

1072A Transmission of shares on death *(replaceable rule—see section 135)*

If shares not held jointly

(1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

(2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

(a) the personal representative may:

(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

(3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

(4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

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If shares held jointly

(5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

1072B Transmission of shares on bankruptcy *(replaceable rule—see section 135)*

(1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(b) by giving a completed transfer form to the company, transfer the shares to another person.

(2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

(3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

(4) This section has effect subject to the *Bankruptcy Act 1966.*

1072C Rights of trustee of estate of bankrupt shareholder

(1) If:

(a) because of the *Bankruptcy Act 1966*, a share in a company, being part of the property of a bankrupt, vests in the trustee of the bankrupt's estate; and

(b) the bankrupt is the registered holder of that share;

this section applies whether or not the trustee has been registered as the holder of the share.

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(2) On producing such information as the company's directors properly require, the trustee is entitled to:

(a) the same dividends and other benefits; and

(b) the same rights, for example, but without limitation, rights in relation to:

(i) meetings of the company; or

(ii) documents, including notices of such meetings; or

(iii) voting; or

(iv) inspection of the company's records;

as the bankrupt would be entitled to if he or she were not a bankrupt.

(3) The trustee has the same rights:

(a) to transfer the share; and

(b) to require a person to do an act or give a consent in connection with completing or registering a transfer of the share;

as the bankrupt would have if he or she were not a bankrupt.

(4) If the trustee transfers the share, the transfer is as valid as if the trustee had been registered as the holder of the share when the trustee executed the instrument of transfer.

(5) A person or body whose consent or approval is required for the transfer of shares in the company must not unreasonably withhold consent or approval for the transfer of the share by the trustee.

(6) If:

(a) the company's constitution requires:

(i) the share to be offered for purchase to a member of the company; or

(ii) an invitation to buy the share to be issued to such a member; and

(b) as at the end of a reasonable period after the trustee so offers the share, or so issues such an invitation, no such member has agreed to buy the share from the trustee at a reasonable price;

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the trustee may sell and transfer the share to a person other than such a member.

(7) A provision of the company's constitution is void as against the trustee in so far as, apart from this section, it would affect rights attached to the share:

(a) because the bankrupt is a bankrupt; or

(b) because of some event that led to the bankrupt becoming, or that indicated that the bankrupt was about to become, or might be about to become, a bankrupt; or

(c) for reasons including a reason referred to in paragraph (a) or (b).

(8) Nothing in this section limits the generality of anything else in it.

(9) This section has effect despite anything in the company's constitution.

1072D Transmission of shares on mental incapacity *(replaceable rule—see section 135)*

(1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

(a) the person may:

(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

(2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

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(3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

1072E Trustee etc. may be registered as owner of shares

(1) In this section:

share, in relation to a body corporate, means a share in the body that is registered in a register kept in this jurisdiction.

(2) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be registered as the holder of that share as trustee, executor or administrator of that estate.

(3) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of:

(a) the corporation; and

(b) the registered holder of that share;

be registered as the holder of that share as trustee, executor or administrator of that estate.

(4) If:

(a) a person (the ***administrator***) is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is the registered holder of a share in a corporation;

the administrator may be registered as the holder of that share as administrator of that estate.

(5) If:

(a) a person (the ***administrator***) is appointed, under a law of a State or Territory relating to the administration of the estates

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of a person who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and

(b) the incapable person is entitled in equity to a share in a corporation;

the administrator may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.

(6) If:

(a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is the registered holder of that share;

the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

(7) If:

(a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is entitled in equity to that share;

the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

(8) A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection:

(a) subject to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and

(b) subject to no other liabilities in respect of the share.

(9) Shares in a corporation registered in a register and held by a trustee in respect of a particular trust may, with the consent of the

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corporation, be marked in the register in such a way as to identify them as being held in respect of the trust.

(10) Except as provided in this section and section 169:

(a) no notice of a trust, whether express, implied or constructive, must be entered on a register kept in this jurisdiction or be receivable by ASIC; and

(b) no liabilities are affected by anything done under a preceding subsection of this section or under section 169; and

(c) nothing so done affects the body corporate concerned with notice of a trust.

(11) A person must, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so holds the shares.

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

1072F Registration of transfers *(replaceable rule—see section 135)*

(1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

(2) The directors are not required to register a transfer of shares in the company unless:

(a) the transfer and any share certificate have been lodged at the company's registered office; and

(b) any fee payable on registration of the transfer has been paid; and

(c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

(3) The directors may refuse to register a transfer of shares in the company if:

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(a) the shares are not fully-paid; or
(b) the company has a lien on the shares.

(4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any one calendar year.

1072G Additional general discretion for directors of proprietary companies to refuse to register transfers *(replaceable rule—see section 135)*

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

1072H Notices relating to non-beneficial and beneficial ownership of shares

(1) If, upon registration of a transfer of shares in a company, the transferee would hold non-beneficially particular shares (the ***relevant shares***), being all or any of the shares to which the transfer relates, the transferee must only lodge the instrument of transfer with the company for registration of the transfer if the instrument of transfer includes a notice that:
(a) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially; and
(b) sets out particulars of the relevant shares; and
(c) is signed by or on behalf of the transferee.

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

(2) The fact that a person has failed to comply with subsection (1) does not affect the validity of the registration of a transfer of shares in a company.

(3) If:

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(a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1)(c) and is lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds beneficially particular shares (in this subsection called the ***relevant shares***), being all or any of the shares particulars of which are set out in the notice;

then, before the end of 14 days beginning on registration of the transfer, the transferee must, whether or not the transferee begins before the end of that period to hold all or any of the relevant shares non-beneficially, give to the company a notice that:

(c) sets out the name and address of the transferee; and

(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially; and

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

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

(4) If:

(a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and

(b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this subsection called the ***relevant shares***), being all or any of the shares to which the instrument of transfer relates (other than, in a case in which the instrument of transfer includes a notice of the kind referred to in paragraph (1)(c), the shares particulars of which are set out in the notice);

then, before the end of 14 days beginning on registration of the transfer, the transferee must, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the transferee; and

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(d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially; and

(e) sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the transferee.

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

(5) If:

(a) at a particular time, a person holds beneficially shares in a company; and

(b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the ***relevant shares***), being all or any of the shares referred to in paragraph (a);

then, before the end of 14 days beginning at that time, the person must, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

(c) sets out the name and address of the person; and

(d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially; and

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

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

(6) If:

(a) at a particular time, a person holds non-beneficially shares in a company; and

(b) immediately after that time, the person holds beneficially particular shares (in this subsection called the ***relevant shares***), being all or any of the shares referred to in paragraph (a);

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then, before the end of 14 days beginning at that time, the person must, whether or not the person recommences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:

(c) sets out the name and address of the person; and

(d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially; and

(e) specifies that time and sets out particulars of the relevant shares; and

(f) is signed by or on behalf of the person.

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

(7) In proceedings under, or for an offence based on a provision of, this section, a person is, unless the contrary is established, presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.

(8) For the purposes of this section and of section 169:

(a) if, at a particular time, a person:

(i) holds shares in a capacity other than that of sole beneficial owner; or

(ii) without limiting the generality of subparagraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person;

the first-mentioned person is taken to hold the shares non-beneficially at that time; and

(b) a person who holds shares at a particular time is taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

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Division 3—Transfer of certain securities effected otherwise than through a prescribed CS facility

1073A Application of the Division to certain securities

(1) This Division applies to the following securities:

(a) shares in a company;

(b) debentures of a company;

(c) interests in a registered scheme, being interests that are covered by regulations made for the purposes of this paragraph;

(d) rights (whether existing or future, and whether contingent or not) to acquire, by way of issue, a security referred to in paragraph (a), (b) or (c) (whether or not on payment of any money or for any other consideration);

(da) a CGS depository interest;

(db) a simple corporate bonds depository interest;

(e) securities declared by ASIC under section 1073E to be securities to which the regulations apply.

(2) This Division applies to an interest in a registered scheme as if:

(a) references to a company were instead references to the responsible entity of the registered scheme; and

(b) references to the constitution of a company were instead references to the constitution of the registered scheme; and

(c) references to members of a company were instead references to members of the registered scheme.

1073B Definitions

In this Division, unless the contrary intention appears:

transfer of a financial product means:

(a) a change in the ownership of the financial product; or

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(b) if the financial product is a right—the renunciation and transfer of the right.

transfer document for the transfer of a financial product means a document, or electronic message or other electronic communication, by which the financial product is transferred.

1073C Application of Division to certain bodies as if they were companies

This Division applies to the following as if they were companies:

(a) a body corporate (other than a company) that:
  (i) is incorporated in a State or Territory in this jurisdiction; and
  (ii) is prescribed by regulations made for the purposes of this subparagraph;

(b) an unincorporated society, association or body, that:
  (i) is formed or established in a State or Territory in this jurisdiction; and
  (ii) is included in the official list of a licensed market; and
  (iii) is prescribed by regulations made for the purposes of this paragraph.

1073D Regulations may govern transfer of certain securities

(1) The regulations may make provision in relation to transfers of securities that are not effected through a prescribed CS facility.

Regulations may make provision in relation to the transfer of securities

(2) The regulations may specify:

(a) the way in which a security may be transferred, including:
  (i) the forms (if any) to be used; and
  (ii) what amounts to a proper or sufficient transfer of a security; and

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(b) the legal effect of a proper or sufficient transfer of a security; and

(c) the rights, liabilities and obligations of a person in relation to the transfer of a security, including the rights, liabilities and obligations of:

(i) the transferor and transferee; and

(ii) any other person involved in the transfer; and

(d) the circumstances in which a person will be taken to be involved in the transfer of a security for the purposes of the regulations; and

(e) the circumstances in which a person is required not to register, or give effect to, a transfer.

Sufficient transfer

(3) Without limiting paragraph (2)(a), the regulations may:

(a) specify the requirements for a document to be a sufficient transfer of a security; and

(b) provide that a document meeting specified requirements may be used:

(i) as a proper instrument of transfer for the purposes of section 1071B; and

(ii) as an instrument of transfer for the purposes of any other law or instrument governing or relating to the security.

Rights and liabilities in relation to transfer

(4) Without limiting paragraph (2)(c), the regulations may provide that a person:

(a) is taken to have:

(i) agreed to do, to accept or to be bound by a particular thing; or

(ii) done a particular thing; or

(iii) given particular warranties; or

(iv) done particular things on behalf of another person; or

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(b) is taken to be authorised to do particular things on behalf of another person; or

(c) is taken to be bound by a particular act; or

(d) is liable to indemnify another person against particular loss or damage; or

(e) is entitled to assume a particular matter without inquiry.

Person involved in transfer

(5) Without limiting paragraph (2)(d), the regulations may provide for any of the following to be taken to be involved in a transfer of securities:

(a) a person who carries on a financial services business and who arranges for the transfer; and

(b) a person who operates a financial market on which the securities are sold; and

(c) a person who operates a licensed CS facility through which the securities are transferred; and

(d) a company with which the transfer is lodged for registration; and

(e) an associate of a person who is involved in the transfer.

The regulations may specify the circumstances in which a person will be taken to be an associate of another person for the purposes of the regulations.

Offences

(6) Without limiting subsection (2), the regulations may provide for offences in relation to:

(a) the use, or purported use, of a stamp of a person who:

(i) carries on a financial services business; or

(ii) operates a financial market; or

(iii) operates a clearing and settlement facility; or

(b) the execution of a document, or the transmission of an electronic message or other electronic communication, that may be used as a sufficient transfer under this Division; or

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(c) the lodgment of a transfer document or title document for a security with the issuer of the security; or

(d) the use of identifying codes in relation to transfers of securities.

Jurisdiction

(7) The regulations may apply to conduct engaged in in this jurisdiction or elsewhere.

1073E ASIC may extend regulations to securities not otherwise covered

(1) ASIC may, by writing, declare that:

(a) particular securities; or

(b) a particular class of securities;

are securities to which this Division, and regulations made for the purposes of section 1073D, apply.

Note: The securities in respect of which a declaration under this subsection may be made are not limited to those covered by paragraphs 1073A(1)(a) to (db).

(2) ASIC may specify in the declaration modifications of the regulations that are to have effect in relation to the application of this Division and the regulations to the securities, or the class of securities, to which the declaration relates.

(3) A declaration under subsection (1) has effect accordingly.

(4) ASIC must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.

(5) If conduct (including an omission) of a person would not have constituted an offence if a particular declaration under subsection (1) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the gazettal requirement of subsection (4)):

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(a) the text of the declaration was made available by ASIC on the internet; or

(b) ASIC gave written notice setting out the text of the declaration to the person.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.

1073F Operation of this Division and regulations made for its purposes

(1) This section deals with the effect of the provisions of:

(a) this Division; and

(b) the regulations made for the purposes of this Division.

(2) The provisions apply in relation to a transfer of securities despite anything to the contrary in:

(a) this Act (other than this Division); or

(b) another law, or instrument, relating to the transfer of the securities.

(3) Except as provided in the provisions, the provisions do not affect the terms and conditions on which securities are sold.

(4) Nothing in the provisions affects any right of the issuer of a security to refuse:

(a) to acknowledge or register a person as the holder of a security; or

(b) to issue a security to a person;

on a ground other than an objection to the form of document, or electronic message or other electronic communication, that is lodged with or sent to the issuer and purports to transfer the security to the person.

(5) The registration of a transfer, or the issue, of a security by means of a transfer effected in accordance with regulations made for the

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purposes of this Division does not breach any law, constitution, trust deed or other instrument relating to financial products.

(6) Nothing in the provisions prevents or affects the use of:
  (a) any other form of transfer of securities; or
  (b) any other mode of executing a document transferring securities;

that is otherwise permitted by law.

(7) A transfer of a security by or to a trustee or legal representative may be effected by means of a transfer in accordance with regulations made for the purposes of this Division. The transfer may be so effected despite the means required by any law or the provisions of the instrument (if any) creating, or having effect in relation to, the trust or will under which the trustee or legal representative is appointed.

(8) In subsection (7):

legal representative means:
  (a) the executor, original or by representation, of a will of a dead person; or
  (b) the administrator of the estate of a dead person.

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Division 4—Transfer of financial products effected through prescribed CS facility

1074A Financial products to which this Division applies

This Division only applies in relation to particular financial products and a prescribed CS facility if regulations made for the purposes of this section provide that all financial products, or a class of financial products that includes the financial products, are financial products to which this Division applies in relation to the prescribed CS facility (whether or not they are also products to which this Division applies in relation to other prescribed CS facilities).

1074B Definitions

In this Division, unless the contrary intention appears:

transfer of a financial product has the meaning given by section 1073B.

transfer document for the transfer of a financial product has the meaning given by section 1073B.

1074C Operating rules of prescribed CS facility may deal with transfer of title

(1) The operating rules of a prescribed CS facility may deal with the transfer of financial products through the facility.

(2) Without limiting subsection (1), the operating rules of a prescribed CS facility may deal with the way in which a financial product may be transferred, including specifying:

(a) the financial products that may be transferred through the facility; and

(b) how financial products are transferred through the facility; and

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(c) the person or body (if any) authorised to determine whether a transfer substantially complies with the operating rules of the facility.

(3) Nothing in subsection (1) or (2) confers a discretion to deal with a matter in the operating rules of a prescribed CS facility if there is an obligation under section 822A for that matter to be dealt with in those rules.

1074D Valid and effective transfer if operating rules complied with

(1) If a transfer of a financial product is effected:
(a) through a prescribed CS facility; and
(b) in accordance with the operating rules of the facility;
the transfer is valid and effective for the purposes of any law or instrument governing or relating to the way in which the financial product may be transferred.

(2) For the purposes of this section, the transfer of a financial product is taken to be, and always to have been, effected in accordance with the operating rules of a prescribed CS facility if the person or body authorised to do so under those rules determines that the transfer substantially complies with those rules.

1074E Regulations may govern transfer of financial products in accordance with operating rules of prescribed CS facility

Transfers that regulations may deal with

(1) The regulations may make provision in relation to transfers of financial products effected:
(a) through a prescribed CS facility; and
(b) in accordance with the operating rules of the facility.

Regulations may make provision in relation to the transfer of financial products

(2) The regulations may specify:

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(a) the legal effect of a transfer of a financial product through the facility in accordance with its operating rules; and

(b) the rights, liabilities and obligations of a person in relation to the transfer of a financial product through the facility, including the rights, liabilities and obligations of:

(i) the transferor and transferee; and

(ii) any other person involved in the transfer; and

(c) the circumstances in which a person will be taken to be involved in the transfer of a financial product for the purposes of the regulations; and

(d) the circumstances in which a person is required not to register, or give effect to, a transfer through the facility; and

(e) the circumstances in which a person is required not to refuse or fail to register, or give effect to, a transfer through the facility; and

(f) the circumstances in which a transfer through the facility will be taken to have been made in accordance with the rules of a prescribed CS facility; and

(g) the circumstances in which a person will be taken to be the holder of a financial product for the purposes of:

(i) a meeting; or

(ii) paying or transferring money or property to a person because the person holds or held a financial product; or

(iii) issuing a financial product to a person because the person holds or held a financial product; or

(iv) conferring a right on a person because the person holds or held a financial product.

Rights and liabilities in relation to transfer

(3) Without limiting paragraph (2)(b), the regulations may provide that a person:

(a) is taken to have:

(i) agreed to do, to accept or to be bound by a particular thing; or

(ii) done a particular thing; or

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(iii) given particular warranties; or
(iv) done particular things on behalf of another person; or

(b) is taken to be authorised to do particular things on behalf of another person (even if the person has died); or

(c) is taken to be bound by a particular act; or

(d) is liable to indemnify another person against particular loss or damage; or

(e) is entitled to assume a particular matter without inquiry.

Person involved in transfer

(4) Without limiting paragraph (2)(c), the regulations may provide for any of the following to be taken to be involved in a transfer of a financial product:

(a) a person who carries on a financial services business and who arranges for the transfer;

(b) a person who operates a financial market on which the financial product is sold;

(c) a person who operates a licensed CS facility through which the product is transferred;

(d) the issuer of the product;

(e) an associate of a person who is involved in the transfer.

The regulations may specify the circumstances in which a person will be taken to be an associate of another person for the purposes of the regulations.

Offences

(5) Without limiting subsection (2), the regulations may provide for offences in relation to:

(a) the lodgment of a transfer document or title document for a financial product with the issuer of the product; or

(b) the use of identifying codes in relation to transfers of financial products; or

(c) contraventions of the operating rules of a prescribed CS facility.

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Civil liability

(6) The regulations may also:

(a) provide for the liability of a person who contravenes the operating rules of a prescribed CS facility to compensate a person for loss or damage the person suffers because of the conduct engaged in in contravention of those rules; and

(b) specify the period within which an action for compensation must be begun.

(7) The regulations do not affect a liability that a person has under any other law.

Jurisdiction

(8) The regulations may apply to conduct engaged in in this jurisdiction or elsewhere.

1074F Issuer protected from civil liability for person's contravention of prescribed CS facility's certificate cancellation rules

If:

(a) a person contravenes the certificate cancellation provisions of a prescribed CS facility in relation to the transfer of a particular financial product through the facility; and

(b) the issuer of the financial product is not involved in the contravention;

the issuer is not liable to an action or other proceeding for damages in relation to the person's contravention.

1074G Operation of this Division and regulations made for its purposes

(1) This section deals with the effect of the provisions of:

(a) this Division; and

(b) the regulations made for the purposes of this Division.

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(2) The provisions apply in relation to a transfer of financial products despite anything to the contrary in:
  (a) this Act (other than this Division); or
  (b) another law, or instrument, relating to the transfer of the financial products.

(3) Except as provided in the provisions, the provisions do not affect the terms and conditions on which financial products are sold.

(4) Nothing in the provisions (other than in regulations made for the purpose of paragraph 1074E(2)(e)) affects any right of the issuer of a financial product to refuse:
  (a) to acknowledge or register a person as the holder of a financial product; or
  (b) to issue a financial product to a person;
on a ground other than an objection to the form of document, or electronic message or other electronic communication, that is lodged with or sent to the issuer and purports to transfer the financial product to the person.

(5) The registration of a transfer, or the issue, of a financial product by means of a transfer effected in accordance with the operating rules of a prescribed CS facility does not breach any law, constitution, trust deed or other instrument relating to financial products.

(6) Nothing in the provisions (other than in regulations made for the purpose of paragraph 1074E(2)(d)) prevents or affects the use of:
  (a) any other form of transfer of financial products; or
  (b) any other mode of executing a document transferring financial products;
that is otherwise permitted by law.

(7) A transfer of a financial product by or to a trustee or legal representative may be effected by means of a transfer in accordance with the operating rules of a prescribed CS facility despite any law or the provisions of the instrument (if any) creating, or having effect in relation to, the trust or will under which the trustee or legal representative is appointed.

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(8) In subsection (7):

legal representative means:

(a) the executor, original or by representation, of a will of a dead person; or

(b) the administrator of the estate of a dead person.

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Division 5—Exemptions and modifications

1075A ASIC's power to exempt and modify

(1) ASIC may:

(a) exempt specified financial products, or a specified class of financial products, from a provision of this Part; or

(b) declare that this Part applies to specified financial products, or a specified class of financial products, as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) ASIC's power to grant an exemption or make a declaration under this section may be exercised in relation to financial products, or a class of financial products, only if ASIC is satisfied that:

(a) if the exemption were granted or the declaration were made, the interests of the holders of those financial products, or of financial products in that class, would continue to have adequate protection; and

(b) the granting of the exemption or the making of the declaration would make the transfer of those financial products, or of financial products in that class, more efficient.

(3) The exemption or declaration may:

(a) apply to all or specified provisions of this Part; and

(b) apply to all persons, specified persons, or a specified class of persons; and

(c) relate to all financial products, specified financial products or a specified class of financial products; and

(d) relate to any other matter generally or as specified.

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

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(5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

(6) If conduct (including an omission) of a person would not have constituted an offence if a particular declaration under paragraph (1)(b) had not been made, that conduct does not constitute an offence unless, before the conduct occurred (in addition to complying with the gazettal requirement of subsection (5)):

(a) the text of the declaration was made available by ASIC on the internet; or

(b) ASIC gave written notice setting out the text of the declaration to the person.

In a prosecution for an offence to which this subsection applies, the prosecution must prove that paragraph (a) or (b) was complied with before the conduct occurred.

(7) For the purposes of this section, the ***provisions of this Part*** include:

(a) definitions in this Act, or in the regulations, as they apply to references in this Part; and

(b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

Note: Because of section 761H, a reference to this Part or Part 10.2 also includes a reference to regulations or other instruments made for the purposes of this Part or Part 10.2 (as the case requires).

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Part 7.12—Miscellaneous

Division 1—Qualified privilege

1100A Qualified privilege for information given to ASIC

(1) A person has qualified privilege in respect of the giving of any information to ASIC that the person:

(a) is required to give under this Chapter or regulations made for the purposes of this Chapter; or

(b) gives in relation to a contravention or suspected contravention of subsection 798H(1) (complying with market integrity rules), 908CF(1) (complying with rules about financial benchmarks) or 981M(1) (complying with client money reporting rules).

(2) A person or body that is:

(a) a market licensee; or

(b) a CS facility licensee; or

(c) a person acting under an arrangement to operate a licensed market or supervise a licensed CS facility; or

(d) a foreign person or body responsible for the supervision of the operation in a foreign country of a financial market or clearing and settlement facility; or

(e) a benchmark administrator licensee;

also has qualified privilege in respect of the giving of any information to ASIC in connection with the performance or exercise of ASIC's functions or powers under, or in relation to, this Chapter or regulations made for the purposes of this Chapter.

(3) A person or body that has qualified privilege under subsection (1) or (2) in respect of conduct is also not liable for any action based on breach of confidence in relation to that conduct.

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1100B Qualified privilege for the conduct of market licensees and CS facility licensees

(1) A market licensee, or CS facility licensee, has qualified privilege in respect of actions (including the giving of information) done in connection with:

(a) the performance, or purported performance, of the licensee's obligations under this Act; or

(b) the exercise or performance, or purported exercise or performance, of the licensee's powers, functions or obligations under the operating rules of the market or facility concerned, if the licensee believes, on reasonable grounds, that the action is necessary:

(i) in the case of a market licensee—to ensure the market operates in a fair, orderly and transparent way; or

(ii) in the case of a CS facility licensee—to ensure the facility's services are provided in a fair and effective manner or to reduce systemic risk in the provision of those services.

(2) A market licensee, or CS facility licensee, has qualified privilege in respect of the giving of information:

(a) to the operator of a financial market (regardless of where the market is operated) for the purpose of assisting the operator to ensure that market operates in a fair, orderly and transparent way; or

(b) to the operator of a clearing and settlement facility (regardless of where the facility is operated) for the purpose of assisting the operator to ensure that facility's services are provided in a fair and effective manner or to reduce systemic risk.

(3) Despite subsections (1) and (2), a market licensee does not have qualified privilege in respect of the giving of information if:

(a) an entity included on the market's official list gave the information to the licensee under a provision of this Act or of the market's operating rules; and

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(b) this Act, or those rules, expressly or impliedly authorised the entity to limit the purposes for which it gave the information to the licensee; and

(c) when giving the information to the licensee, the entity limited those purposes as so authorised; and

(d) the giving of the information by the licensee is not solely for one or more of the limited purposes.

(4) The protections given by this section apply to the giving of information whether or not the recipient of the information has an interest in the information.

1100C Qualified privilege for information given to market licensees and CS facility licensees etc.

A person has qualified privilege in respect of the giving of information if:

(a) the person gives the information to any of the following persons or bodies:

(i) a market licensee;

(ii) a CS facility licensee;

(iii) a person acting under an arrangement to operate a licensed market or supervise a licensed CS facility;

(iv) a foreign person or body responsible for the supervision of the operation in a foreign country of a financial market or clearing and settlement facility; and

(b) the information is in relation to a contravention or suspected contravention of this Act or the operating rules of the market or facility concerned.

1100D Extension of protections given by this Division

The protections given by this Division to a person or body in respect of conduct extend to officers, employees and representatives of the person or body.

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Division 2—Other matters

1101A Approved codes of conduct

(1) ASIC may, on application, approve codes of conduct that relate to any aspect of the activities of:

(a) financial services licensees; or

(b) authorised representatives of financial services licensees; or

(c) issuers of financial products;

being activities in relation to which ASIC has a regulatory responsibility. The approval must be in writing.

(2) ASIC may, on application, approve a variation of an approved code of conduct. The approval must be in writing.

(3) ASIC must not approve a code of conduct, or a variation of a code of conduct, unless it is satisfied that:

(a) the code, or the code as proposed to be varied, is not inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and

(b) it is appropriate to approve the code, having regard to the following matters, and to any other matters that ASIC considers are relevant:

(i) the ability of the applicant to ensure that persons who hold out that they comply with the code will comply with the code as in force from time to time; and

(ii) the desirability of codes of conduct being harmonised to the greatest extent possible.

(4) ASIC may revoke an approval of a code of conduct:

(a) on application by the person who applied for the approval; or

(b) if ASIC is no longer satisfied as mentioned in subsection (3).

The revocation must be in writing.

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1101B Power of Court to make certain orders

Court's power to make orders in relation to certain contraventions

(1) The Court may make such order, or orders, as it thinks fit if:

(a) on the application of ASIC, it appears to the Court that a person:

(i) has contravened a provision of this Chapter, or any other law relating to dealing in financial products or providing financial services; or

(ii) has contravened a condition of an Australian market licence, Australian CS facility licence, Australian derivative trade repository licence or Australian financial services licence; or

(iii) has contravened a provision of the operating rules, or the compensation rules (if any), of a licensed market or of the operating rules of a licensed CS facility; or

(v) has contravened a condition on an exemption from the requirement to hold an Australian market licence or an Australian CS facility licence; or

(vi) is about to do an act with respect to dealing in financial products or providing a financial service that, if done, would be such a contravention; or

(b) on the application of a market licensee, it appears to the Court that a person has contravened the operating rules, or the compensation rules (if any), of a licensed market operated by the licensee; or

(c) on the application of a CS facility licensee, it appears to the Court that a person has contravened a provision of the operating rules of a licensed CS facility operated by the licensee; or

(d) on the application of a person aggrieved by an alleged contravention by another person of subsection 798H(1) (complying with market integrity rules) or 981M(1) (complying with client money reporting rules) or a provision of the operating rules, or the compensation rules (if any), of a licensed market, or subsection 908CF(1) (complying with

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rules about financial benchmarks), it appears to the Court that:

(i) the other person did contravene the provision; and

(ii) the applicant is aggrieved by the contravention.

However, the Court can only make such an order if the Court is satisfied that the order would not unfairly prejudice any person.

Note: For examples of orders the Court could make, see subsection (4).

(2) For the purposes of paragraph (1)(d), if a body corporate contravenes a provision of the operating rules of a licensed market, a person who holds financial products of the body corporate that are able to be traded on the licensed market is taken to be a person aggrieved by the contravention.

(3) Subsection (2) does not limit the circumstances in which a person may be aggrieved by a contravention for the purposes of paragraph (1)(d).

Examples of orders the Court may make

(4) Without limiting subsection (1), some examples of orders the Court may make under subsection (1) include:

(a) an order restraining a person from carrying on a business, or doing an act or classes of acts, in relation to financial products or financial services, if the person has persistently contravened, or is continuing to contravene:

(i) a provision or provisions of this Chapter; or

(ii) a provision or provisions of any other law relating to dealing in financial products or providing financial services; or

(iii) a condition on an Australian market licence, Australian CS facility licence, Australian derivative trade repository licence or Australian financial services licence; or

(v) a condition of an exemption from a requirement to hold an Australian market licence or Australian CS facility licence; or

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(vi) a provision of the operating rules, or the compensation rules (if any), of a licensed market or of the operating rules of a licensed CS facility; or

(b) an order giving directions about complying with a provision of the market integrity rules, of the derivative transaction rules, of the derivative trade repository rules or of the client money reporting rules, or a provision of the operating rules, or the compensation rules (if any), of a licensed market or of the operating rules of a licensed CS facility, or a provision of the financial benchmark rules or the compelled financial benchmark rules, to a person (or the directors of the body corporate, if the person is a body corporate) who contravened the provision; and

(c) an order requiring a person to disclose to the public or to specified persons, in accordance with the order, specified information that the person to whom the order is directed possesses or to which that person has access, if the person:

(i) contravened a provision of the market integrity rules, of the derivative transaction rules, of the derivative trade repository rules or of the client money reporting rules, or a provision of the operating rules of a licensed market, or a provision of the financial benchmark rules or the compelled financial benchmark rules, or a condition relating to the disclosure or provision of information; or

(ii) was involved in such a contravention; and

(d) an order requiring a person to publish advertisements in accordance with the order at that person's expense, if the person:

(i) contravened a provision of the market integrity rules, of the derivative transaction rules, of the derivative trade repository rules or of the client money reporting rules, or a provision of the operating rules of a licensed market, or a provision of the financial benchmark rules or the compelled financial benchmark rules, or a condition relating to the disclosure or provision of information; or

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(ii) was involved in such a contravention; and

(e) an order restraining a person from acquiring, disposing of or otherwise dealing with any financial products that are specified in the order; and

(f) an order restraining a person from providing any financial services that are specified in the order; and

(g) an order appointing a receiver of property (see subsection (9)) of a financial services licensee; and

(h) an order declaring a contract relating to financial products or financial services to be void or voidable; and

(i) an order directing a person to do or refrain from doing a specified act, if that order is for the purpose of securing compliance with any other order under this section; and

(j) any ancillary order considered to be just and reasonable in consequence of the making of an order under any of the preceding provisions of this subsection.

Interim orders

(5) Before considering an application to the Court under subsection (1), the Court may make an interim order of the kind applied for to apply pending the determination of the application, if in the opinion of the Court it is desirable to do so.

(6) However, if ASIC, a market licensee or a CS facility licensee applies for an order under subsection (1), the Court must not require the applicant, or any other person, to give any undertakings as to damages as a condition of making an interim order under subsection (5).

Power to give notice of applications

(7) Before making an order under subsection (1), the Court may do either or both of the following:

(a) direct that notice of the application be given to such persons as it thinks fit;

(b) direct that notice of the application be published in such manner as it thinks fit.

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Powers of receivers appointed under Court orders

(8) A person appointed by order of the Court under subsection (1) as a receiver of the property (see subsection (12)) of a financial services licensee:

(a) may require the financial services licensee to:

(i) deliver to the person any property of which the person has been appointed receiver; or

(ii) give to the person all information concerning that property that may reasonably be required; and

(b) may acquire and take possession of any property of which the person has been appointed receiver; and

(c) may deal with any property that the person has acquired, or of which the person has taken possession, in any way in which the financial services licensee might lawfully have dealt with the property; and

(d) has such other powers in respect of the property as the Court specifies in the order.

Duty to comply with order

(10) A person must not, without reasonable excuse, contravene:

(a) an order under this section; or

(b) a requirement imposed under paragraph (8)(a) or (8)(d) by a receiver appointed by order of the Court under subsection (1).

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

Power to rescind or vary order

(11) The Court may rescind or vary an order made by it under this section or suspend the operation of such an order.

(12) In this section:

compensation rules has the same meaning as in Part 7.5.

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property, in relation to a financial services licensee, includes:

(a) money; or

(b) financial products; or

(c) documents of title to financial products; or

(d) other property;

entrusted to, or received on behalf of, any other person by the financial services licensee or another person in the course of, or in connection with, a financial services business carried on by the financial services licensee.

1101C Preservation and disposal of records etc.

Registers

(1) A person who is required by a provision of this Chapter to keep a register in relation to a business carried on by the person must preserve it for 5 years after the day on which the last entry was made in the register.

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

Financial records

(2) A person who is required by a provision of this Chapter to keep any financial record in relation to a business carried on by the person must preserve it for 7 years after the transactions covered by the record are completed.

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

Other records

(3) A person who is required by a provision of this Chapter or the regulations to keep any other record must preserve it for 5 years after the day on which the last entry was made in the record.

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

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Exceptions

(4) Registers and records must be preserved in accordance with this section (even if the person stops carrying on the business to which they relate during the period for which they must be preserved), unless:

(a) the regulations provide that those documents, or a class to which they belong, need not be preserved; and

(b) any conditions specified in or under those regulations have been complied with.

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

1101D Destruction of records by ASIC

ASIC may destroy or otherwise dispose of any document that is lodged under, or for the purposes of, a provision of this Chapter if:

(a) ASIC is of the opinion that it is no longer necessary or desirable to retain it; and

(b) it has been in the possession of ASIC for such period as is specified in the regulations, either generally or in relation to a particular document or class of documents.

1101E Concealing etc. of books

(1) A person must not:

(a) conceal, destroy, mutilate or alter a book:

(i) relating to the business carried on by a financial services licensee or an authorised representative of such a licensee; or

(ii) required under a provision of this Chapter to be kept by a market licensee, a CS facility licensee, a financial services licensee or an authorised representative of a financial services licensee; or

(b) send such a book out of this jurisdiction.

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

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(2) In any proceedings against a person for an offence based on subsection (1), it is a defence if the person did not act with intent to:

(a) defraud; or

(b) defeat the objects of this Chapter; or

(c) prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power, under this Chapter.

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

1101F Falsification of records

(1A) A person must not engage in conduct that results in the falsification of:

(a) a book required to be kept by a provision of this Chapter; or

(b) a register or any accounting or other record referred to in section 1101C.

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

(1) If matter that is used, or intended to be used, in connection with:

(a) the keeping of a book required to be kept by a provision of this Chapter; or

(b) a register or any accounting or other record referred to in section 1101C;

is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person must not:

(c) record or store by means of that device matter that the person knows to be false in a material particular or materially misleading; or

(d) destroy, remove or falsify matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or

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(e) fail to record or store matter by means of that device, with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter.

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

(2) In any proceedings against a person for an offence based on subsection (1A) or (1), it is a defence if it is proved that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

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

1101G Precautions against falsification of records

A person required by a provision of this Chapter to keep a book or record must take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

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

1101GA How Part 9.3 applies to books required to be kept by this Chapter etc.

(1) In this section:

Chapter 7 book means:

(a) a book (by whatever name it is known) that a provision of this Chapter requires to be kept; or

(b) a document lodged under, or for the purposes of, a provision of this Chapter; or

(c) a book relating to the business carried on by a financial services licensee or an authorised representative of a financial services licensee; or

(d) a register or accounting record referred to in section 1101C.

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(2) Part 9.3 does not apply in relation to a Chapter 7 book except as provided in the following paragraphs:
  (a) section 1303 applies to a Chapter 7 book;
  (b) section 1305, and subsections 1306(5) and (6), apply to a Chapter 7 book as if references in section 1305 to a body corporate were instead references to a person;
  (c) regulations made for the purposes of this paragraph may provide that other provisions of Part 9.3 apply in relation to a Chapter 7 book, or a class of Chapter 7 books, with such modifications (if any) as are specified in the regulations.

1101H Contravention of Chapter does not generally affect validity of transactions etc.

(1) Subject to subsection (2), a failure to comply with any requirement of this Chapter (including requirements in regulations made for the purposes of this Chapter) does not affect the validity or enforceability of any transaction, contract or other arrangement.

(2) Subsection (1) has effect subject to any express provision to the contrary in:
  (a) this Chapter; or
  (b) regulations made for the purposes of another provision of this Chapter; or
  (c) regulations referred to in subsection (3).

(3) Regulations made for the purposes of this subsection may provide that a failure to comply with a specified requirement referred to in subsection (1) has a specified effect on the validity or enforceability of a transaction, contract or arrangement.

1101I Gaming and wagering laws do not affect validity of contracts relating to financial products

Despite any law of a State or Territory in this jurisdiction about gaming and wagering:
  (a) a person may enter into a contract that is a financial product; and

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(b) the contract is valid and enforceable.

1101J Delegation

(1) The Minister may delegate all or any of the Minister's powers under this Chapter to:

(a) ASIC; or

(b) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or

(c) a staff member of ASIC who is a senior staff member (within the meaning given by subsection 5(1) of that Act).

(2) However, the Minister must not delegate the Minister's powers under section 1023H, 1023J, 1023K or 1023M (which deal with product intervention orders) to a person other than ASIC.

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Chapter 8—Mutual recognition of securities offers

Part 8.1—Preliminary

1200A Definitions

(1) In this Chapter:

foreign recognition scheme means the provisions of a law of a recognised jurisdiction that are prescribed by the regulations as comprising a foreign recognition scheme for the purposes of this Chapter.

law of a recognised jurisdiction includes law of part of a recognised jurisdiction.

offer securities includes:

(a) invite applications for the issue of securities; and

(b) invite offers to purchase securities.

offeror, of securities, means:

(a) in relation to an offer of a kind prescribed by the regulations—a person of a kind prescribed by the regulations; and

(b) otherwise—the person who has the capacity, or who agrees, to issue or transfer the securities if the offer is accepted.

recognised jurisdiction means a foreign country prescribed by the regulations as a recognised jurisdiction.

recognised offer has the meaning given by section 1200B.

securities means:

(a) a share in a body; or

(b) a debenture of a body; or

(c) an interest in a managed investment scheme; or

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(d) a legal or equitable right or interest in a security or interest covered by paragraph (a), (b) or (c); or

(e) an option to acquire, by way of issue, an interest or right covered by paragraph (a), (b), (c) or (d).

(2) For the purposes of this Chapter, paragraph (b) of the definition of ***debenture*** in section 9 is taken to include a reference to an undertaking by an institution, authorised by or under the law of a recognised jurisdiction as a deposit-taking institution (however described), to repay money deposited with it, or lent to it, in the ordinary course of its banking business.

(3) For the purposes of this Chapter:

(a) paragraph (c) of the definition of ***managed investment scheme*** in section 9 is taken to include a reference to a partnership that, if this Act applied to it, would not need to be incorporated or formed under an Australian law because of regulations made for the purposes of subsection 115(2); and

(b) paragraph (i) of the definition of ***managed investment scheme*** in section 9 is taken to include a reference to a scheme operated by an institution, authorised by or under the law of a recognised jurisdiction as a deposit-taking institution (however described), in the ordinary course of its banking business.

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Part 8.2—Foreign offers that are recognised in this jurisdiction

Division 1—Recognised offers

1200B When an offer is a recognised offer

(1) An offer of securities becomes a ***recognised offer***, in relation to a recognised jurisdiction, on the day the offer is first made in this jurisdiction, if the conditions in section 1200C are met in relation to the offer on that day.

(2) The offer continues to be a recognised offer after that day, even if a condition in section 1200C ceases to be met after that day.

(3) If, at the time an offer is first made in this jurisdiction, the offer would be a recognised offer but for a failure to meet the condition in subsection 1200C(5) or (6) that ASIC is satisfied is minor or technical, ASIC may declare in writing that the offer is a recognised offer within the meaning of subsection (1).

(4) If ASIC makes a declaration under subsection (3) in relation to an offer, the condition is taken to have been met at the time the offer was first made in this jurisdiction.

(5) A declaration under subsection (3) is not a legislative instrument.

1200C Conditions that must be met to be a recognised offer

(1) For the purposes of subsection 1200B(1), the conditions that must be met are those set out in this section.

(2) The person offering the securities must be:
  (a) a person incorporated by or under the law of the recognised jurisdiction; or
  (b) a natural person resident in the recognised jurisdiction; or

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(c) a legal person established by or under the law of the recognised jurisdiction; or

(d) a person of a kind prescribed by regulations made in relation to the recognised jurisdiction for the purposes of this paragraph.

(3) The person offering the securities must not be banned under section 1200P.

(4) The offer must be an offer of a kind prescribed by the regulations in relation to the recognised jurisdiction.

(5) At least 14 days before the day on which the offer is first made in this jurisdiction, the person making the offer must have lodged with ASIC:

(a) a notice in the prescribed form (if any) of the person's intention to make a recognised offer; and

(b) the documents and information required to be lodged under section 1200D.

(6) If:

(a) before the offer is first made in this jurisdiction; and

(b) after a document or information was lodged with ASIC under section 1200D;

either:

(c) an event of a kind mentioned in the table in subsection 1200G(9) happened; or

(d) the address for service in this jurisdiction of the person proposing to offer the securities changed;

the person making the offer must have lodged with ASIC:

(e) if paragraph (c) applies—the document or information that would have been required to have been lodged under subsection 1200G(9) for the event if that subsection had applied; and

(f) if paragraph (d) applies—the changed address for service.

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1200D Required documents and information

(1) For the purposes of paragraph 1200C(5)(b), the documents and information required to be lodged under this section are:

(a) any offer document required by the law of the recognised jurisdiction; and

(b) the warning statement that is to be included with an offer document in this jurisdiction (which, if regulations are in force for the purposes of section 1200E, must comply with those regulations); and

(c) unless paragraph (d) applies—the constitution of the body whose securities are to be the subject of the offer; and

(d) if the securities that are to be the subject of the offer are interests in a managed investment scheme, rights or interests in such interests, or options to acquire such interests by way of issue—the constituent document of the scheme; and

(e) details, in the prescribed form (if any), of any exemption from the securities law of the recognised jurisdiction that applies, but not exclusively, to the offer or to the offeror in relation to the offer; and

(f) if the offeror is relying on subsection (2)—notice of the document or information that is not being lodged because of the offeror's reliance on that subsection; and

(g) an address for service in this jurisdiction, in the prescribed form (if any); and

(h) a copy of any exemption from the securities law of the recognised jurisdiction that applies exclusively to the offer or to the offeror; and

(i) any other documents or information prescribed by the regulations.

(2) For the purposes of this Chapter, a person is taken to have lodged a document or information under this section if:

(a) the document or information has been lodged under Division 2 or 3 of Part 5B.2; or

(b) the document or information is not required to be lodged because of section 601CDA or 601CTA.

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(3) For the purposes of this Chapter, a person is taken to have lodged a document or information under this section if the person lodged the document or information in compliance with subsection 1200C(6).

1200E Warning statement

The regulations may, in relation to offer documents used in this jurisdiction for recognised offers, prescribe either or both of the following:

(a) statements to be included with those documents that relate to the status of an offer as a recognised offer and the laws that regulate the offer;

(b) details to be given in statements to be included with those documents that relate to the status of an offer as a recognised offer and the laws that regulate the offer.

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Division 2—Effect of a recognised offer

1200F Effect of a recognised offer

(1) The provisions listed in the table do not apply, in relation to a recognised offer, to the things specified in the table for those provisions.

Note: Recognised offers must comply with Division 3 instead.

Provisions that do not apply in relation to a recognised offer

Item	These provisions:	do not apply, in relation to the offer, to:
1	Chapter 2L	if the recognised offer is an offer of debentures—the offeror.
2	Chapter 5C	if the recognised offer is an offer of interests in a managed investment scheme—the operator of the managed investment scheme.
3	Chapter 6D, other than sections 736 and 738	(a) the recognised offer; or (b) the offeror of the recognised offer; or (c) any offer document for the offer.
4	Parts 7.6, 7.7 and 7.8, other than section 992AA	(a) the issue or disposal of a security under the recognised offer; or (b) general advice (within the meaning of Chapter 7) contained in any offer document for the offer; or (c) general advice contained in an advertisement for the recognised offer issued by, or on behalf of, the offeror; or (d) the provision of a custodial or depository service (within the meaning of Chapter 7) in relation to interests in a managed investment scheme that are the subject of the recognised offer.

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Provisions that do not apply in relation to a recognised offer		
Item	**These provisions:**	**do not apply, in relation to the offer, to:**
5	Part 7.9, other than sections 1020AB, 1020AC, 1020AD and 1020B	the offeror of the recognised offer.

(2) Despite subsection (1), the regulations may:

(a) apply a provision listed in the table in subsection (1) to a person or class of persons; or

(b) apply a provision listed in the table in subsection (1) to a security or class of securities; or

(c) provide that a provision listed in the table in subsection (1) applies with the modifications specified in the regulations.

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Division 3—Ongoing conditions for recognised offers

1200G Offering conditions

When the offering conditions apply

(1) The offering conditions in this section apply in relation to a recognised offer until the recognised offer closes in this jurisdiction.

Note: Failure to comply with an offering condition is an offence (see sections 1200Q and 1311).

Offering conditions

(2) The offer must be made in the recognised jurisdiction as well as in this jurisdiction.

(3) The offeror must meet the conditions in subsections 1200C(2) and (3).

(4) The offer must meet the condition in subsection 1200C(4).

(5) The offer must comply with the law of the recognised jurisdiction.

(6) There must be no person concerned in the management of the offeror:

(a) who is disqualified from managing corporations for the purposes of Part 2D.6; or

(b) who is disqualified from being concerned in the management of the offeror under the law of the recognised jurisdiction; or

(c) who is subject to a banning order; or

(d) who is subject to a court order under paragraph 921A(2)(a).

(7) An offer document provided to a person in this jurisdiction must have included with it:

(a) the warning statement lodged under subsection 1200D(1) for that offer document; or

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(b) if a changed warning statement is lodged with ASIC under subsection 1200G(9)—the changed warning statement.

(8) The offeror must, on request by a person in this jurisdiction, provide a copy of the constitution or constituent document lodged under paragraph 1200D(1)(c) or (d).

(9) If an event mentioned in an item of this table occurs in relation to the offer or offeror, the offeror must lodge with ASIC the document, statement or notice specified in the table for that event, by the time specified for that event.

Offering condition under subsection (9)

Item	If:	the offeror must lodge with ASIC:	by this time:
1	a change is made to an offer document, or any other document, required by the law of the recognised jurisdiction in relation to the offer	a copy of the document as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
2	a change is made to the warning statement that is included with the offer document in this jurisdiction	a copy of the warning statement as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
3	a supplementary or replacement offer document is required by the law of the recognised jurisdiction	a copy of the supplementary or replacement offer document	no later than 7 days after the day on which the supplementary or replacement offer document is (or should have been) lodged with the home regulator.

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Offering condition under subsection (9)			
Item	**If:**	**the offeror must lodge with ASIC:**	**by this time:**
4	a change is made to the constitution or constituent document lodged under paragraph 1200D(1)(c) or (d)	a copy of the constitution or constituent document as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
5	the home regulator makes, changes or revokes an exemption that applies, but not exclusively, to the offer or the offeror under the law of the recognised jurisdiction	written notice in the prescribed form (if any) of the details of the exemption, change or revocation	no later than 14 days after the making, change or revocation occurs.
6	the home regulator makes, changes or revokes an exemption that applies exclusively to the offer or the offeror under the law of the recognised jurisdiction	a copy of the exemption, the exemption as changed, or notice in the prescribed form (if any) of the details of the revocation	no later than 7 days after the making, change or revocation occurs.
7	the home regulator begins enforcement action, or exercises a power it has under law, in relation to the offeror or offer	written notice in the prescribed form (if any) of the details of the action taken or power exercised	no later than 7 days after the action is taken or the power is exercised.

(10) For the purposes of this Chapter, a person is taken to have lodged a document under subsection (9) if:

(a) the document has been lodged under Division 2 or 3 of Part 5B.2; or

(b) the document is not required to be lodged because of section 601CDA or 601CTA.

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(11) If:

(a) an event mentioned in the table in subsection (9) occurs while the offering conditions in this section apply; and

(b) the time by which an offeror is required to lodge a document, statement or notice with ASIC because of that event is after the offering conditions cease to apply;

then, for the purposes of this section and paragraph 1200Q(1)(b), the offering conditions are taken to continue to apply until that time in relation to the offer to the extent necessary to require the offeror to lodge the document, statement or information by that time.

(12) The offer must meet any other conditions prescribed by the regulations.

Home regulator

(13) For the purposes of subsection (9), the ***home regulator*** for a recognised jurisdiction is an authority in the recognised jurisdiction whose functions under the law of the recognised jurisdiction include functions equivalent to any of those of ASIC under this Act and that is prescribed by the regulations as the home regulator for that jurisdiction.

(14) If there is more than one authority in a recognised jurisdiction whose functions include functions under the law of the recognised jurisdiction equivalent to any of those of ASIC under this Act and that is prescribed under subsection (13), the regulations may prescribe the matters in relation to which that authority is to be regarded as the home regulator.

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1200H Address for service condition

When the address for service condition applies

(1) The address for service condition in this section applies in relation to a recognised offer:

(a) until the end of the last day on which a person who resides in this jurisdiction could acquire securities under the offer; and

(b) if a person who resides in this jurisdiction acquires securities under the offer—at all times when the offeror's records indicate that someone who resides in this jurisdiction holds securities in the class of securities that was the subject of the recognised offer.

Note: Failure to comply with the address for service condition is an offence (see sections 1200Q and 1311).

Address for service condition

(2) The offeror must lodge with ASIC written notice, in the prescribed form (if any), of any change in its address for service in this jurisdiction, no later than the end of the seventh day after the day on which the address changed.

(3) If:

(a) the offeror's address for service in this jurisdiction changes while the address for service condition in this section applies; and

(b) the time by which the offeror is required to lodge notice with ASIC because of the change is after the address for service condition ceases to apply;

then, for the purposes of this section and subparagraph 1200Q(2)(b)(i), the address for service condition is taken to continue to apply until that time to the extent necessary to require the offeror to lodge notice by that time.

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1200J Dispute resolution condition

When the dispute resolution condition applies

(1) The dispute resolution condition in this section applies, to a person who is or who has been the offeror of a recognised offer, at all times when the person's records indicate that someone who resides in this jurisdiction holds securities in the class of securities that was the subject of the recognised offer.

Note: Failure to comply with the dispute resolution condition is an offence (see sections 1200Q and 1311).

Dispute resolution condition

(2) The person must have a dispute resolution process that complies with subsection 1017G(2), if the recognised offer was an offer of:
(a) interests in a managed investment scheme; or
(b) rights or interests in such interests, or options to acquire such interests by way of issue.

Exemption from the dispute resolution condition

(3) ASIC may, on application by a person in the prescribed form (if any), grant the person an exemption from the dispute resolution condition in this section, subject to any conditions specified in the exemption.

(4) If ASIC grants a person an exemption under subsection (3), then, for the purposes of this Chapter, the person is taken to comply with the dispute resolution condition in this section for so long as the exemption is in force.

(5) ASIC may, in relation to an exemption under subsection (3):
(a) vary, or impose, a condition in relation to the exemption; or
(b) revoke the exemption.

(6) A variation, imposition or revocation under subsection (5) takes effect:

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(a) if the person has an address for service in this jurisdiction—when it is served on the person at that address; or

(b) if the person does not have an address for service in this jurisdiction—on publication in the *Gazette*.

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Division 4—Modification of provisions of this Act

1200K Additional operation of section 675 (continuous disclosure)

In relation to a disclosing entity that has been the offeror of a recognised offer, section 675 also has the operation it would have if paragraph 675(2)(c) were replaced by the following paragraph:

(c) the information is not required, by the law of the recognised jurisdiction to which the offer relates, to be included in a supplementary or replacement offer document; and

1200L Pre-offer advertising

Offers that need a disclosure document

(1) Subsection 734(4) also has the operation it would have if:

(a) the reference in that subsection to a disclosure document that has been lodged with ASIC were a reference to an offer document lodged with ASIC for the purposes of this Chapter; and

(b) the reference in that subsection to section 739 were a reference to section 1200N.

(2) Subsection 734(5) also has the operation it would have if:

(a) references in that subsection to a disclosure document were references to an offer document that complies with the law of a recognised jurisdiction; and

(b) references in that subsection to completing an application form were references to completing an application process under the law of that recognised jurisdiction.

(3) Subsection 734(6) also has the operation it would have if:

(a) references in that subsection to a disclosure document were references to an offer document lodged with ASIC for the purposes of this Chapter; and

(b) references in that subsection to completing an application form were references to completing an application process

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under the law of the recognised jurisdiction to which the offer relates.

Offers that need a Product Disclosure Statement

(4) Subsection 1018A(2) also has the operation it would have if:
  (a) a reference in that subsection to a Product Disclosure Statement were a reference to an offer document that complies with the law of a recognised jurisdiction; and
  (b) a reference in that subsection to sale offers to which section 1012C will apply were a reference to sale offers to which section 1012C would apply if the financial product, when made available, were not made available under a recognised offer.

(5) Subsection 1018A(3) also has, in relation to subsection 1018A(2), the operation it would have if:
  (a) the reference in that subsection to a Product Disclosure Statement were a reference to an offer document that complies with the law of a recognised jurisdiction; and
  (b) the reference to section 1020E were a reference to section 1200N.

1200M Modification by the regulations

The regulations may modify a provision of this Act in relation to its application in respect of a recognised offer or a proposed offer of securities that may become a recognised offer.

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Division 5—ASIC's powers in relation to recognised offers

1200N Stop orders

(1) If, in relation to a thing mentioned in an item of this table, ASIC is satisfied of the matters specified in the table item for that thing, ASIC may make either or both of the orders specified in the table item about that thing.

Stop orders

Item	If, in relation to:	ASIC is satisfied that:	ASIC may order:
1	(a) an offer document lodged under paragraph 1200D(1)(a); or (b) a warning statement lodged under paragraph 1200D(1)(b); or (c) a document or information lodged under paragraph 1200D(1)(i)	there is a misleading or deceptive statement in, or a material omission from, the document, statement or information	(a) that no offers, issues, sales or transfers of the securities to which the document, statement or information relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, statement or information, must not be engaged in while the order is in force.

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Stop orders			
Item	**If, in relation to:**	**ASIC is satisfied that:**	**ASIC may order:**
2	a document, statement or notice lodged under subsection 1200G(9)	the change results in there being a misleading or deceptive statement in, or a material omission from, the document, statement or notice	(a) that no offers, issues, sales or transfers of the securities to which the document, statement or notice relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, statement or notice, must not be engaged in while the order is in force.
3	(a) an advertisement of securities the subject of a recognised offer; or (b) a published statement that is reasonably likely to induce people to acquire securities the subject of a recognised offer	there is a misleading or deceptive statement in, or a material omission from, the advertisement or statement	(a) that no offers, issues, sales or transfers of the securities to which the advertisement or statement relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the advertisement or statement, must not be engaged in while the order is in force.

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Stop orders			
Item	**If, in relation to:**	**ASIC is satisfied that:**	**ASIC may order:**
4	an offer document lodged under paragraph 1200D(1)(a)	a new circumstance has arisen since lodgment and that circumstance would have been required by the law of the recognised jurisdiction to be included in the offer document, if the circumstance had arisen before the document was lodged with the home regulator (as defined in subsection 1200G(13))	(a) that no offers, issues, sales or transfers of the securities to which the document relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, must not be engaged in while the order is in force.
5	a notice of intention to make a recognised offer lodged under paragraph 1200C(5)(a)	one or more of the requirements in section 1200C is not met in relation to the proposed offer	(a) that no offers, issues, sales or transfers of the securities that are proposed to be offered be made while the order is in force; (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.

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Stop orders			
Item	**If, in relation to:**	**ASIC is satisfied that:**	**ASIC may order:**
6	a recognised offer	an offering condition in section 1200G, the address for service condition in section 1200H or the dispute resolution condition in section 1200J is not being met	(a) that no offers, issues, sales or transfers of the securities be made while the order is in force; (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.

(2) The order may include a statement that specified conduct engaged in contrary to the order will be regarded as not meeting a specified ongoing condition in Division 3.

(3) Before making an order under subsection (1), ASIC must:
  (a) hold a hearing; and
  (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

(4) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

(5) At any time during the hearing, ASIC may make an interim order. The interim order lasts until:
  (a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or
  (b) the interim order is revoked;

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whichever happens first.

(6) An order under subsection (1), (4) or (5) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities or not to engage in specified conduct.

(7) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.

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

(8) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.

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

(9) A statement under subsection (2) has effect accordingly in relation to a person on whom the order is served, or who is aware of it, who engages in conduct contrary to the order. This applies in addition to any other consequence that is provided for in this Act.

1200P Ban on making subsequent recognised offers

(1) ASIC may declare in writing that a person is, for the time specified in the declaration (which must be no longer than 5 years from the day the declaration takes effect), banned from making a recognised offer if:

(a) the person, or an associate of the person, has been convicted (whether or not in this jurisdiction) of an offence constituted by conduct engaged in in relation to a recognised offer; or

(b) a court in this jurisdiction has made a civil penalty order against the person, or an associate of the person, for a contravention in relation to a recognised offer; or

(c) a court in a recognised jurisdiction has made an order against the person, or an associate of the person, for a contravention of the law of the recognised jurisdiction (other than an offence) in relation to an offer that is a recognised offer in this jurisdiction.

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(2) Before making the declaration, ASIC must give the person an opportunity:
   (a) to appear, or be represented, at a hearing before ASIC that takes place in private; or
   (b) to make submissions to ASIC on the matter.

   This subsection does not apply if the person does not have an address for service in this jurisdiction.

(3) ASIC may, in writing, vary or cancel the declaration, on ASIC's own initiative or on application lodged by the person in the prescribed form (if any) together with any prescribed documents, if ASIC is satisfied that a circumstance on which ASIC based the declaration has changed.

(4) If ASIC proposes to reject an application by the person to vary or cancel the declaration, ASIC must give the person an opportunity:
   (a) to appear, or be represented, at a hearing before ASIC that takes place in private; or
   (b) to make submissions to ASIC on the matter.

(5) The declaration, and any variation or cancellation of the declaration, takes effect:
   (a) if the person to whom the declaration applies has an address for service in this jurisdiction—when it is served on the person at that address; or
   (b) if the person to whom the declaration applies does not have an address for service in this jurisdiction—when it is published in the *Gazette* under subsection (7).

(6) A declaration that is served on a person under paragraph (5)(a) must be accompanied by a statement of ASIC's reasons for the declaration.

(7) ASIC must publish a notice in the *Gazette* as soon as practicable after making, varying or cancelling the declaration. The notice:
   (a) must state when the action takes or took effect; and
   (b) in the case of the making of a declaration—set out a copy of the declaration; and

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(c) in the case of the varying of a declaration—set out a copy of the declaration as varied.

(8) A declaration under this section is not a legislative instrument.

1200Q Offence of breaching an ongoing condition

(1) A person commits an offence if, at any particular time:
(a) the person is the offeror of a recognised offer; and
(b) an offering condition in section 1200G applies in relation to the offer; and
(c) the condition is not met in relation to the offer.

(2) A person commits an offence if:
(a) the person is or has been the offeror of a recognised offer; and
(b) at any particular time:
(i) the address for service condition in section 1200H; or
(ii) the dispute resolution condition in section 1200J;
applies in relation to the offer; and
(c) the condition is not met in relation to the offer.

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Division 6—Miscellaneous

1200R Service of documents

(1) For the purposes of any law, a document may be served on a person who is, or who has been, the offeror of a recognised offer by leaving it at, or posting it to, the person's address for service in this jurisdiction.

(2) The person's address for service in this jurisdiction is:
  (a) the address lodged under paragraph 1200D(1)(g); or
  (b) if a change to that address has been lodged with ASIC under section 1200H—the changed address, on and from the later of:
    (i) the day that is 7 days after the day on which the change (or, if more than one change has been lodged, the latest change) was lodged; or
    (ii) the day specified in the notice of change as the day from which the change is to take effect.

(3) This section does not affect:
  (a) any other provision of this Act, or any provision of another law, that permits a document to be served in a different way; or
  (b) the power of a court to authorise a document to be served in a different way.

(4) This section does not apply in relation to a person who is, or who has been, the offeror of a recognised offer if the address for service condition in section 1200H does not apply to the person.

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Part 8.3—Offers made under foreign recognition schemes

1200S Notice to ASIC

If:

(a) a body proposes to make an offer of securities in a recognised jurisdiction under a foreign recognition scheme; and

(b) under the foreign recognition scheme, the offer is to be regulated by the law of this jurisdiction;

the body must lodge with ASIC written notice, in the prescribed form (if any), of its intention to make the offer under the foreign recognition scheme, no later than the time it notifies the recognised jurisdiction of that intention.

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

1200T Extension of this Act to recognised jurisdictions

(1) If:

(a) a body proposes to make, or is making, an offer of securities in a recognised jurisdiction under a foreign recognition scheme; and

(b) under the foreign recognition scheme, the offer is to be regulated by the law of this jurisdiction;

this Act applies in the recognised jurisdiction in relation to the offer as if it were an offer being made in this jurisdiction.

(2) Despite subsection (1), the regulations may:

(a) exempt a person or class of persons from all or specified provisions of this Act as it applies by force of subsection (1); or

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(b) exempt a security or a class of securities from all or specified provisions of this Act as it applies by force of subsection (1); or

(c) provide that a provision of this Act as it applies by force of subsection (1) applies with the modifications specified in the regulations.

1200U ASIC stop order for advertising in a recognised jurisdiction

(1) If ASIC is satisfied that:

(a) an offer of securities is being made or has been made in a recognised jurisdiction under a foreign recognition scheme; and

(b) there is a contravention of section 734 or 1018A (as they apply by force of section 1200T) constituted by conduct in the recognised jurisdiction in relation to the offer;

ASIC may order that no offers, issues, sales or transfers of the securities the subject of the offer be made in the recognised jurisdiction while the order is in force.

(2) Before making an order under subsection (1), ASIC must:

(a) hold a hearing; and

(b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

(3) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

(4) At any time during the hearing, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order lasts until:

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(a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or

(b) the interim order is revoked;

whichever happens first.

(5) An order under subsection (1), (3) or (4) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities.

(6) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.

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

(7) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.

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

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Chapter 8A—Asia Region Funds Passport

Part 8A.1—Preliminary

1210 Definitions

In this Chapter:

APFRN: see ***Australian Passport Fund Registration Number***.

Australian Passport Fund Registration Number or ***APFRN*** means the number assigned to an Australian passport fund under paragraph 1212A(2)(a).

consideration period for a notice of intention to offer interests in a foreign passport fund to a person in this jurisdiction: see section 1213D.

home economy, for a passport fund, means:

(a) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in only one participating economy—that participating economy; and

(b) if the passport fund is a regulated CIS, or a sub-fund of a regulated CIS, in more than one participating economy—the participating economy in which the fund is first registered or approved as a regulated CIS (however that registration or approval is described).

home regulator, for a passport fund, means the entity that is the Passport Regulator for the home economy for the passport fund under the Passport Rules for this jurisdiction.

host economy: a participating economy is a ***host economy*** for a passport fund if:

(a) the participating economy is not the home economy for the fund; and

(b) either:

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(i) it is permitted under the law of the participating economy to offer interests in the fund in that economy, on the basis that the fund is a passport fund; or

(ii) an application has been made under the law of the participating economy for permission to offer interests in the fund in that economy, on the basis that the fund is a passport fund.

host regulator, for a passport fund, means the entity that is the Passport Regulator for a host economy for the passport fund under the Passport Rules for this jurisdiction.

Memorandum of Cooperation means the Memorandum of Cooperation on the Establishment and Implementation of the Asia Region Funds Passport signed on behalf of Australia on 28 April 2016, as it applies in relation to Australia from time to time.

operator, of a passport fund, means the entity that is the operator of the fund under the Passport Rules for this jurisdiction.

participating economy: a Participant, within the meaning of the Memorandum of Cooperation, is a ***participating economy*** at a particular time if:

(a) the Asia Region Funds Passport Joint Committee established under the Memorandum of Cooperation has published notification on the Passport website under subparagraph 5.6 of the Memorandum, at or before that time, that the Participant has effected implementation; and

(b) at that time:

(i) the Memorandum of Cooperation has not been terminated; and

(ii) the Participant has not withdrawn from the Memorandum of Cooperation.

passport fund means a regulated CIS, or a sub-fund of a regulated CIS, registered as a passport fund in a participating economy.

Register of Passport Funds: see section 1214.

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regulated CIS has the same meaning as in the Passport Rules for this jurisdiction.

sub-fund, in relation to a regulated CIS, has the same meaning as in the Passport Rules for this jurisdiction.

1210A List of participating economies

(1) The Minister must, by notifiable instrument, publish a list of participating economies.

(2) The Minister must:

(a) include in the instrument the date on which each Participant, within the meaning of the Memorandum of Cooperation, became a participating economy; and

(b) if a Participant, within the meaning of the Memorandum of Cooperation, ceases to be a participating economy—include in the instrument the date on which that Participant ceases to be a participating economy; and

(c) ensure that the instrument is updated as soon as is reasonably practicable after a Participant, within the meaning of the Memorandum of Cooperation, becomes, or ceases to be, a participating economy.

1210B Minister may determine that funds not to offer interests in this jurisdiction

(1) The Minister may, by legislative instrument, determine that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the funds in this jurisdiction.

(2) The Minister may only make a determination under subsection (1), if:

(a) the Minister is satisfied that:

(i) under the Memorandum of Cooperation, there are grounds for requiring the operators of the funds to

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which the determination applies not to offer interests in the funds in this jurisdiction; and

(ii) the processes that, under the Memorandum of Cooperation, are to be followed before requiring the operators of the funds to which the determination applies not to offer interests in the funds in this jurisdiction, have been complied with; or

(b) the Memorandum of Cooperation has been terminated; or

(c) Australia or the home economy for the funds to which the determination applies withdraws from the Memorandum of Cooperation.

(3) If the Minister makes a determination under this section, the regulations may deal with matters of a transitional nature relating to the movement of funds to which the determination applies from participation in this jurisdiction under this Chapter to participation in this jurisdiction under the other provisions of the Corporations legislation dealing with managed investment schemes.

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Part 8A.2—Passport Rules

1211 Minister may make Passport Rules for this jurisdiction

(1) The Minister may, by legislative instrument, make rules that provide for matters relating to passport funds, or entities connected with passport funds.

(2) The rules made by the Minister under subsection (1) must be substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation.

(3) If the rules made by the Minister under subsection (1) taken together with other provisions of the Corporations legislation have substantially the same effect as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation, the rules made by the Minister under subsection (1) are taken to be substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation.

1211A Definition of *Passport Rules*

Passport Rules for this jurisdiction

(1) ***Passport Rules*** for this jurisdiction, means rules made by the Minister under section 1211 as in force from time to time.

Passport Rules for a participating economy other than Australia

(2) ***Passport Rules*** for a participating economy other than Australia, means rules that are:

(a) substantially the same as the Passport Rules set out in Annex 3 to the Memorandum of Cooperation; and

(b) in force from time to time in that participating economy.

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1211B Compliance with the Passport Rules

(1) A person contravenes this subsection if:

(a) an obligation is imposed on the person in relation to an Australian passport fund under the Passport Rules for this jurisdiction; and

(b) the person does not comply with the obligation.

(2) A person contravenes this subsection if:

(a) an obligation is imposed on the person in relation to a notified foreign passport fund under the Passport Rules for this jurisdiction; and

(b) the person does not comply with the obligation; and

(c) the failure to comply results, or is likely to result, in a person in this jurisdiction who holds an interest in the fund suffering financial or other disadvantage.

(3) A person commits an offence if the person contravenes subsection (1) or (2).

Penalty:

(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and

(b) for a body corporate—20,000 penalty units.

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

Penalty: 60 penalty units.

(5) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (3) or (4).

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Part 8A.3—Australian passport funds

1212 Application for registration

(1) A person may lodge an application with ASIC to have a managed investment scheme registered as a passport fund if:

(a) the scheme is a registered scheme and the person is the responsible entity for the scheme; or

(b) an application has been made for the scheme to be registered under section 601EB, and the person is the proposed responsible entity for the scheme.

(2) The application must:

(a) be in the prescribed form; and

(b) include a copy of the Product Disclosure Statement that the responsible entity for the scheme would be required to prepare if:

(i) the responsible entity were a regulated person required to give a Product Disclosure Statement to a retail client under subsection 1012B(3); and

(ii) the scheme were registered as a passport fund.

(3) The applicant may withdraw the application by notice lodged in the prescribed form at any time before the scheme is registered as an Australian passport fund.

(4) ASIC may, by legislative instrument, determine that information that is lodged with ASIC under this section will not be available for inspection or copying from ASIC if it is of a kind specified in the determination.

1212A Registration of registered scheme as a passport fund

(1) ASIC must register a registered scheme as a passport fund if ASIC is of the opinion that:

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(a) the responsible entity for the scheme is an eligible entity, within the meaning of section 3 of Annex 2 of the Memorandum of Cooperation; and

(b) each of the following is likely to be complied with in relation to the scheme:

(i) this Act (including the Passport Rules for this jurisdiction);

(ii) the ASIC Act.

(2) A registered scheme is registered as a passport fund by ASIC:

(a) assigning a unique number to the passport fund (the ***Australian Passport Fund Registration Number*** or ***APFRN*** for the passport fund); and

(b) ensuring that details of the fund are entered on the Register of Passport Funds.

1212B All documents etc. lodged with ASIC to bear APFRN

After a registered scheme is registered as a passport fund, all documents relating to the fund that are lodged with ASIC must set out the scheme's APFRN.

1212C Notifying ASIC if offering interests in another participating economy in another name

(1) The operator of an Australian passport fund must notify ASIC in accordance with this section if:

(a) the operator of the fund offers interests in the fund in a participating economy other than Australia; and

(b) the name of the fund in the other participating economy is not the same as the name of the Australian passport fund.

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

(2) The notice must be given:

(a) in the prescribed form; and

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(b) within 7 days after interests in the fund begin to be offered under that name.

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Part 8A.4—Notified foreign passport funds

Division 1—Becoming a notified foreign passport fund

1213 Notice of intention to offer interests in a foreign passport fund

(1) The operator of a foreign passport fund may lodge with ASIC a notice of intention to offer interests in the fund to persons in this jurisdiction, provided the operator is a registered foreign company.

(2) The notice must:
  (a) be in the prescribed form; and
  (b) include a copy of the Product Disclosure Statement that the operator of the foreign passport fund would be required to prepare if:
    (i) the operator were a regulated person required to give a Product Disclosure Statement to a retail client under subsection 1012B(3); and
    (ii) the fund were a notified foreign passport fund.

(3) The operator of the foreign passport fund may withdraw the notice of intention by notice lodged in the prescribed form at any time during the consideration period for the notice.

(4) ASIC may, by legislative instrument, determine that information that is lodged with ASIC under this section will not be available for inspection or copying from ASIC if it is of a kind specified in the determination.

1213A ASIC may notify operator that notice of intention lacks information required

(1) ASIC may, within the consideration period for the notice of intention, notify the operator of the foreign passport fund that ASIC is of the opinion that information required under the prescribed form has not been provided.

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(2) ASIC's notification must be given in writing.

1213B Rejecting a notice of intention

Circumstances in which ASIC may reject a notice of intention

(1) ASIC may, within the consideration period for the notice of intention, reject the notice if:

(a) ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund:

(i) this Act (other than the Passport Rules for this jurisdiction);

(ii) the ASIC Act;

(iii) the law of the home economy for the fund, to the extent that the law is administered by the home regulator for the fund (including the Passport Rules for the home economy for the fund); or

(b) ASIC is of the opinion that it is not in the public interest in this jurisdiction for the operator to offer interests in the passport fund in this jurisdiction; or

(c) both of the following are satisfied:

(i) an exemption has been given, or a modification made, to the Passport Rules for the home economy for the passport fund that affects the fund or entities connected with the fund;

(ii) ASIC does not consent to the exemption or modification; or

(d) the name of the passport fund in relation to which the operator has given notice is not available in this jurisdiction.

(2) In determining its opinion in relation to a matter mentioned in subparagraph (1)(a)(iii), ASIC must:

(a) make a request, in writing, to the home regulator for the fund for the opinion of the home regulator on the matter; and

(b) specify in the request the basis for ASIC's concerns about compliance with the law of the home economy; and

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(c) state a reasonable period during which ASIC will wait for a reply before acting; and

(d) if the home regulator replies to the request within that period—give effect to the opinion of the home regulator on the matter.

(3) In paragraph (1)(b), ***public interest*** does not include any benefit in this jurisdiction that may arise from limiting competition for managed investment schemes operating principally in this jurisdiction.

(4) Nothing in this section requires ASIC to conduct an assessment of the public interest in this jurisdiction in each case.

(5) A name is not available to a foreign passport fund in this jurisdiction for the purposes of paragraph (1)(d) if:

(a) the name is:

(i) identical (under rules set out in the regulations) to a name that is reserved or registered under this Act for another body; or

(ii) identical (under rules set out in the regulations) to a name of a managed investment scheme that is the subject of an application for registration that has been lodged under section 601EA but not yet determined; or

(iii) identical (under rules set out in the regulations) to a name of a foreign passport fund in relation to which a notice of intention under section 1213 has already been lodged; or

(iv) 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 operator; or

(v) unacceptable for registration under the regulations; and

(b) the operator of the fund has not notified ASIC and the home regulator for the fund in writing that it will adopt an available alternative name for the fund in this jurisdiction.

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(6) The Minister may consent in writing to a name being available to a foreign passport fund in this jurisdiction even if the name would not otherwise be available because of paragraph (5)(a).

(7) The Minister's consent may be given subject to conditions.

Circumstances in which ASIC must reject a notice of intention

(8) ASIC must, within the consideration period for the notice of intention, reject the notice if:

(a) the Minister has made a determination under subsection 1210B(1) that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the fund in this jurisdiction; and

(b) the determination applies to the passport fund.

ASIC must notify operator of decision to reject

(9) The notice of intention is rejected by ASIC giving the operator of the foreign passport fund notification in writing of the rejection.

1213C Notified foreign passport funds—authority to offer interests in this jurisdiction

(1) A foreign passport fund becomes a ***notified foreign passport fund*** if:

(a) the operator of the fund has lodged a notice of intention to offer interests in the fund to persons in this jurisdiction with ASIC under section 1213; and

(b) the operator of the fund has not withdrawn the notice of intention under subsection 1213(3); and

(c) within the consideration period for the notice of intention, ASIC has not given the operator:

(i) notification under section 1213A that ASIC is of the opinion that information required under the prescribed form has not been provided; or

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(ii) notification under section 1213B that the notice of intention has been rejected.

(2) The foreign passport fund becomes a ***notified foreign passport fund*** on the first day after the end of the consideration period for the notice of intention.

(3) The foreign passport fund ceases to be a ***notified foreign passport fund*** if it is removed as a notified foreign passport fund under Division 2 of Part 8A.7.

(4) A notified foreign passport fund may offer interests in the fund to persons in this jurisdiction.

1213D Definition of *consideration period*

(1) The ***consideration period***, for a notice of intention to offer interests in a foreign passport fund in this jurisdiction, is:

(a) a period of 15 business days beginning on the day after the notice is lodged with ASIC; or

(b) if ASIC and the operator agree that the period is to be extended under subsection (2)—the extended period.

(2) ASIC and the operator of the foreign passport fund may agree, in writing, to one or more extensions of the consideration period. However, each extension must be for no more than 5 business days.

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Division 2—Treatment of notified foreign passport funds

1213E Notified foreign passport funds to be treated as managed investment schemes

(1) A notified foreign passport fund is a ***managed investment scheme*** for the purposes of this Act, even if it would not otherwise be a managed investment scheme for the purposes of this Act because of the way in which that term is defined in section 9.

Note: This subsection does not affect the other legal characteristics of a notified foreign passport fund for the purposes of this Act. For example, if a notified foreign passport fund is a body corporate, it remains a body corporate for the purposes of this Act.

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

1213F Operators and notified foreign passport funds not to be treated as companies etc.

To avoid doubt:

(a) neither the operator of a notified foreign passport fund nor the fund is to be treated as a company for the purposes of the corporations legislation, merely because the operator or the fund is registered as a foreign company under Division 2 of Part 5B.2; and

(b) a reference in the corporations legislation to a share does not include an interest in a notified foreign passport fund unless the fund is also a company.

1213G Offences relating to the operation of notified foreign passport funds

(1) This section applies if:

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(a) one of the following persons engages in conduct that constitutes an alleged offence against this Act or the ASIC Act:
  (i) a notified foreign passport fund;
  (ii) the operator of a notified foreign passport fund;
  (iii) a person with responsibilities in relation to a notified foreign passport fund; and
(b) the conduct occurs in relation to the operation of the fund; and
(c) the conduct occurs wholly in a foreign country; and
(d) the person who engages in the conduct is not:
  (i) an Australian citizen; or
  (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
(e) it is not otherwise a physical element of the offence that the conduct results, or is likely to result, in a person in this jurisdiction who has an interest in the fund suffering financial or other disadvantage.

(2) It is a physical element of the offence that the conduct results, or is likely to result, in a person in this jurisdiction who has an interest in the fund suffering financial or other disadvantage.

(3) In this section:

person with responsibilities in relation to a notified foreign passport fund means a person (other than a regulator) who has functions or duties in relation to the fund under the Passport Rules for this jurisdiction.

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Division 3—Conduct of notified foreign passport funds in this jurisdiction

1213H Notified foreign passport funds must not issue debentures in this jurisdiction

The operator of a notified foreign passport fund commits an offence if the operator or the fund:

(a) makes an offer of debentures in this jurisdiction that needs disclosure to investors under Chapter 6D, or does not need disclosure to investors under Chapter 6D because of subsection 708(14) (disclosure document exclusion for debenture roll overs) or section 708A (sale offers that do not need disclosure); or

(b) makes an offer of debentures in this jurisdiction or elsewhere as consideration for the acquisition of securities under an off-market takeover bid.

Penalty: 60 penalty units.

Note: For rules about when an offer of debentures will need disclosure to investors under Chapter 6D, see sections 706, 707, 708, 708AA and 708A.

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Division 4—Providing key information in relation to notified foreign passport funds

Subdivision A—Obligations to provide information to members in this jurisdiction

1213J Constitution—right to obtain a copy

Right to a copy of the consolidated constitution

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:

(a) a person makes an application to the operator in accordance with subsection (2) for a copy of the consolidated constitution of the fund; and

(b) the person is:

(i) an Australian member of the fund; or

(ii) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction; and

(c) the person pays the reasonable costs of the operator, up to a prescribed amount, in providing a copy of the consolidated constitution; and

(d) the operator fails, or refuses, to give the person a copy of the consolidated constitution in accordance with this section; and

(e) as a result, the person does not obtain a copy of the consolidated constitution of the fund in accordance with this section.

Penalty: 60 penalty units.

Application for a copy of the consolidated constitution

(2) An application to the operator of a notified foreign passport fund is in accordance with this subsection if the application is in writing.

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Manner in which the consolidated constitution must be provided

(3) If, in the application, the applicant requests a paper copy of the consolidated constitution, the operator must post the applicant a copy of the consolidated constitution within 7 days after the application is made.

(4) Otherwise, the operator must give the applicant a copy of the consolidated constitution electronically, within 7 days after the application is made.

(5) ASIC may allow a longer period for the operator to give the applicant a copy of the consolidated constitution.

Language in which consolidated constitution must be provided

(6) If, in the application, the applicant requests that the copy of the consolidated constitution be in an official language of the home economy of the fund (other than English), the copy of the consolidated constitution given to the applicant must be in that language.

(7) Otherwise, the copy of the consolidated constitution given to the applicant must be in English.

Geographical jurisdiction

(8) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

1213K Register of members—right to obtain a copy

Right to a copy of the register of members of a fund

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:

(a) a person makes an application to the operator in accordance with subsection (2) for a copy of the register of members for the fund; and

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(b) the person is:
(i) in this jurisdiction; or
(ii) an Australian member of the fund; or
(iii) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction; and
(c) the person pays the reasonable costs of the operator, up to a prescribed amount, in providing a copy of the register; and
(d) the operator fails, or refuses, to give the person a copy of the register in accordance with this section; and
(e) as a result, the person does not obtain a copy of the register of the fund in accordance with this section.

Penalty: 60 penalty units.

Application for a copy of the register

(2) An application to the operator of a notified foreign passport fund is in accordance with this subsection if:
(a) the application is in writing; and
(b) the application states each purpose for which the applicant wishes to obtain a copy of the register; and
(c) none of those purposes is a prescribed purpose.

Manner in which register must be provided

(3) If, in the application, the applicant requests a paper copy of the register, the operator must post the applicant a copy of the register within 7 days after the application is made.

(4) Otherwise, the operator must give the applicant a copy of the register electronically, within 7 days after the application is made.

(5) ASIC may allow a longer period for the operator to give the applicant a copy of the register.

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Language in which register must be provided

(6) If, in the application, the applicant requests that the copy of the register be in an official language of the home economy of the fund (other than English), the copy of the register given to the applicant must be in that language.

(7) Otherwise, the copy of the register given to the applicant must be in English.

Geographical jurisdiction

(8) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

1213L Use of information on register of members

Offence—using information obtained from the register to contact members

(1) A person who obtains a copy of a register of members of a notified foreign passport fund under section 1213K must not:

(a) use information about a person (the ***other member***) obtained from the register 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 other member.

Penalty: 60 penalty units.

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.

Exception

(2) Subsection (1) does not apply if the use or disclosure of the information is:

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(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 operator of the fund.

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

Offence—using information obtained from the register for a prescribed purpose

(3) A person who obtains a copy of a register of members of a notified foreign passport fund under section 1213K must not:

(a) use information obtained from the register for any purpose prescribed by regulations made for the purposes of paragraph 1213K(2)(c); or

(b) disclose information of that kind knowing that the information is likely to be used for any such purpose.

Penalty: 60 penalty units.

Strict liability

(4) An offence based on subsection (1) or (3) is an offence of strict liability.

Geographical jurisdiction

(5) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1) or (3).

Liability to pay compensation

(6) A person who contravenes subsection (1) or (3) is liable to compensate anyone else who suffers loss or damage because of the contravention.

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Returning profits made by contravening subsection (1) or (3)

(7) A person who makes a profit by contravening subsection (1) or (3) owes a debt to the fund. The amount of the debt is the amount of the profit.

(8) If a person owes a debt under subsection (7) to the fund:
  (a) the debt may be recovered by the operator of the fund as a debt due to it; and
  (b) any amount paid or recovered in respect of the debt forms part of the property of the fund.

1213M Reports required under the law of the home economy

Right to a copy of reports

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:
  (a) the operator or the fund is required under the law of the home economy for the fund to prepare a report (however described) in relation to the fund; and
  (b) the operator or the fund makes the report available to members of the fund in the home economy without charge; and
  (c) the operator does not give Australian members of the fund, in accordance with this section:
    (i) a copy of the report; and
    (ii) if a summary in English of all or part of the report is required under subsection (5)—a summary in English of all or that part of the report.

Penalty: 60 penalty units.

Manner in which report must be made available

(2) The report must be given to Australian members of the fund within 7 days after the first day on which the report is made available to a member of the fund in the home economy without charge.

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(3) The report may be given to Australian members of the fund by:
  (a) putting the report on the fund's website so that it is accessible to Australian members of the fund; and
  (b) if members of the fund in the home economy are notified that the report is available on the fund's website, or notified how those members may access it—giving equivalent notice to Australian members of the fund.

(4) The report must be given without charge.

English summary of the report

(5) If all or part of the report is not in English, the operator must also give an Australian member of the fund a summary of the report, or that part of the report, in English in the same manner as the operator gives the report under subsections (2), (3) and (4).

Exception

(6) Subsection (1) does not apply if the operator of the fund is required under another provision of this Act to lodge the report, or to give the report to Australian members of the fund.

Geographical jurisdiction

(7) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

1213N Order for copies of books of a notified foreign passport fund

(1) A person may apply to the Court for an order under subsection (2) if the person is:
  (a) an Australian member of the fund; or
  (b) a former member of the fund who acquired an interest in the fund in this jurisdiction, or is ordinarily resident in this jurisdiction.

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(2) On application by the member or former member, the Court may order the operator of the fund to give the member or former member an electronic copy of any or all of the following:
  (a) all or a specified part of the books of the operator that relate to the fund;
  (b) all or a specified part of the books of the fund;
  (c) an English translation of all or a specified part of the books of the operator that relate to the fund;
  (d) an English translation of all or a specified part of the books of the fund.

(3) The Court may make the order only if it is satisfied that:
  (a) the applicant is acting in good faith; and
  (b) the books, or the specified part of the books, are to be obtained for a proper purpose.

(4) The member or former member may make copies of the books, or the specified part of the books, unless the Court orders otherwise.

Subdivision B—Obligations to provide information to ASIC

1213P Register of members—ASIC may require lodgment

(1) The operator of a notified foreign passport fund commits an offence of strict liability if:
  (a) ASIC requires the operator of the fund to lodge a copy of the whole or a specified part of the register of members of the fund, in accordance with subsections (2) and (3); and
  (b) the operator fails, or refuses, to lodge a copy of the register in accordance with this section.

Penalty: 60 penalty units.

Notice requiring operator to lodge register of members

(2) ASIC may, by written notice given to the operator of a notified foreign passport fund, require the operator to lodge a copy of the whole or a specified part of the register of members of the fund.

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(3) ASIC may, in the notice, require the copy of the whole or the specified part of the register to be lodged in English.

Manner in which register must be lodged

(4) The operator must lodge a copy of the register with ASIC electronically, within 7 days after being given notice to do so in accordance with subsections (2) and (3).

(5) ASIC may allow a longer period for the operator to lodge a copy of the register.

Language in which register must be provided

(6) If, in the notice, ASIC requires a copy of the whole or a specified part of the register to be lodged in English, the operator must lodge the whole or that part of the register in English.

Geographical jurisdiction

(7) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category A) applies to an offence against subsection (1).

1213Q Destruction of records by ASIC

ASIC may destroy or otherwise dispose of any document that is lodged under, or for the purposes of, a provision of this Chapter or the Passport Rules for this jurisdiction if:

(a) ASIC is of the opinion that it is no longer necessary or desirable to retain it; and

(b) it has been in the possession of ASIC for such period as is specified in the regulations, either generally or in relation to a particular document or class of documents.

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Part 8A.5—Register of Passport Funds

1214 Register of Passport Funds

(1) ASIC must either:
  (a) establish and maintain a Register of Passport Funds; or
  (b) ensure that a Register of Passport Funds is established and maintained.

(2) If the Register of Passport Funds is established and maintained by ASIC, ASIC may do so in any form that ASIC considers appropriate.

(3) The Register of Passport Funds:
  (a) must include the prescribed details of Australian passport funds and notified foreign passport funds; and
  (b) must include the prescribed details of funds that have been deregistered as Australian passport funds and funds that have been removed as notified foreign passport funds; and
  (c) may include details of other passport funds.

(4) For the purposes of the Corporations legislation, a reference to a register kept by ASIC under this Act is taken to include a Register of Passport Funds that ASIC ensures is established and maintained under paragraph (1)(b).

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Part 8A.6—Stop orders

1215 Stop order—Australian passport funds

ASIC may make stop orders

(1) ASIC may, by written instrument, order the operator of an Australian passport fund to do one or more of the following:

(a) cease to offer, or not to begin offering, interests in the fund to persons in this jurisdiction either indefinitely or for a period specified in the order;

(b) cease to offer, or not to begin offering, interests in the fund to persons in another participating economy either indefinitely or for a period specified in the order;

(c) take other action specified in the order;

(d) cease to take other action specified in the order.

The order is a ***stop order***.

(2) A stop order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Act.

Basis on which stop orders may be made

(3) However, ASIC may only make a stop order under this section if ASIC is of the opinion that:

(a) one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund (whether in this jurisdiction or in any other place):

(i) this Act (including the Passport Rules for this jurisdiction);

(ii) the ASIC Act; or

(b) if the order is made under paragraph (1)(c)—taking the action specified in the order is reasonably necessary to ensure that

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an order made under paragraph (1)(a) or (b) is complied with; or

(c) if the order is made under paragraph (1)(d)—not taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) or (b) is complied with.

Hearing before stop order made

(4) Before making a stop order, ASIC must:

(a) hold a hearing; and

(b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

ASIC must give notice if stop order made

(5) If ASIC makes a stop order under this section, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

1215A Stop order—notified foreign passport fund

ASIC may make stop orders

(1) ASIC may, by written instrument, order the operator of a notified foreign passport fund to do one or more of the following:

(a) cease to offer, or not to begin offering, interests in the fund to persons in this jurisdiction either indefinitely or for a period specified in the order;

(b) take other action specified in the order;

(c) cease to take other action specified in the order.

The order is a ***stop order***.

(2) A stop order may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Act.

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Basis on which stop orders may be made

(3) However, ASIC may only make a stop order under this section if:
  (a) subsections (4) and (7) are satisfied; or
  (b) the operator of the fund has ceased to be a registered foreign company; or
  (c) the operator of the fund has not had a local agent for more than 21 days; or
  (d) both of the following are satisfied:
    (i) the Minister has made a determination under subsection 1210B(1) that the operators of passport funds, or a class of passport funds, the home economy for which is specified in the determination, must not offer interests in the fund in this jurisdiction;
    (ii) the determination applies to the passport fund;
  (e) if the order is made under paragraph (1)(b)—taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) is complied with; or
  (f) if the order is made under paragraph (1)(c)—not taking the action specified in the order is reasonably necessary to ensure that an order made under paragraph (1)(a) is complied with.

(4) For the purposes of paragraph (3)(a), this subsection is satisfied if ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to the fund (whether in this jurisdiction or in any other place):
  (a) this Act (including the Passport Rules for this jurisdiction);
  (b) the ASIC Act;
  (c) the law of the home economy for the fund, to the extent that the law is administered by the home regulator for the fund (including the Passport Rules for the home economy of the fund).

(5) In determining its opinion in relation to compliance with the Passport Rules for this jurisdiction, as mentioned in paragraph (4)(a), ASIC must make a request, in writing, to the

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home regulator for the fund for the opinion of the home regulator on the interpretation of any provision of the Passport Rules for the home economy that is equivalent to a provision of the Passport Rules for this jurisdiction under consideration by ASIC.

(6) In determining its opinion in relation to a matter mentioned in paragraph (4)(c), ASIC must:
   (a) make a request, in writing, to the home regulator for the fund for the opinion of the home regulator on the matter; and
   (b) specify in the request the basis for ASIC's concerns about compliance with the law of the home economy; and
   (c) state a reasonable period during which ASIC will wait for a reply before acting; and
   (d) if the home regulator replies to the request within that period—give effect to the opinion of the home regulator on the matter.

(7) For the purposes of paragraph (3)(a), this subsection is satisfied if ASIC is of the opinion that the stop order is necessary, having regard to:
   (a) the impact on the members and prospective members of the fund of the failure, or potential failure, to comply with a law mentioned in subsection (4); and
   (b) any action taken, or that may be taken, by the home regulator for the fund.

Hearings before certain stop orders made

(8) Before making a stop order on the basis of subsections (4) and (7), ASIC must:
   (a) hold a hearing; and
   (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

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ASIC must give notice if stop order made

(9) If ASIC makes a stop order under this section, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

1215B Interim stop orders

(1) ASIC may make an interim stop order, if ASIC is of the opinion that:

(a) any delay in making a stop order under section 1215 or 1215A would be prejudicial to the public interest; and

(b) either:

(i) in the case of an order that is to be made in relation to an Australian passport fund—one or more of the circumstances mentioned in subsection 1215(3) exists; or

(ii) in the case of an order that is to be made in relation to a notified foreign passport fund—one or more of the circumstances mentioned in subsection 1215A(3) exists.

(2) An interim stop order under subsection (1):

(a) may be made without holding a hearing, or during a hearing; and

(b) must be in writing; and

(c) lasts:

(i) if the stop order is made during a hearing—until ASIC makes a stop order after the conclusion of the hearing, or the interim stop order is revoked; and

(ii) otherwise—for 21 days after the day on which it is made, unless sooner revoked.

(3) If ASIC makes an interim stop order, ASIC must give the operator of the fund a copy of the order as soon as reasonably practicable after it is made.

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1215C Revocation of stop order made under section 1215 or 1215A

(1) The operator of an Australian passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis that there are no longer grounds for the order under subsection 1215(3).

(2) The operator of a notified foreign passport fund may make an application to ASIC, in accordance with this section, to have a stop order that is in force in relation to the fund revoked on the basis that there are no longer grounds for the order under subsection 1215A(3).

(3) An application under subsection (1) or (2) must:
  (a) be in the prescribed form; and
  (b) without limiting paragraph (a), set out the basis on which the operator of the fund believes that there are no longer grounds for the stop order.

(4) ASIC must:
  (a) revoke a stop order made under section 1215 in relation to an Australian passport fund if:
    (i) an application is made under subsection (1) of this section; and
    (ii) ASIC is of the opinion that there are no longer grounds for the stop order; and
  (b) revoke a stop order made under section 1215A in relation to a notified foreign passport fund if:
    (i) an application is made under subsection (2) of this section; and
    (ii) ASIC is of the opinion that there are no longer grounds for the stop order.

(5) Nothing in this section limits the circumstances in which ASIC may revoke or vary a stop order made under section 1215 or 1215A.

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1215D Compliance with stop orders

(1) This section applies if:

(a) ASIC gives the operator of an Australian passport fund a copy of a stop order under subsection 1215(5) or an interim stop order under subsection 1215B(3); or

(b) ASIC gives the operator of a notified foreign passport fund a stop order under subsection 1215A(9) or an interim stop order under subsection 1215B(3).

(2) The operator must not contravene the order.

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

(3) The operator must take reasonable steps to ensure that any other person who might engage in conduct that is contrary to the order, is aware of the order.

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

(4) A person who is aware of the order must not engage in conduct that is contrary to the order.

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

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Part 8A.7—Deregistration and denotification

Division 1—Deregistration of Australian passport funds

Subdivision A—Voluntary deregistration

1216 Application to deregister

(1) The operator of an Australian passport fund may lodge an application for deregistration of the fund as an Australian passport fund.

(2) The application must be in the prescribed form.

1216A ASIC to deregister

(1) On an application under section 1216, ASIC must deregister a fund as an Australian passport fund if ASIC is satisfied that:
   (a) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and
   (b) there are no members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

(2) For the purposes of subsection (1), ignore any member of the fund that:
   (a) is, or has at any time been, the operator of the fund; or
   (b) is a related party of an entity that is, or has at any time been, the operator of the fund.

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1216B When is there an expectation that a fund would become an Australian passport fund?

For the purposes of this Act (including the Passport Rules for this jurisdiction), a person becomes a member of a fund on the ***expectation*** that it would become an Australian passport fund if:

(a) a representation has been made by the fund or the operator of the fund in any document, or other means of communication, that might reasonably be expected to be available to persons considering acquiring an interest in the fund that the fund will become, or that it is intended or expected that the fund will become, an Australian passport fund; and

(b) the person acquires an interest in the fund after that representation was made.

Subdivision B—Deregistration initiated by ASIC

1216C Deregistration—initiated by ASIC

(1) ASIC may decide to deregister an Australian passport fund if ASIC is of the opinion that one or more of the following has not been, is not being or is not likely to be complied with in relation to an Australian passport fund (whether in this jurisdiction or in any other place):

(a) this Act (including the Passport Rules for this jurisdiction);

(b) the ASIC Act.

(2) However, ASIC must not decide to deregister an Australian passport fund if ASIC is of the opinion that to do so would not be in the interests of:

(a) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) after the fund became an Australian passport fund; and

(b) members of the fund who became members (whether in this jurisdiction or any host economy for the fund) on the expectation that the fund would become an Australian passport fund.

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(3) For the purposes of subsection (2), ignore any member of the fund that:

(a) is, or has at any time been, the operator of the fund; or

(b) is a related party of an entity that is, or has at any time been, the operator of the fund.

Note: See section 1216B for the circumstances in which a person becomes a member of a fund on the expectation that it would become an Australian passport fund.

(4) Before deciding to deregister the fund as an Australian passport fund, ASIC must give the operator of the fund a written notice that requires the operator to show cause, at a hearing before a specified person, why the fund should not be deregistered as an Australian passport fund.

(5) The notice must specify:

(a) the grounds on which it is proposed to deregister the fund as an Australian passport fund; and

(b) a reasonable time and place at which the hearing is to be held.

However, if the operator consents, the person conducting the hearing may fix a different time or place.

(6) The person conducting the hearing must:

(a) give the operator an opportunity to be heard at the hearing; and

(b) give ASIC:

(i) a report about the hearing; and

(ii) a recommendation about the grounds in the notice on which it is proposed to deregister the fund.

(7) After considering the report and recommendation, ASIC may decide to:

(a) take no further action in relation to the matter and give written advice of that decision to the operator; or

(b) deregister the fund as an Australian passport fund.

(8) Neither of the following is a legislative instrument:

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(a) a notice under subsection (4);
(b) a report under subsection (6) (if it is in writing).

Subdivision C—Process for deregistration

1216D Process for deregistration

Notice before deregistration

(1) If ASIC proposes to deregister a fund as an Australian passport fund under subsection 1216A(1) or paragraph 1216C(7)(b), ASIC must give written notice setting out the date on which ASIC proposes to deregister the fund as an Australian passport fund to:
(a) the operator of the fund; and
(b) each host regulator for the fund.

(2) The notice must be given at least 5 business days before the fund is deregistered.

Deregistration

(3) The fund is deregistered as an Australian passport fund by including an annotation on the Register of Passport Funds that the fund has been deregistered. The fund ceases to be an Australian passport fund on the day on which the annotation is made.

Notice of deregistration

(4) If ASIC deregisters a fund as an Australian passport fund under subsection 1216A(1) or paragraph 1216C(7)(b), ASIC must give written notice that the fund has been deregistered and of the date of deregistration to:
(a) the operator of the fund; and
(b) each host regulator for the fund.

(5) The notice must be given within 5 business days after the fund is deregistered.

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Division 2—Denotification of notified foreign passport funds

Subdivision A—Voluntary denotification

1216E Application to be removed as a notified foreign passport fund

(1) The operator of a notified foreign passport fund may lodge an application for the fund to be removed as a notified foreign passport fund.

(2) The application must be in the prescribed form.

1216F ASIC to remove fund as a notified foreign passport fund

(1) On an application under section 1216E, ASIC must remove a fund as a notified foreign passport fund if ASIC is satisfied that:
   (a) there are no members of the fund who became members in this jurisdiction after the fund became a notified foreign passport fund; and
   (b) there are no members of the fund who became members in this jurisdiction on the expectation that the fund would become a notified foreign passport fund.

(2) For the purposes of subsection (1), ignore any member of the fund that:
   (a) is, or has at any time been, the operator of the fund; or
   (b) is a related party of an entity that is, or has at any time been, the operator of the fund.

1216G When is there an expectation that a fund would become a notified foreign passport fund?

For the purposes of this Act (including the Passport Rules for this jurisdiction), a person becomes a member of a fund on the ***expectation*** that it would become a notified foreign passport fund if:

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(a) a representation has been made by the fund or the operator of the fund in any document, or other means of communication, that might reasonably be expected to be available to persons considering acquiring an interest in the fund that the fund will become, or that it is intended or expected that the fund will become, a notified foreign passport fund; and

(b) the person acquires an interest in the fund after that representation was made.

Subdivision B—Notified foreign passport fund deregistered in the fund's home economy

1216H ASIC to remove a fund as a notified foreign passport fund

ASIC must remove a fund as a notified foreign passport fund if the home regulator for the fund notifies ASIC that the fund has been deregistered as a passport fund in the home economy for the fund.

Subdivision C—Process for removal as a notified foreign passport fund

1216J Process for removal as a notified foreign passport fund

Notice before removal

(1) If ASIC proposes to remove a fund as a notified foreign passport fund under section 1216F or 1216H, ASIC must give written notice setting out the date on which ASIC proposes to remove the fund as a notified foreign passport fund to:

(a) the operator of the fund; and

(b) the home regulator for the fund and each other host regulator for the fund.

(2) The notice must be given at least 5 business days before the fund is removed.

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Removing the fund as a notified foreign passport fund

(3) The fund is removed as a notified foreign passport fund by including an annotation on the Register of Passport Funds to that effect. The fund ceases to be a notified foreign passport fund on the day on which the annotation is made.

Notice of removal

(4) If ASIC removes a fund as a notified foreign passport fund under section 1216F or 1216H, ASIC must give written notice that the fund has been removed and of the date of removal to:
  (a) the operator of the fund; and
  (b) the home regulator for the fund and each other host regulator for the fund.

(5) The notice must be given within 5 business days after the fund is removed.

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Division 3—Continued application of the Corporations legislation

1216K ASIC's power to continue the application of the Corporations legislation

Declarations on continued application of the Corporations legislation

(1) ASIC may:

(a) declare that the Corporations legislation continues to apply:

(i) in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and

(ii) to an entity in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and

(b) declare that the Corporations legislation continues to apply:

(i) in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund; and

(ii) to an entity in relation to a fund that has been deregistered as an Australian passport fund or removed as a notified foreign passport fund;

as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The continued application of the Corporations legislation may:

(a) apply to all or specified provisions of the Corporations legislation; and

(b) apply to all entities, a specified class of entities or a specified entity; and

(c) apply to all former passport funds, a specified class of former passport funds or a specified former passport fund; and

(d) relate to any other matter generally or as specified.

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Declarations relating to all or a class of entities or passport funds

(3) A declaration that relates to all entities, a specified class of entities, all former passport funds or a specified class of former passport funds, must be made by legislative instrument.

Declarations relating to specified entities or passport funds

(4) A declaration that relates to a specified entity or a specified former passport fund must be made by notifiable instrument.

(5) ASIC must also:
   (a) give a copy of a declaration that relates to a specified entity to the entity; and
   (b) give a copy of a declaration that relates to a specified former passport fund to the most recent operator of the fund.

ASIC must do so as soon as is reasonably practicable after the declaration is made.

1216L Regulations may continue the application of the Corporations legislation

The regulations may:
   (a) provide that the Corporations legislation continues to apply:
      (i) in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and
      (ii) to an entity, all entities of a specified class or all entities in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and
   (b) provide that the Corporations legislation continues to apply:
      (i) in relation to a fund, all funds of a specified class or all funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and
      (ii) to an entity, all entities of a specified class or all entities in relation to a fund, all funds of a specified class or all

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funds that have been deregistered as Australian passport funds or removed as notified foreign passport funds; and

as if specified provisions were omitted, modified or varied as specified in the regulations.

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Part 8A.8—Exemptions and modifications

1217 ASIC's power to make exemptions and declare modifications etc. in relation to this Chapter

Exemptions and declarations on application of this Chapter

(1) ASIC may:
  (a) exempt an entity from a provision of this Chapter; or
  (b) declare that this Chapter applies to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:
  (a) apply to all or specified provisions of this Chapter; and
  (b) apply to all entities, a specified class of entities or a specified entity; and
  (c) apply to all passport funds, a specified class of passport funds or a specified passport fund; and
  (d) relate to any other matter generally or as specified.

Imposition of conditions on exemption

(3) An exemption may apply unconditionally or subject to specified conditions.

(4) An entity to whom a condition specified in an exemption applies must comply with the condition.

(5) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

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Exemptions and declarations relating to all or a class of entities or passport funds

(6) An exemption or declaration that relates to all entities, a specified class of entities, all passport funds or a specified class of passport funds, must be made by legislative instrument.

Exemptions and declarations relating to specified entities or passport funds

(7) An exemption or declaration that relates to a specified entity or a specified passport fund must be made by notifiable instrument.

(8) ASIC must also:
   (a) give a copy of an exemption or declaration that relates to a specified entity to the entity; and
   (b) give a copy of an exemption or declaration that relates to a specified passport fund to the operator of the fund.

ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

Definitions

(9) In this section:

provisions of this Chapter include:
   (a) regulations made for the purposes of this Chapter; and
   (b) definitions in this Act or the regulations as they apply to references in:
      (i) this Chapter; or
      (ii) regulations made for the purposes of this Chapter.

1217A ASIC's power to make exemptions and declare modifications etc. in relation to the Passport Rules

Exemptions and declaration on Passport Rules

(1) ASIC may:

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(a) exempt an entity from a provision of the Passport Rules for this jurisdiction; or

(b) declare that the Passport Rules for this jurisdiction apply to an entity as if specified provisions were omitted, modified or varied as specified in the declaration.

(2) The exemption or declaration may:

(a) apply to all or specified provisions of the Passport Rules for this jurisdiction; and

(b) apply to all entities, a specified class of entities or a specified entity; and

(c) apply to all passport funds, a specified class of passport funds or a specified passport fund; and

(d) relate to any other matter generally or as specified.

(3) However:

(a) ASIC may only give an exemption or make a declaration under subsection (1) in relation to an Australian passport fund if each host regulator for the fund has agreed to the exemption being given or the declaration being made; and

(b) ASIC may only give an exemption or make a declaration under subsection (1) in relation to a foreign passport fund if the home regulator for the fund has granted an equivalent exemption or made a similar omission, modification or variation of the Passport Rules for the home economy for the fund.

Imposition of conditions on exemption

(4) An exemption may apply unconditionally or subject to specified conditions.

(5) An entity to whom a condition specified in an exemption applies must comply with the condition.

(6) The Court may order the entity to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

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Exemptions and declarations relating to all or a class of entities or passport funds

(7) An exemption or declaration that relates to all entities, a specified class of entities, all passport funds or a specified class of passport funds, must be made by legislative instrument.

Exemptions and declarations relating to specified entities or passport funds

(8) An exemption or declaration that relates to a specified entity or a specified passport fund must be made by notifiable instrument.

(9) ASIC must also:
   (a) give a copy of an exemption or declaration that relates to a specified entity to the entity; and
   (b) give a copy of an exemption or declaration that relates to a specified passport fund to the operator of the fund.

ASIC must do so as soon as is reasonably practicable after the exemption or declaration is made.

1217B Exemptions and modification by regulations

The regulations may:
   (a) exempt from all or specified provisions of the Corporations legislation (which includes this Chapter and the Passport Rules for this jurisdiction):
      (i) a passport fund, all passport funds of a specified class or all passport funds; or
      (ii) an entity, all entities of a specified class or all entities, in relation to a passport fund, all passport funds of a specified class or all passport funds;
   (b) provide that the Corporations legislation (which includes this Chapter and the Passport Rules for this jurisdiction) applies in relation to:
      (i) a passport fund, all passport funds of a specified class or all passport funds; or

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(ii) an entity, all entities of a specified class or all entities, in relation to a passport fund, all passport funds of a specified class or all passport funds;

as if specified provisions of the Corporations legislation were omitted, modified or varied as specified in the regulations.

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Chapter 9—Miscellaneous

Part 9.1—Registers and registration of documents

1274 Registers

(1) ASIC must, subject to this Act, keep such registers as it considers necessary in such form as it thinks fit.

(2) A person may:

(a) inspect any document lodged with ASIC, not being:

(iaa) a notice lodged under subsection 205D(3); or

(iab) information of the kind specified under subsection 1212(4) or 1213(4) (information included in, or accompanying, applications in relation to passport funds); or

(i) an application under section 1279 (application for registration as an auditor), or section 20-5 of Schedule 2 (application for registration as a liquidator); or

(ia) a document lodged under a provision of Chapter 7 (other than subsection 792C(1), section 1015B or section 1015D); or

(ii) a document lodged under section 1287 (notification of matters by registered auditors), 1287A (annual statements by registered auditors), 30-1 of Schedule 2 (annual liquidator returns) or 35-1 of Schedule 2 (notice of significant events); or

(iii) a document lodged under paragraph 1296(2)(b); or

(iv) a report made or lodged under section 422, 438D or 533; or

(iva) a disclosure document lodged under section 718, or a supplementary or replacement document lodged under section 719, in relation to an offer of an ESS interest, in a company (within the meaning of the *Income Tax*

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Assessment Act 1997), if the conditions set out in subsection (2AA) are satisfied; or

(ivb) an industry notice lodged under subsection 40-100(1) of Schedule 2; or

(v) a document that has been destroyed or otherwise disposed of; or

(b) require a certificate of the registration of a company or any other certificate authorised by this Act to be given by ASIC; or

(c) require a copy of or extract from any document that the person is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given, or given and certified, by ASIC.

(2AA) For the purposes of subparagraph (2)(a)(iva), the conditions are the following:

(a) the offer is under an employee share scheme (within the meaning of the *Income Tax Assessment Act 1997*);

(b) the disclosure document or replacement document being lodged, or the disclosure document as supplemented by the supplementary document being lodged, states that the ESS interest, in the company (within the meaning of that Act) (the ***issuing company***), will:

(i) be made available only to employees of the issuing company or a subsidiary (within the meaning of that Act) of the issuing company; and

(ii) relate only to ordinary shares;

(c) no equity interests in any of the following companies are listed for quotation in the official list of any approved stock exchange at the end of the issuing company's most recent income year (the ***pre-lodgement year***) before the income year in which the disclosure document or replacement document, or the disclosure document being supplemented by the supplementary document, is lodged:

(i) the issuing company;

(ii) any subsidiary (within the meaning of that Act) of the issuing company at the end of the pre-lodgement year;

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(iii) any holding company of the issuing company at the end of the pre-lodgement year;

(iv) any subsidiary (within the meaning of that Act) of a holding company of the issuing company at the end of the pre-lodgement year;

(d) the issuing company and each of the other companies mentioned in paragraph (c) were incorporated by or under an Australian law or foreign law less than 10 years before the end of the pre-lodgement year;

(e) the issuing company had an aggregated turnover not exceeding $50 million for the pre-lodgement year.

(2AB) Subsection 83A-33(7) of the *Income Tax Assessment Act 1997* also applies for the purposes of subsection (2AA) of this section.

(2A) For the purposes of subsections (2) and (5), a document given to ASIC by a market operator (whether or not pursuant to a provision of this Act) that contains information that the market operator has made available to participants in the market is taken to be a document lodged with ASIC.

Note: For example, a document given to ASIC for the purposes of subsection 792C(1) will be covered by this subsection.

(2B) For the purposes of subsections (2) and (5), information or a copy of a document that is not required to be lodged with ASIC because of section 601CDA or 601CTA is taken to be a document lodged with ASIC if an authority mentioned in the section has given the information or document to ASIC.

(2C) For the purposes of subsections (2) and (5), information or a copy of a document that is taken to be lodged with ASIC because of paragraph 1200D(2)(b) or 1200G(10)(b) is taken to be a document lodged with ASIC if an authority mentioned in section 601CDA or 601CTA has given the information or document to ASIC.

(2D) For the purposes of subsections (2) and (5), each of the following is taken to be a document lodged with ASIC if a copy has been given to ASIC by APRA:

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(a) benefit fund rules that have been approved by APRA under section 16L of the *Life Insurance Act 1995*;

(b) an amendment of benefit fund rules that has been approved by APRA under section 16Q of the *Life Insurance Act 1995*;

(c) consequential amendments of a company's constitution that have been approved by APRA under section 16U or 16V of the *Life Insurance Act 1995*.

(3) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to paragraph (2)(a) to require the production of the original of that document or certificate.

(4) The reference in paragraph (2)(c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by ASIC, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.

(4A) A person is not entitled under paragraph (2)(a) to require the production of the original of a document or certificate if ASIC keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate and:

(a) ASIC produces to the person for inspection a writing that sets out what purports to be the contents of the document or certificate; or

(b) ASIC causes to be displayed for the person what purports to be the contents of the document or certificate and, as at the time of the displaying, the person has not asked for the production of a writing of the kind referred to in paragraph (a).

(4B) Where:

(a) a person makes under paragraph (2)(c) a requirement that relates to a document or certificate; and

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(b) ASIC keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate; and

(c) pursuant to that requirement, ASIC gives a writing or document that sets out what purports to be the contents of:

(i) the whole of the document or certificate; or

(ii) a part of the document or certificate;

then, for the purposes of that paragraph, ASIC is taken to have given, pursuant to that requirement:

(d) if subparagraph (c)(i) applies—a copy of the document or certificate; or

(e) if subparagraph (c)(ii) applies—an extract from the document or certificate setting out that part of it.

(4C) Where:

(a) the requirement referred to in paragraph (4B)(a) includes a requirement that the copy or extract be certified; and

(b) pursuant to that requirement, ASIC gives a writing or document as mentioned in paragraph (4B)(c);

then:

(c) ASIC may certify that the writing or document sets out the contents of the whole or part of the document or certificate, as the case requires; and

(d) the writing or document is, in a proceeding in a court, admissible as prima facie evidence of the information contained in it.

(4D) ASIC may edit from a statement of affairs any information that ASIC is satisfied is commercial-in-confidence, before allowing a person to inspect the statement, or giving a copy or extract of the statement to a person, under subsection (2).

(4E) A ***statement of affairs*** is a statement or report required to be prepared under one of the following provisions:

(a) subsection 421A(1);

(b) paragraph 429(2)(b);

(c) subsection 438B(2);

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(d) subsection 475(1) or (2);
(e) subsection 494(2);
(f) subsection 497(4).

(4F) Information is ***commercial-in confidence*** if:
(a) the disclosure of the information could unreasonably affect a person, or a business or action related to a person, in an adverse manner; and
(b) the information is not in the public domain; and
(c) the information is not required to be disclosed under another law of the Commonwealth, a State or a Territory; and
(d) the information is not readily discoverable.

(4G) Despite subsection (2), a person is not entitled to inspect, or to require a copy or an extract of, any information in a statement of affairs that has been edited from the statement under subsection (4D).

(5) A copy of or extract from any document lodged with ASIC, and certified by ASIC, is, in any proceeding, admissible in evidence as of equal validity with the original document.

Note: See also subsection (2A) for when certain documents are taken to have been lodged with ASIC.

(6) The reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by ASIC, a reference to that reproduction or transparency.

(7) In any proceeding:
(a) a certificate by ASIC that, at a date or during a period specified in the certificate, no company was registered under this Act by a name specified in the certificate is to be received as prima facie evidence that at that date or during that period, as the case may be, no company was registered by that name under this Act; and
(b) a certificate by ASIC that a requirement of this Act specified in the certificate:

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(i) had or had not been complied with at a date or within a period specified in the certificate; or

(ii) had been complied with at a date specified in the certificate but not before that date;

is to be received as prima facie evidence of matters specified in the certificate; and

(c) a certificate by ASIC that, during a period specified in the certificate, a particular company was registered, or taken to be registered, under this Act is to be received as prima facie evidence that, during that period, that company was registered under this Act.

(7A) A certificate issued by ASIC stating that a company has been registered under this Act is conclusive evidence that:

(a) all requirements of this Act for its registration have been complied with; and

(b) the company was duly registered as a company under this Act on the date specified in the certificate.

(8) If ASIC is of opinion that a document submitted for lodgment:

(a) contains matter contrary to law; or

(b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included; or

(c) because of an omission or misdescription has not been duly completed; or

(d) contravenes this Act; or

(e) contains an error, alteration or erasure;

ASIC may refuse to register or receive the document and may request:

(f) that the document be appropriately amended or completed and resubmitted; or

(g) that a fresh document be submitted in its place; or

(h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.

(9) ASIC may require a person who submits a document for lodgment to produce to ASIC such other document, or to give to ASIC such

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information, as ASIC thinks necessary in order to form an opinion whether it may refuse to receive or register the first-mentioned document.

(10) ASIC may, if in the opinion of ASIC it is no longer necessary or desirable to retain them, destroy or dispose of:

(a) in relation to a body corporate:

(i) any return of allotment of shares for cash that has been lodged for not less than 2 years; or

(ii) any balance-sheet that has been lodged for not less than 7 years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than 7 years; or

(iii) any other document (other than the constitution or any other document affecting it) that has been lodged or registered for not less than 15 years; or

(c) any document a transparency of which has been incorporated with a register kept by ASIC.

(11) If a body corporate or other person, having made default in complying with:

(a) any provision of this Act or of any other law that requires the lodging in any manner of any return, account or other document or the giving of notice to ASIC of any matter; or

(b) any request of ASIC to amend or complete and resubmit any document or to submit a fresh document;

fails to make good the default within 14 days after the service on the body or person of a notice requiring it to be done, a court may, on an application by any member or creditor of the body or by ASIC, make an order directing the body or any officer of the body or the person to make good the default within such time as is specified in the order.

(12) Any such order may provide that all costs of and incidental to the application are to be borne by the body or by any officers of the body responsible for the default or by the person.

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(13) A person must not contravene an order made under subsection (11).

(14) Nothing in this section prejudices the operation of any law imposing penalties on a body corporate or its officers or on another person in respect of a default mentioned in subsection (11).

(15) Where information about a person is included on a register kept by ASIC, ASIC may at any time, in writing, require that person to give ASIC specified information about the person, being information of the kind included on that register.

(16) The person must provide the information within such reasonable period, and in such form, as are specified by ASIC.

(17) An offence based on subsection (9), (13) or (16) is an offence of strict liability.

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

1274AA Register of disqualified company directors and other officers

(1) ASIC must keep a register of persons who have been disqualified from managing corporations under:

(a) section 206C, 206D, 206E, 206EAA, 206EAB, 206EA, 206EB, 206F or 206GAA of this Act; or

(b) a provision of a law of a State or Territory that:

(i) was in force at any time before the commencement of this Act; and

(ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a).

(2) The register must contain a copy of:

(a) every order made by the Court under section 206C, 206D or 206E; and

(aa) every court order referred to in section 206EA; and

(ab) every court order referred to in section 206EAA; and

(aba) every court order referred to in section 206EAB; and

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(ac) every court order referred to in section 206EB; and
(b) every notice that was served under subsection 206F(3); and
(c) every notice that was served under subsection 206GAA(6); and
(ca) each permission given under section 206GAB; and
(d) every order lodged under subsection 206G(4); and
(e) every order, notice or permission that was made, served, given or lodged under a provision of a law of a State or Territory that:
(i) was in force at any time before the commencement of this Act; and
(ii) corresponds, in whole or in part, to one of the provisions referred to in paragraph (a), (b), (c) or (d).

(3) Subsections 1274(2) and (5) apply to a copy of an order, notice or permission referred to in subsection (2) as if that copy were a document lodged with ASIC.

(4) A reference in this section to a provision of a law of a State or Territory includes a provision as applied as a law of that State or Territory.

1274A Obtaining information from certain registers

(1) In this section:

data processor means a mechanical, electronic or other device for the processing of data.

register means a register kept by ASIC under this Act.

search includes inspect.

(2) ASIC may permit a person to search, otherwise than by using a data processor, a prescribed register other than the Register of Relevant Providers.

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(3) ASIC may permit a person to search a prescribed register by using a data processor in order to obtain prescribed information from the register.

(4) ASIC may make available to a person prescribed information (in the form of a document or otherwise) that ASIC has obtained from a prescribed register by using a data processor.

(5) Nothing in this section limits:
  (a) a power or function that ASIC has apart from this section; or
  (b) a right that a person has apart from this section.

1274B Use, in court proceedings, of information from ASIC's national database

(1) In this section:

data processor means a mechanical, electronic or other device for processing data.

(2) In a proceeding in a court, a writing that purports to have been prepared by ASIC is admissible as prima facie evidence of the matters stated in so much of the writing as sets out what purports to be information obtained by ASIC, by using a data processor, from the national database. In other words, the writing is proof of such a matter in the absence of evidence to the contrary.

(3) A writing need not bear a certificate or signature in order to be taken to purport to have been prepared by ASIC.

(4) Nothing in this section limits, or is limited by, section 1274 or 1274A.

1274C ASIC certificate

ASIC may certify that a person was a director or secretary of a company at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

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Note: See section 1274B for the evidentiary status of documents prepared by ASIC from the national database.

1275 Relodging of lost registered documents

(1) Where a document forming part of the constitution of, or any other document relating to, a body corporate has, since being lodged, been lost or destroyed, a person may apply to ASIC for leave to lodge a copy of the document as originally lodged.

(2) Where such an application is made, ASIC may direct that notice of the application be given to such persons and in such manner as it thinks fit.

(3) Whether or not an application has been made to ASIC under subsection (1), ASIC, upon being satisfied:

(a) that an original document has been lost or destroyed; and

(b) of the date of the lodging of that document; and

(c) that a copy of that document produced to ASIC is a correct copy;

may certify upon the copy that it is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.

(4) Upon the lodgment the copy has, and is taken to have had from such date as is mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.

(5) A decision of the Tribunal varying or setting aside a decision of ASIC to certify and grant leave under subsection (3) may be lodged with ASIC and is to be registered by it, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the Tribunal's decision and upon the faith of and in reliance upon the certificate are to be invalidated or affected by the Tribunal's decision.

(6) Where a transparency of a document referred to in subsection (1) has been incorporated with a register kept by ASIC and is lost or

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destroyed as referred to in that subsection, this section applies as if the document of which it is a transparency had been so lost or destroyed.

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Part 9.2—Registration of auditors

Division 1—Interpretation

1276 Definitions

In this Part, unless the contrary intention appears:

body corporate includes a Part 5.7 body.

decision, in relation to the Board, means, in Division 3, a decision of the Board under that Division and includes a refusal to exercise a power under section 1292.

registered means registered under Division 2.

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Division 2—Registration

1279 Application for registration as auditor

(1) A natural person may make an application to ASIC for registration as an auditor.

(2) An application under this section:
  (a) must be lodged with ASIC; and
  (b) must contain such information as is prescribed in the regulations; and
  (c) must be in the prescribed form.

1280 Registration of auditors

(2) Subject to this section, where an application for registration as an auditor is made under section 1279, ASIC must grant the application and register the applicant as an auditor if:
  (a) the applicant satisfies subsection (2A) or (2B); and
  (b) ASIC is satisfied that the applicant has either:
    (i) satisfied all the components of an auditing competency standard approved by ASIC under section 1280A; or
    (ii) had such practical experience in auditing as is prescribed; and
  (c) ASIC is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor;

but otherwise ASIC must refuse the application.

(2A) The applicant satisfies this subsection if the applicant:
  (a) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia; and
  (b) has, in the course of obtaining that degree, diploma or certificate, passed examinations in such subjects, under whatever name, as the appropriate authority of the university

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or other institution certifies to ASIC to represent a course of study:

(i) in accountancy (including auditing) of not less than 3 years duration; and

(ii) in commercial law (including company law) of not less than 2 years duration; and

(c) has satisfactorily completed a course in auditing prescribed by the regulations for the purposes of this paragraph.

(2B) The applicant satisfies this subsection if the applicant has other qualifications and experience that, in ASIC's opinion, are equivalent to the requirements mentioned in subsection (2A).

(3) ASIC must not register as an auditor a person who is disqualified from managing corporations under Part 2D.6.

(4) Subject to subsection (8), ASIC may refuse to register as an auditor a person who is not resident in Australia.

(5) Where ASIC grants an application by a person for registration as an auditor, ASIC must cause to be issued to the person a certificate by ASIC stating that the person has been registered as an auditor and specifying the day on which the application was granted.

(7) A registration under this section is taken to have taken effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:

(a) the registration is cancelled by ASIC or the Board; or

(b) the person who is registered dies.

(8) ASIC must not refuse to register a person as an auditor unless ASIC has given the person an opportunity to appear at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.

(9) Where ASIC refuses an application by a person for registration as an auditor, ASIC must, not later than 14 days after the decision,

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give to the person a notice in writing setting out the decision and the reasons for it.

1280A Approval of auditing competency standard

(1) ASIC may, on application by any person, approve an auditing competency standard for the purposes of paragraph 1280(2)(b). The approval must be in writing.

(2) If, on application by a person, ASIC approves an auditing competency standard under subsection (1), ASIC may, on application by that person, approve a variation of the standard. The approval must be in writing.

(3) ASIC must not approve an auditing competency standard, or a variation of an auditing competency standard, unless it is satisfied that:

(a) the standard, or the standard as proposed to be varied, provides that a person's performance against each component of the standard is to be appropriately verified by a person who:

(i) is a registered company auditor; and

(ii) has sufficient personal knowledge of the person's work to be able to give that verification; and

(b) the standard, or the standard as proposed to be varied, is not inconsistent with this Act or any other law of the Commonwealth under which ASIC has regulatory responsibilities; and

(c) the standard adequately addresses the level of practical experience needed for registration as a company auditor; and

(d) the standard is harmonised to the greatest extent possible with other approved auditing competency standards.

(4) ASIC may revoke an approval of an auditing competency standard:

(a) on application by the person who applied for the approval; or

(b) if ASIC is no longer satisfied as mentioned in subsection (3).

The revocation must be in writing.

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(5) An approval, an approval of a variation, and a revocation of an approval, of an auditing competency standard are legislative instruments.

1281 Auditor-General taken to be registered as auditor

(1) A person who holds office as, or is for the time being exercising the powers and performing the duties of:

(a) the Auditor-General; or

(b) the Auditor-General of a State or Territory in this jurisdiction;

is taken, despite any other provision of this Part, to be registered as an auditor.

(2) A person to whom the Auditor-General of the Commonwealth, or of a State or Territory, delegates:

(a) the function of conducting an audit; or

(b) the power to conduct an audit;

is taken to be registered as an auditor under this Part for the purposes of applying Chapter 2M to the audit.

1285 Register of Auditors

(1) ASIC must cause a Register of Auditors to be kept for the purposes of this Act and must cause to be entered in the Register in relation to a person who is registered as an auditor:

(a) the name of the person; and

(b) the day on which the application by that person for registration as an auditor was granted; and

(c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he or she so practises; and

(d) if the person practises as an auditor as a member of a firm or under a name or style other than his or her own name—the name of that firm or the name or style under which he or she so practises; and

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(e) particulars of any suspension of the person's registration, under Division 2, as an auditor and of any action taken in respect of the person under paragraph 1292(9)(a), (b) or (c);

and may cause to be entered in the Register in relation to a person who is registered as an auditor such other particulars as ASIC considers appropriate.

(2) Where a person ceases to be registered as an auditor, ASIC must cause to be removed from the Register of Auditors the name of the person and any other particulars entered in the Register in relation to that person.

(3) A person may inspect and make copies of, or take extracts from, the Register of Auditors.

1287 Notification of certain matters

(1) Where:

(a) a person who is a registered company auditor ceases to practise as an auditor; or

(b) a change occurs in any matter particulars of which are required by paragraph 1285(1)(a), (c) or (d) to be entered in the Register of Auditors in relation to a person who is a registered company auditor;

the person must, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.

(4) If a person who is registered as an auditor is disqualified from managing corporations under Part 2D.6, then, within a period of 3 days after they become disqualified, they must lodge written particulars in the prescribed form of the circumstances because of which they become disqualified.

1287A Annual statements by registered company auditors

(1) A person who is a registered company auditor must, within one month after the end of:

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(a) the period of 12 months beginning on the day on which the person's registration begins; and

(b) each subsequent period of 12 months;

lodge with ASIC a statement in respect of that period.

(1A) A statement under subsection (1):

(a) must contain such information as is prescribed in the regulations; and

(b) must be in the prescribed form.

(2) ASIC may, on the application of the person made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.

1289 Auditors and other persons to enjoy qualified privilege in certain circumstances

Qualified privilege for auditor

(1) An auditor has qualified privilege in respect of:

(a) a statement that the auditor makes (orally or in writing) in the course of the auditor's duties as auditor; or

(b) a statement that the auditor makes (orally or in writing) on:

(i) a directors' report under section 298 or 306; or

(ii) a statement, report or other document that is taken, for any purpose, to be part of that report; or

(c) notifying ASIC of a matter under section 311; or

(d) a disclosure made by the auditor in response to a notice given to the auditor under subsection 30A(1) or 225A(5) of the ASIC Act.

Note: If the auditor is an audit company, the company has qualified privilege under this subsection in respect of statements made, and notices given, by individuals on behalf of the company if those statements and notices can be properly attributed to the company.

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Qualified privilege for registered company auditor acting on behalf of audit company

(2) If the auditor is an audit company, a registered company auditor acting on behalf of the company has qualified privilege in respect of:

(a) a statement that the registered company auditor makes (orally or in writing) in the course of the performance, on the behalf of the company, of the company's duties as auditor; or

(b) a statement that the registered company auditor makes (orally or in writing), on behalf of the company, on:

(i) a directors' report under section 298 or 306; or

(ii) any statement, report or other document that is taken, for any purpose, to be part of that report; or

(c) a notification of a matter that the registered company auditor gives ASIC, on behalf of the company, under section 311; or

(d) a disclosure made by the registered company auditor in response to a notice given to the audit company under subsection 225A(5) of the ASIC Act.

Extent of auditor's duties—answering questions put to auditor by members

(3) For the purposes of this section, an auditor's duties as auditor include:

(a) answering questions put to the auditor (or the auditor's representative) at an AGM; and

(b) providing answers to questions that are submitted to the auditor under section 250PA.

Qualified privilege for person representing auditor at AGM

(4) A person who represents an auditor at an AGM has qualified privilege in respect of any statement that the person makes in the course of representing the auditor at that AGM.

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Qualified privilege for subsequent publication

(5) A person has qualified privilege in respect of the publishing of a document that:

(a) is prepared by an auditor in the course of the auditor's duties; or

(b) required by or under this Act to be lodged (whether or not the document has been lodged).

(6) A person has qualified privilege in respect of the publishing of any statement:

(a) made by an auditor as mentioned in subsection (1); or

(b) made by a registered company auditor as mentioned in subsection (2); or

(c) made by a person as mentioned in subsection (4).

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Division 2A—Conditions on registration of auditors

1289A ASIC may impose conditions on registration

(1) Under this section, ASIC may impose only conditions of a kind specified in the regulations.

(2) Subject to this section, ASIC may, at any time, by giving written notice to a person registered as an auditor:
  (a) impose conditions, or additional conditions, on their registration; and
  (b) vary or revoke conditions imposed on their registration.

(3) ASIC may do so:
  (a) on its own initiative; or
  (b) if the registered company auditor lodges with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

Note: For fees in respect of lodging applications, see Part 9.10.

(4) Except where conditions are varied on the application of the registered company auditor, ASIC may only impose conditions or additional conditions, or vary the conditions, on registration after giving the auditor an opportunity:
  (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
  (b) to make submissions to ASIC in relation to the matter.

This subsection does not apply to ASIC imposing conditions at the time when the applicant is registered.

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Division 3—Cancellation or suspension of registration

1290 Cancellation at request of registered person

(1) Where a person who is registered as an auditor requests ASIC to cancel his or her registration, ASIC may cancel the registration of that person as an auditor.

(2) A decision of ASIC under subsection (1) to cancel the registration of a person as an auditor comes into effect as soon as practicable upon the making of the decision.

1291 Immediate suspension or cancellation

ASIC may cancel or suspend a person's registration as an auditor if:

(a) the person is liable to pay levy imposed by the *ASIC Supervisory Cost Recovery Levy Act 2017*; and

(b) the following have not been paid in full at least 12 months after the due date for payment:

(i) an amount of levy (if any) payable in respect of the person;

(ii) an amount of late payment penalty payable (if any) in relation to the levy;

(iii) an amount of shortfall penalty payable (if any) in relation to the levy.

Note: See section 1298 for the effect of suspension.

1291A Notice of suspension or cancellation

Application of this section

(1) This section applies if ASIC decides under section 1291 to suspend or cancel the registration of a person as an auditor.

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ASIC must give notice of decision

(2) ASIC must, within 10 business days after making the decision, give a written notice setting out the decision, and the reasons for the decision.

When decision comes into effect

(3) The decision comes into effect on the day after the notice is given to the person.

Failure to give notice does not affect validity of decision

(4) A failure by ASIC to give the notice under subsection (2) within 10 business days does not affect the validity of the decision.

1291B ASIC may vary or revoke suspension

(1) This section applies if ASIC has suspended the registration of a person as an auditor under section 1291.

(2) ASIC may at any time vary or revoke the suspension by giving written notice to the person.

1292 Powers of Board in relation to auditors

(1) The Board may, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:

(a) the person has:

(ia) contravened section 324DB; or

(i) contravened section 1287A; or

(ia) failed to comply with a condition of the person's registration as an auditor; or

(ii) ceased to be resident in Australia; or

(b) the person either:

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(i) has not performed any audit work during a continuous period of not less than 5 years; or

(ii) has not performed any significant audit work during a continuous period of not less than 5 years;

and, as a result, has ceased to have the practical experience necessary for carrying out audits for the purposes of this Act; or

(d) the person has failed, whether in or outside this jurisdiction, to carry out or perform adequately and properly:

(i) the duties of an auditor; or

(ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;

or is otherwise not a fit and proper person to remain registered as an auditor;

by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

(1A) In determining for the purposes of subparagraph (1)(b)(ii) whether audit work performed by a person is significant, have regard to:

(a) the nature of the audit; and

(b) the extent to which the person was involved in the audit; and

(c) the level of responsibility the person assumed in relation to the audit.

(7) The Board must, if it is satisfied on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section:

(a) that the person is disqualified from managing corporations under Part 2D.6; or

(b) that the person is incapable, because of mental infirmity, of managing his or her affairs;

by order, cancel the registration of the person as an auditor.

(9) Where, on an application by ASIC or APRA for a person who is registered as an auditor to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform

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adequately and properly any of the duties or functions mentioned in paragraph (1)(d), or is otherwise not a fit and proper person to remain registered as an auditor the Board may deal with the person in one or more of the following ways:

(a) by admonishing or reprimanding the person;

(b) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;

(c) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;

and, if a person fails to give an undertaking when required to do so under paragraph (b) or (c), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

(10) The Board's powers under subsection (9) may be exercised in addition to, or in substitution for, the exercise of the Board's powers to cancel or suspend a registration under subsection (1).

(11) The Board may exercise any of its powers under this Division in relation to a person as a result of conduct engaged in by the person whether or not that conduct constituted or might have constituted an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.

(12) This section has effect subject to section 1294.

1294 Board to give opportunity for hearing etc.

(1) The Board must not:

(a) cancel or suspend the registration of a person as an auditor; or

(b) deal with a person in any of the ways mentioned in subsection 1292(9);

unless the Board has given the person an opportunity to appear at a hearing held by the Board and to make submissions to, and adduce evidence before, the Board in relation to the matter.

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(2) Where subsection (1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Board must give ASIC and APRA an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

1294A Pre-hearing conference

(1) If subsection 1294(1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Chairperson of the Board may, if he or she considers that it would assist in the conduct of the hearing to do so, convene one or more conferences with the person.

(2) The Chairperson of the Board may allow any of the following persons to attend a conference:
  (a) a representative of ASIC;
  (b) a representative of APRA;
  (c) any other person.

(3) The Chairperson of the Board must give written notice of a conference to ASIC and APRA at least 14 days before the conference.

(4) At a conference, the Chairperson of the Board may, on behalf of the Board:
  (a) fix a date or dates for the hearing; and
  (b) give directions about the time within which submissions are to be made to the Board in relation to the matter; and
  (c) give directions about the time within which evidence is to be brought before the Board in relation to the matter; and
  (d) give directions as to the procedure to be followed at or in connection with the hearing.

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1295 Board may remove suspension

(1) Where a registration of a person as an auditor is suspended by the Board, the Board may, on an application by the person or of its own motion, by order, terminate the suspension.

(2) An order under subsection (1) has effect accordingly.

1296 Notice of Board's decision

(1) Where the Board decides to exercise any of its powers under section 1292 in relation to a person, or decides that it is required to make an order under subsection 1292(7) in relation to a person, the Board must, within 14 days after the decision:

(a) give to the person a notice in writing setting out the decision and the reasons for it; and

(b) lodge a copy of the notice referred to in paragraph (a); and

(c) cause to be published in the *Gazette* a notice in writing setting out the decision.

(1A) If:

(a) the Board decides to exercise the power, or makes the order, on the basis of particular conduct engaged in by the person; and

(b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;

the notice under paragraph (1)(c) may identify the audit firm or audit company.

(1B) If the Board:

(a) decides to exercise any of its powers under section 1292 in relation to a person; or

(b) decides that it is required to make an order under subsection 1292(7) in relation to a person;

then, in addition to meeting the requirements of subsection (1), the Board may take such steps as it considers reasonable and appropriate to publicise:

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(c) the decision; and
(d) the reasons for the decision.

Without limiting this, the Board may make the decision and reasons available on the internet.

(1C) If:
(a) the Board decides to exercise the power under section 1292, or makes the order under subsection 1292(7), on the basis of particular conduct engaged in by the person; and
(b) the person engaged in that conduct in the course of participating in the conduct of an audit on behalf of an audit firm or audit company;

a publication under subsection (1B) may identify the audit firm or audit company.

(2) Where the Board decides to refuse to exercise its powers under section 1292 in relation to a person, or decides that it is not required to make an order under subsection 1292(7) in relation to a person, the Board must, within 14 days after the decision:
(a) give to the person a notice in writing setting out the decision and the reasons for it; and
(b) lodge a copy of the notice referred to in paragraph (a).

(3) The validity of a decision of the Board is not affected by failure of the Board to comply with subsection (1) or (2), as the case requires, in relation to the decision.

1297 Time when Board's decision comes into effect

(1) Subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*, an order made by the Board cancelling or suspending the registration of a person as an auditor comes into effect:
(a) at the end of the day on which there is given to the person a paragraph 1296(1)(a) notice of the decision pursuant to which the order is made; or
(b) at the end of such longer period (not exceeding 90 days) as the Board determines.

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(2) Where the Board makes an order of a kind referred to in subsection (1), it may, in order to enable an application to be made to the Tribunal for review of the decision to make the order, determine that the order is not to come into effect until a specified time or until the happening of a specified event.

(3) The Board may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.

(4) A determination in force under subsection (2) has effect accordingly.

1298 Effect of suspension

A person whose registration as an auditor is suspended is, except for the purposes of subsection 1285(2), section 1287 (other than paragraph 1287(1)(a)), section 1287A and this Division, taken not to be registered as an auditor so long as the registration is suspended.

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Division 4—Validation of approval of auditing competency standard

1298P Validation of approval of auditing competency standard

(1) This section applies, for the purposes of the laws of the Commonwealth (including this Act), in relation to the approval dated 24 November 2004 under section 1280A of an auditing competency standard (whether or not the approval is in force when this section commences).

(2) The *Legislation Act 2003* has effect, and is taken always to have had effect, as if:

(a) the approval had been lodged for registration immediately after the approval was given; and

(b) the approval had been registered immediately after it was lodged for registration; and

(c) any other requirement imposed by that Act in relation to the approval had been met.

(3) However, this section does not affect rights or liabilities arising between parties to proceedings heard and finally determined by a court on or before the commencement of this section, to the extent that those rights or liabilities arose from, or were affected by, the approval.

Definitions

(4) In this section:

lodge has the same meaning as in the *Legislation Act 2003*.

register has the same meaning as in the *Legislation Act 2003*.

1298Q Compensation for acquisition of property

(1) If the operation of section 1298P would result in an acquisition of property from a person otherwise than on just terms, the

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Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

(3) To avoid doubt, this section applies in relation to the operation of section 1298P instead of section 1350.

(4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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Part 9.2A—Authorised audit companies

Division 1—Registration

1299A Application for registration as authorised audit company

(1) A company may apply to ASIC for registration as an authorised audit company.

(2) An application under this section:
  (a) must contain such information as is prescribed in the regulations; and
  (b) must be in the prescribed form.

1299B Eligibility for registration as an authorised audit company

A company is eligible to be registered as an authorised audit company if and only if:
  (a) each of the directors of the company:
    (i) is a registered company auditor; and
    (ii) is not disqualified from managing a corporation under Part 2D.6; and
  (b) each share in the company is held and beneficially owned by a person who is:
    (i) an individual; or
    (ii) the legal personal representatives of an individual; and
  (c) a majority of the votes that may be cast at a general meeting of the company attach to shares in the company that are held and beneficially owned by individuals who are registered company auditors; and
  (d) ASIC is satisfied that the company has adequate and appropriate professional indemnity insurance for claims that may be made against the company in relation to the audit of companies and registered schemes for the purposes of this Act; and

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(e) the company is not a Chapter 5 body corporate.

1299C Registration as authorised audit company

(1) ASIC must grant the application and register the company as an authorised audit company if the company is eligible to be registered as an authorised audit company. Otherwise ASIC must refuse the application.

(2) If ASIC grants the company's application, ASIC must issue to the company a certificate by ASIC stating that the company has been registered as an authorised audit company and specifying the day on which the application was granted.

(3) The company's registration under this section takes effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:
   (a) the registration is cancelled by ASIC; or
   (b) the company is wound up.

(4) ASIC must not refuse to register the company as an authorised audit company unless ASIC has given the company an opportunity to be represented at a hearing before ASIC and to make submissions and give evidence to ASIC in relation to the matter.

(5) If ASIC refuses the company's application, ASIC must, not later than 14 days after the decision, give to the company a notice in writing setting out the decision and the reasons for it.

1299D Registration may be subject to conditions

(1) The company's registration as an authorised audit company is subject to:
   (a) the provisions of this Part; and
   (b) the conditions or restrictions specified in the regulations; and
   (c) any other conditions or restrictions determined by ASIC.

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(2) ASIC may determine conditions or restrictions for the purposes of paragraph (1)(c) either at the time when the company is registered as an authorised audit company or subsequently.

(3) ASIC determines a condition or restriction by written notice to the company.

1299E Register of authorised audit companies

(1) ASIC must keep a Register of Authorised Audit Companies for the purposes of this Act.

(2) In relation to each authorised audit company, ASIC must enter in the Register:
- (a) the name of the company; and
- (b) the company's ACN or ABN; and
- (c) the day on which the company's registration under section 1299C took effect; and
- (d) the address of the company's registered office; and
- (e) the address of the principal place where the company practises as an auditor and the address of the other places (if any) at which the company so practises; and
- (f) the name and address of:
  - (i) each director of the company; and
  - (ii) each person who performs a chief executive officer function (within the meaning of section 295A) in relation to the company; and
- (g) the details of any conditions or restrictions determined under paragraph 1299D(1)(c) in relation to the registration; and
- (h) details of any suspension of the registration.

(3) ASIC may enter in the Register in relation to the company any other details that ASIC considers appropriate.

(4) If a company ceases to be registered as an authorised audit company, ASIC must remove the entry in relation to the company from the Register.

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(5) A person may inspect and make copies of, or take extracts from, the Register.

1299F Notification of certain matters

(1) An authorised audit company must notify ASIC if a condition or restriction to which the company's registration is subject is contravened.

(2) The notice under subsection (1) must:
  (a) set out details of the contravention; and
  (b) be given within 14 days after the company becomes aware of the contravention; and
  (c) be lodged with ASIC in the prescribed form.

(3) An authorised audit company must notify ASIC if:
  (a) details of a matter are required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company; and
  (b) a change occurs in that matter while the company is registered as an authorised audit company.

(4) The notice under subsection (3) must:
  (a) set out details of the change; and
  (b) be given within 28 days after the change occurs; and
  (c) be lodged with ASIC in the prescribed form.

(5) A company that applies for registration as an authorised audit company must notify ASIC if:
  (a) details of a matter would be required by subsection 1299E(2) to be entered in the Register of Authorised Audit Companies in relation to the company if it were to be registered; and
  (b) a change occurs in that matter before the application is granted or rejected.

(6) The notice under subsection (5) must:
  (a) set out details of the change; and
  (b) be given within 28 days after the change occurs; and

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(c) be lodged with ASIC in the prescribed form.

1299G Annual statements by authorised audit company

(1) A company that is an authorised audit company must, within one month after the end of:

(a) the period of 12 months beginning on the day on which the company became registered as an authorised audit company; and

(b) each subsequent period of 12 months;

lodge with ASIC a statement in respect of that period.

(1A) A statement under subsection (1):

(a) must contain such information as is prescribed in the regulations; and

(b) must be in the prescribed form.

(2) ASIC may, on the application of an authorised audit company made before the end of the period for lodging a statement under subsection (1), extend, or further extend, that period.

(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*.

(4) A director of a company must take all reasonable steps to comply with, or to secure compliance with, subsection (1).

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Division 2—Cancellation or suspension of registration

1299H Cancellation at request of registered person

(1) ASIC may cancel a company's registration as an authorised audit company if the company requests ASIC to cancel the registration.

(2) ASIC must take the steps necessary to cancel the registration as soon as practicable after the request is made.

1299I Cancellation or suspension in other cases

ASIC may cancel or suspend a company's registration as an authorised audit company if:

(a) the company ceases to be eligible to be registered as an authorised audit company; or

(b) the company fails to meet conditions or observe restrictions imposed on the company's registration as an authorised audit company; or

(c) in the case of a company that is a leviable entity (within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*)—the following have not been paid in full at least 12 months after the due date for payment:

(i) an amount of levy (if any) payable in respect of the company;

(ii) an amount of late payment penalty payable (if any) in relation to the levy;

(iii) an amount of shortfall penalty payable (if any) in relation to the levy.

Note: See section 1299K for when the cancellation takes effect.

1299J Notice of cancellation or suspension

(1) If ASIC decides to cancel or suspend a company's registration as an authorised audit company under section 1299I, ASIC must, within 14 days after the decision:

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(a) give to the company written notice setting out the decision and the reasons for it; and

(b) publish written notice of the decision in the *Gazette*.

(2) The validity of a decision by ASIC is not affected by a failure by ASIC to comply with subsection (1) in relation to the decision.

1299K Time when ASIC's decision comes into effect

(1) A decision by ASIC to cancel or suspend a company's registration as an authorised audit company comes into effect at the end of the day on which the company is given notice of the decision under paragraph 1299J(1)(a). This subsection has effect subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*.

(2) ASIC may, in order to enable an application to be made to the Tribunal for review of the decision to cancel or suspend the registration, determine that the decision to cancel or suspend the company's registration as an authorised audit company is not to come into effect until:

(a) a specified time; or

(b) the happening of a specified event.

(3) ASIC may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.

(4) A determination in force under subsection (2) has effect accordingly.

1299L Effect of suspension

A company whose registration as an authorised audit company is suspended is, except for the purposes of subsection 1299E(4), sections 1299F and 1299G and this Division, taken not to be registered as an authorised audit company so long as the registration is suspended.

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1299M Effect of cancellation

If a company's registration as an authorised audit company is cancelled (whether under section 1299H or 1299I), each appointment of the company as auditor for a company or registered scheme for the purposes of this Act that is in force on the day on which the cancellation decision takes effect is terminated at the end of that day.

Note: This means that the authorised audit company ceases to be auditor without resigning and that the position of auditor for the company or scheme will immediately become vacant unless there is another auditor who has been appointed, and who can continue to act, as auditor for the company or registered scheme.

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Part 9.3—Books

1300 Inspection of books

(1) A book that is by this Act required to be available for inspection must, subject to and in accordance with this Act, be available for inspection at the place where, in accordance with this Act, it is kept and at all times when the registered office in this jurisdiction of the body corporate concerned is required to be open to the public.

(2) If any register kept by a company or a foreign company for the purposes of this Act is kept at a place other than the registered office of the company or foreign company, that place must be open to permit the register to be inspected during the same hours as those during which the registered office of the company or foreign company is required to be open to the public.

(2A) If a person asks a proprietary company in writing to inspect a particular book of the company that the person has a right to inspect, the company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.

(2B) An offence based on subsection (2A) is an offence of strict liability.

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

(3) A person permitted by this Act (other than section 70-30 of Schedule 2) to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.

Note: Section 70-30 of Schedule 2 is about books relating to an external administration.

(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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Books relating to notified foreign passport funds

(5) Subsection (1) does not apply in relation to the books of the operator of a notified foreign passport fund that relate to the fund, or the books of a notified foreign passport fund.

(6) If a book of that kind is by this Act required to be available for inspection, it must, subject to and in accordance with this Act, be available for inspection:
  (a) at the registered office in this jurisdiction of the operator of the fund; and
  (b) at all times when that office is open to the public.

1301 Location of books on computers

(1) This section applies if:
  (a) a corporation records, otherwise than in writing, matters (***the stored matters***) this Act requires to be contained in a book; and
  (b) the record of the stored matters is kept at a place (***the place of storage***) other than the place (***the place of inspection***) where the book is, apart from this section, required to be kept; and
  (c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and
  (d) the corporation has lodged a notice:
    (i) stating that this section is to apply in respect of:
      (A) except where sub-subparagraph (B) applies—the book; or
      (B) if the stored matters are only some of the information that is required to be contained in the book—the book and matters that are of the same kind as the stored matters; and
    (ii) specifying the situation of the place of storage and the place of inspection.

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(2) Subject to subsection (4), the corporation is taken to have complied with the requirements of this Act as to the location of the book, but only in so far as the book is required to contain the stored matters.

(3) Subject to subsection (4), for the purposes of the application of subsection 1085(3) and section 1300 in relation to the corporation and the book, the book is taken to be kept at the place of inspection, even though the record of the stored matters is kept at the place of storage.

(4) If:

(a) the situation of the place of storage or the place of inspection changes; and

(b) the corporation does not lodge notice of the change within 14 days after the change;

this section, as it applies to the corporation because of the lodging of the notice referred to in paragraph (1)(d), ceases to so apply at the end of that period of 14 days.

1303 Court may compel compliance

If any person in contravention of this Act refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

1304 Translations of instruments

(1) Where under this Act a person is required to lodge an instrument or a certified copy of an instrument and the instrument is not written in English, the person must lodge at the same time a certified translation of the instrument into English.

(2) Where under this Act a body corporate is required to make an instrument available for inspection and the instrument is not written in English, the body corporate must keep at its registered office or, if it does not have a registered office, at its principal office in this jurisdiction, a certified translation of the instrument into English.

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(3) In this section, ***instrument*** includes any certificate, contract or other document.

1305 Admissibility of books in evidence

(1) A book kept by a body corporate under a requirement of this Act is admissible in evidence in any proceeding and is prima facie evidence of any matter stated or recorded in the book.

(2) A document purporting to be a book kept by a body corporate is, unless the contrary is proved, taken to be a book kept as mentioned in subsection (1).

1306 Form and evidentiary value of books

(1) A book that is required by this Act to be kept or prepared may be kept or prepared:
  (a) by making entries in a bound or looseleaf book; or
  (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
  (c) in any other manner approved by ASIC.

(2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:
  (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
  (b) a reproduction of those matters is kept in a written form approved by ASIC.

(3) A corporation must take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Act to be kept or prepared by the corporation.

(4) Where a corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Act to make a book containing those matters available for inspection or to provide copies of the whole or a part of a book

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containing those matters is to be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.

(4A) The regulations may provide for how up to date the information contained in an instrument prepared for the purposes of subsection (4) must be.

(5) If:

(a) because of this Act, a book that this Act requires to be kept or prepared is prima facie evidence of a matter; and

(b) the book, or a part of the book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device;

a written reproduction of that matter as so recorded or stored is prima facie evidence of that matter.

(6) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device is, unless the contrary is established, taken to be a reproduction of that matter.

1307 Falsification of books

(1) An officer, former officer, employee, former employee, member or former member of a company who engages in conduct that results in the concealment, destruction, mutilation or falsification of any securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.

(2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:

(a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular; or

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(b) engages in conduct that results in the destruction, removal or falsification of matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or

(c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:

(i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or

(ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;

contravenes this subsection.

(3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

Note: A defendant bears a legal burden in relation to the matter mentioned in subsection (3), see section 13.4 of the *Criminal Code*.

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Part 9.4—Offences

Division 1A—Application of the Criminal Code

1308A Application of *Criminal Code*

Subject to this Act, Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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Division 1—Specific offences

1308B False or misleading statements about share capital

(1) A corporation must not advertise or publish:

(a) a statement of the amount of its capital that is misleading; or

(b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.

(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*.

1308 False or misleading documents

Fault-based offence

(1) A person commits an offence if:

(a) a document:

(i) is required under or for the purposes of this Act; or

(ii) is lodged with or submitted to ASIC; and

(b) the person:

(i) makes, or authorises the making of, a statement in the document; or

(ii) omits, or authorises the omission of, a matter or thing from the document; and

(c) the person knows that the document is materially false or misleading because of the statement or omission.

Note: For when a document is ***materially false or misleading***, see subsection (6).

(2) A person is not liable to be proceeded against for an offence in consequence of a regulation made under section 1364 as well as for an offence against subsection (1) of this section.

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Strict liability offence—failure to take reasonable steps

(3) A person commits an offence of strict liability if:

(a) a document:

(i) is required under or for the purposes of this Act; or

(ii) is lodged with or submitted to ASIC; and

(b) the person:

(i) makes, or authorises the making of, a statement in the document; or

(ii) omits, or authorises the omission of, a matter or thing from the document; and

(c) the document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Note 1: For when a document is ***materially false or misleading***, see subsection (6).

Note 2: For strict liability, see section 6.1 of the *Criminal Code*.

Civil penalty—knowledge or recklessness

(4) A person contravenes this subsection if:

(a) a document:

(i) is required under or for the purposes of this Act; or

(ii) is lodged with or submitted to ASIC; and

(b) the person:

(i) makes, or authorises the making of, a statement in the document; or

(ii) omits, or authorises the omission of, a matter or thing from the document; and

(c) the person knows that, or is reckless as to whether, the document is materially false or misleading because of the statement or omission.

Note 1: For when a document is ***materially false or misleading***, see subsection (6).

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Note 2: This subsection is a civil penalty provision (see section 1317E).

Civil penalty—failure to take reasonable steps

(5) A person contravenes this subsection if:

(a) a document:

(i) is required under or for the purposes of this Act; or

(ii) is lodged with or submitted to ASIC; and

(b) the person:

(i) makes, or authorises the making of, a statement in a document; or

(ii) omits, or authorises the omission of, a matter or thing from a document; and

(c) the document is materially false or misleading because of the statement or omission; and

(d) the person did not take all reasonable steps to ensure that the document was not materially false or misleading because of the statement or omission.

Note 1: For when a document is ***materially false or misleading***, see subsection (6).

Note 2: This subsection is a civil penalty provision (see section 1317E).

When a document is materially false or misleading

(6) For the purposes of this section, a document is ***materially false or misleading*** if:

(a) the document includes a statement that:

(i) is false in a material particular or materially misleading; or

(ii) is based on information that is false in a material particular or materially misleading, or has omitted from it a matter or thing the omission of which renders the document materially misleading; or

(b) a matter or thing is omitted from the document and, without the matter or thing, the document is false in a material particular or materially misleading.

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Other interpretive provisions

(7) For the purposes of this section, a person who votes in favour of a resolution approving, or who otherwise approves, a document is taken to have authorised:

(a) the making of any statement in the document; and

(b) the omission of any matter or thing from the document.

(8) For the purposes of this section, a statement, report or other document that:

(a) relates to affairs of a company or of a subsidiary of a company; and

(b) is attached to or included with a report of the directors provided under section 314 to members of the company or laid before the company at an annual general meeting of the company;

is taken to be part of the report referred to in paragraph (b) of this subsection, even if it is not otherwise required by this Act to be laid before the company in general meeting.

(9) For the purposes of this section:

(a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and

(b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be misleading in a material respect if it fails to comply with paragraph 708AA(7)(d), 708A(6)(e), 1012DAA(7)(e) or 1012DA(6)(f).

1309 False information etc.

(1) An officer or employee of a corporation who makes available or gives information, or authorises or permits the making available or giving of information, to:

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

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(b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or

(c) an operator of a financial market (whether the market is operated in Australia or elsewhere) or an officer of such a market; or

(ca) a CSF intermediary;

being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer or employee:

(d) is false or misleading in a material particular; or

(e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

contravenes this subsection.

(2) An officer or employee of a corporation who makes available or gives information, or authorises or permits the making available or giving of information, to:

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; or

(b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or

(c) an operator of a financial market (whether the market is operated in Australia or elsewhere) or an officer of such a market;

being information, whether in documentary or any other form, relating to the affairs of the corporation that:

(d) is false or misleading in a material particular; or

(e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;

without having taken reasonable steps to ensure that the information:

(f) was not false or misleading in a material particular; and

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(g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;

contravenes this subsection.

(3) The references in subsections (1) and (2) to a person making available or giving, or authorising or permitting the making available or giving of, information relating to the affairs of a corporation include references to a person making available or giving, or authorising or permitting the making available or giving of, information as to the state of knowledge of that person with respect to the affairs of the corporation.

(4) Where information is made available or given to a person referred to in paragraph (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information are to be considered together in determining whether the information was false or misleading.

(5) For the purposes of this section:

(a) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be a notice required for the purposes of this Act; and

(b) a notice under subsection 708AA(2), 708A(5), 1012DAA(2) or 1012DA(5) is taken to be misleading in a material respect if it omits information that is excluded information for the purposes of section 708AA, 708A, 1012DAA or 1012DA.

(6) Paragraphs (1)(a) and (b) do not apply in relation to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar offences are created in relation to Aboriginal and Torres Strait Islander corporations under section 561-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

(7) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

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(b) after doing so, the person believed on reasonable grounds that the information was not misleading or deceptive in a material particular.

(8) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

(a) the person made all inquiries (if any) that were reasonable in the circumstances; and

(b) after doing so, the person believed on reasonable grounds that there was no such omission.

(9) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information was not false or misleading in a material particular if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

(10) For the purposes of subsection (2), a person is taken to have taken reasonable steps to ensure that information did not have omitted from it any matter or thing the omission of which rendered the information misleading in a material respect if the person proves that:

(a) the person relied on information given to the person by:

(i) if the person is a body—someone other than a director, employee or agent of the body; or

(ii) if the person is an individual—someone other than an employee or agent of the individual; and

(b) the reliance placed on that information by the person was reasonable in all the circumstances.

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Fault-based offence

(11) A person commits an offence if the person contravenes subsection (1) or (2).

Civil liability

(12) A person contravenes this subsection if the person contravenes subsection (2).

Note: This subsection is a civil penalty provision (see section 1317E).

1310 Obstructing or hindering ASIC etc.

A person must not, without lawful excuse, obstruct or hinder ASIC, or any other person, in the performance or exercise of a function or power under this Act.

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Division 2—Offences generally

1311 General penalty provisions

(1) A person who:

(a) does an act or thing that the person is forbidden to do by or under a provision of this Act; or

(b) does not do an act or thing that the person is required or directed to do by or under a provision of this Act; or

(c) otherwise contravenes a provision of this Act;

is guilty of an offence by virtue of this subsection, unless that or another provision of this Act provides that the person:

(d) is guilty of an offence; or

(e) is not guilty of an offence.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

(1A) Paragraphs (1)(a), (b) and (c) only apply to a provision in the following list if a penalty, pecuniary or otherwise, is set out in Schedule 3 for that provision, or for a provision or provisions in which that provision is included:

(a) Chapters 2A, 2B and 2C;

(b) Parts 2F.2 and 2F.3;

(c) Chapters 2G, 2H, 2J, 2M (other than Part 2M.4), 2N, 2P and 5A;

(d) Parts 5B.1 and 5B.3;

(daa) Chapter 5D;

(da) Chapter 6CA;

(dba) Part 6D.3A;

(db) Chapter 7;

(dc) Chapter 8;

(dd) Chapter 8A;

(e) Chapter 10.

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1311A Penalty for committing an offence

A person who commits an offence against this Act is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.

1311B Penalty applicable to an offence committed by an individual

(1) The ***penalty applicable*** to an offence committed by an individual is:

(a) for an offence for which a fine is the only penalty specified—the fine specified; and

(b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.

(2) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula.

(3) The ***individual fine formula*** is:

$$\text{Term of imprisonment, expressed in months} \times 10$$

(4) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greater of:

(c) 4,500 penalty units; and

(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.

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(5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

(a) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;

(b) a regulation made under paragraph 1364(2)(w) prescribing a penalty for an individual for a contravention of the regulations.

1311C Penalty applicable to an offence committed by a body corporate

(1) The ***penalty applicable*** to an offence committed by a body corporate is:

(a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and

(b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.

(2) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.

(3) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greatest of:

(c) 45,000 penalty units; and

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(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and

(e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

(a) subsection 1211B(3), which specifies a penalty for a body corporate;

(b) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;

(c) a regulation made under paragraph 1364(2)(w) prescribing a penalty for a body corporate for a contravention of the regulations.

1311D Meaning of *benefit derived and detriment avoided* because of an offence

The ***benefit derived and detriment avoided*** because of an offence is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the commission of the offence; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the commission of the offence.

1311E Where is the penalty for an offence specified?

(1) The penalty ***specified*** for an offence is:

(a) if a penalty, pecuniary or otherwise, is specified in Schedule 3 for the provision under which the offence is

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created, or a provision or provisions in which that provision is included—that penalty; and

(b) if a penalty, pecuniary or otherwise, is specified in any other provision of this Act for the provision under which the offence is created, or a provision or provisions in which that provision is included—that penalty.

(2) To avoid doubt, a penalty is not ***specified*** for an offence if it is a consequence for committing the offence that is not a punishment on conviction for the offence.

(3) Without limiting subsection (2), each of the following is a consequence for committing an offence that is not a punishment on conviction for the offence:

(a) the availability of a pecuniary penalty order for the contravention of a civil penalty provision that relates to the same conduct as that which gave rise to the offence;

(b) the availability of an infringement notice in relation to an alleged commission of the offence;

(c) the availability of administrative consequences as a result of the commission of the offence, such as:

(i) disqualification from any office; or

(ii) consequences in relation to a licence; or

(iii) other actions that may be taken by ASIC under this Act or any other Act;

(d) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an order to refund money, pay compensation, relinquish a benefit or make any other payment if the offence is committed;

(e) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an injunction or any other order directing a person to take, or refrain from taking, action if the offence is committed.

1311F If no penalty is specified

If no penalty is specified for an offence:

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(a) the offence is an offence of strict liability; and
(b) 20 penalty units is taken to be the penalty specified for the offence.

1313A Offences committed partly in and partly out of the jurisdiction

Where:

(a) a person does or omits to do an act outside this jurisdiction; and
(b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in this jurisdiction, have been guilty of an offence against this Act;

the person is guilty of that offence.

1314 Continuing offences

(1) Where:

(a) by or under a provision, an act is or was required to be done within a particular period or before a particular time; and
(b) failure to do the act within that period or before that time constitutes an offence; and
(c) the act is not done within that period or before that time;

then:

(d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is or has been convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
(e) subsections (3) and (4) apply.

(2) Where:

(a) by or under a provision, an act is or was required to be done but neither a period nor a time for the doing of the Act is or was specified; and
(b) failure to do the act constitutes an offence; and

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(c) a person is or has been convicted of a primary substantive offence in relation to failure to do the act;

then:

(d) the obligation to do the act continues, despite the conviction, until the act is done; and

(e) subsections (3) and (4) apply.

(3) Where:

(a) at a particular time, a person is or was first convicted of a substantive offence, or is or was convicted of a second or subsequent substantive offence, in relation to failure to do the act; and

(b) the failure to do the act continued after that time;

then:

(c) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continued or elapsed after that time and before the relevant day in relation to the further offence; and

(d) for the purposes of this Act and of the *Crimes Act 1914*, the further offence is taken to be constituted by failure to do the act during so much of that period as so elapsed.

(4) Where:

(a) the provision referred to in paragraph (1)(a) or (2)(a), as the case may be, provides or provided that:

(i) an officer or employee of a body corporate; or

(ii) a person;

who is or was in default, or is or was involved in a contravention constituted by the failure to do the act, is or was guilty of an offence or contravenes or contravened a provision of this Act; and

(b) throughout a particular period (in this subsection called the ***relevant period***):

(i) the failure to do the act continued; and

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(ii) a person (in this subsection called the ***derivative offender***) is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and

(iii) in a case where subparagraph (a)(i) applies—the derivative offender is or was an officer or employee of the body;

then:

(c) in a case where either or both of the following events occurs or occur:

(i) a person is or was convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;

(ii) the derivative offender is or was convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;

the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph called the ***relevant offence***) in respect of so much (if any) of the relevant period as elapsed:

(iii) after the conviction referred to in subparagraph (i) or(ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and

(iv) before the relevant day in relation to the relevant offence; and

(d) in a case where, at a particular time during the relevant period, the derivative offender is or was first convicted of a secondary derivative offence, or is or was convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapsed after that time and before the relevant day in relation to the further offence.

(5) Where a person is guilty, by virtue of subsection (3) or (4), of an offence in respect of the whole or a part of a particular period, the

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penalty applicable to the offence is a fine of the amount obtained by multiplying half a penalty unit by the number of days in that period, or in that part of that period, as the case may be.

(6) In this section:

act includes thing.

primary derivative offence, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is or was guilty by virtue of being an officer of a corporation, or a person, who is or was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act.

primary substantive offence, in relation to a failure to do an act, means an offence (other than an offence of which a person is or was guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time.

provision means a section, or a subsection of a section, of this Act.

relevant day, in relation to an offence of which a person is guilty by virtue of this section, means:

(a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or

(b) in any other case—the day on which the information relating to the offence is laid.

required includes directed.

secondary derivative offence, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4)(c) or (d).

substantive offence, in relation to failure to do an act, means:

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(a) a primary substantive offence in relation to failure to do the act; or

(b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of subsection (3).

(7) For the purposes of subsection (4), a provision of this Act is, whether or not it expressly provides as mentioned in paragraph (4)(a), taken to provide that a person who is or was involved in a contravention constituted by a failure to do an act required by the provision contravenes or contravened that provision.

1315 Proceedings: how taken

(1) Subject to this Act, in any proceedings for an offence against this Act, any information, charge, complaint or application may be laid or made by:

(a) ASIC; or

(b) a Commission delegate; or

(c) another person authorised in writing by the Minister to institute the proceedings.

(2) A delegation for the purposes of paragraph (1)(b), or an authorisation for the purposes of paragraph (1)(c), may relate to all offences, or to specified offences, against this Act.

(3) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

1316 Time for instituting criminal proceedings

Despite anything in any other law, proceedings for an offence against this Act may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister's consent, at any later time.

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1316A Privilege against self-incrimination not available to bodies corporate in Corporations Act criminal proceedings

(1) In a Corporations Act criminal proceeding, a body corporate is not entitled to refuse or fail to comply with a requirement:

(a) to answer a question or give information; or

(b) to produce a book or any other thing; or

(c) to do any other act whatever;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend:

(d) to incriminate the body (whether in respect of an offence to which the proceeding relates or otherwise); or

(e) to make the body liable to a penalty (whether in respect of anything to which the proceeding relates or otherwise).

(2) Subsection (1) applies whether or not the body concerned is a defendant in the proceeding or in any other proceeding.

(3) In this section:

Corporations Act criminal proceeding means a proceeding in a court when exercising jurisdiction in respect of a criminal matter arising under this Act.

1317 Certain persons to assist in prosecutions

(1) Where a prosecution in respect of an offence against this Act has been instituted, or ASIC is of the opinion that a prosecution in respect of an offence against this Act ought to be instituted, against a person (in this section referred to as the ***defendant***), ASIC may:

(a) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or

(b) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;

to assist in the prosecution, and the person who is so required must give all assistance in connection with the prosecution that that person is reasonably able to give.

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(2) ASIC must not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of ASIC, is or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.

(3) If a person to whom paragraph (1)(a) or (b) relates fails to give assistance as required by subsection (1), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of ASIC, order the person to comply with the requirement within such time, and in such manner, as the Court orders.

(4) In this section, ***agent***, in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

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Part 9.4AAA—Protection for whistleblowers

1317AA Disclosures qualifying for protection under this Part

Disclosure to ASIC, APRA or prescribed body

(1) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to a regulated entity; and

(b) the disclosure is made to any of the following:

(i) ASIC;

(ii) APRA;

(iii) a Commonwealth authority prescribed for the purposes of this subparagraph in relation to the regulated entity; and

(c) subsection (4) or (5) applies to the disclosure.

Note: Section 1317AAD (public interest disclosure and emergency disclosure) and paragraph 1317AB(1)(c) (protection from self-incrimination etc.) may apply to a disclosure covered by this subsection.

Disclosure to eligible recipients

(2) A disclosure of information by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser is an eligible whistleblower in relation to a regulated entity; and

(b) the disclosure is made to an eligible recipient in relation to the regulated entity; and

(c) subsection (4) or (5) applies to the disclosure.

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Disclosure to legal practitioner

(3) A disclosure of information by an individual qualifies for protection under this Part if the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part.

Disclosable matters

(4) This subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information concerns misconduct, or an improper state of affairs or circumstances, in relation to:
  (a) the regulated entity; or
  (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity.

(5) Without limiting subsection (4), this subsection applies to a disclosure of information if the discloser has reasonable grounds to suspect that the information indicates that any of the following:
  (a) the regulated entity, or an officer or employee of the regulated entity;
  (b) if the regulated entity is a body corporate—a related body corporate of the regulated entity, or an officer or employee of a related body corporate of the regulated entity;

  has engaged in conduct that:
  (c) constitutes an offence against, or a contravention of, a provision of any of the following:
    (i) this Act;
    (ii) the ASIC Act;
    (iii) the *Banking Act 1959*;
    (iv) the *Financial Sector (Collection of Data) Act 2001*;
    (v) the *Insurance Act 1973*;
    (vi) the *Life Insurance Act 1995*;
    (vii) the *National Consumer Credit Protection Act 2009*;
    (viii) the *Superannuation Industry (Supervision) Act 1993*;

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(ix) an instrument made under an Act referred to in any of subparagraphs (i) to (viii); or

(d) constitutes an offence against any other law of the Commonwealth that is punishable by imprisonment for a period of 12 months or more; or

(e) represents a danger to the public or the financial system; or

(f) is prescribed by the regulations for the purposes of this paragraph.

Note: There is no requirement for a discloser to identify himself or herself in order for a disclosure to qualify for protection under this Part.

1317AAA Eligible whistleblowers

An individual is an ***eligible whistleblower*** in relation to a regulated entity if the individual is, or has been, any of the following:

(a) an officer of the regulated entity;

(b) an employee of the regulated entity;

(c) an individual who supplies services or goods to the regulated entity (whether paid or unpaid);

(d) an employee of a person that supplies services or goods to the regulated entity (whether paid or unpaid);

(e) an individual who is an associate of the regulated entity;

(f) for a regulated entity that is a superannuation entity:

(i) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*), custodian (within the meaning of that Act) or investment manager (within the meaning of that Act) of the superannuation entity; or

(ii) an officer of a body corporate that is a trustee, custodian or investment manager of the superannuation entity; or

(iii) an employee of an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii); or

(iv) an individual who supplies services or goods to an individual referred to in subparagraph (i) or a body

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corporate referred to in subparagraph (ii) (whether paid or unpaid); or

(v) an employee of a person that supplies services or goods to an individual referred to in subparagraph (i) or a body corporate referred to in subparagraph (ii) (whether paid or unpaid);

(g) a relative of an individual referred to in any of paragraphs (a) to (f);

(h) a dependant of an individual referred to in any of paragraphs (a) to (f), or of such an individual's spouse;

(i) an individual prescribed by the regulations for the purposes of this paragraph in relation to the regulated entity.

1317AAB Regulated entities

Each of the following is a ***regulated entity***:

(a) a company;

(b) a corporation to which paragraph 51(xx) of the Constitution applies;

(c) an ADI (within the meaning of the *Banking Act 1959*), an authorised NOHC (within the meaning of that Act) or a subsidiary of an ADI or an authorised NOHC;

(d) a general insurer (within the meaning of the *Insurance Act 1973*), an authorised NOHC (within the meaning of that Act) or a subsidiary of a general insurer or an authorised NOHC;

(e) a life company (within the meaning of the *Life Insurance Act 1995*), a registered NOHC (within the meaning of that Act) or a subsidiary of a life company or a registered NOHC;

(f) a superannuation entity or a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a superannuation entity;

(g) an entity prescribed by the regulations for the purposes of this paragraph.

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1317AAC Eligible recipients

(1) Each of the following is an ***eligible recipient*** in relation to a regulated entity that is a body corporate:

(a) an officer or senior manager of the body corporate or a related body corporate;

(b) an auditor, or a member of an audit team conducting an audit, of the body corporate or a related body corporate;

(c) an actuary of the body corporate or a related body corporate;

(d) a person authorised by the body corporate to receive disclosures that may qualify for protection under this Part.

(2) Each of the following is an ***eligible recipient*** in relation to a regulated entity that is a superannuation entity:

(a) an officer of the superannuation entity;

(b) an auditor, or a member of an audit team conducting an audit, of the superannuation entity;

(c) an actuary of the superannuation entity;

(d) an individual who is a trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;

(e) a director of a body corporate that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity;

(f) a person authorised by the trustee or trustees (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of the superannuation entity to receive disclosures that may qualify for protection under this Part.

(3) The regulations may prescribe persons or bodies that are ***eligible recipients*** in relation to all regulated entities, or in relation to a class or classes of regulated entities.

(4) Subsections (1), (2) and (3) do not limit each other.

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1317AAD Public interest disclosure and emergency disclosure

(1) A disclosure of information (the ***public interest disclosure***) by an individual (the ***discloser***) qualifies for protection under this Part if:

(a) the discloser has previously made a disclosure of that information (the ***previous disclosure***) that qualifies for protection under this Part under subsection 1317AA(1); and

(b) at least 90 days have passed since the previous disclosure was made; and

(c) the discloser does not have reasonable grounds to believe that action is being, or has been, taken to address the matters to which the previous disclosure related; and

(d) the discloser has reasonable grounds to believe that making a further disclosure of the information in accordance with this subsection would be in the public interest; and

(e) after the end of the period referred to in paragraph (b), the discloser gave the body to which the previous disclosure was made a written notification that:

(i) includes sufficient information to identify the previous disclosure; and

(ii) states that the discloser intends to make a public interest disclosure; and

(f) the public interest disclosure is made to:

(i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or

(ii) a journalist; and

(g) the extent of the information disclosed in the public interest disclosure is no greater than is necessary to inform the recipient referred to in paragraph (f) of the misconduct or the improper state of affairs or circumstances referred to in subsection 1317AA(4) or the conduct referred to in subsection 1317AA(5), as the case may be.

(2) A disclosure of information (the ***emergency disclosure***) by an individual (the ***discloser***) qualifies for protection under this Part if:

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(a) the discloser has previously made a disclosure of that information (the ***previous disclosure***) that qualifies for protection under this Part under subsection 1317AA(1); and

(b) the discloser has reasonable grounds to believe that the information concerns a substantial and imminent danger to the health or safety of one or more persons or to the natural environment; and

(c) the discloser gives the body to which the previous disclosure was made a written notification that:

(i) includes sufficient information to identify the previous disclosure; and

(ii) states that the discloser intends to make an emergency disclosure; and

(d) the emergency disclosure is made to:

(i) a member of the Parliament of the Commonwealth, the Parliament of a State or the legislature of a Territory; or

(ii) a journalist; and

(e) the extent of the information disclosed in the emergency disclosure is no greater than is necessary to inform the recipient referred to in paragraph (d) of the substantial and imminent danger.

(3) In this section:

journalist means a person who is working in a professional capacity as a journalist for any of the following:

(a) a newspaper or magazine;

(b) a radio or television broadcasting service;

(c) an electronic service (including a service provided through the internet) that:

(i) is operated on a commercial basis, or operated by a body that provides a national broadcasting service (within the meaning of the *Broadcasting Services Act 1992*); and

(ii) is similar to a newspaper, magazine or radio or television broadcast.

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1317AADA Personal work-related grievances

(1) Subsections 1317AA(1) and (2) do not apply to a disclosure of information by an individual (the ***discloser***) to the extent that the information disclosed:

(a) concerns a personal work-related grievance of the discloser; and

(b) does not concern a contravention, or an alleged contravention, of section 1317AC that involves detriment caused to the discloser or a threat made to the discloser.

Note: A disclosure concerning a personal work-related grievance that is made to a legal practitioner may qualify for protection under this Part under subsection 1317AA(3).

(2) For the purposes of subsection (1), the information disclosed concerns a ***personal work-related grievance*** of the discloser if:

(a) the information concerns a grievance about any matter in relation to the discloser's employment, or former employment, having (or tending to have) implications for the discloser personally; and

(b) the information:

(i) does not have significant implications for the regulated entity to which it relates, or another regulated entity, that do not relate to the discloser; and

(ii) does not concern conduct, or alleged conduct, referred to in paragraph 1317AA(5)(c), (d), (e) or (f).

Examples of grievances that may be personal work-related grievances under paragraph (a) (but subject to paragraph (b)) are as follows:

(a) an interpersonal conflict between the discloser and another employee;

(b) a decision relating to the engagement, transfer or promotion of the discloser;

(c) a decision relating to the terms and conditions of engagement of the discloser;

(d) a decision to suspend or terminate the engagement of the discloser, or otherwise to discipline the discloser.

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1317AAE Confidentiality of whistleblower's identity

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Part; and

(b) the first person discloses any of the following (the ***confidential information***):

(i) the identity of the discloser;

(ii) information that is likely to lead to the identification of the discloser; and

(c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and

(d) the disclosure referred to in paragraph (b) is not authorised under subsection (2) or (3).

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(2) A disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

(a) is made to ASIC; or

(b) is made to APRA; or

(c) is made to a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or

(d) is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Part; or

(e) is made to a person or body prescribed by the regulations for the purposes of this paragraph; or

(f) is made with the consent of the discloser.

(3) Without limiting subsection (2), a disclosure referred to in paragraph (1)(b) is authorised under this subsection if it:

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(a) is made by ASIC, APRA or a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); and

(b) is made to a Commonwealth authority, or a State or Territory authority, for the purpose of assisting the authority in the performance of its functions or duties.

(4) Subsection (1) does not apply if:

(a) the disclosure referred to in paragraph (1)(b):

(i) is not of the identity of the discloser; and

(ii) is reasonably necessary for the purposes of investigating a matter referred to in subsection 1317AA(4) or (5) to which the qualifying disclosure relates; and

(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure referred to in paragraph (1)(b).

Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

1317AB Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Part:

(a) the person is not subject to any civil, criminal or administrative liability (including disciplinary action) for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure; and

(c) if the disclosure qualifies for protection under this Part under subsection 1317AA(1) or section 1317AAD—the information is not admissible in evidence against the person in criminal proceedings or in proceedings for the imposition of a penalty, other than proceedings in respect of the falsity of the information.

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Note: Except as provided for by paragraph (c), this subsection does not prevent the person being subject to any civil, criminal or administrative liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):
  (a) the person has qualified privilege in respect of the disclosure; and
  (b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

1317AC Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) contravenes this subsection if:
  (a) the first person engages in conduct; and
  (b) the first person's conduct causes any detriment to another person (the ***second person***); and
  (c) when the first person engages in the conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and
  (d) the belief or suspicion referred to in paragraph (c) is the reason, or part of the reason, for the conduct.

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

Threatening to cause detriment to another person

(2) A person (the ***first person***) contravenes this subsection if:

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(a) the first person makes to another person (the ***second person)*** a threat to cause any detriment to the second person or to a third person; and

(b) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:

(i) makes a disclosure that qualifies for protection under this Part; or

(ii) may make a disclosure that would qualify for protection under this Part.

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

Officers and employees involved in contravention

(3) If a company contravenes subsection (1) or (2), any officer or employee of the company who is involved in that contravention contravenes this subsection.

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

Note 2: This subsection is also a civil penalty provision (see section 1317E). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

Threats

(4) For the purposes of subsection (2), a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(5) In a prosecution for an offence against subsection (2) or proceedings in relation to a contravention of subsection (2), it is

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not necessary to prove that the person threatened actually feared that the threat would be carried out.

1317AD Compensation and other remedies—circumstances in which an order may be made

(1) A court may make an order under section 1317AE in relation to a person (the ***first person***) if:

(a) the first person engages in conduct (***detrimental conduct***) that:

(i) causes any detriment to another person (the ***second person***); or

(ii) constitutes the making of a threat to cause any such detriment to another person (the ***second person***); and

(b) when the first person engages in the detrimental conduct, the first person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct.

(2) A court may make an order under section 1317AE in relation to a person (the ***first person***) if:

(a) the first person is or was an officer or employee of a body corporate; and

(b) paragraphs (1)(a), (b) and (c) of this section apply to the body corporate because of detrimental conduct engaged in by the body corporate; and

(c) the first person:

(i) aided, abetted, counselled or procured the detrimental conduct; or

(ii) induced, whether by threats or promises or otherwise, the detrimental conduct; or

(iii) was in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the detrimental conduct; or

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(iv) conspired with others to effect the detrimental conduct.

(2A) A court may make an order under section 1317AE in relation to a person (the ***first person***) that is a body corporate if:

(a) another person (the ***third person***) engages in conduct (***detrimental conduct***) that:

(i) causes any detriment to a person (the ***second person***) other than the first person or the third person; or

(ii) constitutes the making of a threat to cause any such detriment to a person (the ***second person***) other than the first person or the third person; and

(b) when the third person engages in the detrimental conduct, the third person believes or suspects that the second person or any other person made, may have made, proposes to make or could make a disclosure that qualifies for protection under this Part; and

(c) the belief or suspicion referred to in paragraph (b) is the reason, or part of the reason, for the detrimental conduct; and

(d) the first person is under a duty to prevent the third person engaging in the detrimental conduct, or a duty to take reasonable steps to ensure that the third person does not engage in the detrimental conduct; and

(e) the first person fails in part or whole to fulfil that duty.

Burden of proof

(2B) In proceedings where a person seeks an order under section 1317AE in relation to another person:

(a) the person seeking the order bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters in:

(i) if subsection (1) of this section applies—paragraph (1)(a); or

(ii) if subsection (2) of this section applies—paragraph (1)(a), as mentioned in paragraph (2)(b); or

(iii) if subsection (2A) of this section applies—paragraphs (2A)(a) and (d); and

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(b) if that onus is discharged—the other person bears the onus of proving that the claim is not made out.

Threats

(3) For the purposes of this section, a threat may be:
(a) express or implied; or
(b) conditional or unconditional.

(4) In proceedings for the purposes of section 1317AE, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

1317ADA Detriment

In sections 1317AC and 1317AD, ***detriment*** includes (without limitation) any of the following:
(a) dismissal of an employee;
(b) injury of an employee in his or her employment;
(c) alteration of an employee's position or duties to his or her disadvantage;
(d) discrimination between an employee and other employees of the same employer;
(e) harassment or intimidation of a person;
(f) harm or injury to a person, including psychological harm;
(g) damage to a person's property;
(h) damage to a person's reputation;
(i) damage to a person's business or financial position;
(j) any other damage to a person.

1317AE Compensation and other remedies—orders that may be made

(1) For the purposes of subsections 1317AD(1), (2) and (2A), a court may make any of the following orders:

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(a) an order requiring the first person to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct;

(b) if the court is satisfied that the first person engaged in the detrimental conduct in connection with the first person's position as an employee:

(i) an order requiring the first person to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct, and an order requiring the first person's employer to compensate the second person, or any other person, for a part of loss, damage or injury as a result of the detrimental conduct; or

(ii) an order requiring the first person and the first person's employer jointly to compensate the second person, or any other person, for loss, damage or injury suffered as a result of the detrimental conduct; or

(iii) an order requiring the first person's employer to compensate the second person, or any other person, for loss, damage or injury as a result of the detrimental conduct;

(c) an order granting an injunction, on such terms as the court thinks appropriate, to prevent, stop or remedy the effects of the detrimental conduct;

(d) an order requiring the first person to apologise to the second person, or any other person, for engaging in the detrimental conduct;

(e) if the second person is or was employed in a particular position and the detrimental conduct wholly or partly consists, or consisted, of the termination, or purported termination, of the second person's employment—an order that the second person be reinstated in that position or a position at a comparable level;

(f) if the court thinks it is appropriate—an order requiring the first person to pay exemplary damages to the second person, or any other person;

(g) any other order the court thinks appropriate.

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(2) If the detrimental conduct wholly or partly consists, or consisted, of terminating or purporting to terminate a person's employment (including detrimental conduct that forces or forced the person to resign), the court must, in making an order mentioned in paragraph (1)(a) or (b), consider the period, if any, the person is likely to be without employment as a result of the detrimental conduct. This subsection does not limit any other matter the court may consider.

(3) In deciding whether to make an order under paragraph (1)(b) in relation to the first person's employer, the court may have regard to the following:

(a) whether the employer took reasonable precautions, and exercised due diligence, to avoid the detrimental conduct;

(b) if the employer has a policy dealing with any or all of the matters referred to in subsection 1317AI(5) (whether or not section 1317AI requires the employer to have such a policy)—the extent to which the employer gave effect to that policy;

(c) any duty that the employer was under to prevent the detrimental conduct, or to take reasonable steps to ensure that the detrimental conduct was not engaged in.

(4) If the court makes an order under subparagraph (1)(b)(ii), the first person and the first person's employer are jointly and severally liable to pay the compensation concerned.

1317AF Interaction between civil proceedings, civil penalties and criminal offences

To avoid doubt, a person may bring civil proceedings for an order under section 1317AE, or civil proceedings for a contravention of subsection 1317AC(1), (2) or (3), in relation to particular conduct, even if a prosecution for a criminal offence against section 1317AC in relation to that conduct has not been brought, or cannot be brought.

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1317AG Identifying information not to be disclosed etc. to courts or tribunals

If a person (the ***discloser***) makes a disclosure of information that qualifies for protection under this Part, the discloser or any other person is not to be required:

(a) to disclose to a court or tribunal:
  (i) the identity of the discloser; or
  (ii) information that is likely to lead to the identification of the discloser; or

(b) to produce to a court or tribunal a document containing:
  (i) the identity of the discloser; or
  (ii) information that is likely to lead to the identification of the discloser;

except where:

(c) it is necessary to do so for the purposes of giving effect to this Part; or

(d) the court or tribunal thinks it necessary in the interests of justice to do so.

Note: A discloser may also be able to apply to the court or tribunal, in accordance with the rules of the court or tribunal, for an order protecting the discloser's identity.

1317AH Costs only if proceedings instituted vexatiously etc.

(1) This section applies to a proceeding (including an appeal) in a court in relation to a matter arising under section 1317AE in which a person (the ***claimant***) is seeking an order under subsection 1317AE(1).

(2) The claimant must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (3) of this section.

(3) The claimant may be ordered to pay the costs only if:
  (a) the court is satisfied that the claimant instituted the proceedings vexatiously or without reasonable cause; or

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(b) the court is satisfied that the claimant's unreasonable act or omission caused the other party to incur the costs.

1317AI Whistleblower policies

(1) A public company must:

(a) have a policy that sets out the matters referred to in subsection (5); and

(b) make that policy available to officers and employees of the company.

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

(2) A proprietary company that has been a large proprietary company for any financial year (the ***first financial year***) must, on each day in each later financial year that is at least 6 months after the last day of the first financial year:

(a) have a policy that sets out the matters referred to in subsection (5); and

(b) make that policy available to officers and employees of the company.

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

(3) Without limiting subsection (2), a proprietary company that is the trustee (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) of a registrable superannuation entity (within the meaning of that Act) must:

(a) have a policy that sets out the matters referred to in subsection (5); and

(b) make that policy available to officers and employees of the company.

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

(4) An offence based on subsection (1), (2) or (3) is an offence of strict liability.

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

(5) The matters that a policy must set out for the purposes of paragraph (1)(a), (2)(a) or (3)(a) are:

(a) information about the protections available to whistleblowers, including protections under this Part; and

(b) information about to whom disclosures that qualify for protection under this Part may be made, and how they may be made; and

(c) information about how the company will support whistleblowers and protect them from detriment; and

(d) information about how the company will investigate disclosures that qualify for protection under this Part; and

(e) information about how the company will ensure fair treatment of employees of the company who are mentioned in disclosures that qualify for protection under this Part, or to whom such disclosures relate; and

(f) information about how the policy is to be made available to officers and employees of the company; and

(g) any matters prescribed by the regulations for the purposes of this paragraph.

1317AJ Exemption orders—class orders for companies

(1) ASIC may, by legislative instrument, make an order in respect of a specified class of company relieving companies in the class from all or specified requirements of section 1317AI.

(2) The order may:

(a) be expressed to be subject to conditions; and

(b) be indefinite or limited to a specified period.

1317AK Review of operation of whistleblower protections

(1) The Minister must cause a review to be undertaken of the operation of:

(a) this Part; and

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(b) Part IVD of the *Taxation Administration Act 1953*.

Note: Part IVD of the *Taxation Administration Act 1953* provides for protections for whistleblowers in relation to tax.

(2) The review must be conducted as soon as practicable after the end of 5 years after this section commences.

(3) The Minister must cause a written report about the review to be prepared.

(4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

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Part 9.4A—Review by Administrative Appeals Tribunal of certain decisions

1317A Definitions

In this Part:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

1317B Applications for review

(1) Subject to this Part, applications may be made to the Tribunal for review of a decision made under this Act by:
  (a) the Minister; or
  (b) ASIC; or
  (c) the Companies Auditors Disciplinary Board; or
  (d) a committee convened under Part 2 of Schedule 2.

(2) For the purposes of this Act and the *Administrative Appeals Tribunal Act 1975*, ASIC and APRA are taken to be persons whose interests are affected by a decision made under this Act by the Companies Auditors Disciplinary Board.

1317C Excluded decisions

Section 1317B does not apply in relation to:
  (a) a decision in respect of which any provision in the nature of an appeal or review is expressly provided by this Act; or
  (b) a decision that is declared by this Act to be conclusive or final or is embodied in a document declared by this Act to be conclusive evidence of an act, matter or thing; or
  (ca) a decision of ASIC to order the winding up of a company under section 489EA; or

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(d) a decision made by ASIC in the performance of a function, or in the exercise of a power, under section 601CC or 601CL or Chapter 5A; or

(e) a decision by ASIC to refuse to exercise a power under section 601CC or 601CL or Chapter 5A; or

(f) a decision to apply under section 596A or 596B for the Court to summon a person for examination about a corporation's examinable affairs; or

(g) a decision to apply under section 597A for the Court to require a person to file an affidavit about a corporation's examinable affairs; or

(ga) a decision of ASIC under section 655A; or

(gb) a decision of ASIC under section 673 in relation to securities of the target of a takeover bid during the bid period; or

(gc) a decision by ASIC whether to make an application under section 657C, 657G, 659B, 1325A, 1325B or 1325C; or

(gca) a decision by ASIC to make market integrity rules under section 798G; or

(gcb) a decision by the Minister to:

(i) consent to the making of a market integrity rule; or

(ii) direct ASIC to revoke or amend a market integrity rule; or

(gcc) a decision by ASIC to do or not do anything under regulations made for the purposes of section 798K (alternatives to civil proceedings); or

(gd) a decision of the Minister under Division 1 of Part 7.4; or

(gda) a decision by the Minister:

(i) to make a determination under section 901B, or to amend or revoke such a determination; or

(ii) to consent, under section 901K or 903H, to the making of a derivative transaction rule or a derivative trade repository rule, or to consent to the variation or revocation of such a rule; or

(iii) to direct ASIC, under section 901L or 903J, to amend or revoke a derivative transaction rule or a derivative trade repository rule; or

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(gdb) a decision by ASIC to make derivative transaction rules or derivative trade repository rules under section 901A or 903A, or to vary or revoke such rules; or

(gdc) a decision by ASIC to do or not do anything under regulations made for the purpose of section 901F or 903E; or

(gdd) a decision by ASIC to make client money reporting rules under section 981J; or

(gde) a decision by ASIC to do or not do anything under regulations made for the purposes of section 981N (alternatives to civil proceedings for contraventions of client money reporting rules); or

(gdf) a decision by ASIC to make a declaration under subsection 908AC(2), or to vary or revoke such a declaration (about significant financial benchmarks); or

(gdg) a decision by the Minister under:

(i) subsection 908AC(4) to consent to the making of a declaration under subsection 908AC(2); or

(ii) subsection 908AD(3) to direct ASIC to revoke a declaration made under subsection 908AC(2); or

(gdh) a decision of the Minister under subsection 908BU(2) to disallow a direction or notice given by ASIC under section 908BT (about compliance directions or notices given to benchmark administrator licensees); or

(gdi) a decision by ASIC to make rules under Division 3 of Part 7.5B, or to vary or revoke such rules; or

(gdj) a decision by ASIC to do or not do anything under regulations made for the purposes of subsection 908CG(1) (alternatives to civil proceedings for contraventions of rules about financial benchmarks); or

(gdk) a decision by the Minister:

(i) under subsection 908CM(2) to consent to the making of rules under Division 3 of Part 7.5B; or

(ii) under subsection 908CN(3) to direct ASIC to vary or revoke rules made under Division 3 of Part 7.5B; or

(gdl) a decision by ASIC to require something, by giving written notice, under the compelled financial benchmark rules; or

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(gdm) any of the following decisions by ASIC:

(i) a decision under subsection 1023D(3) (which relates to making product intervention orders);

(ii) a decision under subsection 1023H(1) (which relates to extensions of product intervention orders);

(iii) a decision under section 1023J (which relates to amendments of product intervention orders) that, under subsection 1023J(6), must be by legislative instrument;

(iv) a decision under section 1023K (which relates to revocation of product intervention orders) that, under subsection 1023K(4), must be by legislative instrument; or

(ge) a decision of ASIC under section 1101A; or

(gf) a decision of ASIC:

(i) to give an infringement notice under section 1317DAM; or

(ii) to extend, or to refuse to extend, the payment period for an infringement notice under section 1317DAR; or

(iii) to make an arrangement, or to refuse to make an arrangement, to pay the amount payable under an infringement notice by instalments under section 1317DAS; or

(iv) to withdraw, or not to withdraw, an infringement notice under section 1317DAT; or

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

(i) a decision of ASIC to issue an infringement notice under section 1317DAC; or

(j) a decision of ASIC to withdraw, or not to withdraw, an infringement notice under section 1317DAI; or

(k) a decision of ASIC under section 40-5 of Schedule 2 (which deals with directing liquidators to comply with requirements to lodge documents etc.); or

(l) a decision of ASIC under section 40-10 of Schedule 2 (which deals with directing liquidators to correct inaccuracies etc.); or

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(m) a decision of ASIC under section 40-100 of Schedule 2 to take no action in relation to matters raised by an industry notice lodged under that section (notice by industry bodies of possible grounds for disciplinary action); or

(n) a decision of ASIC to give a direction under section 70-70 of Schedule 2 (which deals with directing external administrators to comply with requests for information etc.); or

(o) a decision of ASIC under section 70-85 of Schedule 2 (a decision to impose a condition on the use or disclosure of relevant material).

1317D Notice of reviewable decision and review rights

(1) This section applies if the Minister, ASIC, the Companies Auditors Disciplinary Board or a committee convened under Part 2 of Schedule 2 (the ***decision maker***) makes a decision to which section 1317B applies.

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

(a) of the making of the decision; and

(b) of the person's right to have the decision reviewed by the Tribunal.

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

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

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

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

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

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Part 9.4AA—Infringement notices for alleged contraventions of continuous disclosure provisions

1317DAA Definitions

(1) In this Part:

compensation proceedings means:

(a) proceedings under section 1317H, 1317HA, 1317HB, 1317HC or 1317HE; and

(b) proceedings under section 12GF of the ASIC Act in relation to a contravention of section 12DA of that Act; and

(c) any other proceedings by a person for compensation for loss or damage suffered by the person.

compliance period for an infringement notice has the meaning affected by section 1317DAH.

contravention proceedings means proceedings under section 1101B by a person referred to in paragraph 1101B(1)(b) or (d).

enforcement proceedings means proceedings under section 793C by a person referred to in paragraph 793C(1)(b), (c) or (d).

infringement notice means an infringement notice issued under section 1317DAC.

penalty and disclosure proceedings means the proceedings referred to in column 3 of the table in subsection 1317DAG(2).

public interest proceedings means proceedings under section 50 of the ASIC Act.

(2) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a registered scheme relate:

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(a) references to the disclosing entity are taken to be references to the responsible entity for the registered scheme; and

(b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to such a report being lodged by the responsible entity in relation to the scheme; and

(c) references to securities of a disclosing entity are taken to be references to interests in the registered scheme; and

(d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the responsible entity being convicted of such an offence in relation to the registered scheme; and

(e) references to a civil penalty order under Part 9.4B being made against a disclosing entity in relation to a contravention of subsection 674(2) or 675(2) are taken to be references to such an order being made against the responsible entity in relation to the registered scheme; and

(f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA or 93A of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the responsible entity having breached such an undertaking given in relation to the registered scheme.

(3) For the purposes of applying this Part to a disclosing entity that is an undertaking to which interests in a notified foreign passport fund relate:

(a) references to the disclosing entity are taken to be references to the operator of the fund; and

(b) references to a financial report for a financial year being lodged by a disclosing entity are taken to be references to a copy of a report for the fund for the financial year, prepared in accordance with the financial reporting requirements applying to the fund under the Passport Rules for the home economy for the fund, being lodged by the operator of the fund; and

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(c) references to securities of a disclosing entity are taken to be references to interests in the fund; and

(d) references to a disclosing entity being convicted of an offence based on subsection 674(2) or 675(2) are taken to be references to the operator of the fund being convicted of such an offence in relation to the fund; and

(e) references to a civil penalty order under Part 9.4B being made against a disclosing entity in relation to a contravention of subsection 674(2) or 675(2) are taken to be references to such an order being made against the operator of the fund in relation to the fund; and

(f) references to a disclosing entity having breached an enforceable undertaking given to ASIC under section 93AA or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2) are taken to be references to the operator of the fund having breached such an undertaking given in relation to the fund.

1317DAB Purpose and effect of this Part

(1) The purpose of this Part is to provide for the issue of an infringement notice to a disclosing entity for an alleged contravention of subsection 674(2) or 675(2) as an alternative to proceedings for civil penalties under Part 9.4B.

(2) This Part does not:

(a) require an infringement notice to be issued to the disclosing entity for the alleged contravention of subsection 674(2) or 675(2); or

(b) affect the liability of the disclosing entity to civil or criminal proceedings in relation to the alleged contravention of subsection 674(2) or 675(2) if:

(i) an infringement notice is not issued to the disclosing entity for the alleged contravention; or

(ii) an infringement notice issued to the disclosing entity for the alleged contravention is withdrawn under section 1317DAI; or

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(c) prevent a Court from imposing a higher penalty than the penalty specified in the infringement notice if the disclosing entity does not comply with the infringement notice.

1317DAC Issue of infringement notice

Issue of infringement notice

(1) Subject to section 1317DAD, if ASIC has reasonable grounds to believe that a disclosing entity has contravened subsection 674(2) or 675(2), ASIC may issue an infringement notice to the disclosing entity.

(2) ASIC issues the infringement notice to the disclosing entity by serving it on the disclosing entity.

(3) ASIC must not issue more than one infringement notice to the disclosing entity for the same alleged contravention of subsection 674(2) or 675(2).

ASIC must have regard to certain matters

(4) In determining whether to issue an infringement notice to a listed disclosing entity for an alleged contravention of subsection 674(2), ASIC must have regard to:
  (a) any guidelines issued by the relevant market operator for the listed disclosing entity that relate to the provisions of the listing rules referred to in subsection 674(1); and
  (b) any other relevant matter.

Infringement notice does not have effect

(5) The infringement notice does not have any effect if the infringement notice:
  (a) is issued more than 12 months after the day on which the contravention of subsection 674(2) or 675(2) is alleged to have occurred; or

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(b) relates to more than one alleged contravention of subsection 674(2) or 675(2) by the disclosing entity.

1317DAD Statement of reasons must be given

Statement of reasons

(1) Before issuing the infringement notice, ASIC must:
  (a) give the disclosing entity a written statement that sets out ASIC's reasons for believing that the disclosing entity has contravened subsection 674(2) or 675(2); and
  (b) give a representative of the disclosing entity an opportunity to:
    (i) appear at a private hearing before ASIC; and
    (ii) give evidence to ASIC; and
    (iii) make submissions to ASIC;
  in relation to the alleged contravention of subsection 674(2) or 675(2).

(2) If the disclosing entity is a listed disclosing entity, ASIC must consult with the relevant market operator for the disclosing entity before giving the disclosing entity the statement under this subsection.

(3) ASIC does not need to consult the relevant market operator under subsection (2) if:
  (a) the disclosing entity is the relevant market operator; or
  (b) the disclosing entity conducts a business in competition with a business conducted by the relevant market operator.

Limit on the use of evidence or information given to ASIC

(4) Evidence or information that a representative of the disclosing entity gives ASIC under paragraph (1)(b) in relation to the alleged contravention of subsection 674(2) or 675(2) is:
  (a) not admissible in evidence against the disclosing entity in any proceedings; and

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(b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings for an offence based on the evidence or information given being false or misleading).

1317DAE Matters to be included in infringement notice

(1) The infringement notice:

(a) must state the day on which it is issued; and

(b) must state the name and address of the disclosing entity to whom it is issued; and

(c) must state that it is being issued by ASIC; and

(d) must state that ASIC may publish details of the disclosing entity's compliance with the infringement notice under section 1317DAJ if the disclosing entity complies with the notice; and

(e) must give details of the alleged contravention by the disclosing entity, including:

(i) the date of the alleged contravention; and

(ii) the particular provision that was contravened; and

(f) must state the maximum pecuniary penalty that a Court could impose under Part 9.4B in relation to the alleged contravention; and

(g) must specify the penalty that is payable in relation to the alleged contravention; and

(h) must state that the penalty is payable to ASIC on behalf of the Commonwealth; and

(i) if it is alleged that the disclosing entity contravened subsection 674(2)—may specify information that the disclosing entity must notify to the relevant market operator in accordance with the provisions of the listing rules referred to in subsection 674(1); and

(j) if it is alleged that the disclosing entity contravened subsection 675(2)—may require the disclosing entity to lodge a document with ASIC that contains specified information; and

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(k) must explain the effect of sections 1317DAF, 1317DAG and 1317DAH; and

(l) must state that the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice; and

(m) must contain any other matters that are prescribed in the regulations.

(2) Subject to subsection (3), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) $100,000 if the disclosing entity is a Tier 1 entity; or

(b) $66,000 if the disclosing entity is a Tier 2 entity; or

(c) $33,000 if the disclosing entity is a Tier 3 entity.

(3) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 674(2) is:

(a) $100,000 if the disclosing entity is a Tier 2 entity; or

(b) $66,000 if the disclosing entity is a Tier 3 entity;

if:

(c) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(d) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(e) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA, 93A or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(4) Subject to subsection (5), the penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is $33,000.

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(5) The penalty specified in the infringement notice under paragraph (1)(g) for an alleged contravention of subsection 675(2) is $66,000 if:

(a) the disclosing entity has at any time been convicted of an offence based on subsection 674(2) or 675(2); or

(b) a civil penalty order under Part 9.4B has at any time been made against the disclosing entity in relation to a contravention of subsection 674(2) or 675(2); or

(c) the disclosing entity has at any time breached an enforceable undertaking given to ASIC under section 93AA, 93A or 93B of the ASIC Act in relation to the requirements of subsection 674(2) or 675(2).

(6) For the purposes of this section:

(a) a disclosing entity is:

(i) a ***Tier 1 entity*** if its market capitalisation on the relevant day exceeds $1,000 million; and

(ii) a ***Tier 2 entity*** if its market capitalisation on the relevant day exceeds $100 million but does not exceed $1,000 million; and

(iii) a ***Tier 3 entity*** if its market capitalisation on the relevant day does not exceed $100 million or it is not possible to work out its market capitalisation on the relevant day because it has not lodged a financial report with ASIC before the relevant day; and

(b) the ***relevant day*** for an infringement notice is the last day of the financial year in relation to which the latest financial report by the disclosing entity has been lodged with ASIC before the infringement notice is issued.

(7) This is how to work out a disclosing entity's ***market capitalisation*** on the relevant day:

(a) for each class of security of the disclosing entity that is a quoted security:

(i) work out the closing price, on the relevant day, for securities in that class on the prescribed financial market on which the securities are quoted; and

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(ii) multiply that price by the number of securities in that class on issue on the relevant day (as shown in the financial report lodged with ASIC for the period that ends on the relevant day); and

(b) add up the amounts obtained under paragraph (a): the result is the disclosing entity's market capitalisation on the relevant day.

Disregard quoted securities of the disclosing entity that are options.

1317DAF Effect of issue and compliance with infringement notice

Circumstances in which this section applies

(1) This section applies if subsection (2) or (3) is satisfied.

(2) This subsection is satisfied if:

(a) the compliance period for the infringement notice has not ended; and

(b) the infringement notice is not withdrawn under section 1317DAI; and

(c) subsection (3) has not been satisfied.

(3) This subsection is satisfied if, within the compliance period for the infringement notice, the disclosing entity:

(a) pays the penalty specified in the infringement notice; and

(b) either:

(i) if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)—notifies the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice; or

(ii) if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)—lodges any required document with ASIC that contains the information specified in the infringement notice.

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Note: If this subsection is satisfied, ASIC must not withdraw the infringement notice, see section 1317DAI.

No contravention etc. by the disclosing entity

(4) The disclosing entity is not, by reason only of subsection (3) being satisfied, regarded as:

(a) having contravened the provision specified in the infringement notice; or

(b) having been convicted of an offence constituted by the same conduct that constituted the alleged contravention of the provision specified in the infringement notice.

No proceedings may be started etc.

(5) Subject to subsection (6), no proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(6) Subsection (5) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

(i) an order made in relation to proceedings referred to in paragraph (a);

(ii) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;

(c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

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(d) an appeal to a Court against the following decisions or orders of a Court:

(i) a decision or order made in relation to proceedings referred to in paragraph (a);

(ii) a decision or order made under subsection 1335(2) in relation to the proceedings referred to in paragraph (a) other than public interest proceedings.

(7) To avoid doubt, subsection (5) does not prevent ASIC from:

(a) making an order under section 91 of the ASIC Act; or

(b) bringing proceedings to enforce the order.

1317DAG Effect of failure to comply with infringement notice

Circumstances in which this section applies

(1) This section applies if an infringement notice issued to a disclosing entity is not withdrawn under section 1317DAI.

Effect of failure to comply with infringement notice

(2) If the disclosing entity fails to do a thing specified in column 2 of the following table within the compliance period for the infringement notice, the disclosing entity is liable to the proceedings specified in column 3 of the following table:

Effect of failure to comply with infringement notice

Column 1	Column 2	Column 3
Item	**If the disclosing entity fails to:**	**the disclosing entity is liable to:**
1	pay the penalty specified in the infringement notice	proceedings under Part 9.4B for: (a) a declaration of contravention; and (b) a pecuniary penalty order; in relation to the alleged contravention of the provision specified in the infringement notice.

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Section 1317DAG

Effect of failure to comply with infringement notice		
Column 1	**Column 2**	**Column 3**
Item	**If the disclosing entity fails to:**	**the disclosing entity is liable to:**
2	notify the relevant market operator, in accordance with the provisions of the listing rules referred to in subsection 674(1), of any information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 674(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.
3	lodge any required document with ASIC that contains the information specified in the infringement notice if it is alleged in the infringement notice that the disclosing entity contravened subsection 675(2)	proceedings for an order under section 1324B in relation to the alleged contravention of the provision specified in the infringement notice.

No other proceedings may be started etc.

(3) Subject to subsection (4), no other proceedings (whether criminal or civil) may be started or continued against the disclosing entity in relation to:

(a) the alleged contravention of the provision specified in the infringement notice; or

(b) an offence constituted by the same conduct that constituted the alleged contravention.

(4) Subsection (3) does not apply to the following proceedings:

(a) compensation proceedings, contravention proceedings, enforcement proceedings and public interest proceedings that relate to the alleged contravention of the provision specified in the infringement notice;

(b) proceedings to enforce the following orders of a Court:

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(i) an order made in relation to penalty and disclosure proceedings;
(ii) an order made in relation to proceedings referred to in paragraph (a);
(iii) an order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
(iv) an order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings;

(c) any other proceedings in respect of a breach of an order referred to in paragraph (b);

(d) an appeal to a Court against the following decisions or orders of a Court:
(i) a decision or order made in relation to penalty and disclosure proceedings;
(ii) a decision or order made in relation to proceedings referred to in paragraph (a);
(iii) a decision or order made under subsection 1335(2) in relation to penalty and disclosure proceedings;
(iv) a decision or order made under subsection 1335(2) in relation to proceedings referred to in paragraph (a) other than public interest proceedings.

(5) To avoid doubt, subsection (3) does not prevent ASIC from:
(a) making a determination under subsection 708AA(3), 708A(2), 713(6), 713A(23), 1012DAA(3), 1012DA(2) or 1013FA(3) of this Act; or
(b) making an order under section 91 of the ASIC Act; or
(c) accepting an undertaking under section 93AA, 93A or 93B of the ASIC Act; or
(d) bringing proceedings to enforce the determination, order or undertaking.

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Section 1317DAH

1317DAH Compliance period for infringement notice

(1) Subject to this section, the compliance period for an infringement notice is a period of 28 days beginning on the day after the day on which the infringement notice is issued.

(2) ASIC may extend, by notice in writing, the compliance period for the infringement notice if ASIC is satisfied that it is appropriate to do so.

(3) Only one extension may be given and the extension must not be for longer than 28 days.

(4) Notice of the extension must be given to the disclosing entity that was issued with the infringement notice.

(5) A failure to comply with subsection (4) does not affect the validity of the extension.

(6) If ASIC extends the compliance period for an infringement notice, a reference in this Act to the compliance period for an infringement notice is taken to be a reference to the compliance period as so extended.

1317DAI Withdrawal of infringement notice

Disclosing entity may seek withdrawal

(1) If an infringement notice is issued to a disclosing entity, the disclosing entity may make written representations to ASIC seeking the withdrawal of the infringement notice.

(2) Evidence or information that a representative of the disclosing entity gives ASIC in the course of making representations under subsection (1) is:
   (a) not admissible in evidence against the disclosing entity in any proceedings; and
   (b) not admissible in evidence against a representative of the disclosing entity in any proceedings (other than proceedings

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for an offence based on the evidence or information given being false or misleading).

Withdrawal

(3) Subject to subsection (4), ASIC may withdraw the infringement notice (whether or not the disclosing entity has made representations seeking the withdrawal) if ASIC is satisfied that it is appropriate to do so.

(4) ASIC must not withdraw the infringement notice if subsection 1317DAF(3) is satisfied.

Withdrawal notice

(5) The withdrawal must be made by notice in writing and must be given to the disclosing entity.

(6) The withdrawal notice must state:
  (a) the name and address of the disclosing entity; and
  (b) the day on which the infringement notice was issued to the disclosing entity; and
  (c) that the infringement notice is withdrawn; and
  (d) that civil proceedings under Part 9.4B may be brought against the disclosing entity for a contravention of the provision specified in the infringement notice; and
  (e) that a prosecution for an offence based on the provision specified in the infringement notice may be brought against the disclosing entity.

Refund of penalty

(7) If:
  (a) the disclosing entity pays the penalty specified in the infringement notice; and
  (b) the infringement notice is withdrawn after the disclosing entity pays the penalty;

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ASIC must refund to the disclosing entity an amount equal to the amount paid.

1317DAJ Publication in relation to infringement notices

(1) If:

(a) ASIC issues an infringement notice to a disclosing entity; and

(b) subsection 1317DAF(3) (compliance with the infringement notice) is satisfied;

ASIC may publish details of the disclosing entity's compliance with the infringement notice under subsection (2) or (3) or under both of those subsections.

(2) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if it publishes a copy of the infringement notice in the *Gazette* together with the following statements:

(a) a statement that the disclosing entity has complied with the infringement notice;

(b) a statement that compliance with the notice is not an admission of guilt or liability;

(c) a statement that the disclosing entity is not regarded as having contravened the provision specified in the notice.

(3) ASIC publishes details of the disclosing entity's compliance with the infringement notice under this subsection if:

(a) ASIC issues a statement (whether written or oral) about the disclosing entity's compliance with the infringement notice; and

(b) the statement is limited to an accurate summary of the infringement notice including:

(i) the name of the disclosing entity; and

(ii) the amount of the penalty payable under the notice in relation to the alleged contravention; and

(iii) the conduct specified in the notice as the conduct in relation to which the infringement notice was issued;

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together with the following statements:

(iv) a statement that the disclosing entity has complied with the infringement notice;

(v) a statement that compliance with the notice is not an admission of guilt or liability;

(vi) a statement that the relevant disclosing entity is not regarded as having contravened the provision specified in the notice.

(4) ASIC must not otherwise publish details of:

(a) an infringement notice; or

(b) a disclosing entity's compliance with an infringement notice.

Failure to comply with this subsection is not an offence.

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Part 9.4AB—Infringement notices for other alleged contraventions

1317DAM When an infringement notice may be given

(1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, ASIC may give the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.

(4) ASIC may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  (b) the person fails or refuses to do that thing within that period or before that time; and
  (c) the failure or refusal occurs on more than 1 day; and
  (d) each contravention is constituted by the failure or refusal on one of those days.

(5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

1317DAN Provisions subject to an infringement notice

The following provisions are ***subject to an infringement notice*** under this Part:
  (a) strict liability offences against this Act;

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(b) absolute liability offences against this Act;
(c) other prescribed offences;
(d) prescribed civil penalty provisions.

1317DAP Matters to be included in an infringement notice

(1) An infringement notice must:
(a) be identified by a unique number; and
(b) state the day on which it is given; and
(c) state the name of the person to whom the notice is given; and
(d) state the name and contact details of the person who gave the notice; and
(e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
(i) the provision that was allegedly contravened; and
(ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
(iii) the time (if known) and day of, and the place of, each alleged contravention; and
(f) state the amount that is payable under the notice; and
(g) give an explanation of how payment of the amount is to be made; and
(h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and
(i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):
(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be

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prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

(j) state that payment of the amount is not an admission of guilt or liability; and

(k) state that the person may apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

(l) state that the person may choose not to pay the amount and, if the person does so:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(m) set out how the notice can be withdrawn; and

(n) state that if the notice is withdrawn:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil

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penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.

(2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:

(a) for a single contravention of an offence provision—half the maximum penalty that a court could impose on the person for the contravention; and

(b) for multiple contraventions of an offence provision—the amount worked out under paragraph (a) for a single contravention multiplied by the number of contraventions; and

(c) for a single contravention of a civil penalty provision—12 penalty units for an individual and 60 penalty units for a body corporate; and

(d) for multiple contraventions of a civil penalty provision—the amount worked out under paragraph (c) for a single contravention multiplied by the number of contraventions.

1317DAQ Payment period

Usual payment period

(1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

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Section 1317DAQ

Payment period extended under section 1317DAR

(2) If, under section 1317DAR, ASIC extends the payment period for the notice, the ***payment period*** is as extended.

(3) If ASIC refuses an application under subsection 1317DAR(1) for an extension of the payment period for the notice, the ***payment period*** ends on the later of the following days:
  (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;
  (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;
  (c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAR(4).

Instalments

(4) If, under section 1317DAS, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
  (a) the last day on which an instalment is to be paid under the arrangement;
  (b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.

(5) If ASIC refuses an application made under subsection 1317DAS(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
  (a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;
  (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;
  (c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAS(4).

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Payment period if ASIC refuses to withdraw infringement notice

(6) If ASIC refuses a representation made under subsection 1317DAT(1) for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:

(a) the last day of the period that, without the withdrawal, would be the payment period for the notice;

(b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;

(c) the day that is 7 days after the day on which, under subsection 1317DAT(5), ASIC is taken to have refused to withdraw the infringement notice.

1317DAR Extension of time to pay amount

(1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.

(2) ASIC may, in writing, extend the payment period for an infringement notice:

(a) if a person makes an application in accordance with subsection (1); or

(b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:

(a) grant or refuse to grant an extension of the payment period for the infringement notice;

(b) give the applicant notice in writing of ASIC's decision.

(4) If ASIC does not comply with subsection (3):

(a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and

(b) the refusal is taken to have occurred on the last day of the 14 day period.

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(5) ASIC may extend the payment period more than once under subsection (2).

1317DAS Payment by instalments

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.

(2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
   (a) if a person makes an application in accordance with subsection (1); or
   (b) on ASIC's own initiative.

   ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
   (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
   (b) give the applicant notice in writing of ASIC's decision;
   (c) if ASIC decides to make the arrangement, specify in the notice:
      (i) the day by which each instalment is to be paid; and
      (ii) the amount of each instalment.

(4) If ASIC does not comply with subsection (3):
   (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
   (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

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(6) If:

(a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and

(b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;

ASIC must refund to the person the amount of any instalments paid.

1317DAT Withdrawal of an infringement notice

Representations seeking withdrawal of notice

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

Withdrawal of notice

(2) ASIC may withdraw an infringement notice given to a person:

(a) if the person makes representations to ASIC in accordance with subsection (1); or

(b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):

(a) decide to withdraw, or refuse to withdraw, the infringement notice; and

(b) if ASIC decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and

(c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.

(4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:

(a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and

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(b) may take into account the following:
(i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
(ii) the circumstances of the alleged contravention;
(iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
(iv) any other matter ASIC considers relevant.

(5) If ASIC does not comply with subsection (3):
(a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
(b) the refusal is taken to have occurred on the last day of the 14 day period.

Notice of withdrawal

(6) The withdrawal notice must state:
(a) the person's name and address; and
(b) the day the infringement notice was given; and
(c) the identifying number of the infringement notice; and
(d) that the infringement notice is withdrawn; and
(e) that:
(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty

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order may be brought in relation to the alleged contravention.

Refund of amount if infringement notice withdrawn

(7) If:

(a) ASIC withdraws the infringement notice; and

(b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.

1317DAU Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:

(a) any liability of the person for the alleged contravention is discharged; and

(b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and

(c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and

(d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and

(e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and

(f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

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1317DAV Effect of this Part

This Part does not:

(a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

(b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:

(i) the person does not comply with an infringement notice given to the person for the contravention; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

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Part 9.4B—Civil consequences of contravening civil penalty provisions

Division 1—The Court may make declarations of contravention, pecuniary penalty orders, relinquishment orders, refund orders and compensation orders

1317E Declaration of contravention of a civil penalty provision

Declaration of contravention

(1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court must make a declaration of contravention.

(2) The declaration must specify the following:
- (a) the Court that made the declaration;
- (b) the civil penalty provision that was contravened;
- (c) the person who contravened the provision;
- (d) the conduct that constituted the contravention;
- (e) if the contravention is of a corporation/scheme civil penalty provision—the corporation, registered scheme or notified foreign passport fund to which the conduct related;
- (f) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction)—the passport fund in relation to which the obligation was imposed on the person;
- (g) if the contravention is of subsection 670A(4), 727(6), 728(4) or 1309(12) (misleading statements etc.)—the corporation, registered scheme or notified foreign passport fund to which the conduct related.

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Section 1317E

*Meanings of **civil penalty provision**, **corporation/scheme civil penalty provision** and **financial services civil penalty provision***

(3) In this Act:

(a) a provision specified in column 1 of the following table is a ***civil penalty provision***; and

(b) a civil penalty provision categorised as a corporation/scheme provision in column 3 of the following table is a ***corporation/scheme civil penalty provision***; and

(c) a civil penalty provision categorised as a financial services provision in column 3 of the following table is a ***financial services civil penalty provision***; and

(d) a provision that is specified as having no categorisation in column 3 of the following table is neither a ***corporation/scheme civil penalty provision*** nor a ***financial services civil penalty provision***.

Civil penalty provisions

Column 1 **Provision**	**Column 2** **Brief description of the provision**	**Column 3** **Categorisation of the provision**
subsections 180(1), 181(1) and (2), 182(1) and (2) and 183(1) and (2)	officers' duties	corporation/scheme
subsections 188(1) and (2)	responsibilities of secretaries etc. for corporate contraventions	corporation/scheme
subsection 209(2)	related parties rules	corporation/scheme
subsections 254L(2), 256D(3), 259F(2) and 260D(2)	share capital transactions	corporation/scheme
subsections 344(1) and (1A)	requirements for financial reports	corporation/scheme
subsection 588G(2)	insolvent trading	corporation/scheme
Subsection 588GAB(2)	preventing creditor-defeating dispositions	corporation/scheme

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Civil penalty provisions

Column 1 **Provision**	**Column 2** **Brief description of the provision**	**Column 3** **Categorisation of the provision**
Subsection 588GAC(2)	procuring creditor-defeating dispositions	corporation/scheme
subsections 596AC(1), (2), (3) and (4)	avoiding employee entitlements	corporation/scheme
subsection 601ED(8)	obligation to be registered if operating certain managed investment schemes	corporation/scheme
subsection 601FC(5)	duties of responsible entity	corporation/scheme
subsection 601FD(3)	duties of officers of responsible entity	corporation/scheme
subsection 601FE(3)	duties of employees of responsible entity	corporation/scheme
subsection 601FG(2)	acquisition of interest in scheme by responsible entity	corporation/scheme
subsection 601JD(3)	duties of members	corporation/scheme
subsection 601UAA(2)	duties of officers of licensed trustee company	corporation/scheme
subsection 601UAB(2)	duties of employees of licensed trustee company	corporation/scheme
subsection 670A(4)	misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents	uncategorised
subsections 674(2), 674(2A), 675(2) and 675(2A)	continuous disclosure	financial services
subsection 727(6)	offering securities without a current disclosure document	uncategorised
subsection 728(4)	misstatement in, or omission from, disclosure document	uncategorised
subsection 791A(3)	need for an Australian market licence	uncategorised

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Section 1317E

Civil penalty provisions

Column 1 Provision	Column 2 Brief description of the provision	Column 3 Categorisation of the provision
subsection 792A(2)	general obligations of market licensees	uncategorised
subsection 792B(7)	market licensee to notify ASIC of certain matters	uncategorised
subsection 798H(1)	complying with market integrity rules	uncategorised
subsection 820A(3)	need for an Australian CS facility licence	uncategorised
subsection 821A(2)	general obligations of CS facility licensees	uncategorised
subsection 821B(6)	CS facility licensee to notify ASIC of certain matters	uncategorised
subsection 853F(3)	obligations on disqualified individuals	uncategorised
section 901E	complying with derivative transaction rules	uncategorised
section 903D	complying with derivative trade repository rules	uncategorised
subsection 904A(2)	general obligations of derivative trade repository licensees	uncategorised
subsection 904C(1A)	obligation to notify ASIC of inability to meet obligations under section 904A	uncategorised
subsection 905A(3)	need to hold a licence to operate a derivative trade repository	uncategorised
subsection 908CF(1)	complying with financial benchmark rules or compelled financial benchmark rules	uncategorised
subsections 908DA(1) and (2) and 908DB(1) and (2)	manipulating financial benchmarks	uncategorised
subsection 911A(5B)	need for an Australian financial	uncategorised

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Civil penalty provisions

Column 1 Provision	Column 2 Brief description of the provision	Column 3 Categorisation of the provision
	services licence	
subsection 911B(4)	providing financial services on behalf of a person who carries on a financial services business	uncategorised
subsection 912A(5A)	general obligations of a financial services licensee	uncategorised
subsection 912D(3)	financial services licensee to notify ASIC of certain matters	uncategorised
subsection 920C(4)	need to comply with a banning order	uncategorised
subsection 922M(5)	need to comply with obligation to notify ASIC	uncategorised
subsection 941A(3)	obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised
subsection 941B(4)	obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client	uncategorised
subsection 946A(4)	obligation to give client a Statement of Advice	uncategorised
subsection 952E(9)	giving a defective disclosure document or statement (whether or not known to be defective)	uncategorised
subsection 952H(3)	financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required	uncategorised
subsections 961K(1) and (2)	financial services licensee responsible for breach of certain best interests duties	uncategorised

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Section 1317E

Civil penalty provisions

Column 1 Provision	Column 2 Brief description of the provision	Column 3 Categorisation of the provision
section 961L	financial services licensee to ensure compliance with certain best interests duties	uncategorised
subsection 961Q(1)	authorised representative responsible for breach of certain best interests duties	uncategorised
section 962P	charging ongoing fee after termination of ongoing fee arrangement	uncategorised
subsection 962S(1)	fee recipient must give fee disclosure statement	uncategorised
subsections 963E(1) and (2)	financial services licensee responsible for breach of ban on conflicted remuneration	financial services
section 963F	financial services licensee must ensure representatives do not accept conflicted remuneration	financial services
subsection 963G(1)	authorised representative must not accept conflicted remuneration	financial services
section 963J	employer must not pay employees conflicted remuneration	financial services
section 963K	financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative	financial services
subsection 964A(1)	platform operator must not accept volume-based shelf-space fees	financial services
subsections 964D(1) and (2)	financial services licensee responsible for breach of asset-based fees on borrowed amounts	financial services

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Civil penalty provisions

Column 1 **Provision**	**Column 2** **Brief description of the provision**	**Column 3** **Categorisation of the provision**
subsection 964E(1)	authorised representative must not charge asset-based fees on borrowed amounts	financial services
section 965	anti-avoidance of Part 7.7A provisions	financial services
subsection 981B(3)	obligation to pay money into an account	uncategorised
subsection 981C(2)	various matters relating to accounts maintained for the purposes of section 981B	uncategorised
subsection 981M(1)	complying with client money reporting rules	uncategorised
subsection 985E(1)	issuing or increasing limit of margin lending facility without having made assessment etc.	financial services
subsection 985H(1)	failure to assess a margin lending facility as unsuitable	financial services
subsection 985J(1)	failure to give assessment to retail client if requested before issue of facility or increase in limit	financial services
subsection 985J(2)	failure to give assessment to retail client if requested after issue of facility or increase in limit	financial services
subsection 985J(4)	demanding payment to give assessment to retail client	financial services
subsection 985K(1)	issuing or increasing limit of margin lending facility if unsuitable	financial services
section 985L	making issue of margin lending facility conditional on retail client agreeing to receive communications through agent	financial services

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Section 1317E

Civil penalty provisions

Column 1 Provision	Column 2 Brief description of the provision	Column 3 Categorisation of the provision
subsection 985M(1)	failure to notify of margin call where there is no agent	financial services
subsection 985M(2)	failure to notify of margin call where there is an agent	financial services
subsection 993D(4)	failure to pay loan money into an account as required	financial services
subsection 1012A(5)	obligation to give Product Disclosure Statement—personal advice recommending particular financial product	financial services
subsection 1012B(6)	obligation to give Product Disclosure Statement—situations related to issue of financial products	financial services
subsection 1012C(11)	obligation to give Product Disclosure Statement—offers related to sale of financial products	financial services
subsection 1017BA(4B)	trustee of regulated superannuation funds—obligation to make product dashboard publicly available	financial services
subsection 1017BB(5AA)	trustee of registrable superannuation entities—obligation to make information relating to investment of assets publicly available	financial services
subsection 1020A(5)	offers etc. relating to certain managed investment schemes not to be made in certain circumstances	financial services
subsection 1021E(8)	preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)	financial services

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Civil penalty provisions

Column 1 **Provision**	**Column 2** **Brief description of the provision**	**Column 3** **Categorisation of the provision**
subsection 1021G(3)	financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required	financial services
subsection 1023P(1)	engaging in conduct contrary to a product intervention order	financial services
subsection 1023P(2)	failure to notify retail clients	financial services
subsection 1023P(4)	failure to take reasonable steps to make others aware of product intervention order	financial services
section 1041A	market manipulation	financial services
subsection 1041B(1)	false trading and market rigging—creating a false or misleading appearance of active trading etc.	financial services
subsection 1041C(1)	false trading and market rigging—artificially maintaining etc. market price	financial services
section 1041D	dissemination of information about illegal transactions	financial services
subsections 1043A(1) and (2)	insider trading	financial services
subsections 1211B(1) and (2)	contravening the Passport Rules	uncategorised
subsections 1308(4) and (5)	false or misleading documents	uncategorised
subsection 1309(12)	false information	uncategorised
Subsection 1317AAE(1)	breach of confidentiality of identity of whistleblower	uncategorised
Subsections 1317AC(1), (2) and (3)	victimisation or threatened victimisation of whistleblower	uncategorised
subclause 29(6) of	disclosure for proposed	corporation/scheme

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Civil penalty provisions		
Column 1 **Provision**	**Column 2** **Brief description of the provision**	**Column 3** **Categorisation of the provision**
Schedule 4	demutualisation	

Note 1: Once a declaration has been made, ASIC can seek a pecuniary penalty order (section 1317G) or (in the case of a corporation/scheme civil penalty provision and certain other civil penalty provisions) a disqualification order (section 206C).

Note 2: The descriptions of matters in column 2 are indicative only.

Note 3: Section 908DD contains some matters relevant for making declarations of contravention for subsections 908DA(1) and (2) and 908DB(1) and (2) (about manipulating financial benchmarks).

Attempt and involvement in contravention treated in same way as actual contravention

(4) A person who:
(a) attempts to contravene a civil penalty provision; or
(b) is involved in a contravention of a civil penalty provision;
is taken to have ***contravened*** the provision.

1317F Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subsection 1317E(2).

1317G Pecuniary penalty orders

Court may order person to pay pecuniary penalty

(1) A Court may order a person to pay to the Commonwealth a pecuniary penalty in relation to the contravention of a civil penalty provision if:
(a) a declaration of contravention of the civil penalty provision by the person has been made under section 1317E; and

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(b) if the contravention is of a corporation/scheme civil penalty provision, the contravention:
  (i) materially prejudices the interests of the corporation, scheme or fund, or its members; or
  (ii) materially prejudices the corporation's ability to pay its creditors; or
  (iii) is serious; and
(c) if the contravention is of a financial services civil penalty provision that is not a Part 7.7A civil penalty provision, the contravention:
  (i) materially prejudices the interests of acquirers or disposers of the relevant financial products; or
  (ii) materially prejudices the issuer of the relevant financial products or, if the issuer is a corporation, scheme or fund, the members of that corporation, scheme or fund; or
  (iii) is serious; and
(d) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction), the contravention:
  (i) materially prejudices the interests of the passport fund or its members; or
  (ii) is serious.

The order is a ***pecuniary penalty order***.

Maximum pecuniary penalty

(2) The pecuniary penalty must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.

Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual

(3) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
(a) 5,000 penalty units; and

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(b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate

(4) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:

(a) 50,000 penalty units; and

(b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and

(c) either:

(i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or

(ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

Contrary intention in relation to pecuniary penalty applicable

(5) Subsections (3) and (4) apply in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the contravention. In that case, the ***pecuniary penalty applicable*** is the penalty specified for the civil penalty provision.

Determining pecuniary penalty

(6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:

(a) the nature and extent of the contravention; and

(b) the nature and extent of any loss or damage suffered because of the contravention; and

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(c) the circumstances in which the contravention took place; and

(d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct.

1317GAA Civil enforcement of pecuniary penalty order

(1) A pecuniary penalty is a debt payable to ASIC on behalf of the Commonwealth.

(2) ASIC or the Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317GAB Relinquishing the benefit derived and detriment avoided from contravening a civil penalty provision

Relinquishment order

(1) A Court may order a person to pay the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision if a declaration of contravention by the person has been made under section 1317E. The order is a ***relinquishment order***.

(2) The Court may make a relinquishment order:

(a) on its own initiative, during proceedings before the Court; or

(b) on application by ASIC, made within 6 years after the alleged contravention.

Relationship between relinquishment orders and pecuniary penalty orders

(3) To avoid doubt, the Court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.

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Note: The relationship between relinquishment orders and proceedings for an offence are dealt with in sections 1317M, 1317N, 1317P and 1317Q.

1317GAC Civil enforcement of relinquishment order

(1) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.

(2) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317GAD Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision

The ***benefit derived and detriment avoided*** because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

1317GA Refund orders—contravention of section 962P

(1) A Court may order that a person (the ***fee recipient***) refund a fee paid to the fee recipient by another person (the ***client***) if the Court is satisfied that:

(a) the fee recipient knowingly or recklessly contravened section 962P in charging the client the fee (charging ongoing fee after termination of ongoing fee arrangement); and

(b) it is reasonable in all the circumstances to make the order.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

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Applications for order

(2) The Court may make the order under this section:
  (a) on its own initiative, during proceedings before the Court; or
  (b) on application by ASIC; or
  (c) on the application of the client.

When order may be made

(3) The Court must not make an order under this section in relation to fees paid more than 6 years before the proceedings for the order are commenced.

Recovery of amount as a debt

(4) If the Court makes an order that the fee recipient refund an amount specified in the order to the client, the client may recover the amount as a debt due to the client.

1317H Compensation orders—corporation/scheme civil penalty provisions

Compensation for damage suffered

(1) A Court may order a person to compensate a corporation, registered scheme or notified foreign passport fund for damage suffered by the corporation, scheme or fund if:
  (a) the person has contravened a corporation/scheme civil penalty provision in relation to the corporation, scheme or fund; and
  (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

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Damage includes profits

(2) In determining the damage suffered by the corporation, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.

Damage includes diminution of value of scheme or fund property

(3) In determining the damage suffered by the scheme or fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or fund.

(4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

(4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

Recovery of damage

(5) A compensation order may be enforced as if it were a judgment of the Court.

1317HA Compensation orders—financial services civil penalty provisions

Compensation for damage suffered

(1) A Court may order a person (the ***liable person***) to compensate another person (including a corporation), registered scheme or notified foreign passport fund for damage suffered by the person, scheme or fund if:

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(a) the liable person has contravened a financial services civil penalty provision; and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

Damage includes profits

(2) In determining the damage suffered by a person, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

Damage includes diminution of value of scheme or fund property

(3) In determining the damage suffered by a registered scheme or notified foreign passport fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or fund.

(4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to the scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

(4A) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

Recovery of damage

(5) A compensation order may be enforced as if it were a judgment of the Court.

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Section 1317HB

1317HB Compensation orders—market integrity rules and client money reporting rules

Compensation for damage suffered

(1) A Court may order a person (the ***liable person***) to compensate another person (including a corporation), a registered scheme or a notified foreign passport fund for damage suffered by the person, scheme or fund if:

(a) the liable person has contravened subsection 798H(1) (complying with market integrity rules) or 981M(1) (complying with client money reporting rules); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) Subsection (1) does not apply in relation to a contravention by the operator of a licensed market acting in that capacity.

Damage includes profits

(3) In determining the damage suffered by a person, scheme or fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

Damage includes diminution of value of scheme or fund property

(4) In determining the damage suffered by a registered scheme or a notified foreign passport fund for the purposes of making a compensation order, include any diminution in the value of the property of the scheme or the fund.

(4A) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to the scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

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(4B) If the operator of a notified foreign passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

Recovery of damage

(5) A compensation order may be enforced as if it were a judgment of the Court.

1317HC Compensation orders—financial benchmark rules or compelled financial benchmark rules

Compensation for damage suffered

(1) A Court may order a person (the ***liable person***) to compensate another person (including a corporation), or a registered scheme, for damage suffered by the person or scheme if:

(a) the liable person has contravened subsection 908CF(1) (complying with rules about financial benchmarks); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

Damage includes profits

(2) In determining the damage suffered by a person or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

Damage to scheme includes diminution of value of scheme property

(3) In determining the damage suffered by a registered scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.

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Recovery of damage

(4) A compensation order may be enforced as if it were a judgment of the Court.

1317HE Compensation orders—Passport Rules

(1) A Court may order a person (the ***liable person***) to compensate another person (other than a passport fund) for damage suffered by the other person if:

(a) the liable person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(2) A Court may order a person to compensate a passport fund for damage suffered by the fund if:

(a) the person has contravened subsection 1211B(1) or (2) (failure to comply with the Passport Rules for this jurisdiction); and

(b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

(3) In determining the damage suffered by a person or passport fund for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

(4) In determining the damage suffered by a passport fund for the purposes of making a compensation order, include any diminution in value of the property of the fund.

(5) If the operator of a passport fund is ordered to compensate the fund, the operator must transfer the amount of the compensation to

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the fund property. If anyone else is ordered to compensate the fund, the operator may recover the compensation on behalf of the fund.

(6) A compensation order may be enforced as if it were a judgment of the Court.

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Division 2—Procedural and other matters relating to orders by the Court

1317J Who may apply for a declaration or order

Application by ASIC

(1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by corporation

(2) The corporation, the responsible entity for the registered scheme or the operator of the notified foreign passport fund may apply for a compensation order.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

(3) The corporation, the responsible entity for the registered scheme or the operator of the notified foreign passport fund may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation, scheme or fund. The corporation, responsible entity or operator is entitled to be heard on all matters other than whether the declaration or order should be made.

Compensation order relating to financial services civil penalty provision—any other person who suffers damage may apply

(3A) Any other person who suffers damage in relation to a contravention, or alleged contravention, of a financial services civil penalty provision may apply for a compensation order under section 1317HA.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

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Compensation order relating to the Passport Rules for this jurisdiction—any other person who suffers damage may apply

(3AA) Any other person who suffers damage in relation to a contravention, or alleged contravention, of subsection 1211B(1) or (2) may apply for a compensation order under section 1317HE.

Note: An application for a compensation order may be made whether or not a declaration of contravention has been made under section 1317E.

(3B) Subsections (2) and (3) do not apply in relation to a contravention of:

(a) section 901E (complying with derivative transaction rules); or

(b) section 903D (complying with derivative trade repository rules).

No one else may apply

(4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.

(5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

1317K Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

1317L Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

(a) a declaration of contravention; or

(b) a pecuniary penalty order.

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1317M Civil proceedings after criminal proceedings

A court must not make a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

1317N Criminal proceedings during civil proceedings

(1) Proceedings for a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person are stayed if:
  (a) criminal proceedings are started or have already been started against the person for an offence; and
  (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:
  (a) the civil proceedings are dismissed; and
  (b) costs must not be awarded in relation to the civil proceedings.

1317P Criminal proceedings after civil proceedings

(1) Subject to subsection (2), criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:
  (a) a declaration of contravention has been made against the person; or
  (b) a pecuniary penalty order has been made against the person; or
  (baa) a relinquishment order has been made against the person; or
  (ba) a refund order has been made against the person; or
  (c) a compensation order has been made against the person; or

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(d) the person has been disqualified from managing a corporation under Part 2D.6; or

(e) a banning order, or an order by the Court under section 921A (about disqualification by the Court), has been made against the person.

(2) Subsection (1) does not apply if:

(a) an infringement notice is issued under section 1317DAC to the person for an alleged contravention of subsection 674(2) or 675(2); and

(b) the infringement notice is not withdrawn under section 1317DAI.

1317Q Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

(a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order or a relinquishment order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and

(b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order or the relinquishment order.

1317QA Continuing contraventions of civil penalty provisions

(1) If an act or thing is required under a civil penalty provision to be done:

(a) within a particular period; or

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(b) before a particular time;

then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

(a) within a particular period; or

(b) before a particular time;

commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order or relinquishment order is made or any later day).

1317QB State of mind

(1) In proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, it is not necessary to prove:

(a) the person's intention; or

(b) the person's knowledge; or

(c) the person's recklessness; or

(d) the person's negligence; or

(e) any other state of mind of the person.

(2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.

(3) Subsection (1) does not affect the operation of section 1317QC (which is about mistake of fact).

(4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

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1317QC Mistake of fact

(1) A person is not liable to have a declaration of contravention or an order under Division 1 made against the person for a contravention of a civil penalty provision if:

(a) at or before the time of the conduct constituting the contravention, the person:

(i) considered whether or not facts existed; and

(ii) was under a mistaken but reasonable belief about those facts; and

(b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:

(a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and

(b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a declaration of contravention or an order under Division 1 bears an evidential burden in relation to that matter.

(4) In subsection (3), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

1317QD Exceptions etc. to civil penalty provisions—burden of proof

(1) If, in proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the

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law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

(2) In subsection (1), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

1317QE Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:

(a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or

(b) within the employee's, agent's, or officer's actual or apparent authority;

the element must also be attributed to the body corporate.

1317QF Preference must be given to compensate persons who suffer damage as a result of contravention

(1) This section applies if a court considers that it is appropriate to:

(a) make a pecuniary penalty order against a person in relation to a contravention of a civil penalty provision; or

(b) make a relinquishment order against a person in relation to a contravention of a civil penalty provision; or

(c) impose a fine against a person in relation to a commission of an offence constituted by the same conduct as the conduct constituting the contravention of the pecuniary penalty order.

(2) In making the pecuniary penalty order or relinquishment order or imposing the fine, the court:

(a) must consider the effect that making the order or imposing the fine would have on the amount available to pay:

(i) compensation to which persons might reasonably be expected to be entitled under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or

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(ii) refunds to which persons might reasonably be expected to be entitled under section 1317GA; and

(b) give preference to making an appropriate amount available for refunds and compensation under those sections.

(3) If the court gives preference to making an appropriate amount available for refunds and compensation under paragraph (2)(b), the court may also make such orders as the court thinks fit for the purpose of ensuring that the amount remains available for the payment of:

(a) compensation under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or

(b) refunds under section 1317GA.

1317R ASIC requiring person to assist

(1) ASIC may require a person to give all reasonable assistance in connection with:

(a) an application for a declaration of contravention or a pecuniary penalty order; or

(b) criminal proceedings for an offence against this Act.

(2) ASIC can require the person to assist in connection with an application for a declaration or order if, and only if:

(a) it appears to ASIC that someone other than the person required to assist may have contravened a civil penalty provision; and

(b) ASIC suspects or believes that the person required to assist can give information relevant to the application.

(3) ASIC can require the person to assist in connection with criminal proceedings if, and only if:

(a) it appears to ASIC that the person required to assist is unlikely to be a defendant in the proceedings; and

(b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:

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(i) an employee or agent (including a banker or auditor) of the other person; or

(ii) if the other person is a corporation—an officer or employee of the other person; or

(iii) if the other person is an individual—a partner of the other person.

(4) ASIC can require the person to assist regardless of whether:

(a) an application for the declaration or penalty order has actually been made; or

(b) criminal proceedings for the offence have actually begun.

(5) The person cannot be required to assist if they are or have been a lawyer for:

(a) in an application for a declaration or penalty order—the person suspected of the contravention; or

(b) in criminal proceedings—a defendant or likely defendant in the proceedings.

(6) The requirement to assist must be given in writing.

(7) The Court may order the person to comply with the requirement in a specified way. Only ASIC may apply to the Court for an order under this subsection.

Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see section 104 and subsection 1311(1)).

(8) This section does not limit and is not limited by section 49 of the ASIC Act.

1317S Relief from liability for contravention of civil penalty provision

(1) In this section:

eligible proceedings:

(a) means proceedings for a contravention of a civil penalty provision (including proceedings under section 588M, 588W,

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961M, 1317GA, 1317H, 1317HA, 1317HB, 1317HC or 1317HE); and

(b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 588K, 1317H, 1317HA, 1317HB, 1317HC or 1317HE).

(2) If:

(a) eligible proceedings are brought against a person; and

(b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:

(i) the person has acted honestly; and

(ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer, or employment as an employee, of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;

the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

(3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G, the matters to which regard is to be had include, but are not limited to:

(a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body; and

(b) when that action was taken; and

(c) the results of that action.

(4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.

(5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.

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(6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:

(a) a reference in that subsection to the court is a reference to the judge; and

(b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

(7) Nothing in this section limits, or is limited by, section 1317QC or section 1318.

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Part 9.5—Powers of Courts

1318 Power to grant relief

(1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.

(2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person, the person may apply to the Court for relief, and the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

(3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.

(4) This section applies to a person who is:
   (a) an officer or employee of a corporation; or

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(b) an auditor of a corporation, whether or not the person is an officer or employee of the corporation; or

(c) an expert in relation to a matter:

(i) relating to a corporation; and

(ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or

(d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Act in relation to a corporation.

(5) This section does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar provision is made in relation to Aboriginal and Torres Strait Islander corporations under section 576-1 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

1319 Power of Court to give directions with respect to meetings ordered by the Court

Where, under this Act, the Court orders a meeting to be convened, the Court may, subject to this Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

1322 Irregularities

(1) In this section, unless the contrary intention appears:

(a) a reference to a proceeding under this Act is a reference to any proceeding whether a legal proceeding or not; and

(b) a reference to a procedural irregularity includes a reference to:

(i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation, at a joint meeting of creditors and members of a corporation or at a meeting of members of a registered scheme; and

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(ii) a defect, irregularity or deficiency of notice or time.

(2) A proceeding under this Act is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.

(3) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

(3AA) A meeting held for the purposes of this Act, or a meeting notice of which is required to be given in accordance with the provisions of this Act, or any proceeding at such a meeting, is not invalidated only because of the inability of a person to access the notice of meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

Note: Under paragraph 249J(3)(cb), a company may, in certain circumstances, give a member notice of a meeting by notifying the member that the notice of meeting is available and how the member may access the notice of meeting.

(3A) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if:

(a) the Court is of the opinion that:

(i) a substantial injustice has been caused or may be caused; and

(ii) the injustice cannot be remedied by any order of the Court; and

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(b) the Court declares the meeting or proceeding (or that part of it) invalid.

(3B) If voting rights are exercised in contravention of subsection 259D(3) (company controlling entity that holds shares in it), the meeting or the resolution on which the voting rights were exercised will only be invalid on that ground if:

(a) the court is of the opinion that:

(i) a substantial injustice has been caused or may be caused; and

(ii) the injustice cannot be remedied by any order of the court; and

(b) the court declares the meeting or resolution invalid.

(4) Subject to the following provisions of this section but without limiting the generality of any other provision of this Act, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:

(a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Act or in relation to a corporation is not invalid by reason of any contravention of a provision of this Act or a provision of the constitution of a corporation;

(b) an order directing the rectification of any register kept by ASIC under this Act;

(c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);

(d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Act or in relation to a corporation (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period for doing such an act, matter or thing or instituting or taking such a proceeding;

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and may make such consequential or ancillary orders as the Court thinks fit.

(5) An order may be made under paragraph (4)(a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.

(6) The Court must not make an order under this section unless it is satisfied:

(a) in the case of an order referred to in paragraph (4)(a):

(i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;

(ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or

(iii) that it is just and equitable that the order be made; and

(b) in the case of an order referred to in paragraph (4)(c)—that the person subject to the civil liability concerned acted honestly; and

(c) in every case—that no substantial injustice has been or is likely to be caused to any person.

1323 Power of Court to prohibit payment or transfer of money, financial products or other property

(1) Where:

(a) an investigation is being carried out under the ASIC Act or this Act in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Act; or

(b) a prosecution has been begun against a person for a contravention of this Act; or

(c) a civil proceeding has been begun against a person under this Act;

and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an ***aggrieved person***) to whom the person referred to in paragraph (a), (b) or (c), as the case may be, (in this section called

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the ***relevant person***), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for financial products or other property, the Court may, on application by ASIC or by an aggrieved person, make one or more of the following orders:

(d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;

(e) an order prohibiting a person holding money, financial products or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the financial products or other property, to, or to another person at the direction or request of, the person on whose behalf the money, financial products or other property, is or are held;

(f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;

(g) an order prohibiting the taking, sending or transfer by a person of financial products or other property of the relevant person, or of an associate of the relevant person:

(i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of financial products from a register in this jurisdiction to a register outside this jurisdiction); or

(ii) from a place in Australia to a place outside Australia (including the transfer of financial products from a register in Australia to a register outside Australia);

(h) an order appointing:

(i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

(ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court

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orders, of the property or of part of the property of that person;

(j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;

(k) if the relevant person is a natural person—an order prohibiting that person from leaving this jurisdiction, or Australia, without the consent of the Court.

(2A) A reference in paragraph (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:

(a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or

(b) in a fiduciary capacity.

(2B) Subsection (2A) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Act.

(2) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.

(3) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.

(4) On an application under subsection (1), the Court must not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.

(5) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

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(6) An order made under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.

(7) Nothing in this section affects the powers that the Court has apart from this section.

(8) This section has effect subject to the *Bankruptcy Act 1966*.

(9) A person must not contravene an order by the Court under this section that is applicable to the person.

(10) An offence based on subsection (9) is an offence of strict liability.

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

1324 Injunctions

(1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:

(a) a contravention of this Act; or

(b) attempting to contravene this Act; or

(c) aiding, abetting, counselling or procuring a person to contravene this Act; or

(d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or

(e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or

(f) conspiring with others to contravene this Act;

the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(1A) For the purposes of subsection (1):

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(a) a contravention of this Act affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and

(b) a company's contravention of:

(i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or

(ia) paragraph 256B(1)(b) (share capital reduction not to prejudice ability to pay creditors); or

(ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors);

affects the interests of a creditor or member of the company; and

(c) a company's contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.

This subsection does not limit subsection (1) in any way.

(1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:

(a) a contravention of paragraph 256B(1)(a) or (b), section 257A or paragraph 260A(1)(a); or

(b) a contravention of a provision of this Act involving the insolvency of the company because of:

(i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or

(ii) the company buying back its shares; or

(iii) the company giving financial assistance to which Part 2J.3 applies;

the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of:

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(a) ASIC; or

(b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;

grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.

(3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:

(a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and

(b) whether or not the person has previously engaged in conduct of that kind; and

(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:

(a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and

(b) whether or not the person has previously refused or failed to do that act or thing; and

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(c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.

(8) Where ASIC applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.

(9) In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.

(10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

1324A Provisions relating to prosecutions

In the prosecution of a person for an offence in respect of a contravention of a provision of Chapter 5C, 6CA or 6D or Part 7.10, the Court may do either or both of the following:

(a) grant an injunction under section 1324 against the person in relation to:

(i) the conduct that constitutes, or is alleged to constitute, the offence; or

(ii) other conduct of that kind

(b) make an order under section 1324B in respect of the person.

1324B Order to disclose information or publish advertisements

Without limiting section 1324, if, on the application of ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Chapter 5C, 6CA or 6D, subsection 798H(1), section 901E or 903D, subsection 908CF(1) or 981M(1) or Part 7.10, the Court may make either or both of the

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following orders against that person or a person involved in the contravention:

(a) an order requiring the person to whom it is directed to disclose, in the manner specified in the order, to:

(i) the public; or

(ii) a particular person; or

(iii) a particular class of persons;

the information, or information of a kind, that is specified in the order and is in the person's possession or to which the person has access;

(b) an order requiring the person to whom it is directed to publish, at the person's own expense, in the manner and at times specified in the order, advertisements whose terms are specified in, or are to be determined in accordance with, the order.

1325 Other orders

(1) Where, in a proceeding instituted under, or for a contravention of, a section 1325 order provision the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of a section 1325 order provision the Court may, whether or not it grants an injunction, or makes an order, under any other provision of this Act, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

(2) The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of a section 1325 order provision or on the application of ASIC in accordance with subsection (3) on behalf of such a person or 2 or more such

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persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.

(3) Where, in a proceeding instituted for a contravention of a section 1325 order provision or instituted by ASIC under section 1324, a person is found to have engaged in conduct in contravention of a section 1325 order provision, ASIC may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but ASIC must not make such an application except with the consent in writing given before the application is made by the person, or by each of the persons, on whose behalf the application is made.

(4) An application under subsection (2) may be made within 6 years after the day on which the cause of action arose.

(5) The orders referred to in subsections (1) and (2) are:

(a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after a specified day before the order is made; and

(b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after a specified day before the order is made; and

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(c) an order refusing to enforce any or all of the provisions of such a contract; and

(d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage; and

(e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage; and

(f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.

(5A) Subsections (1) and (2) have effect subject to section 1044B.

Note: Section 1044B may limit the liability, under an order under subsection (1) or (2) of this section, of a person for his or her contravention of section 1041H (Misleading or deceptive conduct) or involvement in such a contravention.

(6) Where an application is made for an order under this section against a person, the Court may make an order under section 1323 in respect of the person.

(7) In this section:

section 1325 order provision means:

(a) subsection 201P(1); and

(b) a provision of Chapter 5C; and

(c) a provision of Chapter 6CA; and

(d) a provision of Chapter 6D; and

(e) subsection 798H(1); and

(f) subsection 908CF(1); and

(g) a provision of Part 7.10; and

(h) a provision of Chapter 8A; and

(i) a provision of the Passport Rules for this jurisdiction.

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1325A Orders if contravention of Chapter 6, 6A, 6B or 6C

(1) The Court may make any order or orders (including a remedial order) that it considers appropriate if a person:

(a) contravenes a provision of Chapter 6, 6A, 6B or 6C; or

(b) contravenes a condition on a consent given by ASIC under section 652B; or

(c) states in a notice under section 672B about securities that they do not know particular information about:

(i) the securities; or

(ii) someone who has a relevant interest in, or has given instructions in relation to, the securities.

Note 1: Section 9 defines ***remedial order***.

Note 2: Sections 659B and 659C deal with court proceedings during and after a takeover bid.

(2) The Court may make any order or orders (including a remedial order) that it considers appropriate if:

(a) the consideration offered under a takeover bid is or includes securities; and

(b) the offers under the bid or the bidder's statement states or implies that the securities will be able to be traded on a financial market (whether in Australia or elsewhere) and:

(i) an application for admission to quotation is not made within 7 days after the start of the bid period; or

(ii) permission for admission to quotation is not granted within 7 days after the end of the bid period.

Note: Section 9 defines ***remedial order***.

(3) An order under this section may be made on application by the following:

(a) ASIC;

(b) the company, or the responsible entity of the registered scheme, whose securities are involved in the contravention;

(c) a member or former member of that company or scheme;

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(d) a person from whom the relevant interest in the securities were acquired;

(e) a person whose interests are affected by the contravention.

1325B Court may order bidder to make offers

(1) If a bidder making a takeover bid for a class of securities contravenes section 631 by failing to make offers under the bid within time and ASIC applies for an order under this section, the Court may:

(a) order the bidder to send, to each holder of securities in that class, an offer to which the bidder's statement relates within a specified time; and

(b) make any ancillary orders it thinks appropriate including orders that the bidder:

(i) send notices setting out specified information with the offer; and

(ii) send copies of the notice within a specified period to the target and, if the target is listed, to the relevant market operator; and

(iii) lodge a copy of the notice with ASIC within a specified period.

(2) Offers sent in accordance with an order under this section are taken to be made under a takeover bid.

1325C Unfair or unconscionable agreements, payments or benefits

(1) The Court may make orders under subsection (2) if:

(a) a body corporate gives, or enters into an agreement to give, a director or secretary of the body corporate or a related body corporate a benefit (including a payment or an agreement to employ them, or engage their services, for a fixed period); and

(b) the agreement is entered into or the benefit is given:

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(i) within 12 months after the start of the bid period for a takeover bid for the securities of the body corporate or a related body corporate; or

(ii) at a time when the directors of the body corporate have reason to believe that a takeover bid is to be made in respect of securities of the body corporate or a related body corporate; and

(c) the Court is satisfied that the agreement or benefit was unfair or unconscionable having regard to the interests of the body corporate.

(2) The Court may:

(a) declare the agreement, or any part of it, to be void or to have always been void; or

(b) direct a person to whom a benefit is given, or another specified person, to:

(i) make a payment or transfer property to the body corporate; or

(ii) do any other act for the benefit of the body corporate; or

(c) make any other order it considers appropriate.

(3) This section does not apply to an agreement or benefit that has been approved by an ordinary resolution of the body corporate (whether before or after the agreement was entered into or the benefit given) with no vote being cast by the person who is to receive the benefit or their associates.

(4) An order under this section may be made on application by:

(a) the body corporate; or

(b) ASIC; or

(c) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or a related body corporate;

within 12 months, or any longer period that the Court thinks appropriate in the circumstances, after the agreement is entered into or the benefit given.

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1325D Contravention due to inadvertence etc.

(1) The Court may declare that any act, document or matter:
  (a) is not invalid merely because a person has contravened a provision of Chapter 6, 6A, 6B or 6C; and
  (b) has had effect at all times as if there had been no contravention;
  if the Court is satisfied that the contravention ought to be excused in all the circumstances.

(2) An application for an order under subsection (1) may be made by any interested person.

(3) If the Court is satisfied that in all the circumstances a contravention of a provision of Chapter 6, 6A, 6B or 6C ought to be excused, the Court must not make an order under section 1325A, 1325B or 1325C other than:
  (a) an order restraining the exercise of voting or other rights attached to securities; or
  (b) an order that an exercise of voting or other rights attached to securities be disregarded.

(4) In determining whether or not a contravention of a provision by a person ought to be excused, have regard to the contravention being caused by any of the following:
  (a) the person's inadvertence or mistake;
  (b) the person not having been aware of a relevant fact or occurrence;
  (c) circumstances beyond the control of the person.

(5) This section applies notwithstanding anything contained in any other provision of this Chapter.

1325E Orders to secure compliance

In order to secure compliance with an order under section 1325A, 1325B or 1325C, the Court may direct a person to:
  (a) do a specified act; or

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(b) refrain from doing a specified act.

1326 Effect of sections 1323, 1324 and 1325

Nothing in any of sections 1323, 1324, 1324A, 1324B, and 1325 limits the generality of anything else in any of those sections.

1327 Power of Court to punish for contempt of Court

Nothing in a provision of this Act that provides:

(a) that a person must not contravene an order of the Court; or

(b) that a person who contravenes an order of the Court contravenes a provision of this Act or is guilty of an offence;

affects the powers of the Court in relation to the punishment of contempts of the Court.

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Part 9.6—Proceedings

1330 ASIC's power to intervene in proceedings

(1) ASIC may intervene in any proceeding relating to a matter arising under this Act.

(2) Where ASIC intervenes in a proceeding referred to in subsection (1), ASIC is taken to be a party to the proceeding and, subject to this Act, has all the rights, duties and liabilities of such a party.

(3) Without limiting the generality of subsection (2), ASIC may appear and be represented in any proceeding in which it wishes to intervene pursuant to subsection (1):

(a) by a staff member of ASIC; or

(b) by a natural person to whom, or by an officer or employee of a person or body to whom or to which, ASIC has delegated its functions and powers under this Act or such of those functions and powers as relate to a matter to which the proceeding relates; or

(c) by solicitor or counsel.

1331 Civil proceedings not to be stayed

No civil proceedings under this Act are to be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

1332 Standard of proof

Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Act, that:

(a) a person has contravened a provision of this Act; or

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(b) default has been made in complying with a provision of this Act; or

(c) an act or omission was unlawful by virtue of a provision of this Act; or

(d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of this Act;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

1333 Evidence of contravention

For the purposes of this Act, a certificate that:

(a) purports to be signed by the Registrar or other proper officer of an Australian court; and

(b) states:

(i) that a person was convicted by that court on a specified day of a specified offence; or

(ii) that a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

(c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and

(d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

1335 Costs

(1) Where a corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it

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appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his, her or its defence, require sufficient security to be given for those costs and stay all proceedings until the security is given.

(1A) Subsection (1) does not apply to a corporation that is an Aboriginal and Torres Strait Islander corporation.

Note: Similar provision is made in relation to Aboriginal and Torres Strait Islander corporations under section 581-20 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

(2) The costs of any proceeding before a court under this Act are to be borne by such party to the proceeding as the court, in its discretion, directs.

1336 Vesting of property

(1) Where an order is made by a court under this Act vesting property in a person:

(a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and

(b) the person who applied for the order must, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.

(2) Where:

(a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(b) that law enables the registration of such an order;

the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.

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(3) Where:

(a) property vests in a person by force of this Act; and

(b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and

(c) that law enables the person to be registered as the owner of that property;

that property, notwithstanding that it vests in equity in that person by force of this Act, does not vest in that person at law until the requirements of the law referred to in paragraph (b) have been complied with.

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Part 9.6A—Jurisdiction and procedure of Courts

Division 1—Civil jurisdiction

Subdivision A—Preliminary

1337A Operation of Division

(1) This Division deals with:
  (a) the jurisdiction of courts in respect of civil matters arising under the Corporations legislation; and
  (b) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to decisions made under the Corporations legislation by Commonwealth authorities and officers of the Commonwealth; and
  (c) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations legislation and related criminal justice process decisions.

(2) This Division operates to the exclusion of:
  (a) the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and
  (b) section 39B of the *Judiciary Act 1903*.

(3) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than section 39B.

(4) Without limiting subsection (3), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to civil matters arising under the Corporations legislation.

(5) Nothing in this Division affects any other jurisdiction of any court.

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Subdivision B—Conferral of jurisdiction

1337B Jurisdiction of Federal Court and State and Territory Supreme Courts

(1) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations legislation.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of:

(a) each State; and

(b) the Capital Territory; and

(c) the Northern Territory;

with respect to civil matters arising under the Corporations legislation.

(3) Despite section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of:

(a) each State; and

(b) the Capital Territory; and

(c) the Northern Territory;

with respect to matters arising under that Act involving or related to decisions made, or proposed or required to be made, under the Corporations legislation by a Commonwealth authority or an officer of the Commonwealth.

Note 1: The Federal Court also has jurisdiction with respect to these matters under that Act.

Note 2: A Supreme Court may be required to transfer a proceeding with respect to such a matter to the Federal Court: see subsection 1337H(3).

(4) Subsection (3) applies to a decision made, or proposed or required to be made:

(a) whether or not in the exercise of a discretion; and

(b) whether before or after that subsection commences.

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(5) The jurisdiction conferred on a Supreme Court by subsection (2) or (3) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(6) This section has effect subject to section 1337D.

1337C Jurisdiction of Family Court and State Family Courts

(1) Jurisdiction is conferred on the Family Court with respect to civil matters arising under the Corporations legislation.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations legislation.

(3) The jurisdiction conferred on a State Family Court by subsection (2) is not limited by any limits to which any other jurisdiction of the State Family Court may be subject.

(4) This section has effect subject to section 1337D.

1337D Jurisdiction of courts (decisions to prosecute and related criminal justice process decisions made by Commonwealth officers)

(1) If a decision to prosecute a person for an offence against the Corporations legislation has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a State or Territory court:

(a) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and

(b) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced.

(2) Subject to subsection (3), at any time when:

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(a) a prosecution for an offence against the Corporations legislation is before a State or Territory court; or

(b) an appeal arising out of such a prosecution is before a State or Territory court;

the following apply:

(c) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;

(d) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution or appeal is before a court.

(3) Subsection (2) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.

(4) Where subsection (3) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection and the court may grant such a stay if the court determines that:

(a) the matters that are the subject of the proceedings are more appropriately dealt with in the criminal justice process; and

(b) a stay of proceedings will not substantially prejudice the person.

(5) Subsections (1), (2), (3) and (4) have effect despite anything in this Act or in any other law. In particular:

(a) neither this Act, nor any other law, has the effect of giving the Federal Court or the Family Court jurisdiction contrary to subsection (1) or (2); and

(b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of

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removing from the Supreme Court of a State, the Capital Territory or the Northern Territory the jurisdiction given to that Court by subsection (1) or (2).

(6) In this section:

appeal includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

related criminal justice process decision, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

(a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and

(b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and

(c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and

(d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and

(e) a decision in connection with an appeal arising out of the prosecution.

1337E Jurisdiction of lower courts

(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the lower courts of:

(a) each State; and

(b) the Capital Territory; and

(c) the Northern Territory;

with respect to civil matters (other than superior court matters) arising under the Corporations legislation.

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

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

1337F Appeals

(1) An appeal may not be instituted from a decision of the Federal Court to:
  (a) a State or Territory court; or
  (b) the Family Court.

(2) An appeal may not be instituted from a decision of a court of the Capital Territory to:
  (a) a court of a State or the Northern Territory; or
  (b) the Family Court.

(3) An appeal may not be instituted from a decision of a court (not being a State Family Court) of a State or the Northern Territory to:
  (a) the Federal Court; or
  (b) a court of another State or Territory; or
  (c) the Family Court; or
  (d) a State Family Court of that State.

(4) An appeal may not be instituted from a decision of the Family Court to:
  (a) the Federal Court; or
  (b) a State or Territory court.

(5) An appeal may not be instituted from a decision of a State Family Court of a State to:
  (a) the Federal Court; or
  (b) a court of another State or Territory; or

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(c) except in accordance with the law of the State under which the State Family Court is constituted—the Supreme Court of that State.

1337G Courts to act in aid of each other

All courts having jurisdiction in:

(a) civil matters arising under the Corporations legislation; or

(b) matters referred to in subsection 1337B(3);

and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all those matters.

Subdivision C—Transfer of proceedings

1337H Transfer of proceedings by the Federal Court and State and Territory Supreme Courts

(1) This section applies to a proceeding (the ***relevant proceeding***) in a court (the ***transferor court***) if:

(a) the relevant proceeding is:

(i) a proceeding with respect to a civil matter arising under the Corporations legislation; or

(ii) a subsection 1337B(3) proceeding; and

(b) the transferor court is:

(i) the Federal court; or

(ii) a State or Territory Supreme Court.

(2) Subject to subsections (3), (4) and (5), if it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:

(a) the relevant proceeding; or

(b) an application in the relevant proceeding;

to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application,

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the transferor court may transfer the relevant proceeding or application to that other court.

(3) If:

(a) the relevant proceeding is a subsection 1337B(3) proceeding; and

(b) the transferor court is a State or Territory Supreme Court;

the transferor court must transfer the relevant proceeding to the Federal Court unless the matter for determination in it arises out of, or relates to, another proceeding pending in any court of that State or Territory that:

(c) arises, or a substantial part of which arises, under the Corporations legislation; and

(d) is not a subsection 1337B(3) proceeding;

regardless of which proceeding was commenced first.

(4) Even if subsection (3) does not require a State or Territory Supreme Court to transfer a subsection 1337B(3) proceeding to the Federal Court, it may nevertheless do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same State or Territory.

(5) If:

(a) the relevant proceeding is a subsection 1337B(3) proceeding in relation to a matter; and

(b) the transferor court is the Federal Court;

the transferor court may only transfer the relevant proceeding, or an application in the relevant proceeding, to a State or Territory Supreme Court if:

(c) the matter arises out of, or relates to, another proceeding pending in any court of that State or Territory that:

(i) arises, or a substantial part of which arises, under the Corporations legislation; and

(ii) is not a subsection 1337B(3) proceeding;

regardless of which proceeding was commenced first; and

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(d) the transferor court considers the transfer to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.

(6) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

(7) The fact that some references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that other references to the interests of justice, in this section or elsewhere in this Act, do not include that matter.

1337J Transfer of proceedings by Family Court and State Family Courts

(1) This section applies to a proceeding (the ***relevant proceeding***) in a court (the ***transferor court)*** if:

(a) the relevant proceeding is with respect to a civil matter arising under the Corporations legislation; and

(b) the transferor court is:

(i) the Family Court of Australia; or

(ii) a State Family Court.

(2) If it appears to the transferor court:

(a) that the relevant proceeding arises out of, or is related to, another proceeding pending in:

(i) the Federal Court; or

(ii) another State or Territory court;

and that the court in which the other proceeding is pending is the most appropriate court to determine the relevant proceeding; or

(b) that having regard to:

(i) whether, in the transferor court's opinion, apart from this Division, the relevant proceeding, or a substantial

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part of it, would have been incapable of being instituted in the transferor court; and

(ii) the extent to which, in the transferor court's opinion, the matters for determination in the relevant proceeding are matters not within the transferor court's jurisdiction apart from this Division; and

(iii) the interests of justice;

the Federal Court, or another State or Territory court, is the most appropriate court to determine the relevant proceeding; or

(c) that it is otherwise in the interests of justice that the Federal Court, or another State or Territory court, determine the relevant proceeding;

the transferor court must transfer the relevant proceeding to the Federal Court or to that other court.

(3) Subject to subsection (2), if it appears to the transferor court:

(a) that the relevant proceeding arises out of, or is related to, another proceeding pending in another court that is:

(i) the Family Court of Australia; or

(ii) a State Family Court;

and that has jurisdiction under section 1337C in the matters for determination in the relevant proceeding and that the other court is the most appropriate court to determine the relevant proceeding; or

(b) that it is otherwise in the interests of justice that the relevant proceeding be determined by another court that is:

(i) the Family Court of Australia; or

(ii) a State Family Court;

and that has jurisdiction under section 1337C in the matters for determination in the relevant proceeding;

the transferor court must transfer the relevant proceeding to the other court.

(4) If:

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(a) the transferor court transfers the relevant proceeding to another court; and

(b) it appears to the transferor court that:

(i) there is another proceeding pending in the transferor court that arises out of, or is related to, the relevant proceeding; and

(ii) it is in the interests of justice that the other court also determine the other proceeding;

the transferor court must also transfer the other proceeding to the other court.

(5) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

1337K Transfer of proceedings in lower courts

(1) This section applies to a proceeding (the ***relevant proceeding***) in a court (the ***transferor court***) if:

(a) the relevant proceeding is with respect to a civil matter arising under the Corporations legislation; and

(b) the transferor court is a lower court of a State or Territory.

(2) If it appears to the transferor court that, having regard to the interests of justice, it is more appropriate for:

(a) the relevant proceeding; or

(b) an application in the relevant proceeding;

to be determined by another court that has jurisdiction in the matters for determination in the relevant proceeding or application, the transferor court may take action under whichever of subsections (3) and (4) applies.

(3) If the other court is also a lower court, the transferor court may transfer the relevant proceeding or application to the other court.

(4) If the other court is a superior court, the transferor court may:

(a) transfer the relevant proceeding or application to the relevant Supreme Court; and

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(b) recommend that the relevant proceeding or application be transferred by the Supreme Court to the other court.

(5) The relevant Supreme Court is not bound to comply with a recommendation under subsection (4) and it may instead decide:
(a) to deal with the relevant proceeding or application itself; or
(b) to transfer the relevant proceeding or application to some other court (which could be the transferor court).

(6) Nothing in this section allows the relevant Supreme Court to transfer the relevant proceeding or application to another court otherwise than in accordance with section 1337H and the other requirements of this Division.

(7) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

(8) In this section:

relevant Supreme Court means the Supreme Court of the State or Territory of which the transferor court is a court.

1337L Further matters for a court to consider when deciding whether to transfer a proceeding

In deciding whether to transfer under section 1337H, 1337J or 1337K a proceeding or application, a court must have regard to:
(a) the principal place of business of any body corporate concerned in the proceeding or application; and
(b) the place or places where the events that are the subject of the proceeding or application took place; and
(c) the other courts that have jurisdiction to deal with the proceeding or application.

1337M Transfer may be made at any stage

A court may transfer under section 1337H, 1337J or 1337K a proceeding or application:
(a) on the application of a party made at any stage; or

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(b) of the court's own motion.

1337N Transfer of documents

If, under section 1337H, 1337J or 1337K, a court (the ***transferor court***) transfers a proceeding, or an application in a proceeding, to another court:

(a) the Registrar or other proper officer of the transferor court must transmit to the Registrar or other proper officer of the other court all documents filed in the transferor court in respect of the proceeding or application, as the case may be; and

(b) the other court must proceed as if:

(i) the proceeding had been originally instituted in the other court; and

(ii) the same proceedings had been taken in the other court as were taken in the transferor court; and

(iii) in a case where an application is transferred—the application had been made in the other court.

1337P Conduct of proceedings

(1) Subject to sections 1337S, 1337T and 1337U, if it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with that matter are to be the rules that:

(a) are applied in a superior court in Australia or in an external Territory; and

(b) the court considers appropriate to be applied in the circumstances.

(2) If a proceeding is transferred or removed to a court (the ***transferee court***) from another court (the ***transferor court***), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes

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of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section:

relevant jurisdiction means:

(a) jurisdiction conferred on the Federal Court of Australia or the Family Court with respect to civil matters arising under the Corporations Legislation; or

(b) jurisdiction conferred on a court of a State, the Capital Territory or the Northern Territory with respect to matters referred to in subsection 1337B(3).

1337Q Rights of appearance

(1) This section applies if a proceeding (the ***transferred proceeding)*** in a court (the ***transferor court***) is transferred to another court (the ***transferee court)*** under this Division.

(2) A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in the transferor court has the same entitlements to practise in relation to:

(a) the transferred proceeding; and

(b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;

in the transferee court that the person would have if the transferee court were a federal court exercising federal jurisdiction.

1337R Limitation on appeals

An appeal does not lie from a decision of a court:

(a) in relation to the transfer of a proceeding under this Division; or

(b) as to which rules of evidence and procedure are to be applied pursuant to subsection 1337P(1).

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Subdivision D—Rules of court

1337S Rules of the Federal Court

(1) The power to make rules of court conferred by section 59 of the *Federal Court of Australia Act 1976* extends to making rules of court:

(a) with respect to proceedings, and the practice and procedure, of the Federal Court of Australia under the Corporations legislation; and

(b) with respect to any matter or thing that is:

(i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and

(c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Federal Court of Australia.

(2) In this section:

Corporations legislation does not include rules of court.

1337T Rules of the Supreme Court

(1) The Judges of the Supreme Court of the Capital Territory, or a majority of them, may make rules of court:

(a) with respect to proceedings, and the practice and procedure, of that court under the Corporations legislation; and

(b) with respect to any matter or thing that is:

(i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or

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(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and

(c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

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

(3) In this section:

Corporations legislation does not include rules of court.

1337U Rules of the Family Court

(1) The power to make rules of court conferred by section 123 of the *Family Law Act 1975* extends to making rules of court:

(a) with respect to proceedings, and the practice and procedure, of the Family Court under the Corporations legislation; and

(b) with respect to any matter or thing that is:

(i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and

(c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Family Court.

(2) In this section:

Corporations legislation does not include rules of court.

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Division 2—Criminal jurisdiction

1338A Operation of Division

(1) This Division provides in relation to the jurisdiction of courts in respect of criminal matters arising under the Corporations legislation and so provides to the exclusion of sections 68, 70 and 70A of the *Judiciary Act 1903*.

(2) This Division does not limit the operation of the provisions of the *Judiciary Act 1903* other than sections 68, 70 and 70A.

(3) Without limiting subsection (2), this Division does not limit the operation of subsection 39(2) of the *Judiciary Act 1903* in relation to criminal matters arising under the Corporations legislation.

1338B Jurisdiction of courts

(1) Subject to this section, the several courts of each State, the Capital Territory and the Northern Territory exercising jurisdiction:

(a) with respect to:

(i) the summary conviction; or

(ii) the examination and commitment for trial on indictment; or

(iii) the trial and conviction on indictment;

of offenders or persons charged with offences against the laws of the State, the Capital Territory or the Northern Territory, and with respect to:

(iv) their sentencing, punishment and release; or

(v) their liability to make reparation in connection with their offences; or

(vi) the forfeiture of property in connection with their offences; or

(vii) the proceeds of their crimes; and

(b) with respect to the hearing and determination of:

(i) proceedings connected with; or

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(ii) appeals arising out of; or

(iii) appeals arising out of proceedings connected with;

any such trial or conviction or any matter of a kind referred to in subparagraph (a)(iv), (v), (vi) or (vii);

have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations legislation.

(2) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(3) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of a State, the Capital Territory or the Northern Territory, and:

(a) the reference in paragraph (1)(b) to "any such trial or conviction" includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and

(b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(4) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned:

(a) would be required to be prosecuted on indictment; or

(b) would be required to be prosecuted either summarily or on indictment.

(5) For the purposes of the application of a relevant law as provided by subsection (3):

(a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and

(b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

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(6) Subject to subsection (8), the jurisdiction conferred on a State or Territory court by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or Territory.

(7) If:

(a) jurisdiction is conferred on a State or Territory court in relation to the summary conviction of persons charged with offences against the Corporations legislation by subsection (1); and

(b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest;

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or Territory.

(8) The jurisdiction conferred on a court of a State, the Capital Territory or the Northern Territory by subsection (1) in relation to:

(a) the examination and commitment for trial on indictment; and

(b) the trial and conviction on indictment;

of offenders or persons charged with offences against the Corporations legislation is conferred only in relation to:

(c) offences committed outside Australia; and

(d) offences committed, begun or completed in the State or the Territory concerned.

(9) In this section:

appeal includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

Australia does not include the coastal sea.

relevant law means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on

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indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

1338C Laws to be applied

(1) Subject to this Division, the laws of a State, the Capital Territory or the Northern Territory respecting:

(a) the arrest and custody in the State or Territory of offenders or persons charged with offences; and

(b) criminal procedure in the State or Territory in relation to such persons; and

(c) the rules of evidence applied in criminal procedure in the State or Territory in relation to such persons;

apply in the State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations legislation.

(2) In this section:

criminal procedure means the procedure for:

(a) the summary conviction; and

(b) the examination and commitment for trial on indictment; and

(c) the trial and conviction on indictment; and

(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings;

of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail.

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Part 9.7—Unclaimed property

1339 ASIC to deal with unclaimed property

(1) Unclaimed property held by ASIC is to be dealt with in accordance with this Part.

Note: Unclaimed property is held by ASIC for and on behalf of the Commonwealth (see subsections 8(3) and (4) of the ASIC Act).

(2) If property (other than money) becomes unclaimed property, ASIC must, on behalf of the Commonwealth, sell or dispose of the property as ASIC thinks fit.

1340 No liability to pay calls on shares etc.

Where unclaimed property is or includes shares in a body corporate, neither the Commonwealth nor ASIC is subject to any obligation:

(a) to pay any calls; or

(b) to make any contribution to the debts and liabilities of the body corporate; or

(c) to discharge any other liability; or

(d) to do any other act or thing;

in respect of the shares, whether the obligation arises before or after the shares become unclaimed property, but this section does not affect the right of a body corporate to forfeit a share.

1341 Entitlement to unclaimed property

(1) If:

(a) unclaimed property is or was held by ASIC; and

(b) the unclaimed property is an amount of money; and

(c) a person claims to be entitled to that amount; and

(d) ASIC is satisfied that the person is entitled to that amount;

ASIC must:

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(e) pay the person an amount equal to that amount; and
(f) do so out of money appropriated by the Parliament for the purposes of this section.

(2) If:
(a) ASIC has, under subsection 1339(2), sold or disposed of unclaimed property; and
(b) the amount of the proceeds is or was held by ASIC; and
(c) a person claims to be entitled to that amount; and
(d) ASIC is satisfied that the person is entitled to that amount;
ASIC must:
(e) pay the person an amount equal to that amount; and
(f) do so out of money appropriated by the Parliament for the purposes of this section.

(3) A person who is dissatisfied with the decision of ASIC in respect of a claim made by the person in accordance with subsection (1) or (2) may appeal to the Court and the Court may confirm, disallow or vary the decision of ASIC.

(3A) If ASIC pays an amount to a person under subsection (1) or (2) on or after 1 July 2013, ASIC must:
(a) also pay to the person the amount of interest (if any) worked out in accordance with the regulations; and
(b) do so out of money appropriated by the Parliament for the purposes of this section.

(3B) Regulations made for the purposes of paragraph (3A)(a) may prescribe different rates for different periods over which the interest accrues. For this purpose, ***rate*** includes a nil rate.

(3C) Interest under subsection (3A) does not accrue in relation to a period before 1 July 2013.

(4) Where a person claims to be entitled to money that has been paid to another person in accordance with this section, neither the Commonwealth nor ASIC is under any liability to that first-mentioned person in respect of that money, but, if the

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first-mentioned person is entitled to that money, that person may recover that money from the other person.

1342 Commonwealth or ASIC not liable for loss or damage

Neither the Commonwealth nor ASIC is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on ASIC under this Part or which ASIC has in relation to unclaimed property.

1343 Disposal of securities if whereabouts of holder unknown

Where a person has been shown in an appropriate register of a company as the holder of securities of the company for a period of at least 6 years and the company has, for a period of at least 6 years:

(a) had reasonable grounds for believing that the person was not residing at the address shown in the register as the person's address; and

(b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Act, it sought to communicate with the person, being unable after the exercise of reasonable diligence to do so;

the company may, by executing a transfer for and on behalf of the person, transfer to ASIC:

(c) the securities; and

(d) any rights in respect of the securities;

to be dealt with under this Part.

1343A Disposal of interests in registered scheme if whereabouts of member unknown

If, during a period of at least 6 years while a person has been shown in the register of members of a registered scheme as the holder of interests in the scheme:

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(a) the responsible entity has had reasonable grounds for believing that the person was not residing at the address shown in the register as their address; and

(b) the responsible entity's attempts to communicate with the person have been made using reasonable diligence but have all been unsuccessful;

the responsible entity may, by executing a transfer for and on behalf of the person, transfer the interests and any rights in respect of them to ASIC to be dealt with under this Part.

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Part 9.9—Miscellaneous

1344 Use of ABN

Despite any provision in this Act or any other Act, in any case where:

(a) the ACN of a company; or

(b) the ARBN of a registered body; or

(c) the ARSN of a registered scheme;

is required or permitted to be used under a law of the Commonwealth administered by ASIC, the ABN of the company, body or scheme may be used instead if the last 9 digits of the ABN are the same, and in the same order, as the last 9 digits of the ACN, ARBN or ARSN.

1345A Minister may delegate prescribed functions and powers under this Act

(1) The Minister may, by signed instrument, delegate to an officer of the Department all or any of the Minister's functions and powers under this Act that are prescribed by the regulations for the purposes of this subsection.

(1AA) If:

(a) under subsection (1), the Minister delegates to an officer of the Department all of the Minister's functions and powers that are prescribed for the purposes of that subsection; and

(b) the regulations are amended to prescribe one or more additional functions or powers for the purposes of that subsection; and

(c) the delegation is in force immediately before the amendment takes effect;

then, on and after the amendment taking effect, the delegation is taken to include the additional functions or powers.

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(1A) The Minister may, by signed instrument, delegate the function or power under subsection 147(2), 601DC(2) or 1213B(6) to:

(a) a member of ASIC (within the meaning of paragraph (a) of the definition of ***member*** in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*); or

(b) a staff member of ASIC who holds, or performs the duties of, a position not below an Executive Level 1 position or an equivalent position.

(2) A delegate is, in the performance or exercise of a delegated function or power, subject to the Minister's directions.

1346 Non-application of rule against perpetuities to certain schemes

(1) The rules of law relating to perpetuities do not apply, and are taken never to have applied, to the trusts of any fund or scheme for the benefit of any employee of a corporation, whether the fund or scheme was established before, or is established after, the commencement of this section.

(2) In this section:

(a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, or otherwise duly constituted, whether before, at or after the commencement of this section, by or under:

(i) a law of the Commonwealth, of a State or Territory, of an external Territory or of a country outside Australia and the external Territories; or

(ii) letters patent or a royal charter; and

(b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision; and

(c) a reference to an employee of a corporation includes a reference to:

(i) a director of the corporation; and

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(ii) a spouse, child, grandchild, parent or any dependant of an employee or of a director of the corporation.

1348 Operation of Life Insurance Act

Nothing in this Act is taken to affect any of the provisions of the *Life Insurance Act 1995*.

1349 Privilege against exposure to penalty—disqualification etc.

Court or Tribunal proceeding

(1) In the case of:

(a) a civil or criminal proceeding under, or arising out of, this Act or the ASIC Act; or

(b) a proceeding before the Tribunal arising out of this Act or the ASIC Act;

a person is not entitled to refuse or fail to comply with a requirement:

(c) to answer a question or give information; or

(d) to produce a book or any other thing; or

(e) to do any other act whatever;

on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:

(f) a disqualification under Part 2D.6 of this Act; or

(g) a declaration under section 853C of this Act; or

(h) a suspension or cancellation under section 915B of this Act; or

(i) a suspension or cancellation under section 915C of this Act; or

(j) a banning order; or

(k) an order under section 921A of this Act; or

(l) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or

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(m) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or
(n) a cancellation or suspension under Division 2 of Part 9.2A of this Act; or
(na) a direction under section 40-15 of Schedule 2; or
(nb) a decision of a kind mentioned in section 40-55 of Schedule 2; or
(nc) a cancellation or suspension under Division 40 of Schedule 2; or
(o) an order under section 12GLD of the ASIC Act.

(2) Subsection (1) applies whether or not the person is a defendant in, or a party to, the proceeding or any other proceeding.

Statutory requirement

(3) A person is not entitled to refuse or fail to comply with a requirement under this Act or the ASIC Act:
(a) to answer a question or give information; or
(b) to produce a book or any other thing; or
(c) to do any other act whatever;
on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend to make the person liable to a penalty by way of:
(d) a disqualification under Part 2D.6 of this Act; or
(e) a declaration under section 853C of this Act; or
(f) a suspension or cancellation under section 915B of this Act; or
(g) a suspension or cancellation under section 915C of this Act; or
(h) a banning order; or
(i) an order under section 921A of this Act; or
(j) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or
(k) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or

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(l) a cancellation or suspension under Division 2 of Part 9.2A of this Act; or
(la) a direction under section 40-15 of Schedule 2; or
(lb) a decision of a kind mentioned in section 40-55 of Schedule 2; or
(lc) a cancellation or suspension under Division 40 of Schedule 2; or
(m) an order under section 12GLD of the ASIC Act.

Admissibility

(4) Paragraph 597(12A)(d) of this Act, and paragraph 68(3)(b) of the ASIC Act, do not apply to a proceeding for the imposition of a penalty by way of:
(a) a disqualification under Part 2D.6 of this Act; or
(b) a declaration under section 853C of this Act; or
(c) a suspension or cancellation under section 915B of this Act; or
(d) a suspension or cancellation under section 915C of this Act; or
(e) a banning order; or
(f) an order under section 921A of this Act; or
(g) a cancellation or suspension under Division 3 of Part 9.2 of this Act; or
(h) a requirement to give an undertaking under paragraph 1292(9)(b) or (c) of this Act; or
(i) a cancellation or suspension under Division 2 of Part 9.2A of this Act; or
(ia) a direction under section 40-15 of Schedule 2; or
(ib) a decision of a kind mentioned in section 40-55 of Schedule 2; or
(ic) a cancellation or suspension under Division 40 of Schedule 2; or
(j) an order under section 12GLD of the ASIC Act.

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Other provisions

(5) Subsections (1) and (3) have effect despite anything in:
  (a) section 1317L; or
  (b) any other provision of this Act; or
  (c) the ASIC Act; or
  (d) the *Administrative Appeals Tribunal Act 1975*.

Definition

(6) In this section:

penalty includes forfeiture.

1350 Compensation for compulsory acquisition

(1) If:
  (a) apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms; and
  (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;

the person who acquires the property is liable to pay compensation of a reasonable amount to the person from whom the property is acquired in respect of the acquisition.

(2) If the 2 people do not agree on the amount of the compensation, the person to whom compensation is payable may institute proceedings in the Court for the recovery of such reasonable amount as the court determines from the other person.

(3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

(4) In this section:

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acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

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Part 9.10—Fees imposed by the Corporations (Fees) Act 2001 and the Corporations (Review Fees) Act 2003

1351 Fees are payable to the Commonwealth

(1) The fees imposed under the *Corporations (Fees) Act 2001* are payable to the Commonwealth.

(2) The fees imposed under the *Corporations (Review Fees) Act 2003* are payable to the Commonwealth.

(3) The date on which a fee imposed under the *Corporations (Review Fees) Act 2003* becomes due and payable is worked out under this table.

Due date for review fees

Item	For a review fee imposed on...	The due date is...
1	a company	2 months after the review date to which the fee relates
2	a registered scheme	2 months after the review date to which the fee relates
2A	a notified foreign passport fund	2 months after the review date to which the fee relates
3	a registered Australian body	the date prescribed by the regulations
4	a natural person registered as an auditor under Part 9.2	the date prescribed by the regulations
6	a person holding an Australian financial services licence under Part 7.6	the date prescribed by the regulations

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(4) However, a fee imposed under the *Corporations (Review Fees) Act 2003* is not payable to the Commonwealth by a company in relation to a review date in a year if:

(a) both of the following apply:

(i) ASIC has given notice of the proposed deregistration of the company in accordance with paragraph 601AA(4)(c), and published notice of the proposed deregistration of the company in accordance with paragraph 601AA(4)(d);

(ii) the review date for that year falls in the 2 month period before or after the publication of the notice published in accordance with paragraph 601AA(4)(d); or

(b) in the case of a company, a registered scheme, a notified foreign passport fund or a registered Australian body—the company, scheme, fund or body has, in a previous year, paid the fee in respect of the review date for that year in accordance with regulations made under the *Corporations (Review Fees) Act 2003* for the purposes of this section.

1354 Lodgment of document without payment of fee

(1) This section applies where:

(a) a fee is payable under section 1351 for the lodgment of a document; and

(b) the document was submitted for lodgment without payment of the fee.

(2) The document is not taken not to have been lodged merely because of non-payment of the fee.

1355 Doing act without payment of fee

If a fee is payable under section 1351 for a matter involving the doing of an act by the Minister or ASIC, the Minister or ASIC may refuse to do that act until the fee is paid.

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1356 Effect of sections 1354 and 1355

Sections 1354 and 1355 have effect despite anything in another Part of this Act.

1359 Waiver and refund of fees

Nothing in this Part, the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003* prevents the Commonwealth from:

(a) waiving or reducing, in a particular case or in particular classes of cases, fees that would otherwise be payable under this Act; or

(b) refunding, in whole or in part, in a particular case or in particular classes of cases, fees paid under this Act.

1360 Debts due to the Commonwealth

ASIC may, on behalf of the Commonwealth, recover a debt due under this Part.

1362 Payment of fee does not give right to inspect or search

To avoid doubt, nothing in this Part, and nothing done under this Part:

(a) imposes on ASIC a duty to allow the inspection or search of a register or document, or to make available information; or

(b) confers a right to inspect or search a register or document or to have information made available;

except so far as such a duty or right would, but for the effect of section 1355, exist under a provision of another Part of this Act or under some other law.

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Part 9.11—Coronavirus known as COVID-19

1362A Coronavirus known as COVID-19

(1) If subsection (2) applies, the Minister may, by legislative instrument:

(a) exempt classes of persons from the operation of specified provisions of this Act or the regulations; or

(b) modify the operation of specified provisions of this Act or the regulations in relation to classes of persons.

Note: The Minister may only make instruments during the 6 months beginning on the day this section commences (see subsection (5)). An instrument may be in force for a maximum of 6 months (see paragraph (4)(a)).

(2) This subsection applies if the Minister is satisfied that:

(a) it would not be reasonable to expect the persons in the class to comply with the provisions because of the impact of the coronavirus known as COVID-19; or

(b) the exemption or modification is otherwise necessary or appropriate in order to:

(i) facilitate continuation of business in circumstances relating to the coronavirus known as COVID-19; or

(ii) mitigate the economic impact of the coronavirus known as COVID-19.

(3) A legislative instrument made under subsection (1) may exempt or modify generally or subject to specified conditions. A person to whom a condition applies must comply with the condition. The Court may, on application by ASIC, order the person to comply with the condition.

(4) A legislative instrument made under subsection (1) ceases to be in force:

(a) at the end of the period of 6 months beginning on the day after the instrument is made; or

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(b) if the instrument specifies an earlier time—at the specified earlier time.

(5) A legislative instrument must not be made under subsection (1) after the end of the period of 6 months beginning on the day this section commences. However, this does not prevent the Minister amending an instrument at any time before the instrument ceases to be in force in accordance with subsection (4).

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Part 9.12—Regulations

1363 Definitions

In this Part, unless the contrary intention appears:

prescribed means prescribed by the regulations.

the regulations means the regulations made under section 1364.

1364 Power to make regulations

(1) The Governor-General may make regulations prescribing matters:
  (a) required or permitted by this Act to be prescribed by regulations; or
  (b) necessary or convenient to be prescribed by such regulations for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision:
  (c) for or in relation to the keeping of registers by ASIC, the lodging of documents with ASIC, the registration of documents by ASIC, the time and manner of lodging or registration, and the requirements with which documents lodged or to be lodged are to comply; and
  (d) prescribing forms for the purposes of this Act and the method of verifying any information required by or in those forms; and
  (e) prescribing the manner in which, the persons by whom, and the directions or requirements in accordance with which, the forms prescribed for the purposes of this Act, or any of them, are required or permitted to be signed, prepared, or completed, and generally regulating the signing, preparation and completion of those forms, or any of them; and
  (f) for or in relation to the convening of, conduct of, and procedure and voting at, meetings of creditors, meetings of

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eligible employee creditors, meetings of contributories and meetings of holders of debentures, and joint meetings of creditors and members of companies, the number of persons required to constitute a quorum at any such meeting, the sending of notices of meetings to persons entitled to attend at meetings, the lodging of copies of notices of, and of resolutions passed at, meetings, and generally regulating the conduct of, and procedure at, any such meeting; and

(g) prescribing the persons by whom, and the circumstances and manner in which, proxies may be appointed and generally regulating the appointment and powers of proxies; and

(h) for or in relation to the proving of debts in the winding up of a company, the manner of proving debts and the time within which debts are required or permitted to be proved and generally regulating the proving of debts; and

(j) prescribing the manner in which a liquidator appointed by the Court may:

(i) exercise powers and perform functions under subsection 478(1); and

(ii) exercise any powers conferred, and perform any duties imposed, on the liquidator by regulations made for the purposes of subsection 488(1); and

(k) prescribing the manner in which a liquidator in a voluntary winding up may exercise powers and perform functions under section 506; and

(m) prescribing times for the lodging of any documents; and

(n) prescribing penalties for late payment of a review fee imposed by the *Corporations (Review Fees) Act 2003*; and

(o) prescribing that, in relation to the payment of a fee imposed by the *Corporations (Fees) Act 2001* or the *Corporations (Review Fees) Act 2003*, in the event that the fee is paid by electronic means, a refund of an amount or proportion of the fee is payable; and

(s) for or in relation to the giving to ASIC of information in addition to, or in variation of, the information contained in a prescribed form lodged with it; and

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(t) for or in relation to the times within which information required to be given to ASIC under this Act must be so given; and

(u) for or in relation to the manner in which:

(i) orders made under this Act may be served on persons affected by the orders; and

(ii) documents that are required or permitted by this Act to be served on a person may be so served; and

(w) prescribing penalties not exceeding 50 penalty units for an individual or 500 penalty units for a body corporate for contraventions of the regulations.

Note: See also sections 1311B and 1311C in relation to the penalty applicable to an offence.

1365 Scope of particular regulations

Except as otherwise expressly provided in this Act, the regulations may be of general or specially limited application or may differ according to differences in time, locality, place or circumstance.

1366 Verifying or certifying documents

The regulations may:

(a) where documents required by or under this Act to be lodged in accordance with this Act are required to be verified or certified and no manner of verification or certification is prescribed by or under this Act—require that the documents or any of them be verified or certified by statement in writing made by such persons as are prescribed by the regulations; and

(b) where no express provision is made in this Act for verification or certification of documents—require that the documents be verified or certified by statement in writing by such persons as are prescribed.

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1367 Documents lodged by an agent

The regulations may provide, in such cases as are prescribed, that, if a document that is required by or under this Act to be lodged is signed or lodged on behalf of a person by an agent duly authorised by writing, there must be:

(a) lodged with; or

(b) endorsed on; or

(c) annexed to;

that document, the original, or a verified copy, of the authority.

1367A Publication in the prescribed manner

(1) If a particular provision of this Act requires a person (other than ASIC) to:

(a) publish a notice, or a copy of a notice, in the prescribed manner; or

(b) cause a notice, or a copy of a notice, to be published in the prescribed manner;

the regulations may provide that:

(c) the person is taken to have complied with that requirement if, and only if, the person lodges the notice or copy under subsection (2); and

(d) if the person lodges the notice or copy under subsection (2), ASIC must publish the notice or copy in the manner specified in the regulations.

(2) A person may lodge a notice, or a copy of a notice, under this subsection if the notice or copy is covered by regulations made for the purposes of subsection (1).

1368 Exemptions from Chapter 6D or 7

The regulations may provide that, subject to any prescribed terms and conditions, Chapter 6D or 7, or specified provisions of Chapter 6D or 7:

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(a) do not have effect in relation to a specified person or class of persons; or

(b) have effect in relation to a specified person or class of persons to such extent only as is prescribed; or

(c) do not have effect in relation to a specified transaction or class of transactions; or

(d) do not have effect in relation to a specified transaction or class of transactions entered into by a specified person or class of persons;

and may provide that a contravention of a prescribed term or condition is an offence against the regulations.

1369 Penalty notices

(1) The regulations:

(a) may prescribe offences against this Act (not being offences the penalties applicable to which include a term of imprisonment or a pecuniary penalty that exceeds $1,000), or offences against the regulations, for the purposes of Part 9.4AB; and

(b) must, in relation to each offence that is prescribed under this subsection:

(i) prescribe the particulars of that offence that are to be given in a notice served on a person under that section in relation to the offence; and

(ii) prescribe the amount of the penalty (being not more than half the amount of the penalty applicable to the offence) that is payable in respect of the offence under a notice served on a person under that section in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence because of any of the provisions of sections 1311B and 1311C.

(3) The particulars of an offence required to be prescribed by subparagraph (1)(b)(i) may be prescribed by being set out in the

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form prescribed for the purposes of Part 9.4AB in relation to the offence.

1369A State termination of reference

(1) The regulations may make provision in relation to circumstances that arise because a State ceases to be a referring State.

Note: For example, the regulations may prevent companies that have their registered office or financial records in the State from committing offences and give them time to relocate their office or records.

(2) Without limiting subsection (1), regulations made under that subsection may modify the operation of this Act in relation to the circumstances dealt with in the regulations.

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