Corporations Act 2001

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This compilation is in 7 volumes

Volume 1:	sections 1–260E
Volume 2:	sections 283AA–600K
Volume 3:	sections 601–742
Volume 4:	sections 760A–994Q
Volume 5:	sections 1010A–1369A
Volume 6:	**sections 1370–1682** **Schedules**
Volume 7:	Endnotes

Each volume has its own contents

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About this compilation

This compilation

This is a compilation of the *Corporations Act 2001* that shows the text of the law as amended and in force on 1 July 2021 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 10—Transitional provisions

Part 10.1—Transition from the old corporations legislation

Division 1—Preliminary

1370 Object of Part

(1) Subject to subsection (3), the object of this Part is to provide for a smooth transition from the regime provided for in the old corporations legislation of the States and Territories in this jurisdiction to the regime provided for in the new corporations legislation, so that individuals, bodies corporate and other bodies are, to the greatest extent possible, put in the same position immediately after the commencement as they would have been if:

(a) that old corporations legislation had, from time to time when it was in force, been valid Commonwealth legislation applying throughout those States and Territories; and

(b) the new corporations legislation (to the extent it contains provisions that correspond to provisions of the old corporations legislation as in force immediately before the commencement) were a continuation of that old corporations legislation as so applying.

Note: The new corporations legislation contains provisions that correspond to most of the provisions of the old corporations legislation. Generally, the only exceptions to this are provisions of the old corporations legislation that related to the fact that the Corporations Law operated separately in each of the States and Territories (rather than as a single national law).

(2) In resolving any ambiguity as to the meaning of any of the other provisions of this Part, an interpretation that is consistent with the object of this Part is to be preferred to an interpretation that is not consistent with that object.

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(3) This Part does contain some provisions (for example, subsection 1400(4)) which apply or extend to matters under the old corporations legislation of any non-referring State.

1371 Definitions

(1) In this Part:

carried over provision of the old corporations legislation of a State or Territory in this jurisdiction means a provision of the old corporations legislation of that State or Territory that:

(a) was in force immediately before the commencement; and

(b) corresponds to a provision of the new corporations legislation.

commencement means the commencement of this Act.

corresponds has a meaning affected by subsections (2), (3) and (4).

instrument means:

(a) any instrument of a legislative character (including an Act or regulations) or of an administrative character; or

(b) any other document.

liability includes a duty or obligation.

made includes issued, given or published.

new corporations legislation means:

(a) this Act; and

(b) the new Corporations Regulations (as amended and in force from time to time) and any other regulations made under this Act; and

(c) the laws of the Commonwealth referred to in paragraph (c) of the definition of ***old corporations legislation***, being those laws as they apply after the commencement; and

(d) the preserved instruments.

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new Corporations Regulations means the regulations that, because of section 1380, have effect as if they were made under section 1364.

old application Act for a State or Territory means:

(a) in the case of New South Wales—the *Corporations (New South Wales) Act 1990* of New South Wales as in force from time to time before the commencement; or

(b) in the case of Victoria—the *Corporations (Victoria) Act 1990* of Victoria as in force from time to time before the commencement; or

(c) in the case of Queensland—the *Corporations (Queensland) Act 1990* of Queensland as in force from time to time before the commencement; or

(d) in the case of Western Australia—the *Corporations (Western Australia) Act 1990* of Western Australia as in force from time to time before the commencement; or

(e) in the case of South Australia—the *Corporations (South Australia) Act 1990* of South Australia as in force from time to time before the commencement; or

(f) in the case of Tasmania—the *Corporations (Tasmania) Act 1990* of Tasmania as in force from time to time before the commencement; or

(g) in the case of the Australian Capital Territory—the old Corporations Act; or

(h) in the case of the Northern Territory—the *Corporations (Northern Territory) Act 1990* of the Northern Territory as in force from time to time before the commencement.

old Corporations Act means the *Corporations Act 1989* as in force from time to time before the commencement.

old Corporations Law means:

(a) when used in relation to a particular State or Territory—the Corporations Law of that State or Territory, within the meaning of the old application Act for that State or Territory, as in force from time to time before the commencement; or

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(b) when used in general terms—the Corporations Law set out in section 82 of the old Corporations Act as in force from time to time before the commencement.

old corporations legislation of a particular State or Territory means:

(a) the old Corporations Law and old Corporations Regulations of that State or Territory, and any instruments made under that Law or those Regulations; and

(b) the old application Act for that State or Territory, and any instruments made under that Act; and

(c) either:

(i) when used in relation to a State or the Northern Territory—the laws of the Commonwealth as applying in relation to the old Corporations Law and the old Corporations Regulations of the State or Territory from time to time before the commencement as laws of, or for the government of, that State or Territory because of Part 8 of the old Application Act for that State or Territory, and any instruments made under those laws as so applying; or

(ii) when used in relation to the Australian Capital Territory—the laws of the Commonwealth referred to in subparagraph (i), but as applying of their own force in relation to the old Corporations Law and old Corporations Regulations of the Territory, and any instruments made under those laws as so applying.

old Corporations Regulations means:

(a) when used in relation to a particular State or Territory—the Corporations Regulations of that State or Territory, within the meaning of the old application Act for that State or Territory, as in force from time to time before the commencement; or

(b) when used in general terms—the regulations made under section 22 of the old Corporations Act as in force from time to time before the commencement.

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order, in relation to a court, includes any judgment, conviction or sentence of the court.

pre-commencement right or liability has the meaning given by subsection 1400(1) or 1401(1).

preserved instrument means an instrument that, because of section 1399, has effect after the commencement as if it were made under a provision of the new corporations legislation.

right includes an interest or status.

substituted right or liability has the meaning given by subsection 1400(2) or 1401(3).

this Part includes regulations made for the purposes of any of the provisions of this Part.

(2) Subject to subsection (4), for the purposes of this Part, a provision or part (the ***old provision or part***) of the old corporations legislation of a State or Territory ***corresponds*** to a provision or part (the ***new provision or part***) of the new corporations legislation (and vice versa) if:

(a) the old provision or part and the new provision or part are substantially the same, unless the regulations specify that the 2 provisions or parts do not correspond; or

(b) the regulations specify that the 2 provisions or parts correspond.

Note: The range of provisions of the new corporations legislation that may be corresponding provisions for the purposes of this Part is affected by sections 1401 and 1408, which take certain provisions of the old corporations legislation to be included in the new corporations legislation.

(3) For the purposes of paragraph (2)(a), differences of all or any of the following kinds are not sufficient to mean that 2 provisions or parts are not substantially the same:

(a) differences in the numbering of the provisions or parts;

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(b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);

(c) the fact that one of the provisions refers to a corresponding previous law and the other does not;

(d) that fact that:

(i) the old provision or part allowed a court to exercise powers on its own motion but the new provision or part does not; or

(ii) the old provision or part required a court to apply a criterion of public interest but the new provision or part requires a court to apply a criterion of justice and equity; or

(iii) the new provision or part requires ASIC to take account of public interest but the old provision or part did not;

(e) other differences that are attributable to the fact that the new corporations legislation applies as a Commonwealth law throughout this jurisdiction;

(f) other differences of a kind prescribed by the regulations for the purposes of this paragraph.

This subsection is not intended to otherwise limit the circumstances in which 2 provisions or parts are, for the purposes of paragraph (2)(a), substantially the same.

(4) The regulations may provide that a specified provision of the old corporations legislation of a State or Territory does, or does not, correspond to a specified provision of the new corporations legislation.

1372 Relationship of Part with State validation Acts

(1) This Part applies to an invalid administrative action of a Commonwealth authority or an officer of the Commonwealth (within the meaning of a State validation Act) as if the circumstances that made the authority's or officer's action an invalid administrative action had not made the action invalid.

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Note 1: So, for example, in determining whether the purported registration of a company is an action to which this Part (in particular Division 2) applies, the circumstances that made the action an invalid administrative action for the purposes of a State validation Act are to be disregarded.

Note 2: For the status and effect of invalid administrative actions in relation to times before the commencement, see the State validation Acts.

(2) However, if there are other circumstances that affect or may affect the validity of the action, neither this section, nor anything else in this Part, is taken to negate the effect of those other circumstances.

(3) If:

(a) a person would have had a right or liability under a provision (the ***old provision***) of the old corporations legislation of a State if the circumstances that made the authority's or officer's action an invalid administrative action (within the meaning of the State validation Act of that State) had not made the action invalid; and

(b) the effect of that State validation Act in relation to that action is to declare that the person has, and is taken always to have had, the same rights and liabilities as they would have had under the old provision if the invalid administrative action had been taken, or purportedly taken, at the relevant time by a duly authorised State authority or officer of the State (within the meaning of that Act);

this Part applies as if:

(c) a reference to a right or liability arising under the old corporations legislation included a reference to the right or liability that the person is declared to have by the State validation Act; and

(d) that right or liability arose under the old provision.

(4) In this section:

State validation Act means an Act of a State in this jurisdiction under which certain administrative actions (within the meaning of that Act) taken, or purportedly taken, at or before the commencement by Commonwealth authorities or officers of the

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Commonwealth (within the meaning of that Act) pursuant to functions or powers (the ***relevant functions or powers***) conferred, or purportedly conferred, by or under laws that include the old application Act for that State have, and are deemed always to have had, the same force and effect for all purposes as they would have had if:

(a) they had been taken, or purportedly taken by a State authority or officer of the State (within the meaning of that Act); and

(b) the relevant functions or powers had been duly conferred on those authorities or officers.

1373 References to things taken or deemed to be the case etc.

If:

(a) a law of a State or Territory in this jurisdiction had effect before the commencement:

(i) to take or deem something to have happened or to be the case, or to have a particular effect, under or for the purposes of the old corporations legislation of that State or Territory (or a provision of that legislation); or

(ii) to give something an effect for the purposes of the old corporations legislation of that State or Territory (or a provision of that legislation) that it would not otherwise have had; and

(b) that effect was continuing immediately before the commencement;

this Part applies as if that thing had actually happened or were actually the case, or as if that thing actually had that other effect.

Note: So, for example, if a provision of the old corporations legislation, or another law, of a State or Territory in this jurisdiction took a company to be registered under Part 2A.2 of the old Corporations Law of the State or Territory, this Part applies as if the company were actually registered under that Part.

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1374 Existence of several versions of old corporations legislation does not result in this Part operating to take same thing to be done several times under new corporations legislation etc.

If, apart from this section, a provision of this Part (the ***transitional provision***) would, because each State or Territory in this jurisdiction had its own old corporations legislation (containing parallel provisions) before the commencement, operate so that:

(a) a particular thing done before the commencement would be taken to be done, or have effect, 2 or more times by, under or for the purposes of, a provision of this Act; or

(b) a right or liability would be created 2 or more times in respect of a particular event, circumstance or thing that happened before the commencement; or

(c) a particular result or effect would be produced 2 or more times for the purposes of the new corporations legislation in relation to the same matter;

the transitional provision is taken to operate so that:

(d) if paragraph (a) applies—the thing is taken to be done or have effect only once by, under, or for the purposes of, the provision of the new corporations legislation; or

(e) if paragraph (b) applies—the right or liability is created only once in respect of the event, circumstance or thing; or

(f) if paragraph (c) applies—the result or effect is produced only once in relation to the matter.

Note: So, for example, if a body (because of the operation of section 102A of the old Corporations Law) was registered under section 601CB of the old Corporations Law of several States and Territories and those registrations were still in force immediately before the commencement, section 1399 does not apply separately to each of those registrations.

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1375 Penalty units in respect of pre-commencement conduct remain at $100

(1) If, because of this Part, an offence can be prosecuted after the commencement in respect of conduct that occurred solely before the commencement, the amount of a penalty unit in respect of that offence is $100.

(2) If, because of this Part, section 1314 of this Act applies to conduct that started before the commencement and that continued after the commencement, then, for the purposes of the application of that section to that conduct (including the post-commencement conduct), the amount of a penalty unit is $100.

(3) This section has effect despite section 4AA of the *Crimes Act 1914*.

1376 Ceasing to be a referring State does not affect previous operation of this Part

If, after the commencement, a State ceases to be a referring State, that does not undo or affect:

(a) the effects that this Part has already had in relation to matters connected with that State; or

(b) the ongoing effect of this Act as it operates because of the effects referred to in paragraph (a).

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Division 2—Carrying over registration of companies

1377 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

1378 Existing registered companies continue to be registered

(1) If:

(a) before the commencement, a company was registered under Part 2A.2 of the old Corporations Law of a State or Territory in this jurisdiction; and

(b) that registration was still in force immediately before the commencement;

the registration of the company has effect (and may be dealt with) after the commencement as if it were a registration of the company under Part 2A.2 of this Act as a company of whichever of the company types listed in subsection (2) corresponds to its previous class and type.

Note: The carrying over of other matters (for example, the registration of registered schemes and of registered bodies) is covered by the more general transitional provisions in Division 6.

(2) The company types are as follows:

(a) a proprietary company limited by shares;

(b) an unlimited proprietary company;

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

(d) a public company limited by shares;

(e) an unlimited public company;

(f) a company limited by guarantee;

(g) a public company limited both by shares and by guarantee;

(h) a no liability company.

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(3) The application of subsection (1) in relation to the registration of a company does not have the effect of creating that company as a new legal entity. Rather, it has the effect of continuing the existence of the legal entity that is that company with the same characteristics and attributes as it had immediately before the commencement. The date of the company's first registration remains the same (see subsection 1402(2)), and a new certificate of registration does not need to be issued.

Note: The company will, for example, retain the same name, ACN, constitution and registered office as it had immediately before the commencement. Its certificate of registration will (because of section 1399) have effect as if it were issued under section 118 of this Act.

(4) The State or Territory in which the company is taken to be registered is the State or Territory under whose old Corporations Law the company was registered immediately before commencement. This subsection has effect subject to subsection 119A(3).

Note: For the general provisions about jurisdiction of incorporation and jurisdiction of registration, see section 119A.

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Division 3—Carrying over the old Corporations Regulations

1379 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

1380 Old Corporations Regulations continue to have effect

The old Corporations Regulations that were made for the purposes of provisions of the old Corporations Law that correspond to provisions of this Act and that were in force immediately before the commencement continue to have effect (and may be dealt with) after the commencement as if:

(a) they were regulations in force under section 1364 of this Act; and

(b) they were made for the purposes of the corresponding provisions of this Act.

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Division 4—Court proceedings and orders

1381 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

1382 Definitions

(1) In this Division:

appeal or review proceeding, in relation to an order of a court, means a proceeding by way of appeal, or otherwise seeking review, of the order.

enforcement proceeding, in relation to an order made by a court, means:

(a) a proceeding to enforce the order; or

(b) any other proceeding in respect of a breach of the order.

federal corporations proceeding means a proceeding of any of the following kinds that, immediately before the commencement, was before a court:

(a) a proceeding in respect of a matter arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to a decision made under a provision of the old corporations legislation of a State or Territory in this jurisdiction;

(b) a proceeding for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth (within the meaning of section 75 of the Constitution) in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied;

(ba) a proceeding that relates to a matter to which a provision of the *Corporations Act 1989* applied (other than a proceeding that relates to a matter to which a provision of the

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Corporations Law of the Australian Capital Territory applied);

(bb) a proceeding in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied:

(i) in which the Commonwealth was seeking an injunction or a declaration; or

(ii) to which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, was a party;

(bc) any other proceeding in relation to a matter to which a provision of the old corporations legislation of a State in this jurisdiction applied that was in the exercise of federal jurisdiction;

(bd) any other proceeding in relation to a matter to which a provision of the old corporations legislation of a Territory in this jurisdiction applied that would be covered by paragraph (bc) if the Territory had been a State;

(c) a proceeding in the court's accrued federal jurisdiction in relation to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied.

interlocutory application means an application that:

(a) is made during the course of a proceeding; and

(b) is for an order that is incidental to the principal object of that proceeding, including, for example:

(i) an order about the conduct of that proceeding; or

(ii) an order assisting a party to that proceeding to present their case in that proceeding; or

(iii) an order protecting or otherwise dealing with property that is the subject matter of that proceeding;

but not including an order making a final determination of existing rights or liabilities.

interlocutory order means:

(a) an order made in relation to an interlocutory application; or

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(b) an order or direction about the conduct of a proceeding.

interlocutory proceeding means a proceeding:

(a) dealing only with; or

(b) to the extent it deals with;

an interlocutory application.

primary proceeding means a proceeding other than an interlocutory proceeding.

proceeding means a proceeding, whether criminal or civil, before a court.

(2) For the purposes of this Part, if an interlocutory proceeding relates to a proceeding that is itself an interlocutory proceeding, the first-mentioned proceeding is taken to relate also to the primary proceeding to which the second-mentioned proceeding relates.

1383 Treatment of court proceedings under or related to the old corporations legislation—proceedings other than federal corporations proceedings

(1) This section applies to a proceeding, other than a federal corporations proceeding, in relation to which the following paragraphs are satisfied:

(a) the proceeding was started in a court before the commencement; and

(b) the proceeding was:

(i) under a provision of the old corporations legislation of a State or Territory in this jurisdiction; or

(ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation of a State or Territory in this jurisdiction; and

(c) the proceeding was not an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court; and

(d) the proceeding had not been concluded or terminated before the commencement; and

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(e) either:
  (i) if the proceeding is a primary proceeding—no final determination of any of the existing rights or liabilities at issue in the proceeding had been made before the commencement; or
  (ii) if the proceeding is an interlocutory proceeding—this section applies to the primary proceeding to which the interlocutory proceeding relates.

(2) In this section:
  (a) the proceeding to which this section applies is called the ***old proceeding***; and
  (b) the provision of the old corporations legislation referred to in whichever of subparagraphs (1)(b)(i) and (ii) applies is called the ***relevant old provision***.

(3) A proceeding (the ***new proceeding***) equivalent to the old proceeding is, on the commencement, taken to have been brought in the same court, exercising federal jurisdiction:
  (a) if subparagraph (1)(b)(i) applies—under the provision of the new corporations legislation that corresponds to the relevant old provision; or
  (b) if subparagraph (1)(b)(ii) applies—as, or connected with, a prosecution for an offence against the provision of the new corporations legislation that corresponds to the relevant old provision.

To the extent that the old proceeding, before the commencement, related to pre-commencement rights or liabilities, the new proceeding relates to the substituted rights and liabilities in relation to those pre-commencement rights or liabilities

Note 1: See sections 1400 and 1401 for the creation of substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new corporations legislation that corresponds to the relevant old provision, either because:
  (a) the new corporations legislation actually contains a provision that corresponds to the relevant old provision; or

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(b) the new corporations legislation, because of section 1401 or 1408, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.

(4) The following provisions apply in relation to the new proceeding:
  (a) the parties to the new proceeding are the same as the parties to the old proceeding;
  (b) subject to subsections (5) and (6), and to any order to the contrary made by the court, the court must deal with the new proceeding as if the steps that had been taken for the purposes of the old proceeding before the commencement had been taken for the purposes of the new proceeding.

(5) If:
  (a) an interlocutory order was made before the commencement for the purpose of, or in relation to, the old proceeding; and
  (b) that interlocutory order was in force immediately before the commencement;

  the rights and liabilities of all persons (including rights and liabilities arising wholly or partly because of conduct occurring before the commencement) are declared to be, for all purposes, the same as if the interlocutory order had instead been made by the same court, in the exercise of federal jurisdiction, for the purpose of, or in relation to, the new proceeding.

(6) The court may make orders doing all or any of the following:
  (a) cancelling or varying rights or liabilities that a person has because of subsection (5);
  (b) substituting other rights or liabilities for rights or liabilities a person has because of subsection (5);
  (c) adding rights or liabilities to the rights or liabilities a person has because of subsection (5);
  (d) enforcing, or otherwise dealing with conduct contrary to, a right or liability a person has because of subsection (5) in the same way as it could enforce, or deal with, the right, liability or conduct if the right or liability had arisen under or because

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of an order made by the court in the exercise of federal jurisdiction under the new corporations legislation.

1384 Treatment of court proceedings under or related to the old corporations legislation—federal corporations proceedings

(1) This section applies to a proceeding in relation to which the following paragraphs are satisfied:

(a) the proceeding was started in a court before the commencement; and

(b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and

(c) the proceeding had not been concluded or terminated before the commencement.

(2) In this section:

(a) the proceeding to which this section applies is called the ***continued proceeding***; and

(b) the provision of the old corporations legislation referred to in paragraph (1)(b) is called the ***relevant old provision***.

(3) Subject to subsection (4):

(a) the continued proceeding continues after the commencement in the same court as if it were, and always had been, a proceeding in relation to a matter to which the provision of the new corporations legislation that corresponds to the relevant old provision applies; and

(b) to the extent that the proceeding, before the commencement, related to pre-commencement rights or liabilities, the proceeding, as continued, relates, and as so continuing is taken always to have related, to the substituted rights and liabilities in relation to those pre-commencement rights or liabilities.

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Note 1: See sections 1400 and 1401 for the creation of substituted rights and liabilities.

Note 2: In all cases, there will be a provision of the new corporations legislation that corresponds to the relevant old provision, either because:

(a) the new corporations legislation actually contains a provision that corresponds to the relevant old provision; or

(b) the new corporations legislation, because of section 1401 or 1408, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.

(4) Subject to any order to the contrary made by the court, the court must deal with the continued proceeding as if:

(a) the steps that had been taken for the purposes of the proceeding before the commencement had been taken for the purpose of the proceeding as continued by this section; and

(b) any orders made in relation to the proceeding before the commencement had been made in relation to the proceeding as continued by this section.

1384A Appeals etc. in relation to some former federal corporations proceedings

(1) This section applies to a proceeding in relation to which all of the following paragraphs are satisfied:

(a) the proceeding was started in a court before the commencement;

(b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and

(c) the proceeding had been concluded or terminated before the commencement.

(2) A decision or order made in the proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

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(3) An order made in the proceeding may be enforced as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

1384B Effect of decisions and orders made in federal corporations proceedings before commencement

(1) For the avoidance of doubt, if:
  (a) a proceeding was started in a court before the commencement; and
  (b) the proceeding was a federal corporations proceeding that related to a matter to which a provision of the old corporations legislation of a State or Territory in this jurisdiction applied; and
  (c) a decision was made or an order given in the proceeding before the commencement;

the decision or order continues to have effect after the commencement despite the provision of the old corporations legislation ceasing to have effect.

(2) This section does not limit the operation of section 1384 in relation to the decision or order.

1385 References to proceedings and orders in the new corporations legislation

(1) Subject to subsection (5), a reference in the new corporations legislation to the taking of a proceeding, or a step in a proceeding, in a court under or in relation to a part or provision of the new corporations legislation includes a reference to the taking of a proceeding, or the equivalent step in a proceeding:
  (a) before the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory; or
  (b) after the commencement under or in relation to the corresponding part or provision of the old corporations

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legislation of a State or Territory in this jurisdiction, as that legislation continues to have effect after the commencement.

(2) Subject to subsections (3), (4) and (5), a reference in the new corporations legislation to an order made by a court under or in relation to a part or provision of the new corporations legislation includes a reference to an order made:

(a) before the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory; or

(b) after the commencement under or in relation to the corresponding part or provision of the old corporations legislation of a State or Territory in this jurisdiction, as that legislation continues to have effect after the commencement.

(3) Nothing in subsection (2) is taken to produce a result that would:

(a) make a person liable, under the new corporations legislation, to any penalty (whether civil or criminal) provided for in an order referred to in paragraph (2)(a) or (b); or

(b) enable an enforcement proceeding, or an appeal or review proceeding, in relation to such an order to be taken in a court under the new corporations legislation; or

(c) enable proceedings by way of appeal, or other review, of such an order to be taken in a court under the new corporations legislation.

(4) If, after the commencement, an order referred to in paragraph (2)(a) or (b) is varied or set aside on appeal or review, subsection (2) applies, or is taken to have applied, from the time from which the variation or setting aside takes or took effect, as if:

(a) if the order is varied—the order had been made as so varied; or

(b) if the order is set aside—the order had not been made.

(5) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new corporations legislation.

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Division 5—Other specific transitional provisions

1386 Division has effect subject to Division 7 regulations

This Division has effect subject to regulations made for the purposes of Division 7.

1387 Certain applications lapse on the commencement

(1) An application:
  (a) under section 117 for the registration of a company; or
  (b) under section 601BC for the registration of a body as a company;

that was made by a person before the commencement, but that had not been dealt with by the commencement, lapses on the commencement.

(2) Any fee that was paid in respect of the application must be returned to the person, unless it is, with the person's permission, credited against the fee payable in respect of another application the person makes under this Act after the commencement.

1388 Carrying over the Partnerships and Associations Application Order

The application order in force immediately before the commencement for paragraph 115(b) of the old Corporations Law of each State and Territory in this jurisdiction continues to have effect (and may be dealt with) after the commencement as if it were a regulation in force under section 1364 of this Act made for the purposes of subsection 115(2) of this Act.

1389 Evidentiary certificates

(1) A certificate by ASIC (whether issued before or after the commencement) stating that a company was registered under the

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old Corporations Law of a State or Territory in this jurisdiction is conclusive evidence that:

(a) all requirements of that Law for the company's registration were complied with; and

(b) the company was duly registered as a company under that Law on the date (if any) specified in the certificate.

(2) A certificate issued before the commencement under pre-Corporations Law legislation (see subsection (3)) by the authority responsible for administering that legislation stating that a body was registered as a company under that legislation or other pre-Corporations Law legislation is conclusive evidence that:

(a) all requirements of that legislation for the company's registration were complied with; and

(b) the company was duly registered as a company under that legislation on the date (if any) specified in the certificate.

(3) In subsection (2):

pre-Corporations Law legislation means legislation that was, for the purposes of the old Corporations Law of a State or Territory in this jurisdiction, a corresponding previous law in relation to that old Corporations Law.

1390 Preservation of nomination of body corporate as SEGC

The nomination in force immediately before the commencement under section 67 of the old Corporations Act continues to have effect (and may be dealt with) after the commencement as if it were a nomination under section 890A of this Act.

1391 Preservation of identification of satisfactory records

A notice in force immediately before the commencement under section 70 of the old Corporations Act continues to have effect (and may be dealt with) after the commencement as if it were a notice under subsection 147(5) of this Act.

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1392 Retention of information obtained under old corporations legislation of non-referring State

If a particular State is not a referring State on the commencement, that does not mean that ASIC must then remove from, or cease to retain in, a database or register it maintains information that ASIC obtained before the commencement under or because of (whether in whole or in part) the operation of the old corporations legislation of that State.

1393 Transitional provisions relating to section 1351 fees

(1) If:

(a) either:

(i) before the commencement, a person paid an amount as required by section 1351 of the old Corporations Law of a State or Territory in respect of a particular matter; or

(ii) after the commencement, a person pays an amount as required by subsection 9(2) of the *Corporations (Fees) Act 2001* in respect of a particular matter; and

(b) a fee is also payable under section 1351 of this Act in respect of the same matter;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the fee referred to in paragraph (b).

(2) If:

(a) before the commencement, a person paid a deposit as required by section 1357 of the old Corporations Law of a State or Territory in respect of a particular matter; and

(b) a fee is payable under section 1351 of this Act in respect of the same matter;

the deposit must be applied against the liability to pay the fee.

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1394 Transitional provisions relating to securities exchange fidelity fund levies

(1) If:

(a) before the commencement, a person paid an amount as required by subsection 902(1) of the old Corporations Law of a State or Territory in order to be admitted to:

(i) membership of a securities exchange; or

(ii) membership of a partnership in a member firm recognised by a securities exchange; and

(b) that person had not been so admitted by the commencement of this Act;

the payment they made before the commencement is taken to satisfy their liability to pay the levy referred to in subsection 902(1) of this Act in respect of their admission after the commencement to that securities exchange or firm.

(2) If:

(a) either:

(i) before the commencement, a person paid an amount as required by subsection 902(2) of the old Corporations Law of a State or Territory to a securities exchange in respect of a year some or all of which occurs after the commencement of this Act; or

(ii) after the commencement, a person pays an amount as required by subsection 8(3) of the *Corporations (Securities Exchanges Levies) Act 2001* in respect of a year some or all of which occurs after the commencement of this Act; and

(b) a levy is also payable under subsection 902(2) of this Act in respect of the securities exchange and the year;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).

(3) If, before the commencement, a person paid an amount to a securities exchange as required by subsection 902(2) of the old

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Corporations Law of a State or Territory, that payment is to be counted, for the purposes of:

(a) the reference in paragraph (a) of the definition of ***relevant person*** in subsection 903(1) of this Act; and

(b) subsection 903(5) of this Act;

as if it were a payment of a kind referred to in that paragraph or that subsection, as the case requires.

1395 Transitional provisions relating to National Guarantee Fund levies

(1) If:

(a) either:

(i) before the commencement, a person paid an amount as required by section 938 of the old Corporations Law of a State or Territory in respect of a particular transaction; or

(ii) after the commencement, a person pays an amount of levy imposed by subsection 6(1) of the *Corporations (National Guarantee Fund Levies) Act 2001* in respect of a particular transaction; and

(b) a levy is also payable under section 938 of this Act in respect of the same transaction;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).

(2) Subject to subsection (3), a determination of a matter (other than a rate or rates, or an amount) in force immediately before the commencement for the purposes of section 938, 940 or 941 of the old Corporations Law of a State or Territory in this jurisdiction continues to have effect (and may be dealt with) after the commencement of this Act as if it were:

(a) in the case of a determination for the purposes of section 938—a determination for the purposes of section 938 of this Act; or

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(b) in the case of a determination for the purposes of section 940—a determination for the purposes of section 940 of this Act; or

(c) in the case of a determination for the purposes of section 941—a determination for the purposes of section 941 of this Act.

(3) Nothing in subsection (2) is taken to produce a result that a levy is payable by a person in respect of the same matter in respect of which levy is imposed on the person by subsection 6(1), (2) or (3) of the *Corporations (National Guarantee Fund Levies) Act 2001*.

1396 Transitional provisions relating to futures organisation fidelity fund levies

(1) If:

(a) before the commencement, a person paid an amount as required by subsection 1234(1) of the old Corporations Law of a State or Territory in order to be admitted to membership of a futures organisation; and

(b) that person had not been so admitted by the commencement of this Act;

the payment they made before the commencement is taken to satisfy their liability to pay the levy referred to in subsection 1234(1) of this Act in respect of their admission after the commencement to that futures organisation.

(2) If:

(a) either:

(i) before the commencement, a contributing member of a futures organisation paid an amount as required by subsection 1234(2) of the old Corporations Law of a State or Territory to a futures organisation in respect of a year some or all of which occurs after the commencement of this Act; or

(ii) after the commencement, a person pays an amount as required by subsection 6(1) of the *Corporations*

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(Futures Organisations Levies) Act 2001 in respect of a year some or all of which occurs after the commencement of this Act; and

(b) a levy is also payable under subsection 1234(2) of this Act in respect of the futures organisation and the year;

the payment they made or make as mentioned in subparagraph (a)(i) or (ii) is taken to satisfy their liability to pay the levy referred to in paragraph (b).

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Division 6—General transitional provisions relating to other things done etc. under the old corporations legislation

1397 Limitations on scope of this Division

(1) This Division has effect subject to:
  (a) the provisions of Divisions 2, 3, 4 and 5 (which deal with matters in more specific terms); and
  (b) regulations made for the purposes of Division 7.

(2) Nothing in this Division applies to:
  (a) an order made by a court before the commencement; or
  (b) a right or liability under an order made by a court before the commencement; or
  (c) a right to:
    (i) appeal to a court against an order made by a court before the commencement;
    (ii) apply to a court for review of such an order; or
    (iii) bring an appeal or review proceeding, or an enforcement proceeding, within the meaning of section 1382, in respect of such an order; or
  (d) subject to subsection (3)—a proceeding taken (including an appeal, review or enforcement proceeding) in a court before the commencement, or a step in such a proceeding.

Note: Division 4 deals with court orders and proceedings made or begun before the commencement, and with related matters.

(3) Despite paragraph (2)(d), sections 1400 and 1401 apply to any right or liability to which a proceeding to which section 1383 or 1384 applies relates.

(4) Nothing in this Division applies to a liability under section 902, 904, 938, 940, 941, 1234, 1235 or 1351 of the old Corporations

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Law of a State or Territory in this jurisdiction to pay a contribution, levy or fee.

Note: These liabilities are preserved as taxes by provisions of the following Acts:
(a) the *Corporations (Securities Exchanges Levies) Act 2001*;
(b) the *Corporations (National Guarantee Fund Levies) Act 2001*;
(c) the *Corporations (Futures Organisations Levies) Act 2001*;
(d) the *Corporations (Fees) Act 2001*.

(5) Except as mentioned in subsections (1) to (4), nothing in Division 2, 3, 4 or 5, or in regulations made for the purposes of Division 7, is intended to limit the generality of the provisions in this Division.

1398 Provisions of this Division may have an overlapping effect

The provisions of this Division deal at a broad level with concepts and matters in a way that is intended to achieve the object of this Part as set out in section 1370. Some of the provisions of this Division will (depending on the situation) have an effect that overlaps or interacts to some extent with the effect of other provisions of this Division. This is intended, and the provisions of this Division should be not be regarded as dealing with mutually exclusive situations.

1399 Things done by etc. carried over provisions continue to have effect

(1) Subject to this section, a thing that:
(a) was done before the commencement by, under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and
(b) had an ongoing significance (see subsections (4) and (5)) immediately before the commencement for the purposes of that legislation;

has effect (and may be dealt with) after the commencement, for the purposes of the new corporations legislation, as if it were done by,

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under, or for the purposes of, the corresponding provision of the new corporations legislation.

Note: This section covers all kinds of things done, including things of a coercive nature or done for coercive purposes.

(2) Examples of things done include:

(a) the making of an instrument or order (but not including the making of an order by a court); and

(b) the making of an application or claim (but not including the making of an application or claim to a court); and

(c) the granting of an application or claim (but not including the granting of an application or claim by a court); and

(d) the making of an appointment or delegation; and

(e) the commencement of a procedure or the taking of a step in a procedure (but not including the commencement of a proceeding in a court); and

(f) the establishment of a register or fund; and

(g) requiring a person to do, or not to do, something (but not including a requirement contained in an order made by a court); and

(h) the giving of a notice or document.

(3) The examples in subsection (2) are not intended to limit the generality of the language of subsection (1).

(4) Subject to subsection (5), for the purposes of this section, a thing done by, under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory had an ***ongoing significance*** immediately before the commencement for the purposes of that legislation if:

(a) if the thing done was the making of an instrument or order—the instrument or order was still in force immediately before the commencement; or

(b) if the thing done was the making of an application or claim—the application or claim had not been decided, and had not otherwise ceased to have effect, before the commencement; or

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(c) if the thing done was the granting of an application or claim—the thing granted had not been revoked, and had not otherwise ceased to have effect, before the commencement; or

(d) if the thing done was the making of an appointment or delegation—the appointment or delegation had not been revoked, and had not otherwise ceased to have effect, before the commencement; or

(e) if the thing done was the commencement of a procedure or the taking of a step in a procedure—the procedure was still in progress immediately before the commencement or was otherwise still having an effect; or

(f) if the thing done was the establishment of a register or fund—the register or fund was still in existence immediately before the commencement; or

(g) if the thing done was requiring a person to do, or not to do something—the requirement was still in force immediately before the commencement; or

(h) if the thing done was the giving of a notice or document, or the doing of some other thing—the notice or document (or the giving of the notice or document), or the thing (or the doing of the thing), had an ongoing effect or significance immediately before the commencement for the purposes of the old corporations legislation of the State or Territory.

(5) The regulations may provide that a specified thing done under, or for the purposes of, a carried over provision of the old corporations legislation of a State or Territory did, or did not, have an ongoing significance immediately before the commencement for the purposes of that legislation.

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1400 Creation of equivalent rights and liabilities to those that existed before the commencement under carried over provisions of the old corporations legislation

(1) Subject to subsection (4), this section applies in relation to a right or liability (the ***pre-commencement right or liability***), whether civil or criminal, that:

(a) was:

(i) acquired, accrued or incurred under a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and

(ii) in existence immediately before the commencement; or

(b) would have been:

(i) acquired, accrued or incurred under such a provision; and

(ii) in existence immediately before the commencement;

if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

However, this section does not apply to a right or liability under an order made by a court before the commencement.

(2) On the commencement, the person acquires, accrues or incurs a right or liability (the ***substituted right or liability***), equivalent to the pre-commencement right or liability, under the corresponding provision of the new corporations legislation (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: If a time limit applied in relation to the pre-commencement right or liability under the old corporations legislation, that same time limit (calculated from the same starting point) will apply under the new corporations legislation to the substituted right or liability—see subsection 1402(3).

(3) A procedure, proceeding or remedy in respect of the substituted right or liability may be instituted after the commencement under the new corporations legislation (as if that provision applied to the

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conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 1383 and 1384.

(4) If, immediately before the commencement, a person had an accrued right to make a claim under a provision of Part 7.10 of the old Corporations Law of a State that is not a referring State (and so is not in this jurisdiction), this section applies in relation to that right in the same way as it would have applied if the State had been a referring State.

Note: Except to the extent provided in this subsection, this Part does not create rights and liabilities that are equivalent to those that existed under the old corporations legislation of a non-referring State.

(5) This section does not apply to a pre-commencement right or liability that:
  (a) existed under a law of the Commonwealth or of a State or Territory; and
  (b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

(6) Paragraph (1)(b) and subsection (5) have effect in relation to:
  (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and
  (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.

(7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.

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1401 Creation of equivalent rights and liabilities to those that existed before the commencement under repealed provisions of the old corporations legislation

(1) This section applies in relation to a right or liability (the ***pre-commencement right or liability***), whether civil or criminal, that:

(a) was:

(i) acquired, accrued or incurred under a provision of the old corporations legislation of a State or Territory in this jurisdiction that was no longer in force immediately before the commencement; and

(ii) in existence immediately before the commencement; or

(b) would have been:

(i) acquired, accrued or incurred under such a provision; and

(ii) in existence immediately before the commencement;

if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

However, this section does not apply to a right or liability under an order made by a court before the commencement.

(2) For the purposes of subsections (3) and (4), the new corporations legislation is taken to include:

(a) the provision of the old corporations legislation (with such modifications (if any) as are necessary) under which the pre-commencement right or liability was acquired, accrued or incurred; and

(b) the other provisions of the old corporations legislation (with such modifications (if any) as are necessary) that applied in relation to the pre-commencement right or liability.

(3) On the commencement, the person acquires, accrues or incurs a right or liability (the ***substituted right or liability***), equivalent to the pre-commencement right or liability, under the provision taken to be included in the new corporations legislation by

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paragraph (2)(a) (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: If a time limit applied in relation to the pre-commencement right or liability under the old corporations legislation, that same time limit (calculated from the same starting point) will apply under the new corporations legislation to the substituted right or liability—see subsection 1402(3).

(4) A procedure, proceeding or remedy in respect of the substituted right or liability may be instituted after the commencement under the provisions taken to be included in the new corporations legislation by subsection (2) (as if those provisions applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 1383 and 1384.

(5) This section does not apply to a pre-commencement right or liability that:
  (a) existed under a law of the Commonwealth or of a State or Territory; and
  (b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

(6) Paragraph (1)(b) and subsection (5) have effect in relation to:
  (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and
  (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.

(7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.

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1402 Old corporations legislation time limits etc.

(1) An old corporations legislation time limit (see subsection (4)):
  (a) the starting point of which:
    (i) was known or had been determined before the commencement (whether that starting point occurred or would occur before, on or after the commencement); or
    (ii) would have become known, or have been determined, after the commencement if the old corporations legislation of the relevant State or Territory had continued to apply (whether that starting point would have occurred before, on or after the commencement); and
  (b) that had not ended at or before the commencement;

  continues to run, or starts or started to run, as if that same time limit (starting from the same starting point) were applicable under the new corporations legislation.

(2) If:
  (a) under the old corporations legislation, a process (for example, the winding up of a company), a status of a person or body (for example, a body's registration as a company or a person's status as a registered liquidator), or an instrument, commenced from a particular time before the commencement; and
  (b) that process, status or instrument is continued after the commencement for the purposes of the new corporations legislation by a provision of this Part;

  that process, status or instrument as so continued is still taken to have commenced from the time referred to in paragraph (a).

(3) If an old corporations legislation time limit related to a pre-commencement right or liability, the same time limit applies in relation to the substituted right or liability.

(4) In this section:

  old corporations legislation time limit includes:

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(a) a period for the doing of a thing specified or determined under a provision of the old corporations legislation of a State or Territory; or

(b) a period specified or determined under a provision of the old corporations legislation of a State or Territory as the duration of a particular instrument or status.

1403 Preservation of significance etc. of events or circumstances

(1) An event, circumstance or other thing:

(a) that occurred or arose before the commencement under or as mentioned in a provision of the old corporations legislation of a State or Territory in this jurisdiction; and

(b) that had a particular significance, status or effect for the purposes of a carried over provision of that legislation (including because of an interpretive provision);

has that same significance, status and effect after the commencement for the purposes of the provision of the new corporations legislation that corresponds to that carried over provision.

Note: So, for example:

(a) if a company took action before the commencement that had the result for the purposes of section 200B of the old Corporations Law of making a superannuation fund a prescribed superannuation fund in relation to the company, that action has that same effect for the purposes of section 200B of this Act; and

(b) a delay that could have been taken into account for the purposes of subsection 874(1) of the old Corporations Law also counts for the purposes of subsection 874(1) of this Act.

(2) Without limiting subsection (1), an event, circumstance or other thing had a particular significance for the purposes of a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction if:

(a) the carried over provision created an obligation in respect of the event, circumstance or thing (whenever it arose); or

(b) the carried over provision provided for the event, circumstance or thing to be dealt with in a particular way; or

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(c) the carried over provision stated that the event, circumstance or thing (whenever it arose) was to be disregarded for the purposes of that provision or was not covered by that provision.

1404 References in the new corporations legislation generally include references to events, circumstances or things that happened or arose before the commencement

(1) Subject to this section, a reference in the new corporations legislation to an event, circumstance or thing of a particular kind that happens or arises, or that has happened or arisen, is taken to include a reference to an event, circumstance or thing of that kind that happened or arose at a time before the commencement, unless a contrary intention is expressed. The fact that the provision uses only the present tense in referring to an event, circumstance or thing is not, of itself, to be regarded as an expression of a contrary intention.

Note: So, for example, if a provision of the new corporations legislation refers to a person who consents to a course of action, that reference (in the absence of an express provision to the contrary) will not be limited to consents given after the commencement and will cover a consent given before the commencement.

(2) Nothing in subsection (1) is taken to produce a result that a right or liability exists under a provision of the new corporations legislation that relates solely to events, circumstances or things that occurred before the commencement.

Note: Instead, an equivalent right or liability will be created by section 1400 or 1401.

(3) The regulations may provide that subsection (1) does not apply in relation to a particular reference or class of references in the new corporations legislation.

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1405 References in the new corporations legislation to that legislation or the new ASIC legislation generally include references to corresponding provisions of the old corporations legislation or old ASIC legislation

(1) Subject to subsection (4), a reference in the new corporations legislation to:

(a) an Act, or regulations or another instrument that is part of the new corporations legislation; or

(b) a provision or group of provisions of such an Act, regulations or other instrument;

is taken, in relation to events, circumstances or things that happened or arose at a time before the commencement when the old corporations legislation was in force, to include (in the absence of an express provision to the contrary) a reference to the corresponding part, provision or provisions of the old corporations legislation of the States and Territories in this jurisdiction.

(2) Subject to subsection (4), a reference in the new corporations legislation to:

(a) an Act, or regulations or some other instrument that is part of the new ASIC legislation; or

(b) a provision or group of provisions of such an Act, regulations or other instrument;

is taken, in relation to events, circumstances or things that happened or arose at a time before the commencement when the old corporations legislation was in force, to include (in the absence of an express provision to the contrary) a reference to the corresponding part, provision or provisions of the old ASIC legislation of the Commonwealth, of the States in this jurisdiction and of the Northern Territory.

(3) In subsection (2):

(a) ***new ASIC legislation*** and ***old ASIC legislation*** have the same meanings as they have in Part 16 of the *Australian Securities and Investments Commission Act 2001*; and

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(b) the question whether a provision or part of the old ASIC legislation corresponds to a provision of part of the new ASIC legislation is to be determined in the same way as it is determined for the purposes of Part 16 of the *Australian Securities and Investments Commission Act 2001*.

(4) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new corporations legislation.

1406 Carrying over references to corresponding previous laws

(1) If a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction contained a reference (whether in its own terms or by operation of another provision) to:

(a) a corresponding previous law (as defined for the purposes of that provision or provisions including that provision); or

(b) a thing done by, under, or for the purposes of, such a law;

the corresponding provision of the new corporations legislation is taken to contain an equivalent reference to that previous law, or to such a thing done by, under, or for the purposes of, that previous law.

(2) The following references in the old corporations legislation of the States and Territories in this jurisdiction are covered by subsection (1) in the same way as they would be if they used the "corresponding previous law" form of words:

(a) the reference in subsection 1274AA(1) to a "previous Law";

(b) the reference in subparagraph 1274AA(2)(b)(ii) to a "previous law of this jurisdiction before the commencement of this Part that corresponds";

(c) any other references prescribed by the regulations for the purposes of this subsection.

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1407 References to old corporations legislation in instruments

(1) Subject to subsection (2), a reference in, or taken immediately before the commencement to be in, an instrument, other than:

(a) an Act of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or

(b) an instrument made under such an Act;

to:

(c) an Act, or to regulations or some other instrument, that is part of the old corporations legislation (whether the reference is in general terms or in relation to a particular State or Territory in this jurisdiction); or

(d) to a provision or group of provisions of such an Act, regulations or other instrument;

is taken, after the commencement, to include a reference to the corresponding part, provision or provisions of the new corporations legislation (unless there is no such corresponding part, provision or provisions).

Note: This section will, for example, apply to:

(a) a reference in another Commonwealth Act to the Corporations Law; or

(b) a reference in the Corporations Regulations to the Corporations Law; or

(c) a reference in a company's constitution to a particular provision of the Corporations Law.

(2) The regulations may do either or both of the following:

(a) provide that subsection (1) does not apply in relation to prescribed references in prescribed instruments;

(b) provide that subsection (1) has effect in relation to prescribed references in prescribed instruments as if, in that subsection, the words "to be" were substituted for the words "to include".

1408 Old transitional provisions continue to have their effect

(1) Subject to subsection (3), this Act has the same effect, after the commencement, as it would have if:

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(a) the transitional provisions (see subsections (6) and (7)) of the old Corporations Laws of the States and Territories in this jurisdiction (as in force from time to time before the commencement) had been part of this Act; and

(b) those transitional provisions produced the same results or effects (to the greatest extent possible) for the purposes of this Act as they produced for the purposes of those old Corporations Laws.

(2) Without limiting subsection (1) (but subject to subsection (3)), if a transitional provision of the old Corporations Law of a State or Territory in this jurisdiction could, if it had continued in force after the commencement, have operated to give rise to rights and liabilities (including civil or criminal liabilities) in relation to acts or omissions occurring after the commencement, this Act is taken to include that transitional provision (with such modifications (if any) as are necessary.

Note: In relation to acts or omissions that occurred before the commencement, equivalent rights and liabilities are created by sections 1400 and 1401.

(3) The regulations may determine how a matter dealt with in a transitional provision of the old Corporations Law of a State or Territory in this jurisdiction is to be dealt with under or in relation to the new corporations legislation (including by creating offences). The regulations have effect despite subsections (1) and (2), but subject to subsection (5).

Note: In creating offences, the regulations are subject to the limitation imposed by section 1375.

(4) For the purpose of determining whether the new corporations legislation includes a provision that corresponds to a provision of the old corporations legislation of a State or Territory, and for the purpose of any reference in this part to a corresponding provision of the new corporations legislation, this Act is taken to include the transitional provisions of the old corporations legislation of the States and Territories, as they have effect because of subsections (1) and (2).

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(5) Nothing in subsection (1) or (2), or in regulations made for the purposes of subsection (3), is taken to produce a result that a right or liability exists under a transitional provision as it has effect because of subsection (1) or (2), or exists under regulations made for the purposes of subsection (3), that relates solely to events, circumstances or things that occurred before the commencement.

Note: Instead, an equivalent right or liability will be created by section 1400 or 1401.

(6) Subject to subsection (7), for the purposes of this section, a ***transitional provision*** is any of the provisions of the old Corporations Laws of the States and Territories in this jurisdiction listed in the following table.

Transitional provisions of old Corporations Law

Item	Provisions
1	subsection 87(1A)
2	subsection 88(1A)
3	sections 109E to 109G and section 109T
4	section 268A
5	section 275
6	section 275A
7	Subsections 319(4), (5) and (6)
8	section 601
9	subsection 774(7)
10	subsection 895(3)
11	subsection 977(4)
12	subsection 990(2)
13	section 993
14	subsection 1228(3)
15	subsections 1274(17) and (18)
16	subsections 1288(1), (2) and (6)
17	paragraph 1311(1A)(f) and subsection 1311(3A)

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Transitional provisions of old Corporations Law	
Item	**Provisions**
18	section 1336A
19	Chapter 11, other than section 1416
20	Schedule 4, other than the following provisions: (a) subclauses 7(3), 8(2) and 9(4); (b) clauses 11 to 16; (c) subclause 17(2); (d) clauses 18 and 19; (e) clauses 20, 25 and 27; (f) Parts 5, 6 and 7.

(7) The regulations may provide that certain provisions are to be taken to be included in, or omitted from, the table in subsection (6). The table then has effect as if the provisions were so included in it or omitted from it.

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Division 7—Regulations dealing with transitional matters

1409 Regulations may deal with transitional matters

(1) The regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the old corporations legislation of the States and Territories in this jurisdiction to the application of provisions of the new corporations legislation. The regulations have effect despite anything else in this Part, other than section 1375.

(2) Without limiting subsection (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:

(a) by applying (with or without modifications) to the matter:

(i) provisions of the old corporations legislation of the States and Territories in this jurisdiction, as in force immediately before the commencement or at some earlier time; or

(ii) provisions of the new corporations legislation; or

(iii) a combination of provisions referred to in subparagraphs (i) and (ii);

(b) by otherwise specifying rules for dealing with the matter;

(c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of the new corporations legislation.

(3) The regulations may provide that certain provisions of this Part are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

(4) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, regulations for the purposes of this section may be expressed to take effect from a date before the regulations are registered under that Act.

(5) In this section:

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matters of a transitional nature also includes matters of an application or saving nature.

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Part 10.2—Transitional provisions relating to the Financial Services Reform Act 2001

Division 1—Transitional provisions relating to the phasing-in of the new financial services regime

Subdivision A—Preliminary

1410 Definitions

(1) In this Division, unless the contrary intention appears:

amended Corporations Act means this Act as in force after the FSR commencement.

associated provisions, in relation to provisions (the ***core provisions***) of a particular Act as in force at a particular time, include (but are not limited to):

(a) any regulations or other instruments that are or were in force for the purposes of any of the core provisions at that time; and

(b) any interpretation provisions that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(c) any provisions relating to liability (civil or criminal) that apply or applied in relation to any of the core provisions at that time (whether or not they also apply or applied for other purposes); and

(d) any provisions that limit or limited, or that otherwise affect or affected, the operation of any of the core provisions at that time (whether or not they also limit or limited, or affect or affected, the operation of other provisions).

class, in relation to financial products, has a meaning affected by regulations made for the purposes of subsection (2).

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FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.

old Corporations Act means this Act as in force immediately before the FSR commencement.

regulated activities, in relation to a regulated principal, has the meaning given by section 1430.

regulated principal has the meaning given by section 1430.

relevant old legislation, in relation to a regulated principal, has the meaning given by section 1430.

transition period:

(a) in relation to a market to which section 1414, 1418, 1420, 1421 or 1422 applies—has the meaning given by subsection (2) of that section; and

(b) in relation to a market to which section 1417 applies and the additional products referred to in that section—has the meaning given by subsection 1417(2); and

(c) in relation to a clearing and settlement facility to which section 1426 or 1429 applies—has the meaning given by subsection (2) of that section; and

(d) in relation to a clearing and settlement facility to which section 1428 applies and the additional products referred to in that section—has the meaning given by subsection 1428(2); and

(e) in relation to a regulated principal—has the meaning given by subsection 1431(1); and

(f) in relation to a financial product to which section 1438 applies—has the meaning given by subsection (3) of that section.

(1A) Other expressions used in this Part that are defined in Division 2 of Part 7.1 have the same meanings as they are given by that Division. This has effect subject to:

(a) any contrary intention in a provision of this Part; or

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(b) regulations made for the purposes of this paragraph.

(2) The regulations may include provisions identifying, or providing for the identification of, what constitutes a ***class*** of financial products for the purposes of a provision or provisions of this Division.

(3) If a provision of this Division (the ***transitional provision***) provides for a provision of this or another Act (the ***preserved provision***), as in force immediately before the FSR commencement, to continue to apply to or in relation to a person, thing or matter:

(a) the preserved provision so continues to apply only to the extent (if any) to which it is expressed in terms that cover the person, thing or matter; and

(b) the transitional provision is not taken to extend the scope of the preserved provision (otherwise than by giving it a continued operation).

Subdivision B—Treatment of existing markets

1411 When is a market being operated immediately before the FSR commencement?

Subject to section 1412, in this Subdivision, a reference to a market ***being operated immediately before the FSR commencement*** is a reference to a market that had not permanently ceased to operate before the FSR commencement, even if trading on the market was not actually occurring immediately before the FSR commencement (for example, because of a routine temporary closure of the market).

1412 Treatment of proposed markets that have not started to operate by the FSR commencement

(1) This section applies in relation to the following proposed markets, other than any such market that starts to operate before the FSR commencement:

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(a) a market proposed to be operated by Bendigo Stock Exchange Ltd, or by ASX Futures Exchange Pty Limited, that is identified in writing by the Minister as being a proposed market to which this section applies;

(b) any other proposed market identified in, or in accordance with, regulations made for the purposes of this paragraph.

For this purpose, a ***proposed market*** is a market that a person has, before the FSR commencement, indicated an intention that they propose to operate.

(2) This Subdivision applies in relation to a proposed market to which this section applies subject to the following paragraphs:

(a) subject to paragraphs (b), (c) and (d), this Subdivision applies in relation to the proposed market as if the market, as proposed to be operated, were in fact being operated immediately before the FSR commencement;

(b) if, taking account of the effect of paragraph (a), section 1413 applies in relation to the proposed market, that section applies in relation to the proposed market:

(i) as if the Minister's obligation to grant a licence, and impose conditions, under subsection 1413(2) in relation to the market does not arise unless and until the market operator lodges with ASIC a notice in relation to the market under subsection (3) of this section, and does not arise at all if no such notice is given to ASIC by the end of 6 months after the FSR commencement; and

(ii) as if subsection 1413(3) provided for a licence so granted under subsection 1413(2) in relation to the market, and the conditions subject to which it is granted, to be taken to have had effect from the day (the ***start day***) specified in the subsection (3) notice as the day on which the market started to operate; and

(iii) as if subsection 1413(6) were omitted; and

(iv) as if the references in subsection 1413(8) to the FSR commencement were instead references to the start day;

(c) if:

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(i) taking account of the effect of paragraph (a), section 1418, 1420, 1421 or 1422 applies to the proposed market; and

(ii) the market operator does not lodge with ASIC a notice in relation to the market under subsection (3) of this section by the end of 6 months after the FSR commencement;

that section ceases to apply in relation to the proposed market at the end of that period;

(d) if a provision of this Subdivision provides for a provision of the old Corporations Act to continue to apply in relation to the proposed market, then (without limiting the generality of subsection 1410(3)), while the proposed market remains non-operational, the provision of the old Corporations Act only applies in relation to the proposed market to the extent (if any) to which it would, disregarding the effect of paragraph (a), apply in relation to the proposed market.

(3) If a proposed market to which this section applies starts to operate on a day during the period of 6 months starting on the FSR commencement, the operator must, as soon as practicable, and in any event within 7 days, lodge with ASIC written notice of the fact that the market started to operate on that day.

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

(4) ASIC must, within a reasonable time, give the Minister a notice it receives under subsection (3).

1413 Obligation of Minister to grant licences covering main existing markets

(1) This section applies to each market being operated immediately before the FSR commencement in relation to which any of the following paragraphs applies:

(a) the market was a stock market operated by the Australian Stock Exchange Limited;

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(b) the market was a stock market operated by a body corporate covered by an approval in force under subsection 769(2) of the old Corporations Act;

(c) the market was a futures market operated by a body corporate covered by an approval in force under subsection 1126(2) of the old Corporations Act.

(2) Subject to subsections (3) and (4), the Minister must, in relation to each market to which this section applies, grant the operator of the market a licence, and impose conditions on that licence, in accordance with the following requirements:

(a) the licence must be described as an Australian market licence;

(b) the licence must be granted subject to the following conditions:

(i) a condition specifying the market as the market that the licence authorises the licensee to operate;

(ii) a condition specifying, as the classes of financial products that can be dealt with on the market, the classes that are appropriate for the market under subsection (5);

(iii) if the Minister considers that the licensee should have clearing and settlement arrangements for transactions effected through the market—a condition specifying the type of clearing and settlement arrangements that are adequate.

(3) Subject to subsection (6), a licence that subsection (2) requires to be granted must be granted on, or as soon as practicable after, the FSR commencement. If it is granted after the FSR commencement, it, and the conditions subject to which it is granted, are taken to have had effect from that commencement.

(4) Sections 795D (more than one licence in the same document) and 795E (more than one market covered by the same licence) of the amended Corporations Act apply in relation to the granting of licences, and licences granted, under this section as if the licences were, or were being, granted under section 795B of that Act. If,

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pursuant to section 795E, a single licence is granted under this section in respect of several separate markets, paragraph (2)(b) of this section must be complied with separately in the licence document in relation to each of those markets.

(5) For the purposes of subparagraph (2)(b)(ii), the classes of financial products that are ***appropriate*** for a market to which this section applies are as follows:

(a) for a market described in paragraph (1)(a) or (b)—securities, within the meaning of section 92 of the old Corporations Act as applying for the purposes of Part 7.2 of the old Corporations Act, and agreements of a kind to which section 92A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect);

(b) for a market described in paragraph (1)(c)—futures contracts, within the meaning of section 72 of the old Corporations Act, and agreements of a kind to which section 72A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect).

(6) Despite anything in subsection (3), the Minister may, under this section, grant a licence, and impose conditions on the licence, at any time during the period starting on the commencement of this section and ending on the FSR commencement on the basis that matters known to the Minister in relation to the market concerned will continue to be the case up to the FSR commencement. If the Minister does so:

(a) the licence and conditions come into effect on the FSR commencement, and not before; and

(b) the Minister may vary or revoke the licence, or any of the conditions, before the FSR commencement if the Minister considers it appropriate to do so having regard to the provisions of this section concerning the granting of licences and the imposition of conditions; and

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(c) the licence and conditions do not come into effect on the FSR commencement if, immediately before the FSR commencement, the market is not a market to which this section applies.

(7) If the Minister grants a licence under this section, the Minister must give the operator of the market written notice of:

(a) the grant of the licence, and the conditions imposed on the licence; and

(b) any subsequent revocation or variation under subsection (6) of the licence or conditions.

(8) A notice advising of the grant of a licence under this section must contain a statement to the effect that the licence and conditions will not take effect until the FSR commencement, or will be taken to have had effect from the FSR commencement, as the case requires.

1414 Section 1413 markets—effect of licences and conditions

(1) Subject to subsections (2) to (4):

(a) a licence granted under section 1413 that authorises the operation of a market is, for the purposes of the amended Corporations Act (other than this section), taken to have been granted (and to have been properly granted) under section 795B of the amended Corporations Act; and

(b) conditions imposed under section 1413 on the licence are, for the purposes of the amended Corporations Act (other than this section), taken to have been imposed (and to have been properly imposed) under section 796A of the amended Corporations Act.

Note 1: Section 795C of the amended Corporations Act (publication of notice of licence grant) applies to the grant of the licence.

Note 2: The conditions may be varied or revoked, and additional conditions may be imposed, under section 796A of the amended Corporations Act.

(2) Subject to subsection (4), the relevant new legislation (see subsection (6)) does not apply in relation to the market during the

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period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 796A(2) of the amended Corporations Act;

(c) the licensee has lodged with ASIC notice in writing that it wants to take advantage of the compensation arrangements under Division 3 of Part 7.5 of the amended Corporations Act:

(i) from a specified date, being a date that is after the notice is given to ASIC and that is after compensation arrangements for the market have been approved under Division 3 of Part 7.5 of the amended Corporations Act (see also subsection (4)); or

(ii) from the end of a specified period, being a period that is described as starting when compensation arrangements for the market are approved under Division 3 of Part 7.5 of the amended Corporations Act (see also subsection (4)) and that ends after the notice is given to ASIC;

and that date arrives or period ends.

(3) A notice (the ***original notice***) given for the purposes of paragraph (2)(c) may, before the date, or the end of the period, specified in the original notice as mentioned in that paragraph:

(a) be varied to specify another date or period, being a date or period that would satisfy the requirements of subparagraph (2)(c)(i) or (ii) if the reference in that subparagraph to when the notice (being the original notice) is given to ASIC were instead a reference to when the notice of variation is given to ASIC under this subsection; or

(b) be revoked.

The variation or revocation must be made by notice in writing lodged with ASIC.

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(4) If the relevant new legislation in relation to a market includes Part 7.5 of the amended Corporations Act, then, despite subsection (2), Division 3 of that Part applies to the market during the transition period to the extent necessary for the operator to apply to have compensation arrangements for the market approved before the end of the transition period, and for that application to be determined. However, any approval of the arrangements under that Division does not take effect until immediately after the end of the transition period.

(5) The annual report of the licensee (see section 792F of the amended Corporations Act) for a financial year in which part of the transition period occurs, other than a financial year in which the transition period ends, must include information about:

(a) the steps taken in the year; and

(b) the steps proposed to be taken in the next year;

to ensure that the relevant new legislation will be complied with by the time the transition period ends.

(6) In this section:

relevant new legislation, in relation to a market, means:

(a) section 793A of the amended Corporations Act; and

(b) unless the market is a market to which Division 4 of Part 7.5 of the amended Corporations Act applies—Part 7.5 of the amended Corporations Act.

1415 Section 1413 markets—preservation of old Corporations Act provisions during transition period

Preservation of compensation regimes

(1) If, during the transition period in relation to a market the operation of which is authorised by a licence granted under section 1413, Part 7.5 of the amended Corporations Act does not apply in relation to the market (except as provided in subsection 1414(4)) because of subsection 1414(2), Part 7.9, or Part 8.6, as the case requires, of the old Corporations Act, and any associated

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provisions, continue to apply in relation to the market during the transition period.

Preservation of certain ongoing requirements

(2) During the transition period in relation to a market:
  (a) the operation of which is authorised by a licence granted under section 1413; and
  (b) that, immediately before the FSR commencement, was a securities exchange to which section 769A of the old Corporations Act applied;

the following provisions continue to apply in relation to the market:
  (c) paragraphs 769A(1)(c) and (e) of the old Corporations Act, and any associated provisions;
  (d) section 769B of the old Corporations Act (but only as applying in relation to paragraphs 769A(1)(c) and (e) of the old Corporations Act), and any associated provisions.

1416 Section 1413 markets—powers for regulations to change how the old and new Corporations Act apply during the transition period

(1) The regulations may do all or any of the following in relation to a market the operation of which is authorised by a licence granted under section 1413:
  (a) provide that some or all of the provisions (the ***relevant old legislation***) that would otherwise continue to apply in relation to the market because of section 1415 do not apply in relation to the market;
  (b) provide that some or all of the relevant old legislation applies in relation to the market with specified modifications during some or all of the transition period for the market;
  (c) provide that some or all of the relevant new legislation (within the meaning of section 1414) in relation to the market applies in relation to the market during some or all of the transition period for the market;

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(d) provide that specified provisions of the amended Corporations Act (including relevant new legislation), and any associated provisions, apply in relation to the market during some or all of the transition period for the market with specified modifications.

(2) Regulations made for the purposes of subsection (1) have effect despite anything in sections 1414 and 1415.

(3) Subsection (1) gives a full power to disapply, apply and modify provisions as mentioned in that subsection, including for reasons that do not have an express or implied connection with the transition to the relevant new legislation.

Note: So (for example), a change to the day-to-day operation of the relevant old legislation as continuing to apply may be achieved by a modification under paragraph (1)(b) (whether that change is to an existing rule, or is the addition of a new rule).

1417 Section 1413 markets—additional provisions relating to previously unregulated services

(1) This section applies to a financial market in relation to which the following paragraphs are satisfied:

(a) a licence is granted under section 1413 to the operator of the market; and

(b) the conditions on the licence specify, as the classes of financial products that can be dealt with on the market, the classes of financial products specified in whichever of paragraphs 1413(5)(a) and (b) is applicable; and

(c) immediately before the commencement, other financial products (the ***additional products***) were also dealt with on the market, and the fact that the market dealt with those products did not constitute a contravention of a provision of the old Corporations Act.

(2) Subject to subsection (3), section 791A of the amended Corporations Act does not apply in relation to the market in so far as all or any of the additional products are dealt with on the market

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during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) the licensee applies, under subsection 796A(2) of the amended Corporations Act, to have the conditions on the licence varied or revoked, or to have additional conditions imposed on the licence.

(3) The regulations may, in relation to a market to which this section applies and the additional products, provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to a market to which this section applies and the additional products during some or all of the transition period for the market and the products with specified modifications.

1418 Treatment of exempt stock markets and exempt futures markets (other than markets with no identifiable single operator)

(1) This section applies to the following markets:

(a) stock markets being operated immediately before the FSR commencement that were, at that time, covered by a declaration (the ***declaration of exemption***) in force immediately before the FSR commencement under subsection 771(1) of the old Corporations Act;

(b) futures markets being operated immediately before the FSR commencement that were, at that time, covered by a declaration (the ***declaration of exemption***) in force immediately before the FSR commencement under subsection 1127(1) of the old Corporations Act.

However it does not apply to any market to which section 1419 applies.

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(2) Subject to subsection (5), section 791A of the amended Corporations Act does not apply in relation to a stock market or futures market to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:
  (a) the end of the period of 2 years starting on the FSR commencement;
  (b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;
  (c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;
  (d) the declaration of exemption is revoked.

(3) Subject to subsections (4) and (5), Part 7.2 (in the case of a stock market), or Part 8.2 (in the case of a futures market), and any associated provisions, (the ***relevant old legislation***) of the old Corporations Act continue to apply in relation to a stock market or futures market to which this section applies during the transition period for the market.

(4) The declaration of exemption (including any conditions specified in the declaration) for a stock market or futures market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the declaration as in force immediately before the FSR commencement. However, it may be varied in other ways, or revoked, by the Minister in writing.

(5) The regulations may do all or any of the following:
  (a) provide that some or all of the relevant old legislation does not apply in relation to a stock market or futures market to which this section applies during some or all of the transition period for the market;
  (b) provide that some or all of the relevant old legislation applies in relation to a stock market or futures market to which this section applies with specified modifications during some or all of the transition period for the market;

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(c) provide that specified provisions of the amended Corporations Act (including section 791A), and any associated provisions, apply in relation to a stock market or futures market to which this section applies during some or all of the transition period for the market with specified modifications.

1419 Treatment of exempt stock markets and exempt futures markets that do not have a single identifiable operator

(1) This section applies to the following markets:

(a) stock markets being operated immediately before the FSR commencement:

(i) that were, at that time, covered by a declaration (the ***declaration of exemption***) in force immediately before the FSR commencement under subsection 771(1) of the old Corporations Act; but

(ii) that did not have a single person who could be identified as the operator of the market;

(b) futures markets being operated immediately before the FSR commencement:

(i) that were, at that time, covered by a declaration (the ***declaration of exemption***) in force immediately before the FSR commencement under subsection 1127(1) of the old Corporations Act; but

(ii) that did not have a single person who could be identified as the operator of the market.

(2) In this section:

exempted participant, in relation to a market to which this section applies, means a person:

(a) who is covered by the declaration of exemption (otherwise than in their capacity as a representative of another person who is covered by the declaration); and

(b) whose activities connected with the market after the FSR commencement are activities that, but for this section, would

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be required by section 911A of the amended Corporations Act to be covered by an Australian financial services licence.

(3) Subject to subsections (4) and (5), Part 7.2 (in the case of a stock market), or Part 8.2 (in the case of a futures market), and any associated provisions, (the ***relevant old legislation***) of the old Corporations Act continue to apply in relation to an exempted participant and a stock market or futures market to which this section applies during any period during which section 1431 provides that the relevant new legislation (within the meaning of subsection 1431(1)) does not apply in relation to the exempted participant's activities connected with the market.

(4) The declaration of exemption (including any conditions specified in the declaration) for a stock market or futures market to which this section applies cannot:

(a) be varied during the transition period for an exempted participant and the market so as to cover the market providing services that were not covered by the declaration as in force immediately before the FSR commencement; or

(b) be varied after the FSR commencement so as to cover a person or persons it did not cover immediately before the commencement.

However, it may be varied in other ways, or revoked, by the Minister in writing.

(5) The regulations may do either or both of the following:

(a) provide that some or all of the relevant old legislation does not apply in relation to an exempted participant and a market to which this section applies during some or all of the transition period for the exempted participant and the market;

(b) provide that some or all of the relevant old legislation applies in relation to an exempted participant and a market to which this section applies with specified modifications during some or all of the transition period for the exempted participant and the market.

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1420 Treatment of stock markets of approved securities organisations

(1) This section applies to each stock market being operated immediately before the FSR commencement by a body corporate covered by an approval (the ***instrument of approval***) in force immediately before the FSR commencement under subsection 770(2) of the old Corporations Act, other than a stock market to which section 1413 applies.

(2) Subject to subsections (3) and (5), section 791A of the amended Corporations Act does not apply in relation to a stock market to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;

(c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;

(d) the instrument of approval is revoked.

(3) Subject to subsections (4) and (5), Parts 7.2 and 7.9, and any associated provisions, (the ***relevant old legislation***) of the old Corporations Act continue to apply in relation to a stock market to which this section applies during the transition period for the market.

(4) The instrument of approval (including any conditions specified in the instrument) for a stock market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the instrument as in force immediately before the FSR commencement. However it may be varied in other ways, or revoked, by the Minister in writing.

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(5) The regulations may do all or any of the following:

(a) provide that some or all of the relevant old legislation does not apply in relation to a stock market to which this section applies during some or all of the transition period for the market;

(b) provide that some or all of the relevant old legislation applies in relation to a stock market to which this section applies with specified modifications during some or all of the transition period for the market;

(c) provide that specified provisions of the amended Corporations Act (including section 791A), and any associated provisions, apply in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications.

1421 Treatment of special stock markets for unquoted interests in a registered scheme

(1) This section applies to each stock market being operated before the FSR commencement by a body corporate covered by an approval (the ***instrument of approval***) in force immediately before the FSR commencement under subsection 770A(2) of the old Corporations Act.

(2) Subject to subsection (5), section 791A of the amended Corporations Act does not apply in relation to a stock market to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;

(c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;

(d) the instrument of approval is revoked.

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(3) Subject to subsections (4) and (5), Part 7.2, and any associated provisions, (the ***relevant old legislation***) of the old Corporations Act continue to apply in relation to a stock market to which this section applies during the transition period for the market.

(4) The instrument of approval (including any conditions specified in the instrument) for a stock market to which this section applies cannot be varied during the transition period for the market so as to cover the market providing services that were not covered by the instrument as in force immediately before the FSR commencement. However it may be varied in other ways, or revoked, by the Minister in writing.

(5) The regulations may do all or any of the following:
   (a) provide that some or all of the relevant old legislation does not apply in relation to a stock market to which this section applies during some or all of the transition period for the market;
   (b) provide that some or all of the relevant old legislation applies in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications;
   (c) provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to a stock market to which this section applies during some or all of the transition period for the market with specified modifications.

1422 Treatment of other markets that were not unauthorised

(1) This section applies to each market in relation to which the following paragraphs are satisfied:
   (a) the market is a financial market within the meaning of the amended Corporations Act;
   (b) the market was being operated immediately before the FSR commencement;

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(c) the market is not a market to which section 1413, 1418, 1419, 1420 or 1421 applies;

(d) the market was not an unauthorised stock market or an unauthorised futures market (as defined in section 9 of the old Corporations Act) immediately before the FSR commencement.

(2) Subject to subsection (3), section 791A of the amended Corporations Act does not apply in relation to a market to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) the operator of the market is granted a licence under section 795B of the amended Corporations Act covering the operation of the market;

(c) the Minister makes an exemption under section 791C of the amended Corporations Act covering the market;

(d) the market starts to provide services in respect of a class or classes of financial products in respect of which it did not provide services immediately before the commencement.

(3) The regulations may, in relation to a market to which this section applies, provide that specified provisions (including section 791A) of the amended Corporations Act, and any associated provisions, apply in relation to the market during some or all of the transition period for the market with specified modifications.

Subdivision C—Treatment of existing clearing and settlement facilities

1423 When is a clearing and settlement facility being operated immediately before the FSR commencement?

Subject to section 1424, in this Subdivision, a reference to a clearing and settlement facility ***being operated immediately before***

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the FSR commencement is a reference to a clearing and settlement facility that had not permanently ceased to operate before the FSR commencement, even if the clearing and settlement of transactions by means of the facility was not actually occurring immediately before the FSR commencement (for example, because of a routine temporary closure of the facility).

1424 Treatment of proposed clearing and settlement facilities that have not started to operate by the FSR commencement

(1) This section applies in relation to any proposed clearing and settlement facilities identified in, or in accordance with, regulations made for the purposes of this subsection. For this purpose, a ***proposed clearing and settlement facility*** is a clearing and settlement facility that a person has, before the FSR commencement, indicated an intention that they propose to operate.

(2) This Subdivision applies in relation to a proposed clearing and settlement facility to which this section applies subject to the following paragraphs:

(a) subject to paragraphs (b), (c) and (d), this Subdivision applies in relation to the proposed facility as if the facility, as proposed to be operated, were in fact being operated immediately before the FSR commencement;

(b) if, taking account of the effect of paragraph (a), section 1425 applies in relation to the proposed facility, that section applies in relation to the proposed facility:

(i) as if the Minister's obligation to grant a licence, and impose conditions, under subsection 1425(2) in relation to the proposed facility does not arise unless and until the facility operator lodges with ASIC a notice in relation to the facility under subsection (3) of this section, and does not arise at all if no such notice is given to ASIC by the end of 6 months after the FSR commencement; and

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(ii) as if subsection 1425(3) provided for a licence so granted under subsection 1425(2) in relation to the facility, and the conditions subject to which it is granted, to be taken to have had effect from the day (the ***start day***) specified in the subsection (3) notice as the day on which the facility started to operate; and

(iii) as if subsection 1425(6) were omitted; and

(iv) as if the references in subsection 1425(8) to the FSR commencement were instead references to the start day;

(c) if:

(i) taking account of the effect of paragraph (a), section 1429 applies to the proposed facility; and

(ii) the facility operator does not lodge with ASIC a notice in relation to the facility under subsection (3) of this section by the end of 6 months after the FSR commencement;

that section ceases to apply in relation to the proposed facility at the end of that period;

(d) if a provision of this Subdivision provides for a provision of the old Corporations Act to continue to apply in relation to the proposed facility, then (without limiting the generality of subsection 1410(3)), while the proposed facility remains non-operational, the provision of the old Corporations Act only applies in relation to the proposed facility to the extent (if any) to which it would, disregarding the effect of paragraph (a), apply in relation to the proposed facility.

(3) If a proposed clearing and settlement facility to which this section applies starts to operate on a day during the period of 6 months starting on the FSR commencement, the operator must, as soon as practicable, and in any event within 7 days, lodge with ASIC written notice of the fact that the facility started to operate on that day.

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

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(4) ASIC must, within a reasonable time, give the Minister a notice it receives under subsection (3).

1424A Treatment of unregulated clearing and settlement facilities operated by holders of old Corporations Act approvals

(1) This section applies in relation to a clearing and settlement facility if:
   (a) the facility was being operated immediately before the FSR commencement by a body corporate in relation to which an approval under section 1131 of the old Corporations Act was in force at that time; but
   (b) the services provided by the facility as so operated were not such that section 1128 of the old Corporations Act required the operator to be so approved.

(2) In this section:
   (a) a reference to the ***unregulated services*** is a reference to the services referred to in paragraph (1)(b); and
   (b) a reference to ***regulated services*** is a reference to services that, if they had been provided by the facility immediately before the commencement, would have been services to which section 1128 of the old Corporations Act applied.

(3) For the purposes of section 1425 (as it operates of its own force, rather than because of section 1424), the facility is not to be regarded as a facility that was being operated immediately before the FSR commencement.

(4) If the operator has, before the FSR commencement, indicated an intention that they propose to extend the services provided by the facility so that they also cover regulated services:
   (a) regulations made for the purposes of subsection 1424(1) may identify the facility as a proposed clearing and settlement facility, but only in relation to those regulated services; and
   (b) if they do so, section 1424, and section 1425 as it applies because of section 1424, apply in relation to the facility and

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those regulated services as if the facility did not already provide the unregulated services.

1425 Obligation of Minister to grant licences covering main existing facilities

(1) This section applies to each clearing and settlement facility being operated immediately before the FSR commencement in relation to which either of the following paragraphs applies:

(a) the facility was being operated by the body corporate that was, for the purposes of the old Corporations Act, the securities clearing house;

(b) the facility was being operated by a body corporate in relation to which an approval (the ***section 1131 approval***) under section 1131 of the old Corporations Act was in force at that time.

(2) Subject to subsections (3) and (4), the Minister must, in relation to each clearing and settlement facility to which this section applies, grant the operator of the facility a licence, and impose conditions on that licence, in accordance with the following requirements:

(a) the licence must be described as an Australian CS facility licence;

(b) the licence must be granted subject to the following conditions:

(i) a condition specifying the facility as the facility that the licence authorises the licensee to operate;

(ii) a condition specifying, as the classes of financial products in respect of which the facility can provide services, the classes that are appropriate for the facility under subsection (5);

(iii) in the case of a facility to which paragraph (1)(b) applies—a condition to the effect that the licence only covers the facility providing services for the market or markets that were covered by the section 1131 approval.

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(3) Subject to subsection (6), a licence that subsection (2) requires to be granted must be granted on, or as soon as practicable after, the FSR commencement. If it is granted after the FSR commencement, it, and the conditions subject to which it is granted, are taken to have had effect from that commencement.

(4) Sections 824D (more than one licence in the same document) and 824E (more than one CS facility covered by the same licence) of the amended Corporations Act apply in relation to the granting of licences, and licences granted, under this section as if the licences were, or were being, granted under section 824B of that Act. If, pursuant to section 824E, a single licence is granted under this section in respect of several separate facilities, paragraph (2)(b) of this section must be complied with separately in the licence document in relation to each of those facilities.

(5) For the purposes of subparagraph (2)(b)(ii), the classes of financial products that are ***appropriate*** for a facility to which this section applies are as follows:

(a) for a facility described in paragraph (1)(a)—securities, within the meaning of section 92 of the old Corporations Act as applying for the purposes of Part 7.2 of the old Corporations Act, and agreements of a kind to which section 92A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect);

(b) for a facility described in paragraph (1)(b)—futures contracts, within the meaning of section 72 of the old Corporations Act, and agreements of a kind to which section 72A of the old Corporations Act applied immediately before the FSR commencement (or would have applied after the FSR commencement if that section, and any associated provisions, had continued to have effect).

(6) Despite anything in subsection (3), the Minister may, under this section, grant a licence, and impose conditions on the licence, at any time during the period starting on the commencement of this

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section and ending on the FSR commencement on the basis that matters known to the Minister in relation to the clearing and settlement facility concerned will continue to be the case up to the FSR commencement. If the Minister does so:

(a) the licence and conditions come into effect on the FSR commencement, and not before; and

(b) the Minister may vary or revoke the licence, or any of the conditions, before the FSR commencement if the Minister considers it appropriate to do so having regard to the provisions of this section concerning the granting of licences and the imposition of conditions; and

(c) the licence and conditions do not come into effect on the FSR commencement if, immediately before the FSR commencement, the facility is not a clearing and settlement facility to which this section applies.

(7) If the Minister grants a licence under this section, the Minister must give the operator of the clearing and settlement facility written notice of:

(a) the grant of the licence, and the conditions imposed on the licence; and

(b) any subsequent revocation or variation under subsection (6) of the licence or conditions.

(8) A notice advising of the grant of a licence under this section must contain a statement to the effect that the licence and conditions will not take effect until the FSR commencement, or will be taken to have had effect from the FSR commencement, as the case requires.

1426 Section 1425 facilities—effect of licences and conditions

(1) Subject to subsections (2) to (4):

(a) a licence granted under section 1425 that authorises the operation of a facility is, for the purposes of the amended Corporations Act (other than this section), taken to have been granted (and to have been properly granted) under section 824B of the amended Corporations Act; and

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(b) conditions imposed under section 1425 on the licence are, for the purposes of the amended Corporations Act (other than this section), taken to have been imposed (and to have been properly imposed) under section 825A of the amended Corporations Act.

Note 1: Section 824C of the amended Corporations Act (publication of notice of licence grant) applies to the grant of the licence.

Note 2: The conditions may be varied or revoked, and additional conditions may be imposed, under section 825A of the amended Corporations Act.

(2) Section 822A of the amended Corporations Act does not apply in relation to the facility during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 825A(2) of the amended Corporations Act.

(3) The annual report of the licensee (see section 821E of the amended Corporations Act) for a financial year in which part of the transition period occurs, other than a financial year in which the transition period ends, must include information about:

(a) the steps taken in the year; and

(b) the steps proposed to be taken in the next year;

to ensure that section 822A of the amended Corporations Act will be complied with by the time the transition period ends.

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1427 Section 1425 facilities—powers for regulations to change how the old and new Corporations Act apply during the transition period

(1) The regulations may do either or both of the following in relation to a clearing and settlement facility the operation of which is authorised by a licence granted under section 1425:

(a) provide that section 822A of the amended Corporations Act, and any associated provisions, apply in relation to the facility during some or all the transition period for the facility;

(b) provide that specified provisions of the amended Corporations Act (including section 822A), and any associated provisions, apply in relation to the facility during some or all of the transition period for the facility with specified modifications.

(2) Regulations made for the purposes of subsection (1) have effect despite anything in section 1426.

1428 Section 1425 facilities—additional provisions relating to previously unregulated services

(1) This section applies to a clearing and settlement facility in relation to which the following paragraphs are satisfied:

(a) a licence is granted under section 1425 to the operator of the facility; and

(b) the conditions on the licence specify, as the classes of financial products in respect of which the facility can provide services, the classes of financial products specified in whichever of paragraphs 1425(5)(a) and (b) is applicable; and

(c) the facility also, immediately before the commencement, provided services in respect of one or more other classes of financial products (the ***additional products***) and the fact that it did so did not constitute a contravention of a provision of the old Corporations Act.

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(2) Subject to subsection (3), section 820A of the amended Corporations Act does not apply in relation to the facility in so far as it provides services in respect of all or any of the additional products during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

(a) the end of the period of 2 years starting on the FSR commencement;

(b) conditions on the licence are varied or revoked, or additional conditions are imposed on the licence, pursuant to an application by the licensee under subsection 825A(2) of the amended Corporations Act.

(3) The regulations may provide that specified provisions of the amended Corporations Act (including section 820A), and any associated provisions, apply in relation to a clearing and settlement facility to which this section applies, and its provision of services in respect of all or any of the additional products, during some or all of the transition period for the facility and the products with specified modifications.

1429 Treatment of other clearing and settlement facilities

(1) This section applies to each clearing and settlement facility being operated immediately before the FSR commencement in relation to which both of the following paragraphs are satisfied:

(a) the clearing and settlement facility is not a facility to which section 1425 applies;

(b) section 1128 of the old Corporations Act did not, immediately before the FSR commencement, require the operator of the facility to be a person approved under section 1131.

(2) Subject to subsection (3), section 820A of the amended Corporations Act does not apply in relation to the facility during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:

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(a) the end of the period of 2 years starting on the FSR commencement;
(b) the operator of the facility is granted a licence under section 824B of the amended Corporations Act covering the facility;
(c) the Minister makes an exemption under section 820C of the amended Corporations Act covering the facility;
(d) the facility starts to provide services in respect of a class or classes of financial products in respect of which it did not provide services immediately before the FSR commencement.

(3) The regulations may provide that specified provisions of the amended Corporations Act (including section 820A), and any associated provisions, apply in relation to a clearing and settlement facility to which this section applies during some or all of the transition period for the facility with specified modifications.

Subdivision D—Treatment of people who carry on financial services businesses and their representatives

1430 Meaning of *regulated principal*, *regulated activities* and *relevant old legislation*

(1) For the purposes of this Subdivision, a person is a ***regulated principal*** if, immediately before the FSR commencement, the person is a person described in column 2 of one of the items in the following table. The ***regulated activities*** of that person are as specified in column 3 of that item, and the ***relevant old legislation*** are as specified in column 4 of that item.

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Regulated principals and regulated activities			
Item	**These persons are *regulated principals***	**These are the regulated principal's *regulated activities***	**This is the *relevant old legislation* (if any)**
1	A holder of a dealers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 7.3, 7.4 (other than Division 2), 7.5, 7.6 and 7.7 of the old Corporations Act, and any associated provisions.
2	A holder of an investment advisers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 7.3, 7.4 (other than Division 2) and 7.7 of the old Corporations Act, and any associated provisions.
3	A holder of a futures brokers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 8.3, 8.4 (other than section 1210) and 8.5 of the old Corporations Act, and any associated provisions.
4	A holder of a futures advisers licence within the meaning of the old Corporations Act.	The activities that the licence (as in force immediately before the FSR commencement) authorised the person to carry on.	Parts 8.3 and 8.4 (other than section 1210) of the old Corporations Act, and any associated provisions.
5	A registered insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.	The person's business as an insurance broker within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.	All the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions.

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Section 1430

Regulated principals and regulated activities			
Item	**These persons are *regulated principals***	**These are the regulated principal's *regulated activities***	**This is the *relevant old legislation* (if any)**
6	A body regulated by APRA carrying on activities that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	The class of activities carried on by the person immediately before the FSR commencement that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	For a body regulated by APRA that was an insurer within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement—all the provisions of that Act as then in force, and any associated provisions. In any other case—subject to any regulations made for the purposes of this item, there is no relevant old legislation.
7	A person who is a registered foreign insurance agent of an unauthorised foreign insurer within the meaning of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement.	The person's business as a foreign insurance agent.	All the provisions of the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions.
8	A holder of a general authority under regulation 38A of the Banking (Foreign Exchange) Regulations as in force immediately before the FSR commencement.	The activities the authority authorises its holder to carry on.	Regulations 38A and 39 of the Banking (Foreign Exchange) Regulations as in force immediately before the FSR commencement.

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Regulated principals and regulated activities

Item	These persons are *regulated principals*	These are the regulated principal's *regulated activities*	This is the *relevant old legislation* (if any)
9	A person included in a class of persons specified in regulations made for the purposes of this item.	For a person in a class so specified, the activities identified in, or in accordance with, the regulations as being the regulated activities of a person in that class.	The provisions (if any) identified in, or in accordance with, the regulations as being the relevant old legislation for a person in that class, and any associated provisions.
10	A person who carries on any other activities (that is, activities that are not regulated activities for the purposes of any of items 1 to 9) that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence, except to the extent that subsection (2) excludes this item from applying.	The class of activities so carried on by the person immediately before the FSR commencement that, if carried on after the FSR commencement, would (apart from this Subdivision) be required by the amended Corporations Act to be covered by an Australian financial services licence.	There is no relevant old legislation.

(2) Item 10 of the table in subsection (1) does not apply to a person and activities they carry on to the extent that the person's carrying on of any of those activities is in contravention of any of the provisions of the relevant old legislation for any of the other categories of regulated principals.

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(3) If a person is a regulated principal of 2 or more different kinds, this Subdivision applies separately in relation to the person in their capacity as a regulated principal of each of those kinds.

Note: This may result (depending on what action the regulated principal takes) in a regulated principal having to comply with the relevant new legislation (within the meaning of subsection 1431(1)) in respect of their activities as a regulated principal of one kind, but, at the same time, having to comply with the relevant old legislation in respect of their activities as a regulated principal of another kind.

1431 Parts 7.6, 7.7 and 7.8 of the amended Corporations Act generally do not apply to a regulated principal during the transition period

(1) Subject to subsections (2) and (3), Parts 7.6 (other than Subdivisions A and B of Division 4, and Division 5), 7.7 and 7.8 (other than section 992A) of the amended Corporations Act (the ***relevant new legislation***) do not apply to a regulated principal and their regulated activities during the period (the ***transition period***) starting on the FSR commencement and ending when the first of the following events occurs:

(a) the period of 2 years starting on the FSR commencement ends;

(b) the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers their regulated activities;

(c) the regulated principal starts to be covered by an exemption under subsection 911A(2) of the amended Corporations Act (or would start to be so covered if that subsection applied) in respect of their regulated activities;

(d) the regulated principal ceases (for whatever reason) to have the status that made them a regulated principal.

For the purposes of paragraph (d), ***having a status*** includes holding a licence, registration, approval or other similar thing, or carrying on particular activities.

Note 1: Because of section 1441, a regulated principal whose transition period has not ended (and so who is not required to comply with the relevant

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new legislation) may nonetheless be required to comply with obligations under Part 7.9 of the amended Corporations Act.

Note 2: For the treatment of representatives, see section 1436.

(2) Division 5 of Part 7.6 of the amended Corporations Act has effect in relation to a regulated principal during the transition period subject to the following paragraphs:

(a) the regulated principal may give and revoke authorisations under section 916A or consents under subsection 916B(3) as if the regulated principal were a financial services licensee, however, for the purposes of the provisions of the amended Corporations Act outside that Division, such an authorisation or consent is taken not to have effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation or consent relates (whether or not it also covers other activities);

(b) a person authorised by a section 916A authorisation so made by the regulated principal may give and revoke authorisations under subsection 916B(3) as if they were an authorised representative and the regulated principal were the authorising financial services licensee, however, for the purposes of the provisions of the amended Corporations Act outside that Division, such an authorisation is taken not to have effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation relates (whether or not it also covers other activities);

(c) the regulated principal may give and revoke consents under section 916C as if they were a financial service licensee, however, any such consent does not take effect unless and until the regulated principal is granted a licence under section 913B of the amended Corporations Act;

(d) section 916F applies in relation to an authorisation so made by the regulated principal during the transition period as if the period of 15 business days referred to in subsections 916F(1) and (1A) did not start unless and until

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the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers the activities to which the authorisation relates (whether or not it also covers other activities), and section 916F does not apply at all in relation to revocations so made during the transition period.

(3) If, before paragraph (1)(a) or (d) occurs:

(a) the regulated principal is granted a licence under section 913B of the amended Corporations Act that covers some only (the ***relevant part***) of their regulated activities; or

(b) the regulated principal starts to be covered by an exemption under subsection 911A(2) of the amended Corporations Act in respect of some only (the ***relevant part***) of their regulated activities;

the relevant new legislation starts applying, from that time, to the relevant part of the regulated principal's regulated activities, and subsection (1) continues to apply to the person as if the regulated principal's regulated activities did not include the relevant part.

(4) Subsection (3) has effect subject to subsection 1430(3).

1432 Continued application of relevant old legislation

(1) Subject to subsection (2), during the transition period for a regulated principal, the relevant old legislation (if any) continues to apply, despite its repeal:

(a) to, and in relation to, the regulated principal and their regulated activities; and

(b) to any other person to whom it is expressed to apply, but only in relation to matters related to the regulated principal and their regulated activities.

Note: So, for example, people may continue to be appointed as agents or representatives of the regulated principal (or to have those appointments varied or revoked) during the transition period under provisions of the relevant old legislation that deal with such matters.

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(2) If, because of subsection 1431(2), the relevant new legislation (within the meaning of subsection 1431(1)) starts to apply to part of a person's regulated activities from a particular time, the relevant old legislation (if any) stops applying, from that time, in relation to that part of those activities.

1433 Streamlined licensing procedure for certain regulated principals

(1) This section applies to the following regulated principals:

(a) a regulated principal of a kind referred to in any of items 1 to 5 of the table in subsection 1430(1), but not including anyone who is:

(i) an exempted participant for the purposes of section 1419; or

(ii) in a class of persons specified in, or identified in accordance with, regulations made for the purposes of subsection (3);

(b) a regulated principal of a kind referred to in item 9 of that table who:

(i) is in a class of persons specified in regulations made for the purposes of this subparagraph; and

(ii) is not in a class of persons specified in, or identified in accordance with, regulations made for the purposes of subsection (3).

(2) If:

(a) a regulated principal to whom this section applies, before the end of their transition period, applies (in accordance with section 913A of the amended Corporations Act) for a licence covering some or all of their regulated activities (but no other activities); and

(b) their application includes a statement (in accordance with the requirements of the application form) to the effect that they will, if granted the licence, comply with their obligations as a financial services licensee;

the following provisions apply:

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(c) section 913B of the amended Corporations Act applies to their application as if paragraphs 913B(1)(b), (c), (ca) and (d), and subsections 913B(2) to (5), were omitted; and

(d) the licence condition required by subsection 914A(6) of the amended Corporations Act in relation to a licence granted pursuant to their application must specify, as the financial services that the licensee is authorised to provide, financial services that equate (as closely as possible) to the regulated activities in respect of which the application was made.

Note 1: Paragraph (c) does not limit the matters that can be taken into account under section 915C (suspension or cancellation after offering a hearing) in relation to a licence that has been granted under section 913B as it applies because of this section.

Note 2: The condition referred to in paragraph (d), as with any other conditions imposed on the licence under section 914A of the amended Corporations Act, is subject to variation or revocation in accordance with that section.

(3) The regulations may identify classes of persons, or provide for the identification of classes of persons, who are not to be covered by this section.

1434 Special licences for insurance multi-agents during first 2 years after FSR commencement

(1) For the purposes of this section, a person is an ***insurance multi-agent*** at a particular time if, at that time:

(a) the person is an insurance intermediary (but not an insurance broker), within the meaning of the *Insurance (Agents and Brokers) Act 1984* as then in force; and

(b) the person has agreements with 2 or more different insurers under section 10 of that Act.

(2) If:

(a) a person who, immediately before the FSR commencement, is an insurance multi-agent applies in accordance with section 913A of the amended Corporations Act for a licence,

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during the period of 2 years starting on the FSR commencement; and

(b) the application is lodged at a time:

(i) when the person is still carrying on activities as agent for one or more of the insurers with whom, immediately before the FSR commencement, they had agreements as mentioned in paragraph (1)(b); or

(ii) that is not more than 6 months after the person ceased to so carry on activities as agent for any of those insurers; and

(c) their application includes a statement (in accordance with the requirements of the application form) to the effect that they want this section to apply to their application;

the following provisions apply:

(d) section 913B of the amended Corporations Act applies to their application as if the reference in paragraph 913B(1)(b) to section 912A did not include the obligations under paragraphs 912A(e) and (f);

(e) the licence condition required by subsection 914A(6) of the amended Corporations Act in relation to a licence granted pursuant to their application must specify, as the financial services that the licensee is authorised to provide:

(i) providing financial product advice in relation to risk insurance products and investment life insurance products; and

(ii) dealing in risk insurance products and investment life insurance products.

(3) If the application is granted, then:

(a) while the licence remains in force:

(i) paragraphs 912A(e) and (f) of the amended Corporations Act do not apply to the licensee and the financial services covered by the licence; and

(ii) sections 942B and 942C apply in relation to any Financial Services Guide provided by the licensee or an authorised representative of the licensee as if they

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included a requirement to include in the Guide a statement that the licensee is not bound by the obligations in paragraphs 912A(e) and (f) and that sets out what those obligations are; and

(b) the licence conditions cannot be varied so that the licence covers the licensee providing financial services other than those referred to in paragraph (2)(e); and

(c) the licence ceases to be in force (unless earlier revoked) at the end of the period of 2 years starting on the FSR commencement.

1435 Licensing decisions made within the first 2 years of the FSR commencement—regard may be had to conduct and experience of applicant or related body corporate that currently provides same or similar services

(1) This section applies:

(a) if a person applies, during the period of 2 years starting on the FSR commencement, under section 913A of the amended Corporations Act for the grant of a licence covering the provision of particular financial services (the ***relevant financial services***); and

(b) ASIC is aware that:

(i) the applicant; or

(ii) if the applicant is a body corporate—a related body corporate of the applicant;

is currently (as at the time the application is being considered by ASIC) providing services that are the same as, or similar to, all or any of the relevant financial services.

(2) In considering the matters it is required by section 913B of the amended Corporations Act to consider in deciding whether to grant the licence, ASIC may (but is not required to) have regard to the conduct and experience (including conduct and experience before the FSR commencement) of the applicant, or the related body corporate, in providing services that are the same as, or similar to,

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all or any of the relevant financial services (so far as ASIC is aware of such conduct and experience).

(3) Subsection (2) is not intended to limit, by implication, the matters that ASIC can take into account under section 913B of the amended Corporations Act when considering whether to grant a licence under that section (whether pursuant to an application to which this section applies or otherwise).

1436 Treatment of representatives—general

(1) This section applies to a person who is a representative of a regulated principal. For this purpose, a ***representative*** includes, but is not limited to:

(a) an agent (however described) of the regulated principal; and

(b) an employee or director of the regulated principal; and

(c) any other person who, in accordance with the regulated principal's relevant old legislation as it continues to have effect in relation to the regulated principal, is authorised to carry on activities for or on behalf of the regulated principal.

(1A) However, if a person who, under subsection (1), would be the representative of another person is a financial services licensee in their own right, the licensee, when engaged in activities covered by their licence, is taken not to be acting as representative of that other person.

(2) The following provisions apply in relation to a person who is a representative of a regulated principal:

(a) during any period when, because of section 1431, the relevant new legislation (within the meaning of subsection 1431(1)) does not apply to the regulated principal and particular regulated activities, the relevant new legislation also does not apply to the representative when they are acting as a representative of the regulated principal in relation to any of those activities;

(b) during any period when, because of section 1432, relevant old legislation continues to apply to the regulated principal

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and particular regulated activities, that legislation also continues to apply to the representative when they are acting as a representative of the regulated principal in relation to any of those activities.

Note 1: If a person is a representative of 2 persons, this may result in the person having to comply with the relevant new legislation in respect of what they do as a representative of one of those persons but, at the same time, having to comply with relevant old legislation in respect of what they do as a representative of the other of those persons.

Note 2: If a person is a representative of another person who carries on 2 different sets of activities, being sets of activities in relation to which there are separate applications of this Subdivision because of subsection 1430(3), this may result in the person having to comply with the relevant new legislation in respect of what they do in relation to one of those sets of activities but, at the same time, having to comply with relevant old legislation in respect of what they do in relation to the other set of activities.

Note 3: Because of section 1441, a representative who is not required to comply with the relevant new legislation may nonetheless be required to comply with obligations under Part 7.9 of the amended Corporations Act.

1436A Treatment of representatives—insurance agents

(1) This section has effect despite anything else in this Subdivision, including sections 1436 and 1437.

(2) This section applies if, immediately before the FSR commencement, a person is an insurance intermediary (but not an insurance broker) within the meaning of the *Insurance (Agents and Brokers) Act 1984* as then in force because of an agreement they have with an insurer under section 10 of that Act. For the purposes of this section:

(a) the person is the ***insurance agent***; and

(b) the agreement is the ***authorising agreement***; and

(c) the matters dealt with in the provisions included in the agreement in compliance with section 10 of that Act, and any other matters included in the agreement that are related to those matters, are the ***relevant matters***; and

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(d) the insurer is the ***principal***.

If, immediately before the FSR commencement, the person has more than one such agreement, this section applies separately in relation to each of those agreements.

(3) For the purposes of this section, the ***transition period*** is the period starting on the FSR commencement and ending when the first of the following events occurs:

(a) the period of 2 years starting on the FSR commencement ends;

(b) the authorising agreement ceases to be in force;

(c) the insurance agent has lodged with ASIC notice in writing that the agent no longer wants to be covered by the *Insurance (Agents and Brokers) Act 1984*:

(i) from a specified date, being a date that is after the notice is given to ASIC; or

(ii) from the end of a specified period, being a period that ends after the notice is given to ASIC;

and that date arrives or period ends;

(d) the insurance agent is granted a licence under section 913B (including as it has effect because of section 1434) of the amended Corporations Act that covers the insurance agent engaging in (as licensee) the range of activities that they previously engaged in as agent under the authorising agreement.

(4) A notice (the ***original notice***) given for the purposes of paragraph (3)(c) may before the date, or the end of the period, specified in the original notice as mentioned in that paragraph:

(a) be varied to specify another date or period, being a date or period that would satisfy the requirements of subparagraph (3)(c)(i) or (ii) if the reference in that subparagraph to when the notice (being the original notice) is given to ASIC were instead a reference to when the notice of variation is given to ASIC under this subsection; or

(b) be revoked.

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The variation or revocation must be made by notice in writing lodged with ASIC.

(5) Subject to subsection (7), during the transition period, the *Insurance (Agents and Brokers) Act 1984* as in force immediately before the FSR commencement, and any associated provisions, (the ***relevant old legislation***) continue to apply (despite the repeal of that Act) to, and in relation to, the insurance agent, the principal and the relevant matters.

(6) Subject to subsection (7), during the transition period, the relevant new legislation (within the meaning of section 1431) does not apply to, or in relation to, the insurance agent, the principal and the relevant matters.

(7) Regulations made for the purposes of this subsection may do either or both of the following:

(a) provide that specified provisions of the relevant old legislation apply (with or without specified modifications), or do not apply, to the insurance agent, the principal and some or all of the relevant matters;

(b) provide that specified provisions of the relevant new legislation apply (with or without specified modifications), or do not apply, to the insurance agent, the principal and some or all of the relevant matters.

The regulations may provide as mentioned in paragraph (a) or (b) even after the end of the transition period.

(8) If:

(a) before the end of the transition period, or such longer period during which regulations made for the purposes of subsection (7) provide for the application of some or all of the relevant old legislation, the insurance agent engages in conduct that, under the authorising agreement as then in force, creates a right to brokerage, commission or other remuneration (which may be a present right, or a future right that is dependent on matters specified in the authorising agreement); and

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(b) that right is still in existence immediately before the end of that period;

the right is not taken to be brought to an end merely because of the repeal of the relevant old legislation or the enactment of the relevant new legislation, or because under this section the relevant old legislation ceases to apply and the relevant new legislation starts to apply.

(9) Subsection (8) is not intended to affect, in any way, the determination of the question whether any other right (whether or not it is under an agreement under section 10 of the *Insurance (Agents and Brokers) Act 1984*) is in any way affected by the provisions of the *Financial Services Reform Act 2001* or the *Financial Services Reform (Consequential Provisions) Act 2001* (including the amendments made by those Acts).

1437 Exemptions and modifications by ASIC

(1) This section applies to the following provisions:
  (a) the provisions of this Subdivision (other than section 1436A) and any associated provisions;
  (b) the provisions of legislation that continues to apply because of subsection 1432(1) or 1436(3).

(2) ASIC may:
  (a) exempt a person or a class of persons from some or all of the provisions to which this section applies; or
  (b) declare that some or all of the provisions to which this section applies apply in relation to a person or a class of persons as if the provisions were modified or varied as specified in the declaration.

(3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.

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(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 constitute an offence if a particular declaration under paragraph (2)(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.

Subdivision E—Product disclosure requirements

1438 New product disclosure provisions do not apply to existing products during transition period

(1) This section applies to all financial products issued by a person, other than financial products in a class of products that are first issued by the person after the FSR commencement.

(2) For the purposes of this section, the ***new product disclosure provisions*** in relation to a financial product to which this section applies are the provisions of Part 7.9 of the amended Corporations Act that, apart from this section, would apply in relation to the financial product (whether those provisions apply to the issuer of the product or to another person or persons), other than the following provisions:

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(a) section 1017C (information for existing holders of superannuation products and RSA products);
(b) section 1017DA (trustees of superannuation entities—regulations may specify additional obligations to provide information), and regulations made for the purposes of that section;
(c) section 1017E (dealing with money received for financial product before the product is issued);
(d) section 1017F (confirming transactions);
(e) sections 1019A and 1019B (cooling-off period for return of financial product);
(ea) Division 5A (unsolicited offers to purchase financial products off-market);
(f) sections 1020B and 1020C (short selling of securities, managed investment products and certain other financial products);
(g) section 1020D (Part cannot be contracted out of).

(3) Subject to subsection (4), the new product disclosure provisions do not apply in relation to a financial product to which this section applies during the period (the ***transition period***) starting on the FSR commencement and ending on whichever of the following first occurs:
(a) the end of the period of 2 years starting on the FSR commencement;
(b) the date specified in a notice lodged with ASIC by the issuer of the product that relates to the product, or a class of financial products that includes the product, and that satisfies the following requirements:
(i) the notice must indicate that the issuer of the product wants the new product disclosure provisions to apply in relation to the product from a date specified in the notice;
(ii) the date specified in the notice is the FSR commencement or a later date;

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(iii) the date specified in the notice is at least 28 days after the notice is lodged with ASIC.

Note 1: A notice under paragraph (b) may be lodged during the period between the commencement of this section and the FSR commencement, or it may be lodged after the FSR commencement.

Note 2: Subject to Division 2, the provisions covered by paragraphs (2)(a) to (f) apply from the FSR commencement in relation to all financial products to which they purport to apply.

(4) If the date specified in a notice lodged with ASIC in accordance with paragraph (3)(b) is the FSR commencement, there is no transition period in relation to the financial product or products to which the notice relates.

(5) A notice (the ***first notice***) lodged with ASIC in accordance with paragraph (3)(b):

(a) may, by a further notice lodged with ASIC, be varied to specify a different date (the ***new date***), but only if:

(i) that further notice is lodged with ASIC at least 28 days before the date specified in the first notice; and

(ii) the new date is at least 28 days after that further notice is lodged with ASIC; and

(b) may, by a further notice lodged with ASIC, be revoked, but only if that further notice is lodged with ASIC at least 28 days before the date specified in the first notice.

A date that was specified in a notice before its variation or revocation in accordance with this subsection is to be disregarded for the purposes of the other provisions of this section.

(6) If the issuer of a financial product lodges a notice with ASIC in accordance with paragraph (3)(b) that covers the product, the issuer must comply with any applicable requirements determined, by legislative instrument, by ASIC for the purposes of this subsection in relation to the following matters:

(a) informing people about the notice and its significance; and

(b) informing people about any subsequent variation or revocation of the notice.

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

(7) A determination by ASIC for the purposes of subsection (6):
  (b) may cover all financial products or one or more classes of financial products; and
  (c) may make different provision in relation to different classes of financial products.

(8) Subject to the regulations, ASIC must take reasonable steps to ensure that, during the period of 2 years starting on the FSR commencement, information is available:
  (a) on the internet; and
  (b) at offices of ASIC;

about notices that have been lodged in accordance with paragraph (3)(b). The information must be updated to take account of variations and revocations of such notices.

1439 Offences against new product disclosure provisions—additional element for prosecution to prove if conduct occurs after opting-in and before the end of the first 2 years

(1) If:
  (a) conduct in relation to a financial product that would (apart from this section) constitute an offence against, or based on, any of the new product disclosure provisions occurred at a time:
    (i) during the period of 2 years starting on the FSR commencement; and
    (ii) after the date specified in a notice lodged in relation to the product in accordance with paragraph 1438(3)(b); and
  (b) the new product disclosure provisions started to apply in relation to the product from the date specified in the notice;

the conduct constitutes an offence against that provision only if (in addition to the other elements of the offence), either:

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(c) the person knew that, or was reckless as to whether, the product issuer had lodged a notice under that paragraph that specified that date; or

(d) the person did not know that, and was not reckless as to whether, the product issuer had lodged a notice under that paragraph that specified that date, but the conduct would have contravened the provisions referred to in section 1440 that would have applied to and in relation to the product if those provisions had still applied when the conduct occurred.

(2) In this section:

conduct means an act, an omission to perform an act or a state of affairs.

1440 Continued application of certain provisions of old disclosure regimes during transition period

During the transition period (if any) for a financial product, the following provisions continue to apply, despite their repeal or amendment, to and in relation to the financial product:

(a) if the product is a managed investment product—all the provisions of Chapter 6D of the old Corporations Act, other than section 722 of that Act, and any associated provisions;

(b) if the product is a derivative—section 1210 of the old Corporations Act, and any associated provisions;

(c) if the product is a superannuation product—the following provisions, and any associated provisions:

(i) section 153, and all the provisions of Divisions 3 and 4 of Part 19, of the *Superannuation Industry (Supervision) Act 1993* as in force immediately before the FSR commencement;

(ii) the section 153A of that Act that was provided for in Modification Declaration no. 15 as in force immediately before the FSR commencement, being a declaration of modification made under section 332 of that Act;

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(d) if the product is an RSA product—section 51, and all the provisions of Divisions 4 and 5 of Part 5, of the *Retirement Savings Accounts Act 1997* as in force immediately before the FSR commencement, and any associated provisions;

(e) if the product is an insurance product—sections 71A and 73 of the *Insurance Contracts Act 1984* as in force immediately before the FSR commencement, and any associated provisions.

1441 Certain persons who are not yet covered by Parts 7.6, 7.7 and 7.8 of the amended Corporations Act are required to comply with Part 7.9 obligations as if they were regulated persons

From the time from which the new product disclosure provisions start to apply in relation to a particular financial product, the following persons must comply with those provisions in relation to that product, as if they were regulated persons as defined in section 1011B of the amended Corporations Act, even though they are not yet subject, or fully subject, to Parts 7.6, 7.7 and 7.8 of that Act:

(a) a regulated principal;

(b) a representative (as defined in section 1436) of a regulated principal; or

(c) an insurance agent (as defined in section 1436A).

1442 Exemptions and modifications by ASIC

(1) This section applies to the following provisions:

(a) the provisions of this Subdivision and any associated provisions;

(b) the provisions that continue to apply because of section 1440.

(2) ASIC may:

(a) exempt a person or a class of persons, or a financial product or class of financial products, from some or all of the provisions to which this section applies; or

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(b) declare that some or all of the provisions to which this section applies apply in relation to a person or a class of persons, or a financial product or class of financial products, as if the provisions were modified or varied as specified in the declaration.

(3) A declaration under paragraph (2)(b) may provide for the continued application (with or without modifications, and to the exclusion of provisions of the amended Corporations Act) of provisions referred to in paragraph (1)(b), even after the end of the period of 2 years starting on the FSR commencement.

(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 constitute an offence if a particular declaration under paragraph (2)(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.

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Subdivision F—Certain other product-related requirements

1442A Deferred application of hawking prohibition

(1) For the purposes of this section, the ***transition period*** is the period starting on the FSR commencement and ending on whichever of the following first occurs:
  (a) the day fixed by Proclamation for the purposes of this paragraph;
  (b) the end of the period of 6 months starting on the FSR commencement.

(2) Regulations made for the purposes of this section may provide for specified provisions of legislation that is repealed by the *Financial Services Reform Act 2001* or the *Financial Services Reform (Consequential Provisions) Act 2001*, being provisions that deal with the same or a similar matter as that dealt with in section 992A of the amended Corporations Act, to continue to apply (whether with or without specified modifications) during the transition period.

(3) During the transition period, section 992A of the amended Corporations Act does not apply to any person, except to the extent (if any) provided for in regulations made for the purposes of this section.

1442B Deferred application of confirmation of transaction and cooling-off provisions etc.

(1) This section applies to all financial products issued by a person, other than financial products in a class of products that are first issued by the person after the FSR commencement.

(2) For the purposes of this section, the ***transition period***, in relation to a financial product to which this section applies, is the period starting on the FSR commencement and ending on whichever of the following first occurs:

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(a) the day fixed by Proclamation for the purposes of this paragraph;
(b) the end of the period of 6 months starting on the FSR commencement;
(c) the new product disclosure provisions (within the meaning of section 1438) start to apply in relation to the product.

(3) Subject to subsection (5), the following provisions (the ***preserved provisions***), to the extent they are relevant to a financial product to which this section applies, continue to apply, despite their repeal, in relation to the financial product during the transition period:
(a) Division 6 of Part 19 of the *Superannuation Industry (Supervision) Act 1993*, and any associated provisions;
(b) Division 7 of Part 5 of the *Retirement Savings Accounts Act 1997*, and any associated provisions;
(c) sections 64 and 64A of the *Insurance Contracts Act 1984*, and any associated provisions;
(d) any other provisions specified in regulations made for the purposes of this paragraph, and any associated provisions in relation to provisions so specified.

(4) Subject to subsection (5), during the transition period, the following provisions (the ***deferred provisions***) of the amended Corporations Act do not apply in relation to a financial product to which this section applies:
(a) section 1017F;
(b) sections 1019A and 1019B;
(c) any other provisions of Part 7.9 of the amended Corporations Act that are not part of the new product disclosure provisions (within the meaning of section 1438) and that are specified in regulations made for the purposes of this paragraph.

(5) Regulations made for the purposes of this subsection may do either or both of the following:
(a) provide that specified provisions of the preserved provisions apply (with or without specified modifications), or do not

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apply, in relation to a financial product to which this section applies;

(b) provide that specified provisions of the deferred provisions apply (with or without specified modifications), or do not apply, in relation to a financial product to which this section applies.

The regulations may provide as mentioned in paragraph (a) or (b) even after the end of the transition period.

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Division 2—Other transitional provisions

1443 Definitions

(1) In this Division:

amended Corporations Act has the same meaning as in Division 1.

class, in relation to financial products, has a meaning affected by regulations made for the purposes of subsection (2).

FSR commencement has the same meaning as in Division 1.

law of the Commonwealth includes a reference to an instrument made under such a law.

new legislation means relevant legislation as in force after the FSR commencement.

old legislation means relevant legislation as in force immediately before the FSR commencement.

relevant amendments means the amendments made by:
(a) the *Financial Services Reform Act 2001*; and
(b) the *Financial Services Reform (Consequential Provisions) Act 2001*.

relevant legislation means the following legislation:
(a) this Act;
(b) the Acts that are amended by the relevant amendments;
(c) regulations or other instruments made under Acts covered by paragraph (a) or (b);
(d) any other law of the Commonwealth, or instrument made under a law of the Commonwealth, identified in regulations made for the purposes of this paragraph.

(2) The regulations may include provisions identifying, or providing for the identification of, what constitutes a ***class*** of financial

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products for the purposes of a provision or provisions of this Division.

1444 Regulations may deal with transitional, saving or application matters

(1) The regulations may deal with matters of a transitional, saving or application nature relating to the relevant amendments and the transition from the application of the old legislation to the application of the new legislation. Regulations made for this purpose may make such provision as is necessary to take account of the fact that, because of Division 1, different provisions of the amended Corporations Act start applying (and different provisions of the old legislation stop applying) in relation to different people, things and matters at different times.

(2) Regulations made for the purposes of this section are of no effect to the extent that they are inconsistent with:
  (a) a provision of Division 1; or
  (b) a regulation or determination made under a provision of Division 1, other than any such regulation or determination (the ***other instrument***) that is expressed to have effect subject to anything in regulations made for the purposes of this section (in which case, the other instrument is of no effect, to the extent of the inconsistency).

(3) Without limiting subsection (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  (a) by applying (with or without modifications) to the matter:
    (i) provisions of a law of the Commonwealth; or
    (ii) provisions of a repealed or amended law of the Commonwealth, in the form that those provisions took before the repeal or amendment; or
    (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  (b) by otherwise specifying rules for dealing with the matter;

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(c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.

(4) Without limiting subsections (1) and (3), the regulations may provide for the continued effect after the FSR commencement, for the purposes of the new legislation, of a thing done or instrument made, or a class of things done or instruments made, before the FSR commencement, under or for the purposes of the old legislation. In the case of an instrument, or class of instruments, the regulations may (either when providing for the continued effect of the instrument or instruments or at a later time) provide for the instrument or instruments, as continuing to have effect, to have effect subject to modifications.

(5) Without limiting subsection (4), regulations made for the purposes of that subsection may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:

(a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;

(b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;

(c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.

(6) Despite subsections 12(2) and (3) of the *Legislative Instruments Act 2003*, regulations made for the purposes of this section:

(a) may be expressed to take effect from a date before the regulations are registered under that Act; and

(b) may provide for a determination of a kind referred to in subsection (5) to take effect from a date before the determination is made (including a date before the regulations are registered under that Act).

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(7) If a relevant amendment does not commence on the FSR commencement, this section applies in relation to that amendment as if references in the other provisions of this section, and in the definitions in section 1443, to "the FSR commencement" were instead references to the commencement of the relevant amendment.

(8) In this section:

matters of a transitional, saving or application nature includes, but is not limited to, matters related to any of the following:

(a) how a matter that arose or existed under the old legislation is to be dealt with under the new legislation;

(b) the significance for the purposes of the new legislation of a matter that arose or existed under the old legislation;

(c) how a process started but not completed under the old legislation is to be dealt with;

(d) the preservation of concessions or exemptions (however described) that existed under the old legislation;

(e) interpreting references to matters in terms of the new legislation so as to include references to matters in terms of the old legislation (including that legislation as it continues to have effect because of provisions of Division 1), and vice versa;

(f) any other matters that are prescribed by regulations made for the purposes of this paragraph.

1445 ASIC determinations may deal with transitional, saving or application matters

(1) ASIC may, by legislative instrument, make a determination dealing with matters of a transitional, saving or application nature relating to the relevant amendments and the transition from the application of the old legislation to the application of the new legislation. Determinations for this purpose may make such provision as is necessary to take account of the fact that, because of Division 1, different provisions of the amended Corporations Act start applying (and different provisions of the old legislation stop

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applying) in relation to different people, things and matters at different times.

(2) A determination overrides any inconsistent regulations made for the purposes of section 1444, other than any such regulations that are expressed to have effect despite anything in a determination under this section (in which case, the determination is of no effect, to the extent of the inconsistency).

(3) A determination is of no effect to the extent that it is inconsistent with:
  (a) a provision of Division 1; or
  (b) a regulation or determination made under a provision of Division 1, other than any such regulation or determination (the ***other instrument***) that is expressed to have effect subject to anything in a determination under this section (in which case, the other instrument is of no effect, to the extent of the inconsistency).

(4) Without limiting subsection (1), a determination may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
  (a) by applying (with or without modifications) to the matter:
    (i) provisions of a law of the Commonwealth; or
    (ii) provisions of a repealed or amended law of the Commonwealth, in the form that those provisions took before the repeal or amendment; or
    (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
  (b) by otherwise specifying rules for dealing with the matter;
  (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of a law of the Commonwealth.

(5) Without limiting subsections (1) and (4), a determination may provide for the continued effect after the FSR commencement, for the purposes of the new legislation, of a thing done or instrument made, or a class of things done or instruments made, before the

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FSR commencement, under or for the purposes of the old legislation. In the case of an instrument, or class of instruments, a determination may (either when providing for the continued effect of the instrument or instruments or at a later time) provide for the instrument or instruments, as continuing to have effect, to have effect subject to modifications.

(6) Without limiting subsection (5), a determination for the purposes of that subsection may permit all or any of the following matters to be determined in writing by a specified person, or by a person included in a specified class of persons:

(a) the identification of a thing done or instrument made, or a class of things done or instruments made, that is to continue to have effect;

(b) the purpose for which a thing done or instrument made, or a class of things done or instruments made, is to continue to have effect;

(c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.

(7) If a relevant amendment does not commence on the FSR commencement, this section applies in relation to that amendment as if references in the other provisions of this section, and in the definitions in section 1443, to "the FSR commencement" were instead references to the commencement of the relevant amendment.

(8) In this section:

matters of a transitional, saving or application nature includes, but is not limited to, matters related to any of the following:

(a) how a matter that arose or existed under the old legislation is to be dealt with under the new legislation;

(b) the significance for the purposes of the new legislation of a matter that arose or existed under the old legislation;

(c) how a process started but not completed under the old legislation is to be dealt with;

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(d) the preservation of concessions or exemptions (however described) that existed under the old legislation;

(e) interpreting references to matters in terms of the new legislation so as to include references to matters in terms of the old legislation (including that legislation as it continues to have effect because of provisions of Division 1), and vice versa;

(f) any other matters that are prescribed by regulations made for the purposes of this paragraph.

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Part 10.3—Transitional provisions relating to the Corporations Legislation Amendment Act 2003

1447 Application of sections 601AB and 601PB

If a company or responsible entity had an obligation to lodge an annual return before the commencement of items 31 and 36 of Schedule 1 to the *Corporations Legislation Amendment Act 2003*, sections 601AB and 601PB continue to apply to the annual return, as if the amendments made by those items had not been made.

1448 Application of amendments made by Schedule 4 to the *Corporations Legislation Amendment Act 2003*

If, at the time the amendments made by Schedule 4 to the *Corporations Legislation Amendment Act 2003* commence:

(a) a company is required to lodge a notice under a provision amended by Schedule 4; and

(b) the time within which the company must lodge the notice has not expired;

the amendments made by Schedule 4 apply to the company's requirement to lodge the notice.

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Part 10.4—Transitional provisions relating to the Financial Services Reform Amendment Act 2003

1449 Definition

In this Part:

amending Act means the *Financial Services Reform Amendment Act 2003*.

1450 Application of Part 10.2 to Chapter 7 as amended by Schedule 2 to the amending Act

(1) Subject to subsection (2), the provisions of Division 1 of Part 10.2 (including regulations and determinations made for the purposes of that Division, and the powers given by that Division to deal with matters in regulations and determinations) also apply to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act.

Note: Division 1 of Part 10.2 deals with the phasing-in of the new financial services regime.

(2) However, subsection (1) does not produce the result that a provision of Chapter 7 as amended, added or inserted by an amendment in Schedule 2 to the amending Act applies in relation to a person, matter or circumstance:

(a) at a time that is before the commencement of the amendment; or

(b) contrary to section 1451.

(3) The powers given by Division 2 of Part 10.2 to deal with matters in regulations and determinations apply in relation to the provisions of Chapter 7 as amended by Schedule 2 to the amending Act as if the amendments in Schedule 2 to the amending Act were ***relevant***

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amendments for the purposes of that Division. However (in addition to subsections 1444(2) and 1445(3)) such regulations and determinations are of no effect to the extent that they are inconsistent with section 1451.

1451 Provisions relating to the scope of the amendments of Chapter 7 made by Schedule 2

Application of amendments of section 916F

(1) The amendments made by items 37, 38 and 39 of Schedule 2 to the amending Act do not apply to authorisations made before the commencement of the amendment, unless the relevant 10 day period for notification has not ended by the commencement of the items.

(2) The amendment made by item 40 of Schedule 2 to the amending Act applies to revocations made after the commencement of the item.

Application of certain amendments of sections 952B and 953A

(2A) The amendments made by items 53A and 58A of Schedule 2 to the amending Act apply in relation to the giving of Financial Services Guides after the commencement of the items.

Application of amendments of section 981H

(3) The amendments made by items 62 and 63 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 981H(1), even if an agreement referred to in subsection 981H(2) was in force in relation to the money immediately before that commencement.

Application of certain amendments of section 1016A

(3A) The amendments made by items 77A, 77B and 78C of Schedule 2 to the amending Act apply in relation to applications for financial

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products, and applications to become a standard employer-sponsor, whether made before or after the commencement of the items.

Application of amendments of sections 1016B to 1016E

(3B) The amendments made by items 78D to 78T of Schedule 2 to the amending Act apply in relation to Product Disclosure Statements whether prepared or given before or after the commencement of the items.

Application of amendment of section 1017D

(4) The amendment made by item 88 of Schedule 2 to the amending Act does not apply to statements prepared before the commencement of the item.

Application of amendments of section 1017E

(5) The amendments made by items 89 and 90 of Schedule 2 to the amending Act apply, after the commencement of those items, to money paid to a person before that commencement as mentioned in subsection 1017E(1), even if an agreement referred to in subsection 1017E(2B) was in force in relation to the money immediately before that commencement.

Application of amendments of section 1020E

(6) The amendment made by item 91 of Schedule 2 to the amending Act does not apply to disclosure documents or statements prepared before the commencement of the item.

(7) The amendments made by items 91A, 91B and 91C of Schedule 2 to the amending Act apply to disclosure documents or statements, and to advertisements or statements of a kind referred to in subsection 1018A(1) or (2), whether prepared, given or published before or after the commencement of the items.

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Application of certain amendments of sections 1021B and 1022A

(8) The amendments made by items 95F and 96K of Schedule 2 to the amending Act apply in relation to the giving of Product Disclosure Statements after the commencement of the items.

1452 Amendments of section 1274

(1) The amendment made by item 101 of Schedule 2 to the amending Act applies to documents even if they were lodged before the commencement of the item.

(2) The amendment made by item 102 of Schedule 2 to the amending Act removes a reference to a repealed provision. However, the amendment does not produce the result that a document that was lodged under that provision when it was in force now becomes available for inspection under section 1274.

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Part 10.5—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

1453 Definitions

In this Part:

amending Act means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

old Act means this Act as in force immediately before the commencement day.

Schedule 1 commencement means the day on which Schedule 1 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 4 commencement means the day on which Schedule 4 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 5 commencement means the day on which Schedule 5 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

Schedule 8 commencement means the day on which Schedule 8 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

1454 Audit reforms in Schedule 1 to the amending Act (auditing standards and audit working papers retention rules)

Sections 307A, 307B and 989CA apply to:

(a) an audit of the financial report for a financial year; or

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(b) an audit or review of the financial report for a half-year in a financial year;

if the financial year begins on or after 1 July 2004.

1455 Audit reforms in Schedule 1 to the amending Act (adoption of auditing standards made by accounting profession before commencement)

(1) The regulations may provide that a standard specified in the regulations (as in force from time to time) is to have effect, for the purposes of this Act, as if it had been made by the AUASB under section 336 on the day specified in the regulations.

(2) The standard must be one made or issued by the Australian Accounting Research Foundation before the Schedule 1 commencement on behalf of CPA Australia and The Institute of Chartered Accountants in Australia.

(3) The regulations may provide that the standard is to have effect as if it specified that it applies to periods ending, or starting, on or after a date specified in the standard.

(4) Standards prescribed under subsection (1) do not have effect as auditing standards:

(a) in relation to financial reports for periods ending after 30 June 2006; or

(b) in relation to financial reports for periods ending after a later date specified by regulations made for the purposes of subsection (1) before 30 June 2006.

(5) A person does not commit an offence based on a contravention of section 307A, subsection 308(3A) or 309(5A) or section 989CA because an audit or review is not conducted in accordance with, or does not include a statement or disclosure required by, an auditing standard prescribed under subsection (1) if the audit or review is conducted in relation to a financial report for a period ending before that standard ceases to have effect as an auditing standard.

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Note: This subsection does not prevent, however, other action being taken on the basis of the failure to comply with the auditing standard (for example, the person's failure to comply with the standard being referred to the Companies Auditors and Liquidators Disciplinary Board).

1456 Audit reforms in Schedule 1 to the amending Act (new competency standard provisions)

If an application by a person for registration as a registered company auditor:

(a) is lodged with ASIC before the Schedule 1 commencement; and

(b) has not been determined before that day;

section 1280 of the old Act continues to apply to the application despite the amendments made by the amending Act.

1457 Audit reforms in Schedule 1 to the amending Act (new annual statement requirements for auditors)

(1) The requirement under section 1287A for a registered company auditor to lodge an annual statement applies from the first anniversary of the auditor's registration that occurs on or after 1 January 2005.

(2) The first annual statement lodged under section 1287A should cover the period commencing either:

(a) immediately after the period covered by the last triennial statement; or

(b) the day on which the auditor was registered;

whichever is later, and ending on the first anniversary of registration occurring on or after 1 January 2005.

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1458 Audit reforms in Schedule 1 to the amending Act (imposition of conditions on existing registration as company auditor)

ASIC may impose conditions on a person's registration as a company auditor under section 1289A even if the registration took effect before the Schedule 1 commencement.

1459 Audit reforms in Schedule 1 to the amending Act (application of items 62 and 63)

The amendments made by items 62 and 63 of Schedule 1 to the amending Act apply to periods that start on or after 1 January 2005.

1460 Audit reforms in Schedule 1 to the amending Act (non-audit services disclosure)

Subsections 300(11B) to (11E) apply to an audit of the financial report for a financial year if the financial year begins on or after 1 July 2004.

1461 Audit reforms in Schedule 1 to the amending Act (auditor appointment)

(1) Section 324AC applies to all appointments of firms as auditor (including an appointment that was made before the Schedule 1 commencement).

(2) The appointment of a person as auditor of a company or registered scheme made before the Schedule 1 commencement under section 327 or 331AB of the old Act remains valid and effective despite the repeal of that section.

(3) An approval by ASIC that is in force under subsection 324(12) of the old Act immediately before the Schedule 1 commencement has effect on and after the Schedule 1 commencement as if it had been given under section 324B.

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1462 Audit reforms in Schedule 1 to the amending Act (auditor independence)

(1) Section 307C applies to a financial report for financial years that start on or after 1 July 2004.

(2) Division 3 of Part 2M.4 applies to:
  (a) an audit of the financial report for a financial year; or
  (b) an audit or review of the financial report for a half-year in a financial year;

  if the financial year begins on or after 1 July 2004.

(2A) The following provisions of the old Act continue to apply to an audit of the financial report for a financial year, or an audit or review of the financial report for a half-year in a financial year, if the financial year begins before 1 July 2004:
  (a) subsections 324(1) to (6) (inclusive) (other than paragraphs 324(1)(d) and (2)(d) and (e));
  (b) subsection 324(11);
  (c) subsection 327(4);
  (d) section 331AA (other than paragraphs 331AA(1)(d) and (2)(d) and (e)).

  Subsection 331AA(4) of the old Act continues to apply as if the references in that subsection to subsections 324(7), (8), (9), (10) and (16) were omitted.

(3) Division 3 of Part 2M.4 applies to all relationships that exist on or after the Schedule 1 commencement between an auditor and an audited body (including a relationship that exists because of circumstances that came into existence before the Schedule 1 commencement).

(4) Without limiting subsection (3), the items in the table in subsection 324CH(1) apply to circumstances that exist on or after the Schedule 1 commencement (including circumstances that exist because of events that occurred before the Schedule 1 commencement).

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(5) Item 9 of the table in subsection 324CE(5) applies to a person who ceases to be a professional employee of the individual auditor concerned on or after the Schedule 1 commencement.

(6) Item 10 of the table in subsection 324CE(5) applies to a person who ceases to own the business of the individual auditor concerned on or after the Schedule 1 commencement.

(7) Item 11 of the table in subsection 324CF(5) applies to a person who ceases to be a member of the audit firm concerned on or after the Schedule 1 commencement.

(8) Item 12 of the table in subsection 324CF(5) applies to a person who ceases to be a professional employee of the auditor firm concerned on or after the Schedule 1 commencement.

(9) Item 11 of the table in subsection 324CG(9) applies to a person who ceases to be an officer of the audit company concerned on or after the Schedule 1 commencement.

(10) Item 12 of the table in subsection 324CG(9) applies to a person who ceases to be a professional employee of the audit company concerned on or after the Schedule 1 commencement.

(11) Section 324CI applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.

(12) Section 324CJ applies only if the relevant departure time for the purposes of that section occurs on or after the Schedule 1 commencement.

(13) Section 324CK applies to a person only if:
   (a) the person is on the Schedule 1 commencement, or becomes after the Schedule 1 commencement, a member of the audit firm concerned or a director of the audit company concerned; and
   (b) becomes an officer of the audited body concerned on or after the Schedule 1 commencement.

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1463 Audit reforms in Schedule 1 to the amending Act (auditor rotation)

Division 5 of Part 2M.4 applies to:

(a) an audit of the financial report for a financial year; or

(b) an audit or review of the financial report for a half-year in a financial year;

if the financial year begins on or after 1 July 2006.

1464 Audit reforms in Schedule 1 to the amending Act (listed company AGMs)

The amendments made by Part 5 of Schedule 1 to the amending Act apply to AGMs at which financial reports for financial years that commence on or after 1 July 2004 are considered.

1465 Schedule 2 to the amending Act (financial reporting)

(1) The amendments made by Part 1 of Schedule 2 to the amending Act apply to directors' declarations in relation to financial reports for financial years that start on or after 1 July 2004.

(2) The amendments made by Part 2 of Schedule 2 to the amending Act apply to directors' reports for financial years that start on or after 1 July 2004.

(3) The amendments made by Part 3 of Schedule 2 apply to financial reports lodged with ASIC on or after 1 January 2004.

1466A Schedule 2A to the amending Act (true and fair view)

The amendments made by Schedule 2A to the amending Act apply to directors' reports for periods that start on or after 1 July 2004.

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1466 Schedule 3 to the amending Act (proportionate liability)

The amendments made to this Act and the *Trade Practices Act 1974* by Schedule 3 to the amending Act apply to causes of action that arise on or after the day on which that Schedule commences.

1467 Schedule 4 to the amending Act (enforcement)

(1) The amendments made by Part 2 of Schedule 4 apply to all disclosures made on or after the day on which this Act receives the Royal Assent (including a disclosure of information about circumstances that arose before that day).

(2) Section 206BA applies to disqualifications from managing corporations that occur because of convictions on or after the Schedule 4 commencement.

(3) The amendments made by Part 4 of Schedule 4 to the amending Act apply in relation to a contravention of a financial services civil penalty provision that occurs on or after the day on which this Act receives the Royal Assent.

1468 Schedule 5 to the amending Act (remuneration of directors and executives)

(1) Subject to subsections (2) and (3), the amendments made by Schedule 5 to the amending Act apply to financial years commencing on or after 1 July 2004.

(2) The amendments made by items 4, 4A and 5 of Schedule 5 to the amending Act apply to an agreement only if the agreement is entered into on or after the Schedule 5 commencement.

(3) The amendments made by items 6, 7 and 8 of Schedule 5 to the amending Act apply to remuneration reports for financial years that start on or after 1 July 2004.

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1469 Schedule 6 to the amending Act (continuous disclosure)

(1) The amendments made by Part 1 of Schedule 6 to the amending Act apply in relation to a contravention of subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.

(2) The amendments made by Part 2 of Schedule 6 to the amending Act apply in relation to a failure by a disclosing entity to comply with subsection 674(2) or 675(2) that occurs on or after the day on which this Act receives the Royal Assent.

1470 Schedule 7 to the amending Act (disclosure rules)

(1) The amendments made by Part 1 of Schedule 7 to the amending Act apply to a disclosure document for an offer of securities if the disclosure document is lodged with ASIC on or after the day on which this Act receives the Royal Assent.

(2) The amendments made by Part 2 of Schedule 7 to the amending Act apply to a Product Disclosure Statement that is required to be given on or after the day on which this Act receives the Royal Assent.

(3) The amendment made by items 10 and 11 of Schedule 7 to the amending Act applies to an offer of debentures that is made on or after the day on which this Act receives the Royal Assent.

(4) Section 708A applies to an offer of securities for sale that is made on or after the day on which this Act receives the Royal Assent.

(5) Section 1012DA applies to:
   (a) a recommendation situation if the relevant conduct (within the meaning of subsection 1012A(2)); and
   (b) a sale situation if the relevant conduct (within the meaning of subsection 1012C(2));

occurs on or after the day on which this Act receives the Royal Assent.

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1471 Schedule 8 to the amending Act (shareholder participation and information)

(1) The amendments made by items 1 to 6, 13 and 17 of Schedule 8 to the amending Act apply to a notice of a meeting of a company's members that is given after 30 September 2004.

(2) The amendments made by items 7 to 12 and 14 of Schedule 8 to the amending Act apply to an appointment of a proxy that is made on or after the Schedule 8 commencement.

(2A) The amendment made by item 14A of Schedule 8 to the amending Act applies to reports for financial years that start on or after 1 July 2004.

(3) The amendment made by item 15 of Schedule 8 to the amending Act applies to a directors' report for a financial year that starts on or after 1 July 2004.

(4) The amendment made by item 16 of Schedule 8 to the amending Act applies to a report referred to in subsection 314(1) for a financial year that starts on or after 1 July 2004.

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Part 10.8—Transitional provisions relating to the Corporations Amendment (Takeovers) Act 2007

1478 Application of amendments of the takeovers provisions

(1) The amendments made by Schedule 1 to the *Corporations Amendment (Takeovers) Act 2007* apply in relation to an application under section 657C (including any review under section 657EA of the decision made on the application) if:

(a) the application under section 657C is made on or after the commencement of that Schedule; or

(b) the application under section 657C was made before the commencement of that Schedule but the Panel has not finally disposed of the application before the commencement of that Schedule.

For the purposes of paragraph (b), the Panel does not finally dispose of an application under section 657C until the Panel has disposed of any review under section 657EA of the decision made on the application.

(2) To avoid doubt, the amendments apply in relation to the application even if the circumstances to which the application relates arose before the commencement of Schedule 1 to the *Corporations Amendment (Takeovers) Act 2007*.

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Part 10.9—Transitional provisions relating to the Corporations Amendment (Insolvency) Act 2007

1479 Definition

In this Part:

amending Act means the *Corporations Amendment (Insolvency) Act 2007*.

1480 Schedule 1 to the amending Act (improving outcomes for creditors)

(1) The amendment made by item 4 of Schedule 1 to the amending Act, in so far as it relates to a company subject to a deed of company arrangement, applies if the administration that ended on the execution of the deed began on or after the day on which that item commences.

(2) The amendments made by items 5 to 9 of Schedule 1 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.

(3) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.

(4) The amendments made by items 6 to 9 of Schedule 1 to the amending Act, in so far as they relate to a company to which section 433 applies, apply if the relevant date (within the meaning of that section) is on or after the day on which those items commence.

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(5) The amendment made by item 20 of Schedule 1 to the amending Act applies in relation to a receiver appointed on or after the day on which that item commences.

(6) The amendments made by items 21, 24, 25, 26 and 28 of Schedule 1 to the amending Act apply to the administrator of a company if the administrator is appointed on or after the day on which those items commence.

(7) The amendments made by items 30, 31, 32, 33, 35, 36, 37, 38, 39 and 40 of Schedule 1 to the amending Act apply in relation to the liquidator of a company if the winding up of the company begins on or after the day on which those items commence.

(8) The amendment made by item 52 of Schedule 1 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.

(9) The amendments made by items 53, 54, 55, 56 and 57 of Schedule 1 to the amending Act do not apply in relation to an account opened before the day on which that item commences.

(10) The amendments made by items 59, 60, 61, 62 and 64 of Schedule 1 to the amending Act apply in relation to a managing controller of property of a corporation if:

(a) the managing controller is appointed on or after the day on which those items commence; or

(b) the managing controller enters into possession, or takes control, of property of the corporation on or after the day on which those items commence.

(11) Despite the amendments made by items 65 and 66 of Schedule 1 to the amending Act:

(a) subsection 427(1) continues to apply, in relation to an order obtained, or an appointment made, before the day on which those items commence, as if those amendments had not been made; and

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(b) subsection 427(1A) continues to apply, in relation to an appointment made before the day on which those items commence, as if those amendments had not been made; and

(c) subsection 427(1B) continues to apply, in relation to an entry into possession, or a taking of control, before the day on which those items commence, as if those amendments had not been made; and

(d) subsection 427(4) continues to apply, in relation to a cessation before the day on which those items commence, as if those amendments had not been made.

(12) The amendments made by items 70, 71 and 72 of Schedule 1 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.

(13) The amendment made by item 75 of Schedule 1 to the amending Act applies to a meeting if the meeting is convened on or after the day on which that item commences.

(14) The amendments made by items 87, 88, 92, 93 and 94 of Schedule 1 to the amending Act apply to a transfer or alteration that occurs on or after the day on which those items commence.

(15) The amendments made by items 91, 96, 97, 98, 99, 100, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111 and 112 of Schedule 1 to the amending Act apply in relation to a winding up of a company if the winding up begins on or after the day on which those items commence.

(16) Despite the repeal of subsection 506(4) by item 113 of Schedule 1 to the amending Act, that subsection continues to apply, in relation to the liquidators of a company where the winding up of the company began before the day on which that item commences, as if that repeal had not happened.

(17) Sections 434D, 434E, 434F and 434G apply in relation to persons appointed on or after the day on which those sections commence.

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(18) Section 530 applies in relation to the liquidators of a company if the winding up of the company begins on or after the day on which that section commences.

(19) Section 530AA applies to persons appointed on or after the day on which that section commences.

(20) Subsections 571(1) and 579E(1) of the amended Act apply in relation to a group of 2 or more companies if the winding up of each company in the group begins on or after the day on which those subsections commence.

1481 Schedule 2 to the amending Act (deterring corporate misconduct)

(1) The amendment made by item 2 of Schedule 2 to the amending Act applies in relation to a compromise or arrangement if an application relating to the compromise or arrangement was made under subsection 411(1) on or after the day on which that item commences.

(2) The amendment made by item 11 of Schedule 2 to the amending Act applies in relation to a matter that appears to a person:

(a) during the 6-month period ending when that item commences; or

(b) on or after the day on which that item commences;

where the relevant date is on or after the day on which that item commences.

(3) Section 489A applies in relation to a section 486B warrant if the warrant is issued on or after the day on which that section commences.

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1482 Schedule 3 to the amending Act (improving regulation of insolvency practitioners)

(1) The amendment made by item 7 of Schedule 3 to the amending Act applies to an application for registration if the application was made on or after the day on which that item commences.

(2) Despite the amendment made by item 9 of Schedule 3 to the amending Act, subsection 1288(3) continues to apply, in relation to a 3-year period ending before the day on which that item commences, as if that amendment had not been made.

(3) Subsection 1288(3) as amended by item 9 of Schedule 3 to the amending Act applies as follows:

(a) in the case of a person whose first 12 months of registration ends on or after the day on which that item commences—that subsection applies in relation to:

(i) the person's first 12 months of registration; and

(ii) each subsequent period of 12 months;

(b) in the case of a person whose first 12 months of registration ended before the day on which that item commences—that subsection applies as if the reference in paragraph 1288(3)(a) to the day on which the person's registration begins (the ***initial registration day***) were a reference to the last anniversary of the initial registration day that occurred before the day on which that item commences.

For this purpose, a person's ***first 12 months of registration*** is the period of 12 months beginning on the day on which the person's registration begins.

(4) The amendment made by item 12 of Schedule 3 to the amending Act applies in relation to a decision made on or after the day on which that item commences.

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1483 Schedule 4 to the amending Act (fine-tuning voluntary administration)

(1) The amendments made by items 1, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 39, 40, 45, 49, 51, 52, 53, 54, 55, 56, 57, 59, 60, 61 and 62 of Schedule 4 to the amending Act, in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those items commence.

(2) The amendments made by items 2, 3 and 4 of Schedule 4 to the amending Act apply to an appointment of an administrator if the appointment is made on or after the day on which those items commence.

(3) The amendment made by item 8 of Schedule 4 to the amending Act applies to a transfer or alteration that occurs on or after the day on which that item commences.

(4) The amendments made by items 23, 24, 25, 26 and 28 of Schedule 4 to the amending Act, in so far as they apply to a company that is, or is proposed to be, subject to a deed of company arrangement, apply if the administration that ends, or is to end, on the execution of the deed, began on or after the day on which those items commence.

(5) The amendments made by items 27, 29, 30, 31, 32, 33, 34, 35, 36, 39, 40, 43, 44, 46, 55, 56 and 57 of Schedule 4 to the amending Act, in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those items commence.

(6) Items 37 and 38 of Schedule 4 to the amending Act apply in relation to a company if the winding up of the company begins on or after the day on which those items commence.

(7) The amendments made by items 41 and 42 of Schedule 4 to the amending Act apply in relation to a company subject to a deed arrangement if the administration that ended on the execution of

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the deed began on or after the day on which those items commence.

(8) The amendments made by items 63, 65, 66, 67, 69 and 70 of Schedule 4 to the amending Act, in so far as they relate to the winding up of a company, apply if the relevant date is on or after the day on which those items commence.

(9) Section 440BA, in so far as it relates to a company under administration, applies if the administration begins on or after the day on which that section commences.

Note: Section 440BA was repealed by the *Personal Property Securities (Corporations and Other Amendments) Act 2010*, and was replaced with a new section 440B incorporating the same substantive rules. Section 1507 preserves the operation of this subsection.

(10) Section 440BB does not apply to distress for rent that began to be carried out before the day on which that section commences.

Note: Section 440BB was repealed by the *Personal Property Securities (Corporations and Other Amendments) Act 2010*, and was replaced with a new section 440B incorporating the same substantive rules. Section 1507 preserves the operation of this subsection.

(11) Subsections 442C(7) and (8), in so far as they relate to a company under administration, apply if the administration begins on or after the day on which those subsections commence.

(12) Subsections 442C(7) and (8), in so far as they relate to a company subject to a deed of company arrangement, apply if the administration that ended on the execution of the deed began on or after the day on which those subsections commence.

(13) Section 446C applies in relation to a company as follows:

(a) if the company was under administration immediately before the liquidation time referred to in that section—the administration begins on or after the day on which that section commences;

(b) if the company was subject to a deed of company arrangement immediately before the liquidation time referred to in that section—the administration that ended on the

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execution of the deed began on or after the day on which that section commences.

(14) Subsection 588FE(2A) applies in relation to a company if the administration referred to paragraph 588FE(2A)(b) begins on or after the day on which that subsection commences.

(15) Subsection 588FE(2B) applies in relation to a company if the administration that ended on the execution of the deed of company arrangement referred to in paragraph 588FE(2B)(b) began on or after the day on which that subsection commences.

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Part 10.10—Transitional provisions relating to the Corporations Amendment (Short Selling) Act 2008

1484 Declarations under paragraph 1020F(1)(c) relating to short selling

(1) To avoid doubt, an instrument mentioned in subsection (2) that was made at a particular time was validly made under paragraph 1020F(1)(c) at that time.

(2) The instruments are as follows:
- (a) ASIC Class Order [CO 08/751], registered on the Federal Register of Legislative Instruments on 22 September 2008;
- (b) ASIC Class Order [CO 08/752], registered on the Federal Register of Legislative Instruments on 22 September 2008;
- (c) ASIC Class Order [CO 08/753], registered on the Federal Register of Legislative Instruments on 22 September 2008;
- (d) ASIC Class Order [CO 08/763], registered on the Federal Register of Legislative Instruments on 23 September 2008;
- (e) ASIC Class Order [CO 08/801], registered on the Federal Register of Legislative Instruments on 24 October 2008.

(3) To avoid doubt, an instrument (if any) that:
- (a) was made at a time:
  - (i) after 24 October 2008; and
  - (ii) before the commencement of this section; and
- (b) is of substantially the same nature as the instruments mentioned in subsection (2); and
- (c) was registered on the Federal Register of Legislative Instruments:
  - (i) after 24 October 2008; and
  - (ii) before the commencement of this section;

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was validly made under paragraph 1020F(1)(c) at that time.

(4) This section applies on and after 19 September 2008.

(5) In this section:

Federal Register of Legislative Instruments means the Federal Register of Legislative Instruments established under the *Legislative Instruments Act 2003*.

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Part 10.11—Transitional provisions relating to the Corporations Amendment (No. 1) Act 2009

1485 Application of new subsection 206B(6)

The amendments made by item 2 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2009* apply to an order made by a court of a foreign jurisdiction on or after the commencement of that item.

1486 Application of new section 206EAA

The amendments made by item 3 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2009* apply to a disqualification under a law of a foreign jurisdiction that arises on or after the commencement of that item.

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Part 10.12—Transitional provisions relating to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

Division 1—Transitional provisions relating to Schedule 1 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

1487 Definitions

(1) In this Division:

amended Corporations Act means this Act as in force after commencement.

amending Schedule means Schedule 1 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

commencement means the day on which the amending Schedule commences.

margin lending financial service has the meaning given by subsection 1488(2).

(2) Terms that are used in this Division and that are defined in Division 2 of Part 7.1 have the same meanings as they are given by that Division.

1488 Application of amendments—general

(1) The amendments made by the amending Schedule apply in relation to a margin lending financial service that is provided on or after the day that is 12 months after commencement.

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(2) A ***margin lending financial service*** is:
  (a) a dealing in a margin lending facility that was issued after commencement; or
  (b) the provision of financial product advice in relation to a margin lending facility that was issued after commencement.

1489 Applications of amendments—application for and grant of licences etc. authorising margin lending financial services

(1) Despite section 1488, during the period that:
  (a) starts at the start of the day that is one month after commencement; and
  (b) ends at the end of the day before the day that is 12 months after commencement;

subsections (2) and (3) apply.

(2) A person may:
  (a) apply under section 913A of the amended Corporations Act for an Australian financial services licence that authorises the person to provide a margin lending financial service; and
  (b) apply under section 914A of the amended Corporations Act for a variation of a condition of an Australian financial services licence to authorise the person to provide a margin lending financial service.

(3) ASIC may:
  (a) grant an Australian financial services licence to a person under section 913B of the amended Corporations Act that authorises the person to provide a margin lending financial service, and otherwise deal with that licence (for example, by suspending or cancelling it) under Chapter 7; and
  (b) impose or vary conditions on an Australian financial services licence under section 914A of the amended Corporations Act to authorise a person to provide a margin lending financial service, and otherwise deal with those conditions (for example, by revoking or varying them) under Chapter 7;

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but the Australian financial services licence, condition, or variation of a condition, does not take effect until the day that is 12 months after commencement.

1490 Application of amendments—between 6 and 12 months after commencement

(1) Despite section 1488, the amendments made by the amending Schedule apply in relation to a margin lending financial service that is provided during the period that:

(a) starts at the start of the day that is 6 months after commencement; and

(b) ends at the end of the day before the day that is 12 months after commencement;

but only if, at the time the margin lending financial service is provided, subsection (2) or (3) applies to:

(c) the person who provides the margin lending financial service; and

(d) if the margin lending financial service is provided on behalf of another person—the person on whose behalf the margin lending financial service is provided.

(2) This subsection applies to a person if the person is an Australian financial services licensee and either:

(a) has not applied for a condition of the licence to be varied to authorise the person to provide the margin lending financial service; or

(b) has applied for a condition of the licence to be varied to authorise the person to provide the margin lending financial service, but has been notified by ASIC that the application has been refused.

(3) This subsection applies to a person if the person is not an Australian financial services licensee and either:

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(a) has not applied for an Australian financial services licence that authorises the person to provide the margin lending financial service; or

(b) has applied for an Australian financial services licence that authorises the person to provide the margin lending financial service, but has been notified by ASIC that the application has been refused.

1491 Acquisition of property

(1) Despite section 1350, a provision of this Division does not apply, and is taken never to have applied, to the extent that the operation of the provision would result in an acquisition of property from a person otherwise than on just terms.

(2) In subsection (1), ***acquisition of property*** and ***just terms*** have the same meanings as in paragraph 51(xxxi) of the Constitution.

1492 Regulations

(1) The regulations may make provisions of a transitional, application or saving nature relating to this Division and the amendments and repeals made by the amending Schedule.

(2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

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Division 2—Transitional provisions relating to Schedule 2 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

1493 Definitions

In this Division:

amending Schedule means Schedule 2 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

commencement means the commencement of the amending Schedule.

modify includes make additions, omissions and substitutions.

1494 Transitional provisions relating to limit on control of trustee companies

(1) This section applies in relation to a person and a trustee company if, immediately before the commencement of Part 5D.5, the percentage (the ***pre-commencement percentage***) of the person's voting power in the trustee company exceeded 15%.

(2) Subject to subsection (3), Part 5D.5 applies in relation to the person and the trustee company as if paragraph 601VAA(a) specified the pre-commencement percentage (rather than 15%).

(3) If, after the commencement of Part 5D.5, the percentage of the person's voting power in the trustee company is reduced, the following provisions have effect from the time of the reduction:

(a) if the reduced percentage exceeds 15%—Part 5D.5 applies in relation to the person and the trustee company as if paragraph 601VAA(a) specified the reduced percentage (rather than 15%);

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(b) if the reduced percentage is 15% or less—this section ceases to apply, and never again applies, in relation to the person and the trustee company.

1495 Transitional provisions relating to the amendments of Chapter 7

(1) This section applies to each company:

(a) that is a trustee company immediately after the commencement of the first regulations made for the purpose of paragraph 601RAB(1)(b); and

(b) that, at that time, holds an Australian financial services licence.

(2) During the period of 6 months starting on the commencement of those regulations:

(a) the company's Australian financial services licence is taken to cover the provision by the company of traditional trustee company services; and

(b) section 601TAB does not apply in relation to the company; and

(c) Part 7.7 does not apply in relation to traditional trustee company services provided by the company.

Note: If the company wants to continue to provide traditional trustee company services after the end of the 6 month period, it will (before the end of that period) need to apply to ASIC to have the conditions of its licence varied to cover those services.

(3) To avoid doubt, subsection (2) does not limit ASIC's powers under Part 7.6 (whether during or after the period of 6 months) in relation to the company's Australian financial services licence.

Note: For example, ASIC may (under Subdivision B of Division 4 of Part 7.6) impose or vary licence conditions, or may (under Subdivision C of Division 4 of Part 7.6) vary, cancel or suspend the licence.

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1496 General power for regulations to deal with transitional matters

(1) The regulations may make provisions of a transitional, application or saving nature in relation to any of the following:

(a) the transition from the regime provided for by laws of the States and Territories (as in force before commencement) relating to trustee companies to the regime provided for by this Act as amended by the amending Schedule;

(b) the amendments and repeals made to this Act by the amending Schedule.

(2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

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Division 3—Transitional provisions relating to Schedule 3 to the Corporations Legislation Amendment (Financial Services Modernisation) Act 2009

1497 Definitions

In this Division:

amending Schedule means Schedule 3 to the *Corporations Legislation Amendment (Financial Services Modernisation) Act 2009*.

1498 Application of amendments

(1) The amendment made by item 1 of the amending Schedule applies to promissory notes made after the commencement of that item.

(2) The amendment made by item 2 of the amending Schedule applies to trustees appointed on or after the commencement of that item.

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Part 10.13—Transitional provisions relating to the Personal Property Securities (Corporations and Other Amendments) Act 2010

1499 Definitions

In this Part:

amending Act means the *Personal Property Securities (Corporations and Other Amendments) Act 2010*.

commencement time means the time item 187 of Schedule 1 to the amending Act commences.

Note: Item 187 of Schedule 1 to the amending Act inserts sections 1499 to 1510. The item commences at the registration commencement time within the meaning of section 306 of the *Personal Property Securities Act 2009* (as provided by section 2 of the amending Act).

registrable charge means a charge created before the commencement time that was a registrable charge within the meaning of section 261 when it was created.

1500 Charges, liens and pledges—continuation of restriction of references

(1) This section applies despite the amendment of this Act made by item 10 of Schedule 1 to the amending Act if a reference to a charge in a provision of this Act, as in force immediately before the commencement time, did not include a reference to a lien or a pledge, or any other particular form of security over the property.

Note: Item 10 of Schedule 1 to the amending Act inserts the definition of ***security interest*** in section 51A.

(2) In its application in relation to an interest in property created or arising before the commencement time, or under an agreement or instrument made before that time, the reference in that provision

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(as amended by the amending Act) to a security interest does not include a reference to a lien or a pledge, or that particular form of security over the property, as the case may be.

1501 Charges, liens, pledges and third party property—application

The amendments made by Part 1 (new concepts) of Schedule 1 to the amending Act apply:

(a) in relation to charges, liens and pledges, whether created or arising before, at or after the commencement time; and

(b) in relation to property owned, occupied or used by, or in the possession of, a corporation, whether the ownership, occupation, use or possession started before, at or after the commencement time.

1501A References to the whole or substantially the whole of a company's property

(1) This section applies to a transitional security interest within the meaning of the *Personal Property Securities Act 2009*.

Note: For the meaning of ***transitional security interest***, see section 308 of the *Personal Property Securities Act 2009*.

(2) In working out for the purposes of this Act whether the security interest covers the whole, or substantially the whole, of the company's property at a time (the ***later time***) that is at or after the commencement time, disregard any of the company's property that is PPSA retention of title property of the company at the later time.

Note: This Act gives certain powers to secured parties who hold security interests over the whole, or substantially the whole, of a company's property (for example, the power to appoint an administrator under section 436C).

1501B Constructive notice of registrable charges

Section 130 does not apply in relation to a document that has been lodged with ASIC to the extent that the document relates to a registrable charge.

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Note: Section 130 provides that a person is not taken to have information about a company merely because the information is available to the public from ASIC.

1502 Repeal of Chapter 2K (charges)—general

(1) For the period of 7 years after the commencement time, the amendments made by Part 2 of Schedule 1 to the amending Act do not apply in relation to registrable charges.

Note: The amendments made by Part 2 of Schedule 1 to the amending Act repeal Chapter 2K and make consequential amendments to other provisions.

(2) This section applies subject to sections 1503 to 1506.

1503 Repeal of Chapter 2K (charges)—cessation of requirements in relation to documents or notices

Scope

(1) This section applies if, immediately before the commencement time, a document (however described) or notice is required to be lodged or given by a company or other person under one of the following provisions:
   (a) paragraph 263(1)(a), (b) or (c);
   (b) paragraph 263(2)(b);
   (c) subsection 263(3);
   (d) paragraph 264(1)(a) or (b);
   (e) paragraph 265(6)(b);
   (f) paragraph 268(1)(a) or (b);
   (g) subsection 268(2);
   (h) subsection 269(1) or (2);
   (i) subsection 270(4).

Requirements that stop applying

(2) Whichever of the following requirements would otherwise apply stops applying at the commencement time:

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(a) the requirement to lodge or give the document or notice;
(b) the requirement for ASIC to enter or delete particulars in the Register in relation to the document or notice.

1504 Repeal of Chapter 2K (charges)—application of section 266

(1) Subject to this section, section 266 stops applying at the commencement time in relation to registrable charges.

(2) However, if a registrable charge is void under section 266 immediately before the commencement time, that section continues to apply in relation to the charge, subject to subsection (3) of this section.

(3) The Court may, on such terms and conditions as seem to the Court just and expedient, by order, declare a registrable charge not to be, and never to have been, void under subsection 266(1) or (3), if:
(a) before the commencement time, the charge is void under subsection 266(1) or (3) (as the case requires); and
(b) either:
(i) an application is made to the Court under subsection 266(4) before the commencement time for an extension of the relevant period, and as at the commencement time, the Court had not made a decision in relation to the application; or
(ii) an application is made to the Court at or after the commencement time for an order under this subsection; and
(c) the Court is satisfied of the matters set out in subsection 266(4).

1505 Repeal of Chapter 2K (charges)—cessation of company registration requirements

The requirements in section 271 (company documentation and registration of charges) stop applying in relation to registrable charges at the commencement time.

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1506 Repeal of Chapter 2K (charges)—priority between registrable charges

At and after the commencement time, registrable charges have the priority between themselves that they would have had under this Act as in force immediately before the commencement time, subject to Chapter 9 (Transitional provisions) of the *Personal Property Securities Act 2009*.

1507 New section 440B (restrictions on third party property rights)

The repeal of sections 440B, 440BA, 440BB and 440C by item 156 of Schedule 1 to the amending Act does not affect the operation of subsections 1483(9) and (10) in relation to:

(a) the administration of a company that began at or after the start of the day section 440BA commenced, and before the commencement time within the meaning of section 1499; or

(b) distress for rent that began to be carried out before the day section 440BB commenced.

Note: Sections 440BA and 440BB commenced on 31 December 2007.

1508 New subsection 442CB(1) (administrator's duty of care)

The amendment of this Act by item 135 of Schedule 1 to the amending Act does not apply in relation to the exercise of a power of sale if the power began to be exercised before the commencement time.

Note: Item 135 of Schedule 1 to the amending Act repealed subsection 442CB(1) and substituted a new subsection.

1509 New section 588FP (security interests in favour of an officer of a company etc. void)

Section 588FP does not apply in relation to a registrable charge.

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1510 Winding up applied for before the commencement time

Subject to this Part, the amendments made by the amending Act do not apply in relation to the winding up of a company under Part 5.4, Part 5.4A or Part 5.4B, or the subsequent liquidation of the company, if the application for winding up for the purposes of those Parts is made before the commencement time.

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Part 10.14—Transitional provisions relating to the Corporations Amendment (Corporate Reporting Reform) Act 2010

1510A Definition

In this Part:

amending Act means the *Corporations Amendment (Corporate Reporting Reform) Act 2010*.

1510B Application of Part 1 of Schedule 1 to the amending Act

(1) The amendments made by items 1 to 4, items 11 to 16, items 18 to 23, items 29 and 30, items 32 to 42, items 45 to 47 and items 49 to 51 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.

(1A) The amendment made by item 6 of Schedule 1 to the amending Act applies in relation to a company limited by guarantee incorporated on or after the commencement of that item.

(2) The amendments made by items 7 and 48 of Schedule 1 to the amending Act apply in relation to dividends declared on or after the commencement of those items.

(3) The amendments made by items 8, 9 and 10 of Schedule 1 to the amending Act apply in relation to cancellations of paid-up share capital that occur on or after the commencement of those items.

(4) Despite the amendment made by item 17 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 295(2) of this Act that were in force immediately before the commencement of that item continue in force, after that

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commencement, as if they were made for the purposes of subsection 295(2) of this Act as amended by that item.

(5) The amendment made by item 17 of Schedule 1 to the amending Act applies to a report of a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2010.

(6) The amendments made by items 24 to 28 of Schedule 1 to the amending Act apply in relation to a company, registered scheme or disclosing entity for financial years of the company, registered scheme or disclosing entity ending on or after 30 June 2011.

(7) Despite the amendment made by item 31 of Schedule 1 to the amending Act, accounting standards made for the purposes of subsection 303(2) of this Act that were in force immediately before the commencement of that item continue in force, after that commencement, as if they were made for the purposes of subsection 303(2) of this Act as amended by that item.

(8) The amendment made by item 31 of Schedule 1 to the amending Act applies to a report of a disclosing entity for half-years of the disclosing entity ending on or after 30 June 2010.

(9) The amendments made by items 43 and 44 of Schedule 1 to the amending Act apply where the previous financial year of the company, registered scheme or disclosing entity ends on or after 30 June 2010.

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Part 10.15—Transitional provisions relating to the Corporations Amendment (Financial Market Supervision) Act 2010

1511 Definition

In this Part:

amending Schedule means Schedule 1 to the *Corporations Amendment (Financial Market Supervision) Act 2010*.

1512 Application of amendments

(1) The amendments made by items 2, 5 to 11, 14, 17 and 18 of the amending Schedule apply in relation to Australian market licences granted before, on or after the commencement of the amending Schedule.

(2) The amendments made by items 12 and 13 of the amending Schedule apply in relation to applications for an Australian market licence:
   (a) that were made but had not yet been decided before the day on which the amending Schedule commences; and
   (b) that are made on or after the commencement of the amending Schedule.

1513 Regulations may deal with transitional matters

(1) The regulations may make provisions of a transitional, application or saving nature relating to the amendments and repeals made by the amending Schedule.

(2) Without limiting subsection (1), regulations made for the purpose of that subsection may modify provisions of this Act.

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Part 10.16—Transitional provisions relating to the Corporations Amendment (No. 1) Act 2010

1516 Application of amendments

(1) The amendments made by items 4 to 8 of Schedule 1 to the *Corporations Amendment (No. 1) Act 2010* apply in relation to requests made after the commencement of that Schedule to inspect, or receive a copy of, a register.

(2) The amendment made by item 9 of that Schedule applies in relation to information obtained from a register before, at or after the commencement of that Schedule.

(3) The amendments made by items 12 to 14 of that Schedule apply in relation to offers made after the commencement of that Schedule.

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Part 10.17—Transitional provisions relating to the Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011

1517 Application of Subdivision B of Division 1 of Part 2D.3

Subdivision B of Division 1 of Part 2D.3 applies in relation to the setting of board limits on or after 1 July 2011.

1518 Application of sections 206J, 206K, 206L and 206M

(1) Section 206J applies to entry into arrangements on or after 1 July 2011, whether the remuneration was for services rendered before, on or after that day.

(2) Section 206K applies to contracts entered into on or after 1 July 2011.

(3) Sections 206L and 206M apply to recommendations made under contracts entered into on or after 1 July 2011.

1519 Application of subsection 249L(2)

Subsection 249L(2) as substituted by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* applies in relation to AGMs held on or after 1 July 2011.

1520 Application of section 250BB

Section 250BB applies to voting on or after 1 August 2011, whether the proxy was appointed before, on or after that day.

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1521 Application of section 250BC

Section 250BC applies to appointments of proxies made on or after 1 August 2011.

1522 Application of section 250BD

Section 250BD applies in relation to voting on or after 1 August 2011, whether the matter that is the subject of the resolution relates to a time before, on or after that day.

1523 Application of subsections 250R(4) to (10)

Subsections 250R(4), (5), (6), (7), (8), (9) and (10) apply in relation to voting on or after 1 August 2011, whether the remuneration report concerned relates to a financial year starting before, on or after that day.

1524 Application of Division 9 of Part 2G.2

Division 9 of Part 2G.2 applies in relation to AGMs held on or after 1 July 2011.

Note: This has the effect that the Division can apply in relation to a company only if both of its 2 most recent AGMs have been held on or after 1 July 2011.

1525 Application of amendments of section 300A

(1) The amendments of section 300A made by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* apply in relation to remuneration reports for financial years starting on or after 1 July 2011.

(2) Subsection (1) does not apply to the repeal of subsection 300A(1AAA).

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Saving of regulations made for paragraph 300A(1)(f)

(3) The amendment of paragraph 300A(1)(f) made by the *Corporations Amendment (Improving Accountability on Director and Executive Remuneration) Act 2011* does not affect the validity of any regulations in force for the purposes of that paragraph immediately before that amendment.

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Part 10.18—Transitional and application provisions relating to the Future of Financial Advice Measures

Division 1—Provisions relating to the Corporations Amendment (Further Future of Financial Advice Measures) Act 2012

1526 Definitions

(1) In this Part:

amending Act means the *Corporations Amendment (Further Future of Financial Advice Measures) Act 2012*.

custodial arrangement has the same meaning as it has in subsection 1012IA(1), subject to subsection (2).

platform operator means the provider of a custodial arrangement, or custodial arrangements.

provider, in relation to a custodial arrangement, has the same meaning as in subsection 1012IA(1).

(2) The definition of ***custodial arrangement*** in subsection 1012IA(1) is to be read as if the reference in that definition to an instruction included a reference to:

(a) a direction of the kind mentioned in paragraph 58(2)(d) or (da) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind; and

(b) a direction of the kind mentioned in subsection 52B(4) of the *Superannuation Industry (Supervision) Act 1993* that will involve the acquisition of a particular financial product, or a financial product of a particular kind.

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1527 Application of best interests obligations

(1) The following apply in relation to the provision of personal advice to a person as a retail client on or after the application day (whether or not the advice was sought before that day):
  (a) Division 2 of Part 7.7A, as inserted by item 23 of Schedule 1 to the amending Act;
  (b) the amendments made by items 6, 7, 8, 9 and 34 of Schedule 1 to the amending Act.

(2) In this section:

application day, in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:
  (a) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from the day specified in the notice—the day specified in the notice; or
  (b) if the person has not lodged such a notice—1 July 2013.

1528 Application of ban on conflicted remuneration

(1) Subject to subsections (1A) and (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or a representative of a financial services licensee, if:
  (a) the benefit is given under an arrangement entered into on or after the application day; or
  (b) the benefit is given by a platform operator.

(1A) Subject to subsection (2), Division 4 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given on or after 1 January 2021 to a financial services licensee, or a representative of a financial services licensee, if the benefit is

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given under an arrangement entered into before, on or after the application day.

(2) The regulations may prescribe circumstances in which that Division applies, or does not apply, to a benefit given to a financial services licensee or a representative of a financial services licensee.

(3) Section 1350 does not apply in relation to the operation of that Division in respect of a benefit given to a financial services licensee, or a representative of a financial services licensee.

(4) In this section:

application day:

(a) in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:

(i) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from a day specified in the notice—the day specified in the notice; or

(ii) in any other case—1 July 2013; and

(b) in relation to any other person who would be subject to an obligation or prohibition under Division 4 of Part 7.7A if it applied, means:

(i) if a notice has been lodged with ASIC in accordance with subsection 967(3) that the obligations and prohibitions imposed under Part 7.7A are to apply to the person on and from a day specified in the notice—the day specified in the notice; or

(ii) in any other case—1 July 2013.

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1529 Application of ban on other remuneration—volume-based shelf-space fees

(1) Subject to subsections (1A) and (2), Subdivision A of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given to a financial services licensee, or an RSE licensee, under an arrangement entered into on or after the application day.

(1A) Subject to subsection (2), Subdivision A of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to a benefit given on or after 1 January 2021 to a financial services licensee, or an RSE licensee, under an arrangement entered into before, on or after the application day.

(2) The regulations may prescribe circumstances in which that Subdivision applies to a benefit given to a financial services licensee, or an RSE licensee, under an arrangement entered into before the application day.

(2A) Section 1350 does not apply in relation to the operation of that Subdivision in respect of a benefit given to a financial services licensee, or an RSE licensee.

(3) In this section:

application day:

(a) in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:

(i) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from a day specified in the notice—the day specified in the notice; or

(ii) in any other case—1 July 2013; and

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(b) in relation to any other person who would be subject to an obligation or prohibition under Subdivision A of Division 5 of Part 7.7A if it applied, means:

(i) if a notice has been lodged with ASIC in accordance with subsection 967(3) that the obligations and prohibitions imposed under Part 7.7A are to apply to the person on and from the day specified in the notice—the day specified in the notice; or

(ii) in any other case—1 July 2013.

1530 Section 1350 does not apply to regulations made for the purposes of subsection 1528(2) or 1529(2)

Section 1350 does not apply in relation to regulations made for the purposes of subsection 1528(2) or 1529(2).

1531 Application of ban on other remuneration—asset-based fees on borrowed amounts

(1) Subject to subsection (1A), Subdivision B of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to asset-based fees charged on or after the application day on borrowed amounts, but only to the extent that those amounts are used or to be used to acquire financial products on or after that day.

(1A) Subdivision B of Division 5 of Part 7.7A, as inserted by item 24 of Schedule 1 to the amending Act, applies to asset-based fees charged on or after 1 January 2021 on borrowed amounts, where those amounts have been used, are used or are to be used, to any extent, to acquire financial products before, on or after the application day.

(2) Section 1350 does not apply in relation to the operation of that Subdivision in respect of an asset-based fee.

(3) In this section:

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application day, in relation to a financial services licensee or a person acting as a representative of a financial services licensee, means:

(a) if the financial services licensee has lodged notice with ASIC in accordance with subsection 967(1) that the obligations and prohibitions imposed under Part 7.7A are to apply to the licensee and persons acting as representatives of the licensee on and from the day specified in the notice—the day specified in the notice; or

(b) if the person has not lodged such a notice—1 July 2013.

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Division 2—Provisions relating to the Corporations Amendment (Financial Advice Measures) Act 2016

1531A Definitions

In this Division:

commencement day means the day on which Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* commences.

1531B Best interests obligation

The amendments made by items 12, 14A and 16 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to the provision of personal advice to a person as a retail client on or after the commencement day.

1531C Renewal notices (opt-in requirement)

(1) The amendment made by item 21 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* applies in relation to an ongoing fee arrangement for those renewal notice days for the arrangement that occur on or after the commencement day.

(2) In this item:

renewal notice day for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the commencement day.

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1531D Disclosure statements

The amendments made by items 20A, 20B and 22 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to an ongoing fee arrangement for those disclosure days for the arrangement that occur on or after the commencement day.

1531E Conflicted remuneration

The amendments made by items 23 to 35 of Schedule 1 to the *Corporations Amendment (Financial Advice Measures) Act 2016* apply in relation to a benefit if:

(a) the benefit is one to which Division 4 of Part 7.7A applies under section 1528; and

(b) the benefit is given on or after the commencement day.

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Part 10.19—Transitional provisions relating to the Corporations Amendment (Phoenixing and Other Measures) Act 2012

1532 Definition

In this Part:

amending Act means the *Corporations Amendment (Phoenixing and Other Measures) Act 2012*.

1533 Part 1 of Schedule 1 to the amending Act (winding up by ASIC)

(1) Paragraph 489EA(1)(a) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a return of particulars given to a company before, at or after the commencement of Schedule 1 to the amending Act.

(2) Subsection 489EA(2) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a review fee, if the due date for payment occurs before, on or after the day on which Schedule 1 to the amending Act commences.

(3) Subsection 489EA(3) of the *Corporations Act 2001* as amended by the amending Act applies in relation to a reinstatement that occurs before, at or after the commencement of Schedule 1 to the amending Act.

1534 Part 2 of Schedule 1 to the amending Act (publication requirements)

(1) The amendment of subsection 412(1) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a notice published after the commencement of Schedule 1 to the amending Act.

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(2) The amendment of subsection 436E(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

(3) The amendment of subsection 439A(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

(4) The amendment of subsection 446A(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution that is taken, because of section 446A of the *Corporations Act 2001*, to have been passed by a company after the commencement of Schedule 1 to the amending Act.

(5) The amendment of subsection 449C(5) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

(6) The amendment of subsection 450A(1) of the *Corporations Act 2001* made by the amending Act applies in relation to an appointment of an administrator that occurs after the commencement of Schedule 1 to the amending Act.

(7) The amendment of section 465A of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to an application made under section 459P, 462 or 464 of that Act after the commencement of Schedule 1 to the amending Act.

(8) The amendment of subsection 491(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a resolution passed after the commencement of Schedule 1 to the amending Act.

(9) The amendment of subsection 497(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in

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relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

(10) The amendment of subsection 498(3) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to an adjournment that occurs after the commencement of Schedule 1 to the amending Act.

(11) The amendment of subsection 509(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a meeting convened after the commencement of Schedule 1 to the amending Act.

(12) The amendment of subsection 568A(2) of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act applies in relation to a disclaimer of property, if the disclaimer occurs after the commencement of Schedule 1 to the amending Act.

(13) Despite the amendments of sections 589, 601AA, 601AB and 1351 of the *Corporations Act 2001* made by Part 3 of Schedule 1 to the amending Act, if, before the commencement of Schedule 1 to the amending Act, ASIC gave notice of the proposed deregistration of a company in accordance with subsection 601AA(4) or 601AB(3) of the *Corporations Act 2001*, that Act continues to apply, in relation to the deregistration of the company, as if those amendments had not been made.

1535 Part 3 of Schedule 1 to the amending Act (miscellaneous amendments)

Section 600AA of the *Corporations Act 2001* as amended by the amending Act applies in relation to an appointment, if the appointment occurs after the commencement of Schedule 1 to the amending Act.

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Part 10.20—Transitional provisions relating to the Corporations Legislation Amendment (Audit Enhancement) Act 2012

1536 Definitions

In this Part:

amending Act means the *Corporations Legislation Amendment (Audit Enhancement) Act 2012*.

commencement means the commencement of Schedule 1 to the amending Act.

1537 Application of amendments relating to annual transparency reports

The amendments made by Part 2 of Schedule 1 to the amending Act apply in relation to annual transparency reports for:

(a) the first transparency reporting year that ends after commencement (even if part of that year occurs before commencement); and

(b) all later transparency reporting years.

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Part 10.21—Transitional provision relating to the Corporations Legislation Amendment (Financial Reporting Panel) Act 2012

1538 Courts etc. may have regard to Financial Reporting Panel report

Despite the repeal of section 323EM by the *Corporations Legislation Amendment (Financial Reporting Panel) Act 2012*, that section continues to apply, in relation to a report of the Financial Reporting Panel, as if that repeal had not happened.

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Part 10.21A—Transitional provisions relating to the Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013

1538A Application of amendments relating to contributions to a fund or scheme

The amendments made by items 1, 2 and 3 of Schedule 1 to the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013* apply to contributions paid or payable on or after 1 July 2013.

1538B Application of amendments relating to Statements of Advice

The amendments made by items 7 and 8 of Schedule 1 to the *Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Act 2013* apply in relation to personal advice given on or after the commencement of those items.

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Part 10.22—Transitional provisions relating to the Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Act 2012

1539 Application of section 1017BA (Obligation to make product dashboard publicly available)

Section 1017BA applies:

(a) to the extent that it relates to MySuper products—on and after 1 July 2013; and

(b) to the extent that it relates to choice products—on and after 1 July 2014.

1540 Application of subsection 1017BB(1) (Obligation to make information relating to investment of assets of superannuation entities publicly available)

Subsection 1017BB(1) applies in relation to the reporting day that is 31 December 2019 and to later reporting days.

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Part 10.22A—Transitional provisions relating to the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019

1541A Application of amendments relating to portfolio holdings disclosure

The amendments of section 1017BB made by Schedule 6 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019* apply in relation to the reporting day that is 31 December 2019 and to later reporting days.

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Part 10.23—Transitional provisions relating to the Clean Energy Legislation (Carbon Tax Repeal) Act 2014

1542 Definition

In this Part:

designated carbon unit day has the same meaning as in Part 3 of Schedule 1 to the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*.

1543 Transitional—carbon units issued before the designated carbon unit day

Despite the amendments of this Act made by Schedule 1 to the *Clean Energy Legislation (Carbon Tax Repeal) Act 2014*, this Act continues to apply, in relation to carbon units issued before the designated carbon unit day, as if those amendments had not been made.

1544 Transitional—variation of conditions on Australian financial services licences

Scope

(1) This section applies if, as at the end of the designated carbon unit day, an Australian financial services licence is subject to a condition that authorises the financial services licensee to provide financial services in relation to financial products that are carbon units.

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Variation

(2) After that day, subsections 914A(3), (4) and (5) do not apply in relation to a variation of the condition, if the only effect of the variation is to remove the authorisation to provide financial services in relation to financial products that are carbon units.

1545 Transitional—immediate cancellation of Australian financial services licences

Section 915B applies, on and after the designated carbon unit day, as if the following subsection was added at the end of the section:

Licence relating to carbon units

(5) ASIC may cancel an Australian financial services licence held by a person, by giving written notice to the person, if the licence only authorises the person to provide financial services that relate to financial products that are carbon units.

1546 Transitional—statements of reasons for cancellation of Australian financial services licences

Section 915G does not apply to a cancellation under subsection 915B(5) (as inserted by section 1545).

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Part 10.23A—Transitional provisions relating to the Corporations Amendment (Professional Standards of Financial Advisers) Act 2017

Division 1—Definitions

1546A Definitions

In this Part:

amending Act means the *Corporations Amendment (Professional Standards of Financial Advisers) Act 2017*.

commencement means the start of the day Part 1 of Schedule 1 to the amending Act commences.

education and training standards has the meaning given by section 921B.

existing provider means:

(a) a person who:

(i) is a relevant provider at any time between 1 January 2016 and 1 January 2019 (except a person who has ceased to be a relevant provider under subsection 1546B(4) or (5)); and

(ii) is not banned or disqualified under Division 8 of Part 7.6 on 1 January 2019; and

(iii) is not, on that day, subject to an enforceable undertaking under section 93AA of the ASIC Act to not provide financial product advice or a financial service; or

(b) a person who:

(i) at any time between 1 January 2016 and 1 January 2019, provides personal advice in a foreign country to retail clients in relation to relevant financial products; and

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(ii) is not prohibited under the law of the foreign country from providing such advice on 1 January 2019.

foreign country includes a region, where:

(a) the region is a colony, territory or protectorate of a foreign country; or

(b) the region is part of a foreign country; or

(c) the region is under the protection of a foreign country; or

(d) a foreign country exercises jurisdiction or control over the region; or

(e) a foreign country is responsible for the region's international relations.

relevant financial products has the meaning given by section 910A.

relevant provider has the meaning given by section 910A.

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Division 2—Application and transitional provisions

1546B Existing providers to meet certain education and training standards

Completion of qualifications

(1) An existing provider must have done either of the following by 1 January 2026:
   (a) met the education and training standard in subsection 921B(2);
   (b) completed one or more courses determined by the standards body to give the provider qualifications equivalent to that standard.

Note: The standard in subsection 921B(2) is that a person has completed a bachelor or higher degree, or equivalent qualification, approved by the standards body, or a foreign qualification approved by the standards body.

(2) To avoid doubt, an existing provider may meet the education and training standard in subsection 921B(2), or complete one or more courses in accordance with paragraph (1)(b) of this section, before this section commences.

Exam

(3) An existing provider must have met the education and training standard in subsection 921B(3) before 1 January 2022.

Note 1: The standard in subsection 921B(3) is that a person has passed an exam approved by the standards body.

Note 2: ASIC must be notified when existing providers have passed the exam (see section 1546Y).

Note 3: An existing provider is not required to meet the standard in subsection 921B(4), which is that a person has undertaken at least a year of work and training that meets the requirements set by the standards body.

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Failing to meet the education and training standards

(4) If, at the start of 1 January 2026, a person who is an existing provider, and a relevant provider at that time, fails to comply with subsection (1), the person is taken for the purposes of this Act, after that time, to have ceased to be a relevant provider.

(5) If, at the start of 1 January 2022, a person who is an existing provider, and a relevant provider at that time, fails to comply with subsection (3), the person is taken for the purposes of this Act, after that time, to have ceased to be a relevant provider.

(6) Subsections (4) and (5) do not prevent the person again becoming a relevant provider.

Standards body may determine courses

(7) The standards body may, by legislative instrument, determine courses for the purposes of paragraph (1)(b).

1546C Application of limitation on authorisation to provide personal advice and offence

Limitation on authorisation to provide personal advice

(1) Section 921C, as inserted by the amending Act, applies in relation to:
   (a) any Australian financial services licence granted on or after 1 January 2019 to a person who is not an existing provider; and
   (b) any authorisation given on or after that day to a person who is not an existing provider.

Note: Section 921C provides that a person cannot be granted a licence, or be authorised, to provide certain financial advice unless the person meets certain conditions.

(2) Section 921C, as inserted by the amending Act, applies, on and after 1 January 2026, in relation to a person who ceases to be a relevant provider under subsection 1546B(4).

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(3) Section 921C, as inserted by the amending Act, applies, on and after 1 January 2022, in relation to a person who ceases to be a relevant provider under subsection 1546B(5).

(4) Section 921C, as inserted by the amending Act, does not apply in relation to a person who is an existing provider while the person continues to be a relevant provider.

Restriction on use of terms "financial adviser" and "financial planner"

(5) The following provisions, as inserted by the amending Act, apply on and after 1 January 2019:
   (a) section 923C;
   (b) items 269AAA and 269AAB of the table in Schedule 3.

Note: Those provisions relate to offences for using the terms "financial adviser" and "financial planner".

1546D Application of requirements relating to provisional relevant providers

Section 921F, as inserted by the amending Act, applies in relation to any authorisation given on or after 1 January 2019 to a person who is not an existing provider.

Note: Section 921F sets out the requirements in relation to a person who is a provisional relevant provider.

1546E Application of continuing professional development standard for relevant providers

(1) Sections 921D and 922HA, as inserted by the amending Act, apply on and after 1 January 2019.

Note: Section 921D provides that certain relevant providers must meet the continuing professional development standard. Section 922HA requires ASIC to be notified of the day on which a financial services licensee's CPD year is to begin.

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Section 1546E

(2) Sections 922HB and 922HC, as inserted by the amending Act, apply in relation to any CPD year of a financial services licensee that begins on or after 1 January 2019.

Note: Section 922HB requires ASIC to be notified if relevant providers do not comply with the continuing professional development standard. Section 922HC requires a financial services licensee to retain evidence of the continuing professional development of relevant providers.

(3) Section 922N, as inserted by the amending Act, applies in relation to a request made of a person on or after 1 January 2019 for the purposes of subparagraph 922N(1)(c)(iii).

Note: Among other things, section 922N allows a financial services licensee to ask a person to provide information relating to whether the licensee must lodge a notice under section 922HB.

(4) Subsection (5) applies if:
- (a) the first CPD year of a financial services licensee commences after 1 January 2019; and
- (b) before the start of the licensee's first CPD year:
  - (i) the licensee is a relevant provider; or
  - (ii) a relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products.

(5) Sections 922HB, 922HC and 922Q, as inserted by the amending Act, apply as if a reference in those sections to a financial services licensee's CPD year included a reference to the period:
- (a) beginning on the later of 1 January 2019 and:
  - (i) if subparagraph (4)(b)(i) applies—the day the licensee is granted an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products; and
  - (ii) if subparagraph (4)(b)(ii) applies—the first day the relevant provider is authorised to provide personal advice to retail clients, on behalf of the licensee, in relation to relevant financial products; and
- (b) ending on the day before the licensee's first CPD year.

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Note 1: Among other things, section 922Q requires failures of relevant providers to comply with the continuing education standard to be entered on the Register.

Note 2: The standards body may, under subparagraph 921U(2)(a)(iv), set requirements for continuing professional development in relation to a period mentioned in subsection (5) of this section, and, in one or more determinations made under subsection 921U(3), modify the operation of a provision in Part 7.6 in relation to such a period.

1546F Application of Code of Ethics to relevant providers

Sections 921E and 922HD, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Section 921E requires a relevant provider to comply with the Code of Ethics. Section 922HD requires ASIC to be notified of failures to comply with the Code of Ethics.

1546G Application of obligations in relation to compliance schemes

(1) Section 921H, as inserted by the amending Act, applies on and after 15 November 2019:

(a) in relation to a person who becomes a financial services licensee on or after that day; and

(b) for a person who becomes a financial services licensee before that day:

(i) in relation to a person who becomes a relevant provider on or after that day; and

(ii) in relation to a person who becomes a relevant provider before that day as if subsection 921H(2) required the scheme to cover the relevant provider by 1 January 2020.

Note: Section 921H requires a financial services licensee to ensure that a compliance scheme covers each of its relevant providers.

(2) Section 921J, as inserted by the amending Act, applies on and after 15 November 2019.

Note: Section 921J sets out when a compliance scheme ***covers*** a relevant provider.

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(3) Sections 921K, 921Q, 921R and 921T, as inserted by the amending Act, apply on and after the day this section commences.

Note: Section 921K provides that a monitoring body for a compliance scheme may apply to ASIC for approval of the scheme. Section 921Q provides that ASIC may request information about a compliance scheme from the monitoring body for the scheme. Section 921R provides that a monitoring body may propose to modify a scheme in certain circumstances. Section 921T requires a monitoring body to notify ASIC of certain reductions in the body's resources or expertise.

(4) Sections 921L, 921M, 921N, 921P and 921S, as inserted by the amending Act, apply on and after 1 January 2020.

Note: Sections 921L to 921N include provisions about investigations by monitoring bodies. Section 921P provides for compliance schemes to be made publicly available. Section 921S provides for the review of compliance schemes.

(5) Paragraphs 922E(1)(i) and 922F(1)(n), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(i) and 922F(1)(n) require notices lodged under section 922D in relation to a relevant provider to include the name of the compliance scheme that is to cover the relevant provider.

1546H Application of obligation for standards body to publish annual report

(1) Section 921ZC, as inserted by the amending Act, applies on and after 1 July 2017.

(2) If the declaration of a body corporate to be the standards body under section 921X takes effect at a time during a financial year, the first annual report published by the standards body must cover the period beginning at that time and ending at the end of the next financial year as if that period were a financial year.

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1546J Application of obligation to notify ASIC about a person who becomes a relevant provider

Sections 922D, 922E and 922F, as inserted by the amending Act, apply (subject to subsection 1546G(5) and sections 1546K to 1546N) in relation to a person who becomes a relevant provider if:

(a) the person becomes a relevant provider after commencement; or

(b) both of the following apply:

(i) the person becomes a relevant provider before commencement;

(ii) immediately before commencement, a notice has not been lodged in accordance with section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

Note: Section 922D requires ASIC to be notified if a person becomes a relevant provider.

1546K Application of requirements relating to information about relevant provider's principal place of business

Paragraphs 922E(1)(b) and 922F(1)(b), as inserted by the amending Act, apply on and after 15 November 2019 in relation to notices lodged under section 922D on or after that day.

Note: Paragraphs 922E(1)(b) and 922F(1)(b) require notices lodged under section 922D in relation to a relevant provider to include the address of the relevant provider's principal place of business.

1546L Application of requirements relating to information about membership of professional associations where relevant provider is licensee

Section 922E, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922E(1)(h) were replaced with the following:

(h) information about both of the following:

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(i) the educational qualifications of, and any training courses completed by, the relevant provider;

(ii) the relevant provider's membership (if any) of professional bodies;

to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

1546M Application of requirements relating to information about membership of professional associations where relevant provider is not licensee

Section 922F, as inserted by the amending Act, applies until the start of 15 November 2019 as if paragraph 922F(1)(m) were replaced with the following:

(m) information about both of the following:

(i) the educational qualifications of, and any training courses completed by, the relevant provider;

(ii) the relevant provider's membership (if any) of professional bodies;

to the extent that the qualifications, training courses or memberships are relevant to the provision of financial services (and if the relevant provider has more than 5 memberships, the 5 memberships that the person lodging the notice believes, on reasonable grounds, are most relevant to the provision of financial services);

1546N Application of requirements relating to information about provisional relevant provider's work and training

Paragraphs 922F(1)(f) and (g), as inserted by the amending Act, apply in relation to notices lodged under section 922D on or after 1 January 2019.

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Note: Paragraphs 922F(1)(f) and (g) require notices lodged under section 922D to include information in relation to provisional relevant providers and their work and training.

1546P Application of ongoing obligation to notify ASIC when there is a change in a matter for a relevant provider

Paragraph 922H(1)(a), as inserted by the amending Act, applies in relation to a change in a matter if:

(a) the change occurs after commencement; or

(b) both of the following apply:

(i) the change occurs before commencement;

(ii) immediately before commencement, a notice has not been lodged in accordance with section 922H, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

1546Q Application of obligation to notify ASIC about a person who starts to have control of a body corporate licensee

Section 922J, as inserted by the amending Act, applies in relation to a person who starts to have control of a body corporate licensee if:

(a) the person starts to have control of the licensee after commencement; or

(b) both of the following apply:

(i) the person starts to have control of the licensee before commencement;

(ii) immediately before commencement, a notice has not been lodged in accordance with section 922J, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

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1546R Application of obligation to notify ASIC about a person who ceases to have control of a body corporate licensee

Section 922K, as inserted by the amending Act, applies in relation to a person who ceases to have control of a body corporate licensee if:

(a) the person ceases to have control of the licensee after commencement; or

(b) both of the following apply:

(i) the person ceases to have control of the licensee before commencement;

(ii) immediately before commencement, a notice has not been lodged in accordance with section 922K, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

1546S Application of obligation for relevant providers to provide information to financial services licensees

Section 922N, as inserted by the amending Act, applies in relation to a request made of a person if:

(a) both of the following apply:

(i) the request is made of the person for the purposes of subparagraph 922N(1)(c)(i) or (ii);

(ii) the request is made after commencement (whether the person becomes a relevant provider before or after commencement); or

(b) both of the following apply:

(i) the request (as mentioned in paragraph 922N(1)(c), as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*) is made before commencement;

(ii) immediately before commencement, the person has not provided the information requested.

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1546T Application of requirements relating to Register of Relevant Providers

(1) Paragraphs 922Q(2)(b), (r), and (v), as inserted by the amending Act, apply on and after 1 January 2020.

(2) Subparagraph 922Q(2)(j)(ii) and paragraph 922Q(2)(m), as inserted by the amending Act, apply on and after 1 January 2019.

(3) Section 922Q, as inserted by the amending Act, applies until the start of 1 January 2020 as if subparagraph 922Q(2)(u)(ii) were replaced with the following:

(ii) the relevant provider's membership (if any) of professional associations, to the extent that the memberships are relevant to the provision of financial services;

(4) Otherwise, sections 922Q and 922S, as inserted by the amending Act, apply on and after commencement.

1546U Relevant provider numbers given before commencement

For the purposes of this Act, a number given by ASIC to a person in accordance with regulation 7.6.06A of the *Corporations Regulations 2001* is taken to have been given in accordance with section 922R of this Act, as inserted by the amending Act.

1546V Continuation of Register of Relevant Providers

The repeal of regulation 7.6.06B of the *Corporations Regulations 2001* by the *Corporations Amendment (Professional Standards of Financial Advisers) Regulations 2017* does not affect the continuity of the register of relevant providers established under that regulation.

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Division 3—Transitional notices

1546W Obligation to notify ASIC of certain information

(1) A notice must be lodged under this section, in the prescribed form, if, before 15 November 2019, a notice was lodged in relation to a relevant provider under:
  (a) section 922D, as inserted by the amending Act; or
  (b) section 922D, as notionally inserted into this Act by Schedule 8D to the *Corporations Regulations 2001*.

(2) The notice must include:
  (a) the address of the relevant provider's principal place of business; and
  (b) the name of the compliance scheme that is to cover the relevant provider.

(3) The notice must be lodged before 1 January 2020 by:
  (a) if the relevant provider is a financial services licensee—the licensee; or
  (b) otherwise—the financial services licensee on whose behalf the relevant provider is authorised to provide personal advice to retail clients in relation to relevant financial products.

(4) Subsection 921J(2) applies, subject to this section, as if the reference in that subsection to section 922D included a reference to this section.

1546X Obligation to notify ASIC of CPD year

(1) A notice must be lodged under this section, in the prescribed form, if, before 1 January 2019, ASIC granted an applicant an Australian financial services licence that covers the provision of personal advice to retail clients in relation to relevant financial products.

(2) The notice must include the day of the year on which the relevant financial services licensee's CPD year begins.

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(3) The notice must be lodged by the licensee before 1 January 2019.

(4) Subsection 922HA(3) applies as if a reference in that subsection to subsection 922HA(1) or (3) included a reference to this section.

1546Y Obligation to notify ASIC when exams passed

(1) A notice must be lodged under this section, in the prescribed form, if an existing provider passes an exam for the purposes of complying with subsection 1546B(3).

(2) The notice must state that the existing provider has passed the exam.

(3) The notice must be lodged by a financial services licensee within 30 business days of the financial services licensee becoming aware that the existing provider has passed the exam.

1546ZA Offence for failing to lodge transitional notices

Section 922M applies as if a reference in that section to a notice provision included a reference to a notice given under this Division.

Note: Section 922M provides that a person commits an offence if a person does not lodge certain notices.

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Division 4—Review

1546ZB Review

The Minister must cause a review of Divisions 8A, 8B and 8C of Part 7.6, as inserted by the amending Act, to be commenced before 31 December 2026.

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Part 10.24—Transitional provisions relating to the Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014

1547 Definitions

In this Part:

amending Act means the *Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2014*.

1548 Application of amendments relating to calling of general meetings

The amendments of section 249D made by Schedule 1 to the amending Act do not apply in relation to a request made under that section before the commencement of that Schedule.

1549 Application of amendments relating to directors' reports for listed companies

The amendments of section 300A made by Schedule 1 to the amending Act apply in relation to directors' reports for financial years ending on or after the commencement of that Schedule.

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Part 10.24A—Transitional provisions relating to the Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017

1549A Definitions

In this Part:

amending Act means the *Corporations Amendment (Life Insurance Remuneration Arrangements) Act 2017*.

commencement day means the day on which Schedule 1 to the amending Act commences.

1549B Applications of amendments relating to life risk insurance products

(1) Subject to subsections (2), (3) and (4), the amendments made by Schedule 1 to the amending Act apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, under an arrangement entered into before, on or after the commencement day.

(2) The amendments made by Schedule 1 to the amending Act do not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, in relation to a life risk insurance product if:

(a) the life risk insurance product is issued before the commencement day; or

(b) the application for the issue of the life risk insurance product is made before the commencement day and the product is issued within 3 months after the commencement day.

Note: This means that if a benefit is given in relation to a group of life risk insurance products, some of which were issued before the

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commencement day and some after, the products issued before the commencement day, or in circumstances covered by paragraph (2)(b), would be ignored for the purposes of applying the amendments.

(3) The regulations may prescribe circumstances in which the amendments made by Schedule 1 to the amending Act apply, or do not apply, to a benefit given to a financial services licensee or a representative of a financial services licensee.

(4) Despite any other provision of this section or the regulations, the amendments made by Schedule 1 to the amending Act do not apply to a benefit given to a financial services licensee, or a representative of a financial services licensee, to the extent that the operation of those amendments would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph of the Constitution).

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Part 10.25—Transitional provisions relating to the Insolvency Practice Schedule (Corporations)

Division 1—Introduction

1550 Simplified outline of this Part

This Part deals with the way this Act will apply when the provisions of the *Insolvency Law Reform Act 2016* begin to operate.

Application of Part 2 of the Insolvency Practice Schedule (Corporations)

A person registered as a liquidator before the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue to be registered and must comply with the requirements and duties under Part 2 of the Insolvency Practice Schedule (Corporations).

Application of Part 3 of the Insolvency Practice Schedule (Corporations)

Part 3 of the Insolvency Practice Schedule (Corporations) will apply to an external administration that starts on or after the commencement of Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* and to most ongoing administrations (but generally only in relation to new events).

Proceedings before the Court or the Administrative Appeals Tribunal

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Proceedings already begun in the Court or the Administrative Appeals Tribunal before the commencement of the amendments made by Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* will continue under the old Act. Orders of the Court under the old Act continue to have effect.

Regulations

Regulations may be made to deal with other transitional matters.

1551 Definitions

In this Part:

commencement day means the day on which Part 1 of Schedule 2 to the *Insolvency Law Reform Act 2016* commences.

Insolvency Practice Schedule (Corporations) means Schedule 2 to this Act, and includes rules made under section 105-1 of that Schedule.

make, in relation to an order that is a direction, includes give.

new external administration of a company means an external administration of a company that starts on or after the commencement day.

old Act means the *Corporations Act 2001*, as in force immediately before the commencement day and includes the old regulations.

old Act registrant has the meaning given by subsection 1553(4).

old Act registration day, in relation to a person, has the meaning given by subsection 1555(2).

old regulations means the *Corporations Regulations 2001*, as in force immediately before the commencement day.

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ongoing external administration of a company means an external administration of a company that started before the commencement day and ends after that day.

order includes a direction.

registered: a person is ***registered*** as a liquidator, or as a liquidator of a specified body corporate, at a particular time in the circumstances set out in subsection 1552(2).

Register of Liquidators means the Register of Liquidators established and maintained under section 15-1 of the Insolvency Practice Schedule (Corporations).

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Division 2—Application of Part 2 of the Insolvency Practice Schedule (Corporations) and related consequential amendments

Subdivision A—Registering liquidators

1552 Applications for registration under the old Act

(1) If, before the commencement day:
  (a) a person has applied for registration as a liquidator, or as a liquidator of a specified body corporate, under section 1279 of the old Act; and
  (b) the person's application has not been refused; and
  (c) the person is not registered before the commencement day as a liquidator, or as a liquidator of a specified body corporate;

the application is taken never to have been made and ASIC must refund any fee paid in relation to the application.

(2) A person is ***registered*** as a liquidator, or as a liquidator of a specified body corporate, at a particular time if:
  (a) a certificate of registration as a liquidator or as a liquidator of a specified body corporate has been issued to the person under subsection 1282(6) of the old Act before that time; and
  (b) the day specified in the certificate as the day on which the registration would begin occurs before the day on which that time occurs.

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1553 Persons registered under the old Act continue to be registered under the Insolvency Practice Schedule (Corporations)

Person registered under the old Act immediately before the commencement day

(1) If a person is registered as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, on the commencement day the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations).

Person registered but suspended under the old Act before the commencement day

(2) If:
  (a) a person is registered as a liquidator, or as a liquidator of a specified body corporate, before the commencement day; and
  (b) that person's registration is suspended before the commencement day; and
  (c) the period of the suspension does not expire before the commencement day;

the person is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) on the commencement day, but the person's registration is taken to be suspended under the Insolvency Practice Schedule (Corporations) for a period that ends when the period of the suspension under the old Act would have ended.

Note: The old Act registrant could apply under Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) to have the suspension lifted or shortened.

Circumstances in which person not taken to be registered

(3) Despite subsections (1) and (2), a person mentioned in one of those subsections is not taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule

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(Corporations) on the commencement day if, at the beginning of that day:

(a) the person is an insolvent under administration; or

(b) the person is dead.

*Meaning of **old Act registrant***

(4) A person who is taken to be registered under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) because of this section is referred to as an ***old Act registrant***.

1554 Old Act registrant's details

(1) ASIC must enter on the Register of Liquidators, in relation to each old Act registrant, the details prescribed under subsection 15-1(3) of the Insolvency Practice Schedule (Corporations) that relate to that old Act registrant.

(2) If ASIC holds information in relation to an old Act registrant before the commencement day, ASIC may use and disclose the information for the purposes of establishing and maintaining the Register of Liquidators.

1555 Period of old Act registrant's registration under the Insolvency Practice Schedule (Corporations)

(1) The registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) is for a period ending on the first anniversary of the old Act registration day for that person that occurs on or after the commencement day.

(2) The ***old Act registration day*** in relation to a person who was registered (or but for a suspension would have been registered) as a liquidator, or as a liquidator of a specified body corporate, immediately before the commencement day, is the day on which that registration began.

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(3) To avoid doubt, the registration of an old Act registrant under the Insolvency Practice Schedule (Corporations) may be renewed in accordance with that Schedule.

1556 Conditions for old Act registrants—conditions under the Insolvency Practice Schedule (Corporations)

To avoid doubt, a condition may be imposed on an old Act registrant (or on a class that includes an old Act registrant) under the Insolvency Practice Schedule (Corporations) in accordance with that Schedule.

1557 Current conditions for old Act registrants—undertakings under the old Act

Undertakings under the old Act

(1) If:
  (a) an old Act registrant was required to give an undertaking under paragraph 1292(9)(b) or (c) of the old Act; and
  (b) that requirement is still in force immediately before the commencement day;

it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she gives and complies with the undertaking.

(2) A condition imposed under subsection (1) is a ***current condition*** imposed on the old Act registrant.

Varying etc. conditions of registration

(3) Subdivision C of Division 20 of the Insolvency Practice Schedule (Corporations) applies to a condition imposed under subsection (1) in the same way as it applies to a condition imposed by a committee under the Insolvency Practice Schedule (Corporations).

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1558 Current conditions for old Act registrants—undertakings under the ASIC Act

Undertakings under the ASIC Act

(1) If:

(a) before the commencement day, an old Act registrant gives ASIC an undertaking under section 93AA of the ASIC Act to engage in, or refrain from engaging in, conduct as a liquidator, or as a liquidator of a specified body corporate; and

(b) that undertaking is in force immediately before the commencement day;

it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she comply with the undertaking.

(2) A condition imposed under subsection (1) is a ***current condition*** imposed on the old Act registrant.

Enforcement of undertaking under the ASIC Act not affected

(3) Nothing in this section affects the application of section 93AA of the ASIC Act in relation to a breach of an undertaking accepted under that section.

1559 Old Act registrant registered as liquidator of a specified body corporate

Old Act registrant may not accept further appointments

(1) If an old Act registrant was registered as a liquidator of a specified body corporate immediately before the commencement day, it is a condition of the old Act registrant's registration under the Insolvency Practice Schedule (Corporations) that he or she must not accept any further appointments as external administrator of a company.

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(2) That condition is a ***current condition*** imposed on the old Act registrant.

Registration cancelled once current administrations completed

(3) On the day immediately after the external administration of the body corporate in relation to which the old Act registrant was registered ends:
   (a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and
   (b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

Old Act registrant applies for registration under section 20-5 of the Insolvency Practice Schedule (Corporations)

(4) To avoid doubt, if the old Act registrant applies under section 20-5 of the Insolvency Practice Schedule (Corporations) to be registered as a liquidator, and is registered in response to that application, this section does not affect that registration.

1560 Old Act registrant chooses not to renew

Application of this section

(1) This section applies if an old Act registrant does not apply for renewal of his or her registration under the Insolvency Practice Schedule (Corporations) before his or her period of registration under subsection 1555(1) ends (the ***expiry day***).

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Old Act registrant may not accept further appointments after registration expires

(2) The old Act registrant is taken to be registered as a liquidator under Subdivision B of Division 20 of the Insolvency Practice Schedule (Corporations) after the expiry day, subject to a condition that he or she must not accept any further appointments as external administrator of a company.

(3) That condition is a ***current condition*** imposed on the old Act registrant.

Registration cancelled once current administrations completed

(4) On the day immediately after all of the external administrations of companies that the old Act registrant is entitled to carry out in accordance with his or her current conditions ends:
   (a) the old Act registrant is taken to have lodged a request in the approved form in accordance with paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations) to have his or her registration as a liquidator cancelled; and
   (b) ASIC is taken to have cancelled the registration under subsection 40-30(1) of the Insolvency Practice Schedule (Corporations).

Subdivision B—Annual returns and statements

1561 Application of obligation to lodge annual liquidator returns

Application of the Insolvency Practice Schedule (Corporations)

(1) Section 30-1 of the Insolvency Practice Schedule (Corporations) applies in relation to liquidator return years that begin on or after the commencement day.

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*Meaning of **liquidator return year***

(2) In working out the ***liquidator return year*** for an old Act registrant under subsection 30-1(2) of the Insolvency Practice Schedule (Corporations), "the day on which that registration first began", means "the old Act registration day for that person (as defined for the purpose of Part 10.25 of this Act)".

Annual statements under the old Act

(3) The repeal of section 1288 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to liquidator return years beginning on or after the commencement day.

Subdivision C—Notice requirements

1562 Notice of significant events

(1) If:
  (a) within 2 years before the commencement day, an event of a kind mentioned in subsection 35-1(1) of the Insolvency Practice Schedule (Corporations) occurs in relation to an old Act registrant; and
  (b) the old Act registrant has not already informed ASIC in writing of the event before the commencement day;

the old Act registrant must lodge with ASIC a notice, in the approved form, relating to the event.

(2) The notice must be lodged:
  (a) if the old Act registrant is or could reasonably be expected to be aware of the event on or before the commencement day—within one month after the commencement day; or
  (b) if paragraph (a) is not satisfied, but the old Act registrant is or could reasonably be expected to be aware of the event after the commencement day—within one month after the first day on which the old Act registrant is or could reasonably be expected to be aware of the event.

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(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1) within the period specified in subsection (2); and
  (b) the person intentionally or recklessly fails to comply with the requirement within that period.

Penalty: 100 penalty units.

Subdivision D—Cancellation by ASIC under the old Act

1563 Request for cancellation made before the commencement day

(1) This section applies if:
  (a) before the commencement day, a person requests ASIC under section 1290 of the old Act to cancel the person's registration as a liquidator or as a liquidator of a specified body corporate; and
  (b) no decision by ASIC to cancel that registration has come into effect before the commencement day.

(2) ASIC may not cancel the registration under section 1290 of the old Act.

(3) However, for the purposes of paragraph 40-30(1)(f) of the Insolvency Practice Schedule (Corporations), the person is taken to have lodged a request with ASIC in the approved form to have the person's registration as a liquidator under the Insolvency Practice Schedule (Corporations) cancelled.

(4) The amendments of section 1290 made by Schedule 2 to the *Insolvency Law Reform Act 2016* apply in relation to requests made to ASIC under section 1290 on or after the commencement day.

1564 Decision to cancel registration made before the commencement day

(1) This section applies if:

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(a) before the commencement day, a decision is made by ASIC under section 1290A of the old Act to cancel the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and

(b) the decision has not come into effect before the commencement day.

(2) On the commencement day, ASIC is taken to have made a decision under section 40-30 of the Insolvency Practice Schedule (Corporations) to cancel the registration of the person as a liquidator.

(3) Section 40-35 of the Insolvency Practice Schedule (Corporations) applies in relation to the decision as if the decision were made on the commencement day.

Subdivision E—Disciplinary proceedings before the Board

1565 Matters not dealt with by the Board before the commencement day

(1) If:

(a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and

(b) the Board has not, before the commencement day:

(i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7) of the old Act; or

(ii) dealt with the person under subsection 1292(9) of the old Act in response to the application; or

(iii) held a conference in relation to the application under section 1294A;

the Board must cease its consideration of the matter on the commencement day without making such an order, dealing with

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the person under subsection 1292(9) of the old Act or convening such a conference under section 1294A.

(2) If:
  (a) the Board has ceased to consider a matter because of subsection (1); and
  (b) a conference has been convened in relation to the matter under subsection 1294A(1), but not yet held;

the Chairperson of the Board need not give notice of the conference under subsection 1294A(3) and the conference need not be held.

(3) The fact that the Board has ceased to consider the matter does not preclude the matter, or any aspect of the matter, from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

(4) To avoid doubt, nothing in this section affects any right or obligation that any person has before the commencement day, including any right to review, in relation to the application or the consideration of the matter by the Board.

1566 Matters dealt with by the Board before the commencement day

(1) This section applies if:
  (a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and
  (b) before the commencement day, the Board has:
    (i) made an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or
    (ii) dealt with the person under subsection 1292(9) in response to the application; or
    (iii) held a conference in relation to the application under section 1294A.

(2) The old Act continues to apply in relation to:

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(a) the decision to:
  (i) make the order under subsection 1292(2), (3), (4), (5), (6) or (7); or
  (ii) deal with the matter under subsection 1292(9) in response to the application; or
  (iii) convene the conference under section 1294A; and
(b) a decision made at the conference held under section 1294A; and
(c) any process ordered under subsection 1294A(4) at the conference held under that section; and
(d) the matter in relation to which the conference was held under section 1294A before the commencement day.

(3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

1567 Matters which the Board refuses to deal with before the commencement day

(1) This section applies if:
  (a) an application has been made under section 1292 of the old Act in relation to a person before the commencement day; and
  (b) before the commencement day, the Board has decided to refuse to:
    (i) make an order in response to the application under subsection 1292(2), (3), (4), (5), (6) or (7); or
    (ii) deal with the person under subsection 1292(9) in response to the application; or
    (iii) convene a conference in relation to the application under section 1294A.

(2) The old Act continues to apply in relation to the decision to refuse to make the order under subsection 1292(2), (3), (4), (5), (6) or (7),

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deal with the matter under subsection 1292(9) in response to the application or convene a conference under section 1294A.

(3) The same matter may not be dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

1568 Board considering terminating suspension before the commencement day

(1) If:
  (a) an application has been made under section 1295 of the old Act to terminate the suspension of the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and
  (b) the Board has neither refused the application nor, by order, terminated the suspension before the commencement day;

the Board must cease its consideration of the matter on the commencement day without making such an order.

(2) If:
  (a) the Board, under section 1295 of the old Act, is considering of its own motion whether to terminate the suspension of the registration of a person as a liquidator, or as a liquidator of a specified body corporate; and
  (b) the Board has not, by order, terminated the suspension before the commencement day;

the Board must cease its consideration of the matter on the commencement day without making such an order.

(3) The fact that the Board has ceased to consider the matter does not preclude the matter from being dealt with under Division 40 of the Insolvency Practice Schedule (Corporations).

1569 Sharing information between the Board and committees

(1) The Chair of a committee convened under Part 2 of the Insolvency Practice Schedule (Corporations) may request the Chairperson of

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the Board (the ***Board Chair***) to give the committee any information or document in the Board's possession or control in relation to a person who:

(a) is, or has at any time been, a registered liquidator under the Insolvency Practice Schedule (Corporations); or

(b) has at any time been registered as a liquidator, or as a liquidator of a specified body corporate, under the old Act.

(2) The Board Chair must comply with the request within 10 business days.

Subdivision F—Suspension, cancellation and disciplinary action under the Insolvency Practice Schedule (Corporations)

1570 Direction to comply with requirement to lodge documents etc.

Subdivision B of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a requirement mentioned in that Subdivision to lodge a document or give information or a document arises before, on or after the commencement day.

1571 Suspension by ASIC under the Insolvency Practice Schedule (Corporations)

(1) Section 40-25 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-25(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-25(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.

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1572 Cancellation by ASIC under the Insolvency Practice Schedule (Corporations)

(1) Section 40-30 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-30(1) occurs before, on or after the commencement day.

(2) However, paragraph 40-30(1)(c) of the Insolvency Practice Schedule (Corporations) does not apply in relation to the cancellation of the registration of a person as a trustee under the *Bankruptcy Act 1966*, as in force at any time before the commencement day.

1573 Show-cause notice under the Insolvency Practice Schedule (Corporations)

Subdivision E of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not an event mentioned in subsection 40-40(1) of the Schedule occurs before, on or after the commencement day.

1574 Lifting or shortening suspension under the Insolvency Practice Schedule (Corporations)

Subdivision F of Division 40 of the Insolvency Practice Schedule (Corporations) applies whether or not a person's registration as a liquidator is suspended under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

1575 Action initiated by industry bodies

Section 40-100 of the Insolvency Practice Schedule (Corporations) applies, whether or not the grounds to which a notice under that section relates arise because of an action, a failure to act or circumstance that occurs before, on or after the commencement day.

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Subdivision G—Powers of the Court and other bodies

1576 Application of court powers under section 45-1 of the Insolvency Practice Schedule (Corporations)

The Court may exercise its powers to make an order under section 45-1 of the Insolvency Practice Schedule (Corporations), whether or not the action or failure to act in relation to which, or because of which, the order is made occurs before, on or after the commencement day.

1577 Powers to deal with registration under the old Act on or after the commencement day

(1) This section applies if, as a result of the continued application of the old Act on or after the commencement day, a relevant body may decide to register a person, or suspend or cancel the registration of a person, as a liquidator or as a liquidator of a specified body corporate under the old Act.

(2) A relevant body may instead:
  (a) register the person, or suspend or cancel the registration of the person, as a liquidator under the Insolvency Practice Schedule (Corporations); and
  (b) by order, modify the application of this Part or the Insolvency Practice Schedule (Corporations) in relation to the registration, or the suspension or cancellation of the registration, of the person as a liquidator under the Insolvency Practice Schedule (Corporations).

(3) In this section:

relevant body means ASIC, the Administrative Appeals Tribunal, the Court or any other body.

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Division 3—Application of Part 3 of the Insolvency Practice Schedule (Corporations) and related consequential amendments

Subdivision A—Introduction

1578 Simplified outline of this Division

This Division deals with the way this Act will apply to external administrations when the provisions of the Insolvency Practice Schedule (Corporations) begin to operate.

New external administrations

The Insolvency Practice Schedule (Corporations) applies to external administrations that start on or after the commencement of the *Insolvency Law Reform Act 2016* (called new external administrations).

Ongoing external administrations

For external administrations that start before that day but are still ongoing (called ongoing external administrations), the Insolvency Practice Schedule (Corporations) applies in accordance with this Division but usually only in relation to new events. Generally, the old Act continues to apply to old events and processes that are incomplete. There are some exceptions.

Old external administrations

For old external administrations that have ended but that may have ongoing obligations or processes, in most cases the old Act continues to apply.

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Subdivision B—General rules for Part 3

1579 Application of Part 3 of the Insolvency Practice Schedule (Corporations)—general rules

New external administrations

(1) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to a new external administration of a company.

Ongoing external administrations

(2) Part 3 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company in accordance with this Division.

Subdivision C—Remuneration and other benefits received by external administrators

1580 Application of Division 60 of the Insolvency Practice Schedule (Corporations)—general rule

Subdivision B to D of Division 60 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of a company under ongoing external administration who is appointed on or after the commencement day.

1581 Old Act continues to apply in relation to remuneration for administrators already appointed

(1) Despite the repeal of sections 449E and 473 and the repeal and substitution of subsections 499(3) to (7) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to the remuneration of an external administrator of a company who is appointed before the commencement day.

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(2) Despite subsection (1), if, under Subdivision F of this Division, Division 75 of the Insolvency Practice Schedule (Corporations) rather than the old Act would apply to a meeting that deals with the remuneration of an external administrator of a company who is appointed before the commencement day, Division 75 of the Insolvency Practice Schedule (Corporations) applies to that meeting.

1582 Duties of administrators relating to remuneration and other benefits

(1) Section 60-20 of the Insolvency Practice Schedule (Corporations) applies in relation to an external administrator of an ongoing external administration of a company whether or not the administrator was appointed before, on or after the commencement day.

(2) However, that section does not apply in relation to arrangements made before the commencement day.

1583 Old Act continues to apply in relation to any right of indemnity

(1) This section applies if the remuneration of an external administrator of a company is fixed under section 449E of the old Act:
   (a) before the commencement day; or
   (b) on or after the commencement day (in accordance with a provision of this Division).

(2) Despite the repeal of that section and the amendment of paragraph 443D(b) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, the old Act continues to apply in relation to any right of indemnity that the external administrator has as if that repeal and amendment had not happened.

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1584 Application of new provisions about vacancies of court-appointed liquidator

Subsection 473A(1) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the vacancy in the office of liquidator occurred before, on or after the commencement day.

1585 Application of new provisions about exercise of powers while company under external administration

Application of new section 198G

(1) Section 198G (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies in relation to an exercise of power or a performance of a function that occurs on or after the commencement day.

Approval under old Act continues to have effect

(2) If, under subsection 499(4) of the old Act, a committee of inspection or the company's creditors give approval for a director of the company to continue to perform or exercise the director's powers or functions, subsections 198G(1) and (2) (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) do not apply in relation to the director.

Subdivision D—Funds handling

1586 Application of Division 65 of the Insolvency Practice Schedule (Corporations)—general rule

Division 65 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

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1587 Administration account

If, immediately before the commencement day, a person has a liquidator's general account in relation to the external administration of:

(a) a company; or

(b) a company in a pooled group;

the account is taken on and after the commencement day to be an administration account for the company for the purposes of section 65-5 of the Insolvency Practice Schedule (Corporations).

1588 Paying money into administration account

Application of the Insolvency Practice Schedule (Corporations)

(1) Sections 65-5 and 65-15 of the Insolvency Practice Schedule (Corporations) do not apply in relation to money received before the commencement day.

Old regulations continue to apply to money received before commencement

(2) Paragraph 5.6.06(1)(b) of the old regulations continues to apply in relation to money received before the commencement day.

1589 Paying money out of administration account

Section 65-25 of the Insolvency Practice Schedule (Corporations) does not apply in relation to money paid out of an administration account before the commencement day.

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1590 Handling securities

Application of the Insolvency Practice Schedule (Corporations)

(1) Section 65-40 of the Insolvency Practice Schedule (Corporations) does not apply in relation to negotiable instruments and other securities received before the commencement day.

Old regulations continue to apply to money received before commencement

(2) Regulation 5.6.07 of the old regulations continues to apply in relation to bills, notes and other securities received before the commencement day.

Subdivision E—Information

1591 Application of Division 70 of the Insolvency Practice Schedule (Corporations)—general rule

Division 70 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

1592 Accounts and administration returns

Administration returns for 2017-18 and later years

(1) Sections 70-5 and 70-6 of the Insolvency Practice Schedule (Corporations) apply in relation to the financial year starting on 1 July 2017 and later financial years.

Accounts under old Act

(2) Subsection (3) of this section applies in relation to the repeal of each of the following sections of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*:

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(a) 438E;
(b) 445J;
(c) 539.

(3) To the extent that a repealed section relates to a period for which an account or statement must be lodged:
(a) the repeal of the section applies in relation to periods starting on or after 1 July 2017; and
(b) the section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

Continuation of audits under old Act

(4) For the avoidance of doubt, despite the repeal of a section mentioned in subsection (2) by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to accounts lodged under that section as if the old Act continued to apply.

1593 Administration books

Application of the Insolvency Practice Schedule (Corporations)

(1) Section 70-10 of the Insolvency Practice Schedule (Corporations) does not apply in relation to events:
(a) that occur before the commencement day; and
(b) in respect of which, or because of which, entries or minutes are to be made.

Old Act continues to apply to events etc. before commencement day

(2) Despite the repeal of section 531 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to events:
(a) that occur before the commencement day; and

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(b) in respect of which, or because of which, entries or minutes must be made.

1594 Audit of administration books

Sections 70-15 to 70-25 of the Insolvency Practice Schedule (Corporations) apply to books relating to an ongoing external administration whether or not the books are kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

1595 Transfer of administration books

Application of the Insolvency Practice Schedule (Corporations)

(1) Sections 70-30 and 70-31 of the Insolvency Practice Schedule (Corporations) apply in relation to a person who ceases to be the external administrator of a company on or after the commencement day.

Application of repeal of old Act

(2) The repeal of section 1298A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to a person whose registration as a liquidator is cancelled or suspended on or after the commencement day.

1596 Retention and destruction of administration books

Application of the Insolvency Practice Schedule (Corporations)

(1) To avoid doubt, section 70-35 of the Insolvency Practice Schedule (Corporations) applies to books relating to an ongoing external administration whether or not the books were kept under a provision of the old Act or of the Insolvency Practice Schedule (Corporations).

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Old Act continues to apply in relation to books for old external administrations

(2) If:
  (a) an external administration of a company ends before the commencement day; and
  (b) immediately before that day, a person was required under section 542 of the old Act to retain books of the company for a period; and
  (c) but for the repeal of that section by Schedule 2 to the *Insolvency Law Reform Act 2016*, that period would have ended on or after the commencement day;

section 542 of the old Act continues to apply (despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) on and after the commencement day in relation to the person for the remainder of that period.

Continued effect of consent by ASIC under old Act

(3) If before the commencement day, a person is entitled under subsections 542(3) and (4) of the old Act to destroy books of a company (or of the person's that are relevant to the affairs of the company) then, despite section 70-35 of the Insolvency Practice Schedule (Corporations), those books may be destroyed.

1597 Giving information to creditors etc.

Subdivision D of Division 70 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-40(1), 70-45(1), 70-46(2), 70-47(2) or 70-50(1) of the Insolvency Practice Schedule (Corporations):
  (a) was obtained or generated; or
  (b) was made or prepared; or
  (c) is in respect of actions or events that occurred;

before, on or after the commencement day.

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1598 Commonwealth may request information

Section 70-55 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-55(2):

(a) was obtained or generated; or

(b) was made or prepared; or

(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

1599 Reporting to ASIC

Section 70-60 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 70-60(1):

(a) was obtained or generated; or

(b) was made or prepared; or

(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

1600 Old Act continues to apply in relation to notices to remedy default

Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 540 of the old Act continues to apply in relation to a notice mentioned in that section that is served on a person before the commencement day.

Subdivision F—Meetings

1601 Application of Division 75 of the Insolvency Practice Schedule (Corporations)—general rule

(1) Division 75 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration of a company.

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(2) However, Division 75 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings convened or held before the commencement day.

1602 External administrator must convene meetings in certain circumstances

Application of the Insolvency Practice Schedule (Corporations)

(1) Section 75-15 of the Insolvency Practice Schedule (Corporations) does not apply in relation to:
  (a) directions given before the commencement day; or
  (b) resolutions passed before the commencement day.

Old Act continues to apply in relation to resolutions for voluntary winding up passed before commencement day

(2) Despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*:
  (a) sections 497 and 498 of the old Act continue to apply on and after the commencement day in relation to a resolution for voluntary winding up that is passed before the commencement day; and
  (b) subsection 477(4) of the old Act continues to apply on and after the commencement day if a meeting of creditors has not been held under section 497 of the old Act in relation to a voluntary winding up a resolution for which is passed before the commencement day.

1603 Old Act continues to apply in relation to reporting for first year of administration

(1) This section applies if, in relation to a company, a year mentioned in subsection 508(1) of the old Act starts before the commencement day but ends after that day.

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(2) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 508 of the old Act continues to apply on and after the commencement day in relation to the company for that year.

1604 Old Act continues to apply to the deregistration of companies

The repeal and substitution of section 509 by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the external administration of the company ends during a financial year starting on or after 1 July 2017.

1605 Old Act continues to apply for certain meetings convened etc. before commencement day

(1) If:
  (a) the administrator of a company under external administration is required to convene a meeting of the company's creditors under section 439A of the old Act; and
  (b) the convening period for the meeting as fixed by subsection 439A(5) of the old Act (or extended under subsection (6) of that section) ends on or after the commencement day; and
  (c) as at the commencement day, the meeting has not been convened;

then the old Act continues to apply on and after the commencement day (despite the repeal of subsections 439A(3) and (4) and section 439B by Schedule 2 to the *Insolvency Law Reform Act 2016*) in relation to the meeting.

(2) Despite the repeal of section 445F of the old Act and the amendment of section 445A of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, those sections continue to apply on and after the commencement day in relation to meetings for which a notice under subsection 445F(2) is given before the commencement day.

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(3) Despite its repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*, section 479 of the old Act continues to apply on and after the commencement day in relation to meetings which have been convened under subsection 479(2) or for which a direction or request is given under that subsection before the commencement day.

(4) Despite the amendment of subsection 496(8) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that subsection continues to apply on and after the commencement day in relation to meetings convened before the commencement day as if the amendment had not been made.

1606 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers

Sections 75-41 to 75-45 of the Insolvency Practice Schedule (Corporations) apply whether a proposal has been voted on or a resolution passed before, on or after the commencement day.

Subdivision G—Committees of inspection

1607 Application of Division 80 of the Insolvency Practice Schedule (Corporations)—general rules

(1) Division 80 of the Insolvency Practice Schedule (Corporations) applies in relation to a committee of inspection for an ongoing external administration of a company:

(a) that is appointed under that Division on or after the commencement day; or

(b) that is appointed under a provision of the old Act but is taken to be a committee of inspection under subsection 1608(2) of this Subdivision.

(2) However, Division 80 of the Insolvency Practice Schedule (Corporations) does not apply in relation to meetings of, or related

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to, the committee of inspection convened or held before the commencement day.

1608 Appointing committees of inspection

Committees appointed under old Act taken to be committee of inspection

(1) Subsection (2) applies if there is, in relation to the external administration of a company:
  (a) a committee of creditors validly appointed under section 436E of the old Act; or
  (b) a committee of inspection validly appointed under section 548 of the old Act; or
  (c) a committee of inspection validly appointed under section 548A of the old Act.

(2) On and after the day specified in subsection (3), the committee (the ***continued committee***) is taken for the purposes of the Insolvency Practice Schedule (Corporations) to be:
  (a) in the case of a committee appointed under section 436E or 548 of the old Act—a committee of inspection established under section 80-10 of the Insolvency Practice Schedule (Corporations) in relation to the external administration of the company; and
  (b) in the case of a committee appointed under section 548A of the old Act—a committee of inspection established under section 80-26 of the Insolvency Practice Schedule (Corporations) in relation to a pooled group of which the company is a member.

(3) For the purposes of subsection (2), the day is:
  (a) in the case of a committee appointed on or before the commencement day—the commencement day; and

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(b) in the case of a committee appointed on a day that is after the commencement day in accordance with a provision of this section—that later day.

Old Act continues to apply to certain meetings

(4) If:

(a) because of the operation of section 436E, 548 or 548A (the ***repealed section***) of the old Act before the commencement day, the administrator or liquidator of a company is required to convene a meeting; and

(b) as at the commencement day, the meeting has not been convened;

then (despite their repeal by Schedule 2 to the *Insolvency Law Reform Act 2016*) the repealed sections of the old Act continue to apply on and after the commencement day in relation to the meeting.

1609 Old Act continues to apply to certain reports by administrator

If, before the commencement day, the administrator of a company under administration is directed under subsection 436F(3) of the old Act to give a report, then despite the repeal of section 436F by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply on and after commencement day in relation to the report.

1610 Membership of continued committees

Members of continued committees

(1) The members of a continued committee are the members appointed to the committee under section 436E (in accordance with section 436G), 548 or 548A of the old Act, as the case requires.

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Old Act continues to apply to members of continued committees

(2) If a person is a member of a continued committee, then despite the repeal of:
   (a) section 436G, 548 or 548A (and any regulations made under that section), as the case requires; and
   (b) section 550;

by Schedule 2 to the *Insolvency Law Reform Act 2016*, those provisions continue to apply in relation to the person.

Application of the Insolvency Practice Schedule (Corporations)

(3) The following provisions do not apply in relation to members of a continued committee:
   (a) sections 80-15 to 80-25 and paragraph 80-26(2)(b) of the Insolvency Practice Schedule (Corporations);
   (b) Insolvency Practice Rules made under section 80-30 of the Insolvency Practice Schedule (Corporations) that relate to membership of a committee of inspection.

Note: However, the committee could dissolve and the members could form a new committee to which these provisions would then apply.

1611 Validity of appointment under section 548 of the old Act not affected by lack of separate meeting of contributories

(1) The appointment of a committee of inspection under section 548 of the old Act before the commencement day is not invalid merely because a separate meeting of contributories was not convened for the purposes of determining:
   (a) whether a committee of inspection should be appointed; and
   (b) where a committee of inspection is to be appointed:
      (i) the numbers of members to represent the creditors and the contributories, respectively; and
      (ii) the persons who are to be members of the committee representing creditors and contributories, respectively.

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(2) However, if:

(a) a debt or claim has been paid in the winding up of a company before the commencement day; and

(b) the priority given to the debt or claim was determined under section 556 of the *Corporations Act 2001* on the basis that a committee of inspection was not validly appointed because a separate meeting of contributories was not convened for the purposes mentioned in paragraphs (1)(a) and (b); and

(c) but for subsection (1), the committee of inspection would not have been validly appointed;

the priority of the payment is not affected by subsection (1).

1612 Continued application of directions by creditors or committees under the old Act

Sections 80-35 and 85-5 of the Insolvency Practice Schedule (Corporations) apply whether or not the direction is given before, on or after the commencement day.

1613 Committee of inspection may request information

Section 80-40 of the Insolvency Practice Schedule (Corporations) applies whether or not the information, report or document referred to in subsection 80-40(1):

(a) was obtained or generated; or

(b) was made or prepared; or

(c) is in respect of actions or events that occurred;

before, on or after the commencement day.

1614 Duties of members of committee of inspection and creditors relating to profits and advantages etc.

Sections 80-55 and 80-60 of the Insolvency Practice Schedule (Corporations) apply to arrangements made on or after the commencement day.

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Subdivision H—Review of the external administration of a company

1615 Application of Division 90 of the Insolvency Practice Schedule (Corporations)—general rule

Division 90 of the Insolvency Practice Schedule (Corporations) applies in relation to an ongoing external administration whether or not the matter to be reviewed occurred before, on or after the commencement day.

1616 Application of the Insolvency Practice Schedule (Corporations) provisions that conflict with old Act Court orders—general rule

(1) This section applies if a court makes an order in relation to a person or the external administration of a company under the old Act (the ***old Act order***).

(2) The old Act order does not cease to have effect because a provision of the old Act under which it was made has been amended or repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(3) If the old Act order is inconsistent with a provision of this Act that is amended or inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, then, subject to this Part, the provision does not apply to the extent that it is inconsistent with the old Act order.

1617 Old Act continues to apply in relation to ongoing proceedings before a court—general rule

(1) This section applies if proceedings are brought under the old Act in a court (on application or on the initiative of the court) in relation to the external administration of a company either:

(a) before the commencement day; or

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(b) on or after the commencement day (in accordance with a provision of this Division).

(2) Subject to this Part, nothing in Schedule 2 to the *Insolvency Law Reform Act 2016* affects:
(a) the proceedings; or
(b) the power of the court to make orders in relation to the proceedings; or
(c) any orders made by the court in relation to the proceedings; or
(d) any enforcement in relation to, or as a result of, the proceedings (including giving effect to any court orders); or
(e) any appeal or review in relation to the proceedings.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(4) In this section:

proceedings include civil and criminal proceedings, inquiries by the court, enforcement processes and any other processes.

1618 Court powers to inquire into and make orders

Application of the Insolvency Practice Schedule (Corporations)

(1) Subsections (2) to (4) are for the avoidance of doubt.

(2) Sections 90-5 and 90-10 of the Insolvency Practice Schedule (Corporations) apply whether or not the information, report or document mentioned in subsections 90-5(2) and 90-10(4) was prepared before, on or after the commencement day.

(3) Paragraph 90-15(3)(f) of the Insolvency Practice Schedule (Corporations) applies whether or not the remuneration is paid or payable before, on or after the commencement day.

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(4) Subsection 90-15(4) of the Insolvency Practice Schedule (Corporations) applies whether or not the action or failure to act occurred before, on or after the commencement day.

Old Act continues to apply for inquiries started under section 536

(5) Despite the repeal of section 536 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to inquiries commenced by ASIC before the commencement day (including inquiries commenced because of the extension of section 536 by subsection 411(9) to persons appointed under the terms of a compromise or arrangement).

Application of new section 599

(6) Section 599 (as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*) applies whether or not the act, omission or decision occurred before, on or after the commencement day.

1619 Review by another registered liquidator

(1) The following subsections are for the avoidance of doubt.

(2) Sections 90-24 and 90-26 of the Insolvency Practice Schedule (Corporations) apply whether or not:
   (a) the remuneration is paid or payable; or
   (b) the cost or expense is incurred or paid;
   before, on or after the commencement day.

(3) A period determined by the Court under paragraph 90-26(4)(d) of the Insolvency Practice Schedule (Corporations) or prescribed under paragraph 90-26(4)(c) may include a period that:
   (a) starts before the commencement day but ends after that day; or
   (b) starts and ends before the commencement day.

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(4) Section 90-28 of the Insolvency Practice Schedule (Corporations) applies whether or not the books or information mentioned in paragraph 90-28(2)(a) were prepared before, on or after the commencement day.

(5) Rules made for the purposes of section 90-29 of the Insolvency Practice Schedule (Corporations) in relation to the meaning of properly incurred may make provision for or in relation to costs and expenses incurred before, on or after the commencement day.

1620 Removal by creditors

For the avoidance of doubt, section 90-35 of the Insolvency Practice Schedule (Corporations) applies whether or not the external administrator was appointed before, on or after the commencement day.

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Division 4—Administrative review

1621 Administrative Appeals Tribunal proceedings

(1) This section applies if an application is made to the Administrative Appeals Tribunal for review of a decision made under the old Act either:
  (a) before the commencement day; or
  (b) on or after the commencement day (in accordance with a provision of this Part).

(2) Subject to this Part, nothing in the *Insolvency Law Reform Act 2016* affects:
  (a) any proceedings before the Administrative Appeals Tribunal in relation to the decision; or
  (b) the powers of the Administrative Appeals Tribunal in relation to the decision; or
  (c) any enforcement in relation to, or as a result of, a decision of the Administrative Appeals Tribunal in relation to the decision; or
  (d) any appeal or review in relation to a decision of the Administrative Appeals Tribunal in relation to the decision.

(3) Subject to this Part, the old Act continues to apply on and after the commencement day in relation to the proceedings despite the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

Applications for review made after the commencement day

(4) Despite the repeals and amendments made by the *Insolvency Law Reform Act 2016*, applications may be made to the Administrative Appeals Tribunal for review of the decision.

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Division 5—Application of other consequential amendments

1622 Outcome of voting at creditors' meeting determined by related entity or on casting vote—Court powers

Sections 415A to 415C, as inserted by the *Insolvency Law Reform Act 2016*, apply whether a proposed resolution has been voted on before, on or after the commencement day.

1623 Returns and accounts by controllers

Returns by controllers for 2017-18 and later years

(1) Sections 422A and 422B, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to the financial year starting on 1 July 2017 and later financial years.

Accounts under old Act

(2) Subsection (3) of this section applies in relation to the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(3) To the extent that section 432 of the old Act relates to a period for which an account must be lodged:
   (a) the amendment of the section applies in relation to periods starting on or after 1 July 2017; and
   (b) the unamended section applies in relation to periods starting before 1 July 2017 and ending after that day as if the period ends on 30 June 2017.

Continuation of audits under old Act

(4) For the avoidance of doubt, despite the amendment of section 432 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, audits may be continued under that section in relation to

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accounts lodged under that section as if the old Act continued to apply.

1624 Transfer of books by a controller to a new controller or ASIC

Sections 422C and 422D, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to a person who ceases to act as a controller of property of a corporation on or after the commencement day.

1625 Officers reporting to controller about corporation's affairs

The amendment of paragraph 429(2)(b) by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to notices received on or after the commencement day.

1626 Lodging notice of execution of a deed of company arrangement

The amendment of paragraph 450B(c), and substitution with paragraph 450B(b), by Schedule 2 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement executed on or after the commencement day.

1627 Office of liquidator appointed by the Court

Vacancies in office of liquidator appointed by the Court

(1) Despite the repeal of section 473 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016*, that section continues to apply in relation to a vacancy in the office of a liquidator appointed by the Court that occurs before the commencement day.

(2) Section 473A, as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies in relation to vacancies in the office of a liquidator appointed by the Court that occur on or after the commencement day.

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Where there are 2 or more liquidators appointed by the Court

(3) Subsections 473A(4) and (5), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to 2 or more liquidators appointed by the Court, whether the liquidators were appointed before, on or after the commencement day.

1628 Report as to company's affairs to be submitted to liquidator

(1) The amendments of section 475 by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a winding up order is made on or after the commencement day.

(2) The repeal of section 476 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where a report referred to in subsection 475(1) or (2) is received on or after the commencement day.

1629 Orders for release or deregistration

Despite the amendment of paragraph 481(1)(a) by Schedule 2 to the *Insolvency Law Reform Act 2016*, that paragraph continues to apply in relation to auditors appointed by ASIC under section 539 of the old Act.

1630 Meeting relating to the voluntary winding up of a company

The repeal and substitution of section 506A by Schedule 2 to the *Insolvency Law Reform Act 2016* applies where the resolution for the voluntary winding up of a company is passed on or after the commencement day.

1631 Pooling determinations

(1) The repeal of sections 574 to 576 of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* apply where a pooling determination is made or varied on or after the commencement day.

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(2) Subsection 577(1A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, applies where a pooling determination is made or varied on or after the commencement day.

(3) The repeal of subsection 577(2) of the old Act by Schedule 2 to the *Insolvency Law Reform Act 2016* applies to resolutions agreed on or after the commencement day.

1632 Electronic methods of giving or sending certain notices

(1) If:

(a) a notice or other document was authorised or required to be given or sent under a provision of the old Act mentioned in a paragraph of subsection 600G(1) that is repealed by Schedule 2 to the *Insolvency Law Reform Act 2016*; and

(b) although the authorisation or requirement arose before the commencement day, the notice or other document is required to be given or sent on or after the commencement day;

that paragraph of subsection 600G(1) continues to apply in relation to the giving or sending of the notice or other document.

(2) Subsections 600G(4) and (4A), as inserted by Schedule 2 to the *Insolvency Law Reform Act 2016*, apply in relation to notices or other documents given or sent on or after the commencement day.

1633 Deregistration following winding up

(1) If, on or after the commencement day, the Court orders the deregistration of a company under subsection 509(6) of the old Act, subsection 601AC(1) of the old Act continues to apply in relation to the order.

(2) Subsection 601AC(2) of the old Act continues to apply in relation to a company for which a return has been lodged under section 509 before the commencement day.

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Division 6—Regulations

1634 Regulations

(1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedule 2 to the *Insolvency Law Reform Act 2016*.

(2) The regulations may provide that certain provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.

(3) The provisions of Schedule 2 to the *Insolvency Law Reform Act 2016* that provide for regulations to deal with matters do not limit each other.

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Part 10.26—Transitional provisions relating to Schedule 3 to the Insolvency Law Reform Act 2016

1635 Application of amendments made by Schedule 3 to the *Insolvency Law Reform Act 2016*

(1) The amendment made by Part 1 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to the administration of a company that begins on or after the commencement of that Schedule.

(2) The amendment made by Part 2 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to material contraventions, and likely material contraventions, of a deed of company arrangement that occur on or after the commencement of that Schedule, regardless of when the deed was executed.

(3) The amendment made by item 9 of Part 4 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to deeds of company arrangement that are terminated on or after the commencement of that Schedule.

(4) The amendments made by Part 5 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply for the purposes of working out the relation-back day in relation to a winding up of a company or Part 5.7 body starting on or after the commencement of that Schedule.

(5) The amendments made by items 22, 23, 25, 26, 29 and 30 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in relation to declarations made after the commencement of that Schedule.

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(6) The amendment made by item 28 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to resolutions passed on or after the commencement of that Schedule.

(7) The amendments made by items 31 and 32 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* apply in relation to orders made on or after the commencement of that Schedule.

(8) The amendment made by item 33 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies in relation to orders and declarations made on or after the commencement of that Schedule.

(9) The amendment made by item 34 of Part 6 of Schedule 3 to the *Insolvency Law Reform Act 2016* applies whether the payment of an amount in respect of a liability was made before, on or after the commencement of that Schedule.

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Part 10.28—Transitional provisions relating to the Treasury Laws Amendment (2016 Measures No. 1) Act 2017

1636A Application of subsections 981D(2) and 984B(3)

(1) Subsection 981D(2), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of money on or after the commencement of this section, whether the money was paid to the licensee as mentioned in subsection 981A(1) before, on or after that commencement.

(2) Subsection 984B(3), as added by the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, applies to a use of property on or after the commencement of this section, whether the property was given to the licensee as mentioned in subsection 984A(1) before, on or after that commencement.

1637 Application of subparagraph 1274(2)(a)(iva) and subsections 1274(2AA) and (2AB)

Subparagraph 1274(2)(a)(iva) and subsections 1274(2AA) and (2AB), as inserted by Schedule 2 to the *Treasury Laws Amendment (2016 Measures No. 1) Act 2017*, apply to the following:

(a) a disclosure document lodged under section 718 after that Schedule commences;

(b) a replacement document lodged under section 719 after that commencement;

(c) a supplementary document lodged under section 719 after that commencement if the disclosure document it supplements was also lodged after that commencement.

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Part 10.30—Transitional provisions relating to the Treasury Laws Amendment (2017 Measures No. 5) Act 2018

1639 Definitions

In this Part:

start day means the later of:

(a) 1 January 2018; and

(b) the day after the *Treasury Laws Amendment (2017 Measures No. 5) Act 2018* receives the Royal Assent.

1640 Application—obligation to comply with rules about financial benchmarks

Subsection 908CF(1) applies on or after the start day in relation to rules made before, on or after that day.

1641 Application—offences relating to manipulation of financial benchmarks

Division 4 of Part 7.5B applies in relation to acts or omissions occurring on or after the start day (whether or not the financial benchmark to which the acts or omissions relate is first generated or administered before, on or after the start day).

1642 Application—extended meaning of financial products and Division 3 financial products for Part 7.10

Section 1040B applies in relation to acts or omissions occurring on or after the start day (whether or not the bank accepted bills or negotiable certificates of deposit to which the acts or omissions relate are issued before, on or after the start day).

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Part 10.31—Transitional provisions relating to the Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018

1643 Application of amendments

The amendments made by items 50 and 51 of Schedule 1 to the *Corporations Amendment (Crowd-sourced Funding for Proprietary Companies) Act 2018* apply in relation to CSF offers made at or after the commencement of those items.

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Part 10.32—Transitional provisions relating to the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019

1644 Application of amendments

(1) The amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to disclosures that:

(a) are made at or after the time that Part commences (the ***commencement time***); and

(b) relate to matters that occur or occurred before, at or after the commencement time.

(2) Without limiting subsection (1), sections 1317AC, 1317AD and 1317AE, and any other provision of Part 9.4AAA to the extent that it relates to those sections, as in force immediately after the commencement time, also apply at and after the commencement time in relation to a disclosure that:

(a) was made before the commencement time; and

(b) would be a disclosure protected by Part 9.4AAA, if the amendments made by Part 1 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* had been in force at the time the disclosure was made.

Whistleblower policies

(3) Subsections 1317AI(1) to (4), as inserted by item 9 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019*, apply on and after the day 6 months after the day that item commences.

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(4) A reference to a financial year in subsection 1317AI(2), as inserted by that item, is a reference to a financial year that ends on or after 30 June 2018.

1644A Application of amendments relating to penalties

The amendments made by Part 4 of Schedule 1 to the *Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019* apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement of that Part.

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Part 10.33—Transitional provisions relating to the Corporations Amendment (Asia Region Funds Passport) Act 2018

1 Saving delegations

(1) A delegation of functions or powers by the Minister in force under paragraph 1345A(1A)(b) of this Act immediately before the commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* continues in force on and after that commencement.

(2) Subsection (1) does not prevent an amendment or revocation of the delegation on or after commencement of item 349 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* as if it were a delegation under that paragraph as amended by that item.

2 Decisions to give, withdraw or not withdraw a notice under subsection 1313(1)

The amendment made by item 307 of Schedule 2 to the *Corporations Amendment (Asia Region Funds Passport) Act 2018* applies in relation to decisions of ASIC to give, withdraw or not withdraw a notice under subsection 1313(1) that are made on or after the commencement of that item.

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Part 10.34—Transitional provisions relating to the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019

1647 Application—protection of employee entitlements

The amendments made by Part 1 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to a relevant agreement or a transaction that is entered into at or after the commencement of that Part.

1648 Application—contribution orders

The amendments made by Part 2 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* apply in relation to the winding up of a company that begins at or after the commencement of that Part.

1649 Application—director disqualification

(1) The period of 7 years referred to in paragraphs 206EAB(2)(a) and 206GAA(2)(a) may include any period that is not more than 5 years before the day (the ***commencement day***) that Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019* commences (subject to the time limit of 7 years in those paragraphs).

(2) However, a person may only be disqualified from managing corporations under section 206EAB or 206GAA if at least one of the contraventions referred to in paragraph 206EAB(2)(d) or 206GAA(2)(d), as the case may be, occurs on or after the commencement day.

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(3) A permission given under subsection 206F(5) that was in force immediately before the commencement day continues in force (and may be dealt with) as if it had been given under section 206GAB as inserted by Part 3 of Schedule 1 to the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019*.

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Part 10.35A—Transitional provisions relating to Schedule 2 to the Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020

1653 Director identification numbers

(1) Part 9.1A applies on and after the day (the ***application day***) the Minister appoints, under section 1270:
  (a) a Commonwealth body to be the Registrar; or
  (b) if more than one such body is appointed—such a body with functions and powers in connection with Part 9.1A.

(2) If a person was an eligible officer immediately before the application day:
  (a) if a period (the ***transitional application period***) is specified under subsection (3) of this section—section 1272C applies to the person as if:
    (i) the reference in subparagraph 1272C(2)(a)(ii) to an application period specified by regulations were instead a reference to the transitional application period; and
    (ii) references in paragraph 1272C(2)(a) to the day the person first became an eligible officer (or an eligible officer within the meaning of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) were instead references to the day the transitional application period came into effect; and
  (b) until the transitional application period comes into effect—section 1272C does not apply to the person.

(3) The Minister may, by legislative instrument, specify the transitional application period for the purposes of subsection (2).

(4) If a person:

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(a) was not an eligible officer immediately before the application day; and

(b) becomes an eligible officer within the 12 month period starting on the application day;

section 1272C applies to the person as if a period of 28 days were the application period specified in regulations made for the purposes of subparagraph 1272C(2)(a)(ii).

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Part 10.36—Application and transitional provisions relating to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

1655 Definitions

In this Part:

amending Act means the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

commencement day means the day on which Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commences.

1656 Application—offences

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

1657 Application—civil penalty provisions

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.

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1658 Application—offence provisions repealed and substituted with conduct rules with multiple consequences

To avoid doubt, the amendments made by items 82, 86, 87, 94, 100, 101 and 102 of Schedule 1 to the amending Act apply in relation to the commission of an offence or the contravention of a civil penalty provision under the sections inserted by those items if the conduct constituting the commission of the offence or the contravention of the civil penalty provision occurs wholly on or after the commencement day.

1659 Application—infringement notices

(1) An infringement notice may be given on or after the commencement day under section 1317DAM of the Act, as inserted by item 113 of Schedule 1 to the amending Act, in relation to an alleged contravention of a provision whether the alleged contravention occurred before, on or after the commencement day.

(2) Despite the repeal of section 1313 of the Act by item 111 of Schedule 1 to the amending Act, the Act continues to apply in relation to notices given under that section before the commencement day as if:
   (a) that section, and any regulations made under that section, had not been repealed; and
   (b) section 1311 had not been amended.

1660 Application—definition of dishonesty

(1) The amendment of the definition of ***dishonesty*** in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies in relation to a decision whether to convict a person of an offence under this Act for which dishonesty is an element, if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

(2) The amendment of the definition of ***dishonesty*** in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies:

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(a) in relation to the disqualification of a person from managing corporations under section 206B of the Act—to convictions for an offence involving dishonesty that occur on or after the commencement day; and

(b) in relation to a decision under section 913B of the Act whether to grant an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(c) in relation to a decision under section 915B of the Act whether to suspend or cancel an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(d) in relation to a decision under section 920A of the Act whether to make a banning order—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(e) in relation to a decision to register a person as a liquidator under section 20-20 of Schedule 2 to the Act—to decisions made on or after the commencement day (whether conviction for the offence involving dishonesty occurs before on or after the commencement day); and

(f) in relation to the obligation on a registered liquidator under section 35-1 of the Schedule 2 to the Act to lodge notice with ASIC of a conviction for an offence involving fraud or dishonesty—to convictions that occur on or after the commencement day; and

(g) in relation to a decision under section 40-25 of Schedule 2 to the Act to suspend the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(h) in relation to a decision under section 40-30 of Schedule 2 to the Act to cancel the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether

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the conviction occurs before, on or after the commencement day; and

(i) in relation to a decision under section 40-40 of Schedule 2 to the Act to give a show cause notice—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day.

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Part 10.37—Transitional provisions relating to the Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020

1661 Application of amendments

(1) The amendments of section 588H by Schedule 1 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020* apply in relation to debts incurred, and dispositions made, after the commencement of those amendments.

(2) Sections 203AA and 203AB, as inserted by Schedule 2 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020*, apply in relation to a person's resignation as a director of a company if the person stopped being a director of the company on or after the day that is 12 months after the day those sections commence.

(3) Section 203CA, as inserted by Schedule 2 to the *Treasury Laws Amendment (Combating Illegal Phoenixing) Act 2020*, applies in relation to a resolution that is to take effect on or after the day that is 12 months after the day that section commences.

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Part 10.38—Transitional provisions relating to Schedule 1 to the Treasury Laws Amendment (Mutual Reforms) Act 2019

1662 Application of amendments made by Schedule 1 to the *Treasury Laws Amendment (Mutual Reforms) Act 2019*

The amendments made by Schedule 1 to the *Treasury Laws Amendment (Mutual Reforms) Act 2019* apply on and after the commencement of that Schedule.

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Part 10.39—Transitional provisions relating to Schedule 3 to the Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020

1663 Definitions

In this Part:

amending Part means Part 1 of Schedule 3 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*.

commencement day means the day the amending Part commences.

1664 Application—existing financial services licensee

(1) Subject to this section, the amendments made by the amending Part apply on and after the commencement day to a financial services licensee whose licence was granted before, on or after the commencement day.

(2) Section 912DA, as inserted by the amending Part, applies in relation to an entity that starts to control, or stops controlling, the licensee on or after the commencement day.

(3) In relation to an Australian financial services licence in force immediately before the commencement day, the period of 6 months referred to in subsection 912DB(1) or 915B(1A), (2A), (3A) or (4A), as inserted by the amending Part, begins at the start of the commencement day.

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(4) The reference in paragraph 915C(1)(g), as inserted by the amending Part, to information lodged with ASIC in accordance with a request under subsection 913B(3) in relation to an application for a licence includes information provided in accordance with paragraph 913B(1)(ca) before the commencement day.

1665 Application—applications made before commencement

(1) The following applications made before the commencement day, and not yet granted or refused at the start of the commencement day, are to be dealt with, on and after the commencement day, in accordance with this Act as amended by the amending Part:
   (a) an application under section 913A for an Australian financial services licence;
   (b) an application under paragraph 914A(2)(b) for conditions on an Australian financial services licence to be imposed, varied or revoked.

(2) A request for information under paragraph 913B(1)(ca) that was made before the commencement day and that has not, at the start of the commencement day, been complied with is taken, on and after the commencement day, to be a request for information under paragraph 913B(3)(a) as amended by the amending Part.

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Part 10.40—Transitional provisions relating to Schedule 4 to the Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020

1666 Application—conduct etc. relevant to new banning and disqualification orders

When making either of the following orders at or after the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*:

(a) a banning order;

(b) a disqualification order described in paragraph 921A(2)(a) of this Act;

regard may be had to acts, omissions, states of affairs or matters before, at or after that commencement.

1667 Transitional—existing banning and disqualification orders

(1) An order made under subsection 920A(1), that is in force immediately before the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal Commission Response—Stronger Regulators (2019 Measures)) Act 2020*, continues in force (and may be dealt with) as if it had been made under that subsection as amended by that Act.

(2) An order described in paragraph 921A(2)(a) that:

(a) was made under subsection 921A(2); and

(b) is in force immediately before the commencement of Part 1 of Schedule 4 to the *Financial Sector Reform (Hayne Royal*

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Commission Response—Stronger Regulators (2019 Measures)) Act 2020;

continues in force (and may be dealt with) as if it had been made under that subsection as amended by that Act.

(3) Section 920D applies to an order covered by subsection (1) of this section as if the words "because of a change in any of the circumstances based on which ASIC made the order" were omitted from subsection 920D(1).

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Part 10.41—Transitional provisions relating to the Treasury Laws Amendment (2019 Measures No. 3) Act 2020

1668 Transitional—delegations

(1) The amendments of sections 890C, 1101J and 1345A made by items 25, 27, 28 and 29 of Schedule 3 to the *Treasury Laws Amendment (2019 Measures No. 3) Act 2020* do not affect a delegation in effect for the purposes of any of those sections immediately before the commencement of those items.

(2) Despite the amendment of subsection 1345A(1) made by item 28 of that Schedule, regulations in force for the purposes of that subsection immediately before the commencement of that item continue in force, on and after that commencement, for the purposes of that subsection.

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Part 10.42—Transitional provisions relating to the Coronavirus Economic Response Package Omnibus Act 2020

1669 Application of amendments made by Schedule 12 to the *Coronavirus Economic Response Package Omnibus Act 2020*

The amendments made by Part 2 of Schedule 12 to the *Coronavirus Economic Response Package Omnibus Act 2020* apply to statutory demands that are served on or after the commencement of that Schedule.

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Part 10.45—Transitional provisions relating to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1672 Transitional—Banking Code of Practice

(1) The following provisions have effect:

(a) the *Banking Code of Practice*, whose approval by ASIC was registered on the Federal Register of Legislation on 18 December 2019, is taken to be approved under section 1101A, as substituted by Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*;

(b) Division 2 of Part 7.12, as inserted by that Schedule to that Act, applies to the *Banking Code of Practice*.

(2) In this section:

Banking Code of Practice means the *Banking Code of Practice*, published on 12 December 2019 by the Australian Banking Association Incorporated (ABN 60 117 262 978).

Note: The *Banking Code of Practice* could in 2020 be viewed on the Australian Banking Association's website (http://www.ausbanking.org.au).

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Part 10.46—Application and transitional provisions relating to Schedule 1 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

Division 1—Introduction

1673 Definitions

In this Part:

amending Schedule means Schedule 1 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*.

disclosure day for an ongoing fee arrangement has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

renewal notice has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

renewal notice day has the same meaning as it has in Part 7.7A, as in force immediately before the amending Schedule commences.

transition day, for an ongoing fee arrangement, means the earlier of:

(a) the day when a fee disclosure statement is given for the arrangement in accordance with subsection 1673C(3); and
(b) the last day of the 12 month transition period.

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Division 2—New ongoing fee arrangements

1673A Application provision for new ongoing fee arrangements

The amendments made by the amending Schedule apply in relation to an ongoing fee arrangement entered into on or after 1 July 2021.

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Division 3—Existing ongoing fee arrangements

1673B Application of this Division

This Division applies in relation to an ongoing fee arrangement that is in force immediately before 1 July 2021.

1673C Application—annual requirement to give fee disclosure statement

General rule

(1) Subject to this section, Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, applies to the ongoing fee arrangement on and from 1 July 2021.

Modified application during transition period

(2) For the period from 1 July 2021 to 30 June 2022 (the ***12 month transition period***):
  (a) subsection 962G(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (3) of this section; and
  (b) subsection 962H(1), as amended by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (4) of this section.

(3) The current fee recipient in relation to the ongoing fee arrangement must, on a day that is before the end of the 12 month transition period, give the client a fee disclosure statement for the arrangement and the transition day.

(4) A ***fee disclosure statement*** for an ongoing fee arrangement and a transition day is a statement in writing that:
  (a) includes the information and statements required under this section; and
  (b) relates to:

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(i) the period of 12 months (the ***previous year***) ending immediately before the transition day for the arrangement; and

(ii) the period of 12 months (the ***upcoming year***) starting on the transition day for the arrangement.

Modified application after transition period

(5) After 1 July 2021, subsection 962G(3), as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement as if it were replaced with subsection (6) of this section.

(6) ***Anniversary day***, for an ongoing fee arrangement, means:

(a) the transition day for the arrangement; or

(b) the anniversary of the transition day for the arrangement.

Acquisition of property

(7) Section 1350 does not apply in relation to the operation of Subdivision B of Division 3 of Part 7.7A, as amended by the amending Schedule, in respect of the ongoing fee arrangement.

1673D Transitional—existing obligation to give a fee disclosure statement under section 962G

(1) This section applies if:

(a) a disclosure day for the ongoing fee arrangement occurs before 1 July 2021; and

(b) the period of 60 days beginning on the disclosure day ends on or after 1 July 2021; and

(c) before 1 July 2021 the current fee recipient in relation to the ongoing fee arrangement has not given a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962G (as in force before 1 July 2021) in relation to the disclosure day.

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(2) The obligation on the fee recipient to give the fee disclosure statement within the 60 day period beginning on the disclosure day ceases on 1 July 2021.

(3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1673C, the fee disclosure statement given under that section must include that information.

1673E Transitional—existing obligation to give a renewal notice and fee disclosure statement under section 962K

(1) This section applies if:
  (a) a renewal notice day for the ongoing fee arrangement occurs before 1 July 2021; and
  (b) the period of 60 days beginning on the renewal notice day ends on or after 1 July 2021; and
  (c) before 1 July 2021 the current fee recipient in relation to the ongoing fee arrangement has not given a renewal notice and a fee disclosure statement in relation to the ongoing fee arrangement in accordance with the obligation arising under section 962K (as in force before 1 July 2021) in relation to the renewal notice day.

(2) The obligation on the fee recipient to give the renewal notice and fee disclosure statement within the 60 day period beginning on the renewal notice day ceases on 1 July 2021.

(3) However, to the extent that the fee disclosure statement referred to in subsection (2) would have been required to include information in relation to a period that would not otherwise be required to be included in a fee disclosure statement given under section 1673C, the fee disclosure statement given under that section must include that information.

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1673F Application—consent requirements for deductions of ongoing fees

(1) Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies in relation to the ongoing fee arrangement on and from 1 July 2022.

(2) However, if a person gives a fee recipient in relation to the ongoing fee arrangement consent for the purposes of that Subdivision before 1 July 2022:
   (a) section 962U (variation or withdrawal of consent) in that Subdivision applies in relation to the consent from when it is given; and
   (b) section 962X (obligation to keep records of compliance), as inserted by the amending Schedule, applies in relation to records relating to the consent.

(3) Section 1350 does not apply in relation to the operation of Subdivision C of Division 3 of Part 7.7A, as inserted by the amending Schedule, in respect of the ongoing fee arrangement.

1673G Application—compliance records

Subdivision D of Division 3 of Part 7.7A, as inserted by the amending Schedule, applies on and from 1 July 2021 in relation to a fee recipient's compliance with Division 3 of Part 7.7A on and from that date in relation to the ongoing fee arrangement.

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Part 10.47—Application and transitional provisions relating to Schedule 2 to the Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021

1674 Application of disclosure of lack of independence reforms

The amendments made by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021* apply in relation to a financial service provided on or after 1 July 2021.

1674A Obligation to give updated Financial Services Guide

(1) If:

(a) the providing entity has given a Financial Services Guide to the client under section 941A or 941B before 1 July 2021; and

(b) the providing entity will provide a financial service to the client on or after 1 July 2021; and

(c) paragraph 942B(2)(fa) or 942C(2)(ga), as inserted by Schedule 2 to the *Financial Sector Reform (Hayne Royal Commission Response No. 2) Act 2021*, applies in relation to the providing entity and the financial service;

the providing entity must, before the financial service is provided to the client, give the client:

(d) another Financial Services Guide that contains the statement required by whichever of the paragraphs referred to in paragraph (c) of this subsection is applicable; or

(e) a Supplementary Financial Services Guide that contains that statement.

(2) Subsections 941A(1) and 941B(1) apply as if the reference in those subsections to “this Division” included a reference to this section.

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Part 10.48—Application and transitional provisions relating to Schedule 7 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1675 Definitions

In this Part:

commencement day means the day on which Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commences.

transition period has the meaning given by section 1675B.

1675A Application of claims handling and settling services reforms

Subject to this Part, the amendments made by Schedule 7 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* apply to claims made under insurance products, or potential claims that arise under insurance products, on or after the commencement day.

1675B Transition periods

(1) For the purposes of this Part, the ***transition period*** for a person begins on the commencement day and ends on:
  (a) if the person lodges an application for an Australian financial services licence covering claims handling and settling services and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or
  (b) if the person lodges an application for an Australian financial services licence covering claims handling and settling

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services, the application complies with section 913A and is pending on 30 June 2021—the earlier of:

(i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and

(ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and

(iii) if ASIC refuses to grant the person an Australian financial services licence covering claims handling and settling services—the day on which ASIC gives the person notice in writing of the refusal; and

(iv) the last licence-processing day; or

(c) if the person lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide and ASIC gives the applicant notice in writing on or before 30 June 2021 that the application is granted—the last licence-processing day; or

(d) if the person is a financial services licensee and lodges an application for ASIC to vary the conditions on the licence to specify that claims handling and settling services are financial services that the licensee is authorised to provide, the application complies with paragraph 914A(2)(b) and is pending on 30 June 2021—the earlier of:

(i) if, after 30 June 2021, the person withdraws the application—the day on which the application is withdrawn; and

(ii) if, after 30 June 2021, ASIC notifies the person in writing that ASIC refuses to receive the application under subsection 1274(8)—the day on which ASIC gives that notification; and

(iii) if ASIC refuses to grant the person the variation—the day on which ASIC gives the person notice in writing of the refusal; and

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(iv) the last licence-processing day; or

(e) otherwise—30 June 2021.

(2) In this section:

last licence-processing day means the later of:

(a) 31 December 2021; and

(b) if the Minister determines another day under subsection (3)—that other day.

pending: an application is ***pending*** on a particular day if the application has been lodged on or before that day and each of the following is satisfied:

(a) the application has not been withdrawn by the applicant on or before that day;

(b) ASIC has not, on or before that day, given the applicant notice in writing that the application has been granted or refused;

(c) ASIC has not, on or before that day, notified that applicant in writing that ASIC refuses to receive the application under subsection 1274(8).

(3) The Minister may, by notifiable instrument, determine a day that is after 31 December 2021 and before 1 July 2022 to be the last licence-processing day.

1675C Application during transition period

(1) Despite section 1675A, a claims handling and settling service provided by or on behalf of a person during the transition period for that person is not to be treated as a financial service, except for the purposes of:

(a) section 912C; and

(b) section 912CA; and

(c) section 912E.

(2) Nothing in this section prevents:

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(a) a financial services licensee from giving a person a notice under section 916A during the transition period for the licensee authorising the person to provide claims handling and settling services after the end of that transition period; or

(b) an authorised representative of a financial services licensee giving an individual written notice under section 916B during the transition period for the licensee authorising that individual to provide specified claims handling and settling services or claims handling and settling services on behalf of the licensee after the end of the transition period for the authorised representative.

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Part 10.49—Transitional provisions relating to Schedule 9 to the Financial Sector Reform (Hayne Royal Commission Response) Act 2020

1676 Definitions

In this Part:

amending Schedule means Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020*.

commencement day means the day on which Schedule 9 to the *Financial Sector Reform (Hayne Royal Commission Response) Act 2020* commences.

1676A Automatic extension of licence conditions on the commencement day—licensees who are authorised to deal

(1) This section applies to an Australian financial services licensee if, just before the commencement day:
  (a) the licensee's Australian financial services licence authorised the licensee to deal in a superannuation product; and
  (b) the licensee was also an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the commencement day to be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676B Automatic extension of licence conditions—licence applications pending just before commencement day

(1) This section applies if:
  (a) before the commencement day, a person lodges an application for an Australian financial services licence

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authorising the person to deal in a superannuation product; and

(b) on or after the commencement day, ASIC decides the application by granting the person an Australian financial services licence authorising the person to deal in a superannuation product; and

(c) at the time the licence is granted, the person is an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the time it is granted to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676C Automatic extension of licence conditions—variation applications pending just before commencement day

(1) This section applies if:

(a) before the commencement day, a person lodges an application for ASIC to vary the conditions on the person's Australian financial services licence by authorising the person to deal in a superannuation product; and

(b) on or after the commencement day, ASIC decides the application by varying the conditions on the person's licence to authorise the person to deal in a superannuation product; and

(c) at the time the licence is varied, the person is an RSE licensee.

(2) The licensee's Australian financial services licence is taken from the time it is so varied to also be subject to a condition authorising the licensee to provide a superannuation trustee service.

1676D Automatic licence conditions may be varied etc.

If an Australian financial services licence is subject to a condition authorising a licensee to provide a superannuation trustee service as a result of the operation of this Part, ASIC may, in accordance with the provisions of Part 7.6:

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(a) vary or revoke the condition; or

(b) vary, suspend or cancel the licence;

as if the authorisation to provide a superannuation trustee service had been specified by ASIC under subsection 914A(6).

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Part 10.51—Transitional provisions relating to the Territories Legislation Amendment Act 2020

1678 Definitions

In this Part:

amending Act means the *Territories Legislation Amendment Act 2020.*

commencement means the commencement of Division 1 of Part 1 of Schedule 2 to the amending Act.

commencement day means the day on which commencement occurs.

eligible: a corporation is ***eligible*** for registration as a company under Part 5B.1 of this Act if:

(a) it is a registered company under the Norfolk Island Companies Act, other than a foreign company registered under Part 25 of that Act; and

(b) the corporation is not a Chapter 5 body corporate; and

(c) no application to wind up the corporation has been made to the Supreme Court of Norfolk Island that has not been dealt with; and

(d) no application to approve a compromise or arrangement between the corporation and another person has been made to the Supreme Court of Norfolk Island that has not been dealt with.

Norfolk Island Companies Act means the *Companies Act 1985* of Norfolk Island.

personal information has the same meaning as in the *Privacy Act 1988*.

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1678A Registration of Norfolk Island companies—general

Scope of section

(1) This section applies to a corporation that is eligible for registration as a company under Part 5B.1.

Registration

(2) ASIC must register the corporation as a company under Part 5B.1 on the commencement day, as if it had received an application for registration from the corporation in accordance with section 601BC.

(3) ASIC must register the corporation:
  (a) as a type of company corresponding to whichever of the types covered by subsection (4) corresponds to its type under the Norfolk Island Companies Act immediately before commencement; and
  (b) with the same characteristics and attributes as the corporation had immediately before commencement.

Note: Most eligible corporations will retain the same name, registered office, directors and members. However, for whether the corporation retains the same name and directors, see subsections 1678B(4) and (8).

(4) This subsection covers the following types of company:
  (a) a proprietary company limited by shares;
  (b) an unlimited proprietary company;
  (c) a proprietary company limited both by shares and by guarantee;
  (d) a public company limited by shares;
  (e) an unlimited public company;
  (f) a company limited by guarantee;
  (g) a public company limited both by shares and by guarantee;
  (h) a no liability company.

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Note: This list includes some types of company not covered by subsection 601BA(1).

(5) However, the corporation must not be registered if, immediately before commencement, it is no longer eligible for registration as a company under Part 5B.1.

Note: The corporation is no longer eligible for registration if it has ceased to be registered under the Norfolk Island Companies Act, if it has started to be a Chapter 5B body corporate or if an application for winding up or to approve a compromise or arrangement had been made to the Supreme Court of Norfolk Island.

References to companies in this and other laws

(6) On and after commencement, in this and any other Act, and any instrument under an Act, a reference to a company registered under a Territory law, or under a law of Norfolk Island, is taken not to include a reference to a corporation registered as a company under Part 5B.1 for the purposes of this section.

1678B Registration of Norfolk Island companies—registration process and other matters

Scope

(1) This section applies to an eligible corporation that is registered as a company under Part 5B.1 for the purposes of section 1678A.

(2) ASIC must comply with subsections (3) and (4) of this section to the extent practicable, having regard to any information disclosed under section 1678C.

Registration process

(3) On the registration of the company, ASIC must:
  (a) give the company an ACN; and
  (b) issue a certificate that states:
    (i) the company's name (see subsection (4) of this section); and

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(ii) the company's ACN; and
(iii) the company's type (see subsection 1678A(4)); and
(iv) that the company is registered as a company under this Act; and
(v) that the company is taken to be registered in Norfolk Island; and
(vi) the date of the company's registration.

Note: The date of the company's registration is the commencement day (see subsection 1678A(2)).

Company name

(4) Despite section 601BF, ASIC must register the company with a name consisting of:
(a) either:
(i) the corporation's name immediately before commencement; or
(ii) if that name is prescribed by regulations made for the purposes of paragraph 147(1)(c) as unacceptable for registration—a name that consists of the expression "Australian Company Number" followed by the company's ACN; and
(b) the words required by subsection 148(2) or (3).

(5) If the company is registered with a name that is identical or nearly identical to a name that is reserved or registered for another body or entity under an Act covered by subsection (6), the company's registration with that name does not affect the availability of the name to the company or to the other body or entity under such an Act, despite any provision of such an Act to the contrary.

(6) The Acts covered by this subsection are:
(a) this Act;
(b) the *Business Names Registration Act 2011*;
(c) the *Business Names Registration (Transitional and Consequential Provisions) Act 2011*.

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Company constitution

(7) The company's constitution on registration is the memorandum and articles of association of the corporation as in force immediately before commencement.

Note: Section 601BG (which deals with the constitutions of companies registered under Part 5B.1) does not apply to the company. But within 3 months after the date of registration, the company must modify its constitution to give effect to Part 5B.1 (see section 601BH).

Company directors

(8) If, immediately before commencement, a person who is a director of the corporation does not meet the requirements of section 201B, that person does not become a director of the company on its registration.

1678C Registration of Norfolk Island companies—provision of information

(1) For the purposes of ASIC performing functions or duties, or exercising powers, under this Part, or any rules made under section 1678D:

(a) the Registrar of Companies under the Norfolk Island Companies Act (the ***Norfolk Island Registrar***) may disclose to ASIC information (including personal information) obtained for the purposes of that Act; and

(b) ASIC may record or use information disclosed under paragraph (a); and

(c) ASIC may disclose to the Norfolk Island Registrar information (including personal information) obtained for the purposes of this Act; and

(d) the Norfolk Island Registrar may record or use information disclosed under paragraph (c).

(2) In addition, for the purposes mentioned in subsection (1):

(a) ASIC may, by written notice given to an eligible corporation, request the corporation to provide specified information

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(including personal information) in relation to the registration of the corporation as a company under Part 5B.1; and

(b) the eligible corporation may disclose the requested information to ASIC; and

(c) ASIC may record or use information disclosed under paragraph (b).

Note: This section constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws (including the common law).

1678D Transitional rules

(1) ASIC may, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) in relation to the following:

(a) the amendments of this Act made by Division 1 of Part 1 of Schedule 2 to the *Territories Legislation Amendment Act 2020*;

(b) the amendments of this and any other Act made by the *Treasury Laws Amendment (Registries Modernisation and Other Measures) Act 2020*;

(c) if the Norfolk Island Companies Act is repealed—the repeal of that Act.

Note 1: The amendments mentioned in paragraph (a) included the insertion of this Part.

Note 2: The Norfolk Island Companies Act may be repealed by an amendment of the *Norfolk Island Continued Laws Ordinance 2015*.

(2) Without limiting subsection (1), rules under that subsection may include:

(a) rules providing for the Registrar under this Act to exercise powers, or perform functions, of ASIC under this Part; and

(b) rules in relation to the registration of a particular corporation or corporations under Part 5B.1.

(3) A rule of the kind mentioned in paragraph (2)(b) must specify a period, ending no later than the end of the day that is 2 years after

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the commencement day, during which it is to remain in force for the purposes of subsection 1678E(1).

(4) To avoid doubt, the rules may not do the following:
  (a) create an offence or civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;
  (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  (e) directly amend the text of this Act.

(5) This section is repealed at the end of the first Monday after the period of 12 months beginning on the commencement day.

1678E Saving of rules in relation to particular corporations

(1) Despite the repeal of section 1678D by subsection (5) of that section, a rule of the kind mentioned in paragraph 1678D(2)(b) continues in force until the earlier of the following times:
  (a) the end of the period specified under subsection 1678D(3) for the rule;
  (b) when the rule is repealed under subsection (2).

Note: Paragraph 1678D(2)(b) provides that ASIC may make rules under subsection 1678D(1) in relation to the registration of a particular corporation or corporations.

(2) A rule of the kind mentioned in paragraph 1678D(2)(b) may, under this subsection, be repealed before the end of the period specified under subsection 1678D(3).

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1678F Director identification numbers—Norfolk Island company directors

Scope

(1) This section applies if commencement (within the meaning of this Part) occurs on or after the application day within the meaning of subsection 1653(1).

(2) This section applies in relation to a person who:
  (a) is not an eligible officer immediately before commencement; and
  (b) becomes an eligible officer because of the registration of a company under Part 5B.1 for the purposes of section 1678A (which deals with the registration of former Norfolk Island companies).

Note: When such a company is registered, the former directors of the Norfolk Island company generally become directors of the registered company (see subsection 1678A(3)). Such a director is an eligible officer (see section 1272B).

Transitional application period for Norfolk Island company directors to apply for director identification numbers

(3) If a period (the ***transitional application period***) is specified under subsection (5) of this section, section 1272C applies to the person as if:
  (a) the reference in subparagraph 1272C(2)(a)(ii) to an application period specified by regulations were instead a reference to the transitional application period; and
  (b) the reference in subparagraph 1272C(2)(a)(ii) to the start of the application period specified by regulations were instead a reference to when the transitional application period came into effect; and
  (c) the reference in subparagraph 1272C(2)(a)(iii) to the start of a longer period (if any) allowed by the Registrar under section 1272E were instead a reference to when the transitional application period came into effect.

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Note: Section 1272C requires an eligible officer to have a director identification number, but allows a certain time (an application period) within which an application can be made for a director identification number.

(4) Until a transitional application period comes into effect, section 1272C does not apply to the person.

(5) The Minister may, by legislative instrument, specify a transitional application period for the purposes of subsection (3).

(6) Subsection 1653(4) does not apply to the person.

Note: Subsection 1653(4) applies a default period of 28 days under section 1272C within which an application can be made for a director identification number.

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Part 10.53—Application and transitional provisions relating to meetings and communications under the Corporations Amendment (Corporate Insolvency Reforms) Act 2020

1680 Definitions

In this Part:

commencement day means the day on which Part 2 of Schedule 4 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* commences.

1680A Application of COVID-19 instrument

The modifications of this Act made by the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020* do not apply in relation to:

(a) a meeting of a committee convened under Part 2 of Schedule 2; or

(b) a meeting concerning one or more companies under external administration;

that is held on or after the commencement day.

1680B Validation of things done under COVID-19 instruments

(1) This item applies if, before the commencement day:

(a) a thing is done in accordance with:

(i) the *Corporations (Coronavirus Economic Response) Determination (No. 1) 2020*; or

(ii) the *Corporations (Coronavirus Economic Response) Determination (No. 3) 2020*; and

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(b) the thing done would, apart from this item, be invalid or ineffective because it did not satisfy the requirements of this Act.

(2) The thing done is as valid and effective, and is taken always to have been as valid and effective, as it would have been had the thing done satisfied the requirements of this Act.

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Part 10.54—Application provisions relating to simplified liquidation process under the Corporations Amendment (Corporate Insolvency Reforms) Act 2020

1681 Application of amendments relating to the simplified liquidation process

The amendments made by Schedule 3 to the *Corporations Amendment (Corporate Insolvency Reforms) Act 2020* apply in relation to the winding up of a company because of a triggering event that occurs on or after 1 January 2021.

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Part 10.55—Transitional provisions relating to the Treasury Laws Amendment (Your Future, Your Super) Act 2021

1682 Application of amendment relating to portfolio holdings disclosure

The amendment of section 1017BB made by Schedule 3 to the *Treasury Laws Amendment (Your Future, Your Super) Act 2021* applies in relation to the reporting day that is 31 December 2021 and to later reporting days.

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Schedule 2—Insolvency Practice Schedule (Corporations)

Note: See section 600K.

Part 1—Introduction

Division 1—Introduction

1-1 Object of this Schedule

(1) The object of this Schedule is to ensure that any person registered as a liquidator:
  (a) has an appropriate level of expertise; and
  (b) behaves ethically; and
  (c) maintains sufficient insurance to cover his or her liabilities in practising as a registered liquidator.

(2) The object of this Schedule is also:
  (a) to regulate the external administration of companies consistently, unless there is a clear reason to treat a matter that arises in relation to a particular kind of external administration differently; and
  (b) to regulate the external administration of companies to give greater control to creditors.

1-5 Simplified outline of this Schedule

Registering liquidators

Under this Act, only a registered liquidator can perform certain roles, such as that of the receiver of the property of a corporation, the administrator of a company or of a deed of company arrangement, the restructuring practitioner for a company or for a restructuring plan, or the liquidator or provisional liquidator of a company.

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Part 2 of this Schedule sets out the process for registering liquidators, and also deals with disciplining registered liquidators.

Consistently regulating the external administration of companies

Part 3 of this Schedule sets out provisions to regulate the external administration of companies consistently.

A company is under external administration if the company is under administration, is the subject of a deed of company arrangement, is under restructuring, is the subject of a restructuring plan or has had a liquidator or provisional liquidator appointed in relation to it. A company is not under external administration merely because a person has been appointed as a receiver, receiver and manager or other controller in relation to the property of the company.

Other provisions

There are other matters relevant to the external administration of a company regulated in Chapter 5.

This Schedule also gives authority for a legislative instrument, the Insolvency Practice Rules, to deal with some matters.

Many of the terms in this Schedule are defined. The Dictionary in section 5-5 contains a list of every term that is defined in this Schedule. Other terms are defined in section 9 of this Act.

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Division 5—Definitions

Subdivision A—Introduction

5-1 Simplified outline of this Division

> Terms used in this Schedule are defined in the Dictionary. In some cases, the definition is a signpost to another provision of the Schedule in which the meaning of the term is explained.
>
> Some of the key terms, the meaning of which is explained in this Division, are external administration of a company and external administrator of a company.

Subdivision B—The Dictionary

5-5 The Dictionary

In this Schedule:

adequate and appropriate fidelity insurance has a meaning affected by subsection 25-1(2).

adequate and appropriate professional indemnity insurance has a meaning affected by subsection 25-1(2).

administration account: see section 65-5.

annual administration return means the return required to be lodged under subsection 70-5(3).

annual liquidator return means the return required to be lodged under subsection 30-1(1).

approved form: a document is lodged in the ***approved form*** if it is lodged in accordance with section 100-6.

committee of inspection for a company means:

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(a) a committee appointed under sections 80-10 to 80-25 in relation to the external administration of the company; or
(b) a committee that is taken to be a committee of inspection in relation to the external administration of the company under subsection 80-26(3) (the company is a member of a pooled group).

creditor, when used in relation to a company under external administration, means a creditor of the company.

current conditions: see section 5-10.

end of administration return means the return required to be lodged under subsection 70-6(2).

end of an external administration of a company means:
(a) in relation to a company under administration—the day worked out under paragraph 435C(1)(b); and
(b) in relation to a company subject to a deed of company arrangement—the day the deed is terminated; and
(ba) in relation to a company under restructuring—the day worked out under regulations made for the purposes of paragraph 453A(b); and
(bb) in relation to a company subject to a restructuring plan—the day the plan is terminated; and
(c) in the case of a winding up of a company—the day on which the affairs of the company are fully wound up.

external administration of a company: see section 5-15.

external administrator of a company: see section 5-20.

financial interest: a person has a ***financial interest*** in the external administration of a company in the circumstances set out in section 5-30.

GST has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999*.

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Insolvency Practice Rules means the rules made by the Minister under section 105-1.

Insolvency Practice Schedule (Bankruptcy) means Schedule 2 to the *Bankruptcy Act 1966*, and includes rules made under section 105-1 of that Schedule.

March quarter means the period of 3 months beginning on 1 January.

maximum default amount for an external administrator of a company: see section 60-15.

member of a pooled group: see section 5-27.

pooled group: see section 5-27.

prescribed means prescribed by the Insolvency Practice Rules.

property has a meaning affected by section 5-26.

registered liquidator means an individual who is registered as a liquidator under Part 2 of this Schedule.

Register of Liquidators means the register established and maintained by ASIC under section 15-1.

related entity, in relation to an individual, has the same meaning as in the *Bankruptcy Act 1966*.

remuneration determination, for an external administrator of a company, means a determination made in accordance with section 60-10 in relation to the external administrator.

resolution: a ***resolution*** is passed by creditors or contributories of a company:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

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reviewing liquidator means a registered liquidator who has been appointed under section 90-23 or 90-24 to conduct a review.

special resolution: a ***special resolution*** is passed by creditors or contributories of a company:

(a) in a meeting—in the circumstances prescribed under paragraph 75-50(2)(k); or

(b) without a meeting—in the circumstances prescribed under paragraph 75-40(5)(b).

start of an external administration of a company means:

(a) in relation to a company under administration—the day an administrator of the company is appointed under section 436A, 436B or 436C; and

(b) in relation to a company that is subject to a deed of company arrangement—the day the deed is executed; and

(ba) in relation to a company under restructuring—the day a restructuring practitioner for the company is appointed under section 453B; and

(bb) in relation to a company that is subject to a restructuring plan—the day the plan is made; and

(c) in the case of a winding up of a company—the day the winding up of the company is taken to have begun under section 513A or 513B; and

(d) in relation to a company for which a provisional liquidator has been appointed—the day the provisional liquidator is appointed.

this Schedule includes the Insolvency Practice Rules.

Subdivision C—Other definitions

5-10 Meaning of *current conditions*

(1) Each of the following is a ***current condition*** imposed on a registered liquidator:

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(a) a condition that a committee decides that the registered liquidator is to be subject to under subsection 20-20(5) or (6), subject to any variation that a committee has decided should be made to the condition under section 20-55;
(b) a condition imposed on all registered liquidators, or on registered liquidators of the liquidator's class, under section 20-35;
(c) a condition imposed under subsection 40-15(2) (direction not to accept further appointments);
(d) a condition that a committee decides that the registered liquidator is to be subject to under paragraph 40-55(1)(f) or (g) (conditions as a result of disciplinary action), subject to any variation that a committee has decided should be made to the condition under section 20-55;
(e) a condition imposed on the registered liquidator by the Court under section 45-1.

(2) However, the ***current conditions*** imposed on a registered liquidator do not include:
(a) a condition that a committee has decided to remove under section 20-55; or
(b) a condition that is removed under subsection 40-15(4) (condition removed because a direction not to accept further appointments has been withdrawn); or
(c) a condition that the Court has ordered be removed under section 45-1.

5-15 Meaning of *external administration* of a company

A company is taken to be under ***external administration*** if:
(a) the company is under administration; or
(b) a deed of company arrangement has been entered into in relation to the company; or
(ba) the company is under restructuring; or
(bb) a restructuring plan has been made in relation to the company; or

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(c) a liquidator has been appointed in relation to the company; or
(d) a provisional liquidator has been appointed in relation to the company.

Note: A company is not under ***external administration*** for the purposes of this Schedule merely because a receiver, receiver and manager, or other controller has been appointed in relation to property of the company.

5-20 Meaning of *external administrator* of a company

A person is an ***external administrator*** of a company if the person is:

(a) the administrator of the company; or
(b) the administrator under a deed of company arrangement that has been entered into in relation to the company; or
(ba) the restructuring practitioner for the company; or
(bb) the restructuring practitioner for a restructuring plan that has been made in relation to the company; or
(c) the liquidator of the company; or
(d) the provisional liquidator of the company.

Note: A person is not an ***external administrator*** of a company for the purposes of this Schedule merely because the person has been appointed as a receiver, receiver and manager, or controller in relation to property of the company.

5-25 References to the external administrator of a company

A reference in this Schedule to the external administrator of a company is to be read:

(a) in relation to a company in respect of which there are 2 or more joint external administrators—as a reference to all of the external administrators; and
(b) in relation to a company in respect of which there are 2 or more joint and several external administrators—as a reference to all of the external administrators or any one or more of the external administrators.

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5-26 Property of a company

The ***property*** of a company includes any PPSA retention of title property of the company.

Note: See sections 9 (definition of ***property***) and 51F (PPSA retention of title property).

5-27 Meaning of *pooled group*

If:

(a) a pooling determination is in force in relation to a group of 2 or more companies; or

(b) a pooling order is in force in relation to a group of 2 or more companies;

then:

(c) the companies are together a ***pooled group***; and

(d) each of the companies is a ***member of the pooled group***.

5-30 Persons with a *financial interest* in the external administration of a company

A person has a ***financial interest*** in the external administration of a company:

(a) if the person is one of the following:

(i) the company;

(ii) a creditor of the company;

(iii) an external administrator of the company;

(iv) in a members' voluntary winding up—a member of the company; or

(b) in any other circumstances prescribed.

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Part 2—Registering and disciplining practitioners

Division 10—Introduction

10-1 Simplified outline of this Part

Registering liquidators

An individual may apply to ASIC to be registered as a liquidator. ASIC will refer the application to a committee who will consider the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance. Registration may be subject to conditions, is for 3 years and may be renewed.

A registered liquidator must:

(a) lodge an annual return with ASIC that includes proof that the liquidator has appropriate insurance; and

(b) give ASIC notice if the liquidator's circumstances change or if certain other events happen.

Disciplining registered liquidators

If a registered liquidator fails to comply with certain requirements, such as the requirement to lodge a document or give information, ASIC may give directions that may result in the liquidator being unable to accept further appointments. ASIC may also seek a Court order.

ASIC may suspend or cancel a liquidator's registration in certain circumstances. ASIC may also give the liquidator a show-cause notice. If such a notice is given and no sufficient explanation is given, ASIC may take further disciplinary action on the decision of a committee.

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Industry bodies may notify ASIC where they suspect there are grounds for disciplinary action.

Court powers

The Court has broad powers to make orders in relation to registered liquidators (including imposing conditions on registration).

10-5 Working cooperatively with the Inspector-General in Bankruptcy

In performing its functions and exercising its powers under this Act in relation to persons who are, have been or may become both registered liquidators under this Act and registered trustees under the *Bankruptcy Act 1966*, ASIC must work cooperatively with the Inspector-General in Bankruptcy.

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Division 15—Register of liquidators

15-1 Register of Liquidators

(1) ASIC must establish and maintain a Register of Liquidators.

(2) The Register of Liquidators may be kept in any form that ASIC considers appropriate.

(3) The Insolvency Practice Rules may provide for and in relation to the Register of Liquidators.

(4) Without limiting subsection (3), the Insolvency Practice Rules may provide for and in relation to:
  (a) the details to be entered on the Register of Liquidators; and
  (b) the parts of the Register that are to be made available to the public.

(5) Without limiting paragraph (4)(a), those details may include:
  (a) details of any disciplinary action decided by a committee under section 40-55; and
  (b) details of persons who have had their registration as a liquidator under this Act suspended or cancelled.

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Division 20—Registering liquidators

Subdivision A—Introduction

20-1 Simplified outline of this Division

An individual may apply to ASIC to be registered as a liquidator. The application will be referred to a committee, which will assess the application against specified criteria (the applicant's qualifications, conduct and fitness and whether the applicant will take out appropriate insurance). The committee will report its decision to ASIC and, if the committee decides that the applicant should be registered, ASIC will register the applicant as a liquidator.

A registration may be subject to conditions. Conditions may be imposed on a particular registered liquidator by the committee, or on all registered liquidators or a class of registered liquidators by the Insolvency Practice Rules. A registered liquidator may apply to ASIC to have a condition imposed by a committee removed or varied. That application will be referred to a committee.

Registration is for 3 years, but may be renewed. An application for renewal may be made to ASIC within specified time periods.

A decision of a committee about an application for registration or about a condition of registration is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

Subdivision B—Registration

20-5 Application for registration

(1) An individual may apply to ASIC to be registered as a liquidator.

(2) The application must be lodged with ASIC in the approved form.

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Note: Fees for lodging documents may be imposed under the *Corporations (Fees) Act 2001*.

(3) The application is properly made if subsection (2) is complied with.

20-10 ASIC may convene a committee to consider

(1) ASIC may convene a committee for the purposes of considering an application, or applications, for registration as a liquidator.

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

20-15 ASIC must refer applications to a committee

(1) ASIC must refer an application for registration as a liquidator that is properly made to a committee convened under section 20-10 for consideration.

(2) ASIC must do so within 2 months after receiving the application.

20-20 Committee to consider applications

Committee must consider referred applications

(1) If an application for registration as a liquidator is referred to a committee, the committee must consider the application.

(2) For the purposes of considering the application, the committee:
  (a) must interview the applicant; and
  (b) may require the applicant to sit for an exam.

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Decision of committee

(3) Within 45 business days after interviewing the applicant, the committee must decide whether the applicant should be registered as a liquidator or not.

(4) The committee must decide that the applicant should be registered as a liquidator if it is satisfied that the applicant:
  (a) has the qualifications, experience, knowledge and abilities prescribed; and
  (b) will take out:
    (i) adequate and appropriate professional indemnity insurance; and
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the applicant may incur working as a registered liquidator; and
  (c) has not been convicted, within 10 years before making the application, of an offence involving fraud or dishonesty; and
  (d) is not, and has not been within 10 years before making the application, an insolvent under administration; and
  (e) has not had his or her registration as a liquidator under this Act cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and
  (f) has not had his or her registration as a trustee under the *Bankruptcy Act 1966* cancelled within 10 years before making the application, other than in response to a written request by the applicant to have the registration cancelled; and
  (g) is not disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; and
  (h) is otherwise a fit and proper person; and
  (i) is resident in Australia or in another prescribed country.

(5) The committee may decide that the applicant should be registered even if the committee is not satisfied of a matter mentioned in

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paragraph (4)(a), (e), (f) or (i), provided the applicant would be suitable to be registered as a liquidator.

Registration may be subject to conditions

(6) The committee may decide that the applicant's registration is to be subject to any conditions specified by the committee.

Spent convictions

(7) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

20-25 Committee to report

The committee must give the applicant and ASIC a report setting out:

(a) the committee's decision on the application; and
(b) the committee's reasons for that decision; and
(c) if the committee decides under subsection 20-20(5) or (6) that the applicant should be registered subject to a condition:
  (i) the condition; and
  (ii) the committee's reasons for imposing the condition.

20-30 Registration

Registration as liquidator

(1) ASIC must register the applicant as a liquidator if:
  (a) the committee has decided that the applicant should be registered; and
  (b) the applicant has produced evidence in writing to ASIC that the applicant has taken out:

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(i) adequate and appropriate professional indemnity insurance; and

(ii) adequate and appropriate fidelity insurance;

against the liabilities that the applicant may incur working as a registered liquidator.

Note: Fees may be imposed under the *Corporations (Fees) Act 2001* for the doing of an act by ASIC.

(2) ASIC registers an applicant by entering on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

Registration subject to current conditions

(3) The registration is subject to the current conditions imposed on the registered liquidator.

Certificate of registration

(4) After registering a person as a liquidator, ASIC must give the person a certificate of registration.

(5) The certificate may be given electronically.

Period of registration

(6) The registration has effect for 3 years.

20-35 Conditions imposed on all registered liquidators or a class of registered liquidators

(1) The Insolvency Practice Rules may impose conditions on all registered liquidators, or registered liquidators of a specified class.

(2) Without limiting subsection (1), a condition may be imposed limiting the kinds of activity in which a liquidator may engage, either for the duration of the registration or for a shorter period.

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Subdivision C—Varying etc. conditions of registration

20-40 Application to vary etc. conditions of registration

(1) If a committee has decided under this Schedule that a person's registration as a liquidator is to be subject to a condition, the person may apply to ASIC for the condition to be varied or removed.

(2) However, an application cannot be made:
  (a) if the person's registration as a liquidator is suspended; or
  (b) if the condition is of a prescribed kind; or
  (c) in prescribed circumstances.

(3) The application must be lodged with ASIC in the approved form.

(4) The application is properly made if:
  (a) an application can be made; and
  (b) subsection (3) is complied with.

(5) A single application by a registered liquidator may deal with more than one condition.

20-45 ASIC may convene a committee to consider applications

(1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 20-40.

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and
  (c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

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20-50 ASIC must refer applications to a committee

(1) ASIC must refer an application that is properly made under section 20-40 to a committee convened under section 20-45 for consideration.

(2) ASIC must do so within 2 months after receiving the application.

20-55 Committee to consider applications

(1) If an application to vary or remove a condition of registration is referred to a committee, the committee must consider the application.

(2) Unless the applicant otherwise agrees, the committee must, for the purposes of considering the application, interview the applicant.

(3) The committee must, within 20 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2):
   (a) decide whether the condition to which the application relates should be varied or removed; and
   (b) if a condition is to be varied—specify the way in which it is to be varied.

20-60 Committee to report

The committee must give the applicant and ASIC a report setting out:
   (a) the committee's decision on the application; and
   (b) the committee's reasons for that decision; and
   (c) if the committee decides that a condition should be varied—the variation that is to be made.

20-65 Committee's decision given effect

If the committee decides that a condition imposed on a registered liquidator is to be varied or removed, the condition is varied or removed in accordance with that decision.

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Subdivision D—Renewal

20-70 Application for renewal

(1) An individual may apply to ASIC to have the individual's registration as a liquidator renewed.

(2) The application must be lodged with ASIC in the approved form:
  (a) if the Court makes an order under subsection (3)—on or before the time specified in the order; or
  (b) otherwise—before the applicant's registration as a liquidator ceases to have effect.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

(3) The Court may, on application, extend the time within which the individual may apply to ASIC to have the individual's registration as a liquidator renewed.

(4) The application for renewal is properly made if subsection (2) is complied with.

20-75 Renewal

Renewal of registration

(1) On application under section 20-70, ASIC must renew the registration of the applicant as a liquidator if:
  (a) the application is properly made; and
  (b) the applicant has produced evidence in writing to ASIC that the applicant maintains:
    (i) adequate and appropriate professional indemnity insurance; and
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the applicant may incur working as a registered liquidator; and

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(c) the applicant has complied with any condition dealing with continuing professional education to which the applicant is subject during the applicant's current registration.

(2) ASIC renews the registration of the applicant by entering, or maintaining, on the Register of Liquidators the details relating to the applicant prescribed for the purposes of subsection 15-1(3).

Registration subject to current conditions

(3) The renewed registration is subject to the current conditions imposed on the registered liquidator.

Certificate of registration

(4) After renewing the registration of a person as a liquidator, ASIC must give the person a certificate of registration.

(5) The certificate may be given electronically.

Period of registration

(6) The renewed registration has effect for 3 years, beginning on the day after the person's immediately preceding registration as a liquidator ceased to have effect.

Subdivision E—Offences relating to registration

20-80 False representation that a person is a registered liquidator

A person commits an offence if:

(a) the person makes a representation; and
(b) the representation is that the person is a registered liquidator; and
(c) the representation is false.

Penalty: 30 penalty units.

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Division 25—Insurance

25-1 Registered liquidators to maintain insurance

Registered liquidator must maintain insurance

(1) A registered liquidator must maintain:
  (a) adequate and appropriate professional indemnity insurance; and
  (b) adequate and appropriate fidelity insurance;
against the liabilities that the liquidator may incur working as a registered liquidator.

(2) ASIC may, by legislative instrument, determine what constitutes adequate and appropriate professional indemnity insurance, and adequate and appropriate fidelity insurance, in relation to either or both of the following:
  (a) specified circumstances;
  (b) one or more specified classes of registered liquidators.

Offence

(3) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 1,000 penalty units.

(4) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person fails to comply with the requirement.

Penalty: 60 penalty units.

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Division 30—Annual liquidator returns

30-1 Annual liquidator returns

Registered liquidator must lodge annual return

(1) A person who is a registered liquidator during all or part of a liquidator return year for the person must, within 1 month after the end of that year, lodge with ASIC a return that conforms with subsection (3).

(2) Each of the following is a ***liquidator return year*** for a person who is or was registered as a liquidator under section 20-30:
  (a) the period of 12 months beginning on the day on which that registration first began;
  (b) each subsequent period of 12 months.

(3) A return under subsection (1) must:
  (a) be in the approved form; and
  (b) include evidence that the person has, during the whole of any period of the year during which the person was registered as a liquidator, maintained:
    (i) adequate and appropriate professional indemnity insurance; and
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the person may incur working as a registered liquidator.

(4) ASIC may, on the application of the registered liquidator made before the end of the period for lodging a return under subsection (1), extend, or further extend, that period.

Offence

(5) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1); and

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(b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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Division 35—Notice requirements

35-1 Notice of significant events

Registered liquidator must lodge notice

(1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
  (a) the liquidator becomes an insolvent under administration;
  (b) a bankruptcy notice is issued under the *Bankruptcy Act 1966* in relation to the liquidator as debtor, or a corresponding notice is issued in relation to the liquidator as debtor under a law of an external Territory or a law of a foreign country;
  (c) the liquidator is convicted of an offence involving fraud or dishonesty;
  (d) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country;
  (e) the liquidator ceases to have:
    (i) adequate and appropriate professional indemnity insurance; or
    (ii) adequate and appropriate fidelity insurance;
  against the liabilities that the liquidator may incur working as a registered liquidator;
  (f) the liquidator is issued with a notice under section 40-40 of Schedule 2 to the *Bankruptcy Act 1966* (a show-cause notice) in relation to the liquidator's registration as a trustee under that Act;
  (g) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* is suspended or cancelled;
  (h) any other event prescribed.

The notice must be lodged within 5 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred.

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Offence

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 100 penalty units.

35-5 Notice of other events

Registered liquidator must lodge notice

(1) A registered liquidator must lodge with ASIC a notice, in the approved form, if any of the following events occur:
  (a) information included in an annual liquidator return, an annual administration return or an end of administration return, prepared by or on behalf of the liquidator, is or becomes inaccurate in a material particular;
  (b) any other event prescribed.

The notice must be lodged within 10 business days after the registered liquidator could reasonably be expected to be aware that the event has occurred.

Offence

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 30 penalty units.

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Division 40—Disciplinary and other action

Subdivision A—Introduction

40-1 Simplified outline of this Division

Remedying failure to lodge documents or give information or documents

ASIC may direct a registered liquidator to comply with a requirement to lodge a document, or give any information or document, to ASIC. If the liquidator fails to comply with the direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

Correcting and completing information given to ASIC

If ASIC reasonably suspects that information that a registered liquidator is required to give ASIC is incomplete or inaccurate, ASIC can direct the liquidator to confirm, complete or correct the information. ASIC can also direct the liquidator to tell someone about the defect in the information. If the liquidator fails to comply with a direction, ASIC can direct that the liquidator accept no further appointments or seek an order from the Court directing the liquidator to comply.

Other grounds for a direction not to accept further appointments

There are other grounds on which ASIC can issue a direction not to accept further appointments, for example, if the registered liquidator fails to comply with a direction to convene a meeting.

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Suspending or cancelling registration

An individual's registration as a liquidator can be suspended or cancelled.

The registration is automatically cancelled if the registered liquidator becomes an insolvent under administration or dies.

In some circumstances, ASIC can suspend or cancel the registration of a person as a liquidator. ASIC can also give a registered liquidator notice to show-cause why the liquidator should continue to be registered. If ASIC is not satisfied with the answer, ASIC can refer the matter to a committee which will make a decision on what action should be taken.

An industry body can give ASIC notice of possible grounds for disciplinary action.

If a registration is suspended, the liquidator can apply to ASIC to have the suspension lifted or shortened.

A decision about the suspension or cancellation of the registration of a liquidator is reviewable by the Administrative Appeals Tribunal (see Part 9.4A of this Act).

Subdivision B—Direction to comply

40-5 Registered liquidator to remedy failure to lodge documents or give information or documents

Application of this section

(1) This section applies if a registered liquidator fails to comply with a requirement to lodge any document, or give any information or document, that the liquidator is required under this Act to lodge with or give to ASIC.

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ASIC may give direction to comply

(2) ASIC may, in writing, direct the liquidator to comply with the requirement within 10 business days after the direction is given.

(3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

Consequences for failing to comply

(4) If the liquidator does not comply within the period, ASIC may do either or both of the following:
   (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
   (b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

Direction is not a legislative instrument

(5) A direction under subsection (2) is not a legislative instrument.

Relationship with other laws

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC.

40-10 Registered liquidator to correct inaccuracies etc.

Application of this section

(1) This section applies if ASIC reasonably suspects that any information that a registered liquidator is required under this Act to

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give to ASIC (whether in a document lodged or given to ASIC or otherwise) is incomplete or incorrect in any particular.

ASIC may give direction to correct information etc.

(2) ASIC may, in writing, direct the liquidator to do one or more of the following within a period of 10 business days after the direction is given:
   (a) confirm to ASIC that the information is complete and correct;
   (b) complete or correct the information (as the case requires);
   (c) notify any persons specified by ASIC in the direction of the addition or correction.

(3) ASIC may, on the application of a registered liquidator made before the end of the period referred to in subsection (2), extend, or further extend, that period.

Consequences for failing to comply

(4) If the liquidator does not comply within the period, ASIC may do either or both of the following:
   (a) give a direction under subsection 40-15(1) (direction not to accept further appointments);
   (b) apply to the Court for an order, under subsection 1274(11) (registers), section 45-1 of this Schedule or any other provision that is relevant, directing the liquidator to comply with the requirement within such time as is specified in the order.

Direction is not a legislative instrument

(5) A direction under subsection (2) is not a legislative instrument.

Relationship with other laws

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to a person giving incomplete or incorrect information.

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40-15 Direction not to accept further appointments

ASIC may give direction not to accept further appointments

(1) ASIC may, in writing, direct a registered liquidator not to accept any further appointments under Chapter 5 (external administration), or not to accept any further appointments under Chapter 5 during a period specified in the direction, if:
   (a) the liquidator has failed to comply with a direction given to the liquidator under section 40-5 (direction to remedy failure to lodge documents, or give information or documents); or
   (b) the liquidator has failed to comply with a direction given to the liquidator under section 40-10 (direction to correct inaccuracies); or
   (c) a committee has decided under paragraph 40-55(1)(d) that ASIC should give the direction referred to in that paragraph; or
   (d) the liquidator has failed to comply with a direction given to the liquidator under section 70-70 (direction to give relevant material); or
   (e) the liquidator has failed to comply with a direction given to the liquidator under subsection 75-20(1) or (2), or subsection 80-27(1) (direction to convene a meeting of creditors or comply with requirements in relation to such a meeting).

Condition of registration to comply with direction

(2) If ASIC gives a direction to a registered liquidator under subsection (1), it is a condition of the liquidator's registration that the liquidator must comply with the direction.

Withdrawal of direction

(3) ASIC may withdraw a direction given under subsection (1).

(4) The condition is removed from the liquidator's registration if ASIC withdraws the direction.

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Direction is not a legislative instrument

(5) A direction under subsection (1) is not a legislative instrument.

Relationship with other laws

(6) Nothing in this section limits the operation of any other provision of this Act, or any other law, in relation to:
  (a) a person who fails to comply with a requirement to lodge a document with, or give information or a document to, ASIC; or
  (b) a person giving incomplete or incorrect information; or
  (c) any matter in relation to which a committee makes a decision under subsection 40-55(1).

(7) Nothing in this section limits ASIC's power under this Act, or any other law, to apply to the Court for an order in relation to a failure to comply with a direction mentioned in subsection (1).

Subdivision C—Automatic cancellation

40-20 Automatic cancellation

(1) The registration of a person as a liquidator is cancelled if:
  (a) the person becomes an insolvent under administration; or
  (b) the person dies.

(2) The cancellation takes effect on the day the event mentioned in subsection (1) happens.

Subdivision D—ASIC may suspend or cancel registration

40-25 ASIC may suspend registration

(1) ASIC may suspend the registration of a person as a liquidator if:
  (a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

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(b) the person ceases to have:
  (i) adequate and appropriate professional indemnity insurance; or
  (ii) adequate and appropriate fidelity insurance;

against the liabilities that the person may incur working as a registered liquidator; or

(c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the person to cancel or suspend the registration; or

(d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or

(e) the person has been convicted of an offence involving fraud or dishonesty; or

(f) the person lodges a request with ASIC in the approved form to have the registration suspended; or

(g) in the case of a person who 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 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.

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

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40-30 ASIC may cancel registration

(1) ASIC may cancel the registration of a person as a liquidator if:

(a) the person is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

(b) the person ceases to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

against the liabilities that the person may incur working as a registered liquidator; or

(c) the person's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled, other than in compliance with a written request by the person to cancel the registration; or

(d) if the Court has made an order under section 90-15 that the person repay remuneration—the person has failed to repay the remuneration; or

(e) the person has been convicted of an offence involving fraud or dishonesty; or

(f) the person lodges a request with ASIC in the approved form to have the registration cancelled; or

(g) in the case of a person who 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 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.

(2) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

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Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

40-35 Notice of suspension or cancellation

Application of this section

(1) This section applies if ASIC decides under section 40-25 or 40-30 to suspend or cancel the registration of a person as a liquidator.

ASIC must give notice of decision

(2) ASIC must, within 10 business days after making the decision, give the person 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.

Subdivision E—Disciplinary action by committee

40-40 ASIC may give a show-cause notice

(1) ASIC may give a registered liquidator notice in writing asking the liquidator to give ASIC a written explanation why the liquidator should continue to be registered, if ASIC believes that:
  (a) the liquidator no longer has the qualifications, experience, knowledge and abilities prescribed under paragraph 20-20(4)(a); or

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(b) the liquidator has committed an act of bankruptcy, within the meaning of the *Bankruptcy Act 1966* or a corresponding law of an external Territory or a foreign country; or

(c) the liquidator is disqualified from managing corporations under Part 2D.6 of this Act, or under a law of an external Territory or a law of a foreign country; or

(d) the liquidator has ceased to have:

(i) adequate and appropriate professional indemnity insurance; or

(ii) adequate and appropriate fidelity insurance;

against the liabilities that the person may incur working as a registered liquidator; or

(e) the liquidator has breached a current condition imposed on the liquidator; or

(f) the liquidator has contravened a provision of this Act; or

(g) the liquidator has been appointed to act as a reviewing liquidator under Subdivision C of Division 90 of this Schedule, and has failed to properly exercise the powers or perform the duties of a reviewing liquidator; or

(h) the liquidator's registration as a trustee under the *Bankruptcy Act 1966* has been cancelled or suspended, other than in compliance with a written request by the liquidator to cancel or suspend the registration; or

(i) if the Court has made an order under section 90-15 that the liquidator repay remuneration—the liquidator has failed to repay the remuneration; or

(j) the liquidator has been convicted of an offence involving fraud or dishonesty; or

(k) the liquidator is permanently or temporarily unable to perform the functions and duties of a liquidator because of physical or mental incapacity; or

(l) the liquidator has failed to carry out adequately and properly (whether in Australia or in an external Territory or in a foreign country):

(i) the duties of a liquidator; or

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(ii) any other duties or functions that a registered liquidator is required to carry out under a law of the Commonwealth or of a State or Territory, or the general law; or

(m) the liquidator is not a fit and proper person; or

(n) the liquidator is not resident in Australia or in another prescribed country.

(2) A notice under subsection (1) is not a legislative instrument.

(3) Nothing in this section affects the operation of Part VIIC of the *Crimes Act 1914*.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

40-45 ASIC may convene a committee

(1) ASIC may convene a committee to make a decision of a kind mentioned in section 40-55 in relation to a registered liquidator, or registered liquidators.

(2) The committee must consist of:

(a) ASIC; and

(b) a registered liquidator chosen by a prescribed body; and

(c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

40-50 ASIC may refer matters to the committee

ASIC may refer a registered liquidator to a committee convened under section 40-45 if ASIC:

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(a) gives the liquidator a notice under section 40-40 (a show-cause notice); and
(b) either:
  (i) does not receive an explanation within 20 business days after the notice is given; or
  (ii) is not satisfied by the explanation.

40-55 Decision of the committee

(1) If a registered liquidator is referred to a committee under section 40-50, the committee must decide one or more of the following:
  (a) that the liquidator should continue to be registered;
  (b) that the liquidator's registration should be suspended for a period, or until the occurrence of an event, specified in the decision;
  (c) that the liquidator's registration should be cancelled;
  (d) that ASIC should direct the liquidator not to accept any further appointments as liquidator, or not to accept any further appointments as liquidator during the period specified in the decision;
  (e) that the liquidator should be publicly admonished or reprimanded;
  (f) that a condition specified in the decision should be imposed on the liquidator;
  (g) that a condition should be imposed on all other registered liquidators that they must not allow the liquidator to carry out any of the functions or duties, or exercise any of the powers, of a registered liquidator on their behalf (whether as employee, agent, consultant or otherwise) for a period specified in the decision of no more than 10 years;
  (h) that ASIC should publish specified information in relation to the committee's decision and the reasons for that decision.

(2) Without limiting paragraph (1)(f), conditions imposed under that paragraph may include one or more of the following:

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(a) a condition that the liquidator engage in, or refrain from engaging in, specified conduct;
(b) a condition that the liquidator engage in, or refrain from engaging in, specified conduct except in specified circumstances;
(c) a condition that the liquidator publish specified information;
(d) a condition that the liquidator notify a specified person or class of persons of specified information;
(e) a condition that the liquidator publish a specified statement;
(f) a condition that the liquidator make a specified statement to a specified person or class of persons.

(3) In making its decision, the committee may have regard to:
(a) any information provided to the committee by ASIC; and
(b) any explanation given by the liquidator; and
(c) any other information given by the liquidator to the committee; and
(d) if the liquidator is or was also a registered trustee under the *Bankruptcy Act 1966*—any information in relation to the liquidator given to the committee by the Inspector-General in Bankruptcy or a committee convened under the Insolvency Practice Schedule (Bankruptcy); and
(e) any other matter that the committee considers relevant.

40-60 Committee to report

The committee must give the registered liquidator and ASIC a report setting out:
(a) the committee's decision in relation to the liquidator; and
(b) the committee's reasons for that decision; and
(c) if the committee decides under paragraph 40-55(1)(f) that the liquidator should be registered subject to a condition:
(i) the condition; and
(ii) the committee's reasons for imposing the condition; and

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(d) if the committee decides under paragraph 40-55(1)(g) that a condition should be imposed on all other registered liquidators in relation to the liquidator:
  (i) the condition; and
  (ii) the committee's reasons for imposing the condition.

40-65 ASIC must give effect to the committee's decision

ASIC must give effect to the committee's decision.

Subdivision F—Lifting or shortening suspension

40-70 Application to lift or shorten suspension

Application of this section

(1) This section applies if a person's registration as a liquidator has been suspended.

Suspended liquidator may apply to ASIC

(2) The person may apply to ASIC:
  (a) for the suspension to be lifted; or
  (b) for the period of the suspension to be shortened.

(3) The application must be lodged with ASIC in the approved form.

(4) The application is properly made if subsection (3) is complied with.

40-75 ASIC may convene a committee to consider applications

(1) ASIC may convene a committee for the purposes of considering an application, or applications, made under section 40-70.

(2) The committee must consist of:
  (a) ASIC; and
  (b) a registered liquidator chosen by a prescribed body; and

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(c) a person appointed by the Minister.

Note 1: Section 50-5 sets out the knowledge and experience that a prescribed body must be satisfied a person has before making an appointment under paragraph (2)(b).

Note 2: Section 50-10 sets out the matters of which the Minister must be satisfied before making an appointment under paragraph (2)(c).

40-80 ASIC must refer applications to a committee

(1) ASIC must refer an application that is properly made under section 40-70 to a committee convened under section 40-75 for consideration.

(2) ASIC must do so within 2 months after receiving the application.

40-85 Committee to consider applications

(1) If an application is referred to a committee, the committee must consider the application.

(2) Unless the applicant otherwise agrees, the committee must interview the applicant for the purposes of considering the application.

(3) Within 10 business days after interviewing the applicant or obtaining the agreement of the applicant as referred to in subsection (2), the committee must:

(a) decide whether the suspension should be lifted, or the period of the suspension shortened; and

(b) if the period of the suspension is to be shortened—specify when the suspension is to end.

40-90 Committee to report

The committee must give the applicant and ASIC a report setting out:

(a) the committee's decision on the application; and

(b) the committee's reasons for that decision; and

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(c) if the committee decides that the period of the suspension should be shortened—when the suspension is to end.

40-95 Committee's decision given effect

If the committee decides that a suspension is to be lifted or shortened, the suspension is lifted or shortened in accordance with the decision.

Subdivision G—Action initiated by industry body

40-100 Notice by industry bodies of possible grounds for disciplinary action

Industry body may lodge notice

(1) An industry body may lodge with ASIC a notice in the approved form (an ***industry notice***):
   (a) stating that the body reasonably suspects that there are grounds for ASIC:
      (i) to suspend the registration of a registered liquidator under section 40-25; or
      (ii) to cancel the registration of a registered liquidator under section 40-30; or
      (iii) to give a registered liquidator a notice under section 40-40 (a show-cause notice); or
      (iv) to impose a condition on a registered liquidator under another provision of this Schedule; and
   (b) identifying the registered liquidator; and
   (c) including the information and copies of any documents upon which the suspicion is founded.

ASIC must consider information and documents

(2) ASIC must consider the information and the copies of any documents included with the industry notice.

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ASIC must give notice if no action to be taken

(3) If, after such consideration, ASIC decides to take no action in relation to the matters raised by the industry notice, ASIC must give the industry body written notice of that fact.

45 business days to consider and decide

(4) The consideration of the information and the copies of any documents included with the industry notice must be completed and, if ASIC decides to take no action, a notice under subsection (3) given, within 45 business days after the industry notice is lodged.

ASIC not precluded from taking action

(5) ASIC is not precluded from:
   (a) suspending the registration of a registered liquidator under section 40-25; or
   (b) cancelling the registration of a registered liquidator under section 40-30; or
   (c) giving a registered liquidator a notice under section 40-40 (a show-cause notice); or
   (d) imposing a condition on a registered liquidator under another provision of this Schedule;

   wholly or partly on the basis of information or a copy of a document included with the industry notice, merely because ASIC has given a notice under subsection (3) in relation to the matters raised by the industry notice.

Notice to industry body if ASIC takes action

(6) If ASIC does take action of the kind mentioned in subsection (5) wholly or partly on the basis of information or a copy of a document included with the industry notice, ASIC must give the industry body notice of that fact.

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Notices are not legislative instruments

(7) A notice under subsection (3) or (6) is not a legislative instrument.

40-105 No liability for notice given in good faith etc.

(1) An industry body is not liable civilly, criminally or under any administrative process for giving a notice under subsection 40-100(1) if:
   (a) the body acted in good faith in giving the notice; and
   (b) the suspicion that is the subject of the notice is a reasonable suspicion.

(2) A person who, in good faith, makes a decision as a result of which the industry body gives a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for making the decision.

(3) A person who, in good faith, gives information or a document to an industry body that is included, or a copy of which is included, in a notice under subsection 40-100(1) is not liable civilly, criminally or under any administrative process for giving the information or document.

40-110 Meaning of *industry bodies*

The Insolvency Practice Rules may prescribe ***industry bodies*** for the purposes of this Subdivision.

Subdivision H—Consequences of certain disciplinary and other action

40-111 Appointment of another liquidator if liquidator's registration is suspended or cancelled

(1) If:
   (a) the registration of a liquidator is suspended or cancelled under this Division; and

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(b) the liquidator is conducting the external administration of a company at the time the registration is suspended or cancelled;

ASIC may, in writing, appoint another registered liquidator to conduct the external administration of the company.

(2) If:

(a) a liquidator fails to renew his or her registration as a liquidator before that registration ceases to have effect; and

(b) no order has been made by the Court under subsection 20-70(3) extending the period during which the liquidator may apply for renewal; and

(c) the liquidator is conducting the external administration of a company at the time his or her registration as a liquidator ceases to have effect;

ASIC may, in writing, appoint another registered liquidator to conduct the external administration of the company.

(3) Subsections (1) and (2) do not apply to:

(a) a liquidator appointed by the Court; or

(b) a winding up ordered by ASIC under section 489EA; or

(c) a members' voluntary winding up.

Note: For court-appointed liquidators, see section 473A. For a winding up ordered by ASIC, see section 489EA. For a members' voluntary winding up, see section 495.

(4) An appointment of a registered liquidator by ASIC under subsection (1) must not be made without the written consent of the liquidator.

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Division 45—Court oversight of registered liquidators

45-1 Court may make orders in relation to registered liquidators

(1) The Court may make such orders as it thinks fit in relation to a registered liquidator.

(2) The Court may exercise the power under subsection (1):
  (a) on its own initiative, during proceedings before the Court; or
  (b) on application under subsection (3).

(3) Each of the following persons may apply for an order under subsection (1):
  (a) the registered liquidator;
  (b) ASIC.

(4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
  (a) whether the registered liquidator has faithfully performed, or is faithfully performing, the registered liquidator's duties; and
  (b) whether an action or failure to act by the registered liquidator is in compliance with this Act and the Insolvency Practice Rules; and
  (c) whether an action or failure to act by the registered liquidator is in compliance with an order of the Court; and
  (d) whether any person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the registered liquidator; and
  (e) the seriousness of the consequences of any action or failure to act by the registered liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.

(5) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

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45-5 Court may make orders about costs

(1) Without limiting section 45-1, the Court may make orders in relation to a registered liquidator that deal with the costs of a matter considered by the Court.

(2) Those orders may include an order that:
   (a) the registered liquidator is personally liable for some or all of those costs; and
   (b) the registered liquidator is not entitled to be reimbursed by a company or its creditors in relation to some or all of those costs.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

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Division 50—Committees under this Part

50-1 Simplified outline of this Division

This Division sets out common rules for committees established under this Part.

If a prescribed body appoints a person to a committee, that person must have the prescribed knowledge or experience or, if no knowledge or experience is prescribed, the knowledge and experience necessary to carry out the functions to be performed. If the Minister appoints a person to a committee, that person must have knowledge or experience in a field such as business, law (including the law of corporate insolvency) or public policy relating to corporate insolvency.

A single committee may consider more than one matter. The consideration of a matter is not affected by a change in the membership of the committee. A matter may be adjourned or transferred to another committee. The Insolvency Practice Rules may prescribe procedures and make other rules for committees.

The use and disclosure of information given to a committee is restricted to listed purposes.

50-5 Prescribed body appointing a person to a committee

Application of this section

(1) This section applies if a prescribed body is to appoint a person to a committee under this Part.

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Prescribed body must only appoint a person with appropriate knowledge and experience

(2) The prescribed body is to appoint a person as a member of the committee only if the prescribed body is satisfied that the person has:
  (a) if any knowledge or experience is prescribed in relation to appointments of the kind to be made—that knowledge or experience; or
  (b) if no knowledge or experience is prescribed in relation to appointments of the kind to be made—the knowledge and experience necessary to carry out the person's functions as a member of the committee if appointed.

50-10 Minister appointing a person to a committee

Application of this section

(1) This section applies if the Minister is to appoint a person to a committee under any of the following paragraphs:
  (a) paragraph 20-10(2)(c);
  (b) paragraph 20-45(2)(c);
  (c) paragraph 40-45(2)(c);
  (d) paragraph 40-75(2)(c).

Matters of which the Minister must be satisfied before appointing

(2) The Minister is to appoint a person as a member of the committee only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields:
  (a) business;
  (b) law, including the law relating to corporate insolvency;
  (c) economics;
  (d) accounting;
  (e) public policy relating to corporate insolvency;
  (f) administration of companies, including insolvent companies.

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Minister must not appoint member or staff member of ASIC

(3) The Minister must not appoint:
  (a) a member of ASIC (within the meaning of section 9 of the *Australian Securities and Investments Commission Act 2001*); or
  (b) a staff member of ASIC;

to be a member of the committee.

Delegation of power to appoint

(4) The Minister may, in writing, delegate the Minister's powers to appoint a person to a committee 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).

(5) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

50-15 Single committee may consider more than one matter

A single committee may be convened under this Part to consider one or more of the following:
  (a) a matter or matters relating to one applicant for registration as a liquidator;
  (b) a matter or matters relating to more than one applicant for registration as a liquidator;
  (c) a matter or matters relating to one registered liquidator;
  (d) a matter or matters relating to more than one registered liquidator.

50-20 Ongoing consideration of matters by committee

If a committee is convened under this Part to consider a matter:

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(a) the committee's powers, functions and duties in relation to the matter are not affected by a change in the membership of the committee; and
(b) the committee may adjourn its consideration of the matter, and may do so more than once; and
(c) the matter may be transferred to another committee with powers, functions and duties under this Part in relation to matters of that kind.

50-25 Procedure and other rules relating to committees

The Insolvency Practice Rules may provide for and in relation to:
(a) the manner in which the committees convened under this Part are to perform their functions, including:
  (i) meetings of committees; and
  (ii) the number of committee members required to constitute a quorum; and
  (iii) disclosure of interests in a matter before a committee; and
  (iv) the manner in which questions are to be decided by the committee; and
(b) the reconstitution of a committee; and
(c) the termination of the consideration of a matter by a committee, and the transfer of matters to another committee.

50-30 Remuneration of committee members

(1) A member of a committee convened under this Part is entitled to receive the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is entitled to receive such remuneration as the Minister determines in writing.

(2) A member is entitled to receive such allowances as the Minister determines in writing.

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(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

50-35 Committee must only use information etc. for purposes for which disclosed

Offence

(1) A person commits an offence if:
  (a) the person is or was a member of a committee convened under this Part; and
  (b) information or a document is or was disclosed to the person for the purposes of exercising powers or performing functions as a member of the committee; and
  (c) the person uses or discloses the information or document.

Penalty: 50 penalty units.

Exception—information or document disclosed to the Inspector-General in Bankruptcy or another committee etc.

(2) Subsection (1) does not apply if the information or document:
  (a) is used or disclosed by the person for the purposes of exercising powers or performing functions as a member of the committee mentioned in subsection (1); or
  (b) is disclosed:
    (i) to the Inspector-General in Bankruptcy to assist the Inspector-General to exercise his or her powers or perform his or her functions under the *Bankruptcy Act 1966*; or
    (ii) to a committee convened under Part 2 of the Insolvency Practice Schedule (Bankruptcy) to assist the committee to exercise its powers or perform its functions under that Part; or
    (iii) to another committee convened under this Part to assist the committee to exercise its powers or perform its functions under this Part; or

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(iv) to enable or assist a body prescribed for the purposes of this paragraph to perform its disciplinary function in relation to its members; or

(v) in order to enable or assist an authority or person in a State or Territory, or a foreign country, to perform or exercise a function or power that corresponds, or is analogous, to any of the committee's or ASIC's functions and powers; or

(vi) to a court or tribunal in relation to proceedings before the court or tribunal.

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

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Part 3—General rules relating to external administrations

Division 55—Introduction

55-1 Simplified outline of this Part

This Part sets out requirements for conducting the external administration of a company.

The main provisions deal with:

(a) the remuneration of the external administrator; and
(b) the duties of the external administrator in handling the money and other property of the company; and
(c) conflicts of interest; and
(d) the duties of the external administrator to keep appropriate records, to report to ASIC and to give information, documents and reports to creditors, members of the company and others; and
(e) creditor and company meetings; and
(f) the creation and conduct of a committee to monitor the external administration (called a committee of inspection); and
(g) the rights of creditors to review the external administration; and
(h) the rights of creditors to remove the external administrator and appoint another; and
(i) the review of the external administration by the Court.

There are additional rules that apply to companies under external administration in Chapter 5 (for example, about appointment of external administrators) of this Act.

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Section 55-1

Companies in receivership are not covered in this Part (see generally Part 5.2 of this Act).

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Division 60—Remuneration and other benefits received by external administrators

Subdivision A—Introduction

60-1 Simplified outline of this Division

Remuneration

The external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration.

The amount of remuneration will usually be set under a remuneration determination. Remuneration determinations are made by:

(a) in a members voluntary winding up—the members; and

(b) in most other cases—the creditors or the committee of inspection (if there is one).

However, if there is no remuneration determination, the external administrator will be entitled to receive a reasonable amount for the work. The maximum amount that the external administrator may receive in this way is $5,000 (exclusive of GST and indexed).

The remuneration of provisional liquidators is, in most cases, determined by the Court.

The remuneration of a restructuring practitioner for a company or for a restructuring plan is dealt with in the Insolvency Practice Rules.

The Court may review the remuneration of the external administrator of a company and may also make orders under Division 90 about remuneration (including ordering repayment of remuneration).

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Other benefits

The external administrator of a company must not:

(a) employ a related entity, unless certain requirements are met;

(b) purchase any assets of the company; or

(c) get any other benefits or profits from the administration.

Subdivision B—Remuneration of external administrators—general rules

60-2 Application of this Subdivision

This Subdivision applies in relation to an external administrator of a company other than:

(a) a provisional liquidator; or

(b) a liquidator appointed by ASIC under section 489EC (winding up by ASIC); or

(c) a restructuring practitioner for a company; or

(d) a restructuring practitioner for a restructuring plan.

Note: For the remuneration of provisional liquidators, see Subdivision C of this Division. For the remuneration of liquidators appointed by ASIC under section 489EC, see Subdivision D of this Division.

60-5 External administrator's remuneration

Remuneration in accordance with remuneration determinations

(1) An external administrator of a company is entitled to receive remuneration for necessary work properly performed by the external administrator in relation to the external administration, in accordance with the remuneration determinations (if any) for the external administrator (see section 60-10).

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Remuneration for external administrators if no remuneration determination made

(2) If no remuneration determination is made in relation to necessary work properly performed by the external administrator of a company in relation to the external administration, the administrator is entitled to receive reasonable remuneration for the work. However, that remuneration must not exceed the maximum default amount.

60-10 Remuneration determinations

Remuneration determinations

(1) A determination, specifying remuneration that an external administrator of a company (other than an external administrator in a members' voluntary winding up) is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:
   (a) by resolution of the creditors; or
   (b) if there is a committee of inspection and a determination is not made under paragraph (a)—by the committee of inspection; or
   (c) if a determination is not made under paragraph (a) or (b)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

(2) A determination, specifying remuneration that an external administrator of a company in a members' voluntary winding up is entitled to receive for necessary work properly performed by the external administrator in relation to the external administration, may be made:
   (a) by resolution of the company at a general meeting; or
   (b) if a determination is not made under paragraph (a)—by the Court.

Note: For determinations made by the Court, see also section 60-12 (matters to which the Court must have regard).

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(3) A determination under this section may specify remuneration that the external administrator is entitled to receive in either or both of the following ways:
   (a) by specifying an amount of remuneration;
   (b) by specifying a method for working out an amount of remuneration.

Remuneration on a time-cost basis

(4) If a determination under this section specifies that the external administrator is entitled to receive remuneration worked out wholly or partly on a time-cost basis, the determination must include a cap on the amount of remuneration worked out on a time-cost basis that the external administrator is entitled to receive.

More than one remuneration determination may be made

(5) To avoid doubt, more than one determination under this section may be made in relation to a particular external administrator of a company and a particular external administration of a company.

60-11 Review of remuneration determinations

Review on application

(1) Any of the following may apply to the Court for a review of a remuneration determination for an external administrator of a company:
   (a) ASIC;
   (b) a person with a financial interest in the external administration of the company;
   (c) an officer of the company.

(2) Paragraph (1)(c) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

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(3) On application under subsection (1), the Court may, if it considers it appropriate to do so, review the remuneration determination.

Note: See also section 60-12 (matters to which the Court must have regard).

Court must affirm, vary or set aside remuneration determination

(4) After reviewing the remuneration determination, the Court must:
  (a) affirm the remuneration determination; or
  (b) vary the remuneration determination; or
  (c) set aside the remuneration determination and substitute another remuneration determination.

Exception

(5) Subsection (1) does not apply to a remuneration determination made by the Court.

60-12 Matters to which the Court must have regard

In making a remuneration determination under paragraph 60-10(1)(c) or (2)(b), or reviewing a remuneration determination under section 60-11, the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:
  (a) the extent to which the work by the external administrator was necessary and properly performed;
  (b) the extent to which the work likely to be performed by the external administrator is likely to be necessary and properly performed;
  (c) the period during which the work was, or is likely to be, performed by the external administrator;
  (d) the quality of the work performed, or likely to be performed, by the external administrator;
  (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the external administrator;
  (f) the extent (if any) to which the external administrator was, or is likely to be, required to deal with extraordinary issues;

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(g) the extent (if any) to which the external administrator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;

(h) the value and nature of any property dealt with, or likely to be dealt with, by the external administrator;

(i) the number, attributes and conduct, or the likely number, attributes and conduct, of the creditors;

(j) if the remuneration is worked out wholly or partly on a time-cost basis—the time properly taken, or likely to be properly taken, by the external administrator in performing the work;

(k) whether the external administrator was, or is likely to be, required to deal with one or more controllers, or one or more managing controllers;

(l) if:

(i) a review has been carried out under Subdivision C of Division 90 (review by another registered liquidator) into a matter that relates to the external administration; and

(ii) the matter is, or includes, remuneration of the external administrator;

the contents of the report on the review that relate to that matter;

(m) any other relevant matters.

60-15 Maximum default amount

Maximum default amount

(1) The ***maximum default amount*** for an external administrator of a company is an amount (exclusive of GST) worked out as follows:

(a) if the external administrator is appointed in relation to the external administration of the company during the financial year beginning on 1 July 2016—$5,000;

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(b) if the external administrator is appointed in relation to the external administration of the company during a financial year beginning on or after 1 July 2017—the greater of:
  (i) the amount worked out by multiplying the indexation factor for the financial year (worked out under subsections (3) and (4)) by the maximum default amount for an external administrator appointed during the previous financial year; and
  (ii) the amount (if any) prescribed for the purposes of this subparagraph.

Rounding

(2) Amounts worked out under subsection (1) must be rounded to the nearest whole dollar (rounding 50 cents upwards).

Indexation factor

(3) Subject to subsection (4), the ***indexation factor*** for a financial year is the number worked out by dividing the index number for the March quarter immediately preceding that financial year by the index number for the March quarter immediately preceding that first-mentioned March quarter.

(4) If an indexation factor worked out under subsection (3) would be less than 1, the indexation factor is to be increased to 1.

Changes to CPI index reference period and publication of substituted index numbers

(5) In working out the indexation factor:
  (a) use only the index numbers published in terms of the most recently published index reference period for the Consumer Price Index; and
  (b) disregard index numbers published in substitution for previously published index numbers (except where the substituted numbers are published to take account of changes in the index reference period).

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Definition—index number

(6) In this section:

index number, in relation to a quarter, means the All Groups Consumer Price Index number, being the weighted average of the 8 capital cities, published by the Australian Statistician in respect of that quarter.

Subdivision C—Remuneration of provisional liquidators

60-16 Remuneration of provisional liquidators

(1) A provisional liquidator is entitled to receive such remuneration, by way of percentage or otherwise, as is:
  (a) determined by the Court; or
  (b) if:
    (i) no determination by the Court is in force; and
    (ii) there is a committee of inspection;
  determined by agreement between the liquidator and the committee of inspection; or
  (c) if:
    (i) no determination by the Court is in force; and
    (ii) there is no committee of inspection or the liquidator and the committee of inspection fail to agree;
  determined by resolution of the creditors.

(2) Sections 60-11 and 60-12 (Court review) apply in relation to a determination mentioned in this section in the same way as they apply to a remuneration determination made under section 60-10.

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Subdivision D—Remuneration of liquidators in winding up by ASIC

60-17 Remuneration of liquidators in winding up by ASIC

If ASIC orders under section 489EA that a company be wound up, ASIC may determine the remuneration that the liquidator is entitled to receive.

Subdivision DA—Remuneration of restructuring practitioners

60-18 Insolvency Practice Rules

(1) The Insolvency Practice Rules may provide for and in relation to the remuneration of:
  (a) a restructuring practitioner for a company; and
  (b) a restructuring practitioner for a restructuring plan.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for the remuneration of a restructuring practitioner for a restructuring plan that has been made in relation to a company to be dealt with wholly or partly under the restructuring plan.

Subdivision E—Duties of external administrators relating to remuneration and benefits etc.

60-20 External administrator must not derive profit or advantage from the administration of the company

Deriving profit or advantage from the company

(1) An external administrator of a company must not directly or indirectly derive any profit or advantage from the external administration of the company.

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Circumstances in which profit or advantage is taken to be derived

(2) To avoid doubt, an external administrator of a company is taken to derive a profit or advantage from the external administration of the company if:

(a) the external administrator directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or

(b) the external administrator directly or indirectly derives a profit or advantage from a creditor or member of the company; or

(c) a related entity of the external administrator directly or indirectly derives a profit or advantage from the external administration of the company.

Exceptions

(3) Subsection (1) does not apply to the extent that:

(a) another provision of this Act, or of another law, requires or permits the external administrator to derive the profit or advantage; or

(b) the Court gives leave to the external administrator to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent the external administrator from recovering remuneration for necessary work properly performed by the external administrator in relation to the external administration of the company, as the external administrator is permitted to do so under other provisions of this Act.

(4) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:

(a) the external administrator employs or engages a person to provide services in connection with the external administration of the company; and

(b) a related entity of the external administrator directly or indirectly derives a profit or advantage as a result of that employment or engagement; and

(c) one of the following is satisfied:

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(i) the external administrator does not know, and could not reasonably be expected to know, that the related entity would derive that profit or advantage;

(ii) the creditors, by resolution, agree to the related entity deriving the profit or advantage;

(iii) it is not reasonably practicable in all the circumstances to obtain the agreement, by resolution, of the creditors to the related entity deriving the profit or advantage and the cost of employing or engaging the person to provide the services is reasonable in all the circumstances.

(4A) Despite paragraph (2)(c), subsection (1) does not apply to the extent that a related entity of the external administrator directly or indirectly derives a profit or advantage:

(a) from remuneration paid to the external administrator in accordance with section 60-5 of this Schedule; or

(b) from a profit or advantage covered by subsection (4).

(5) Subsection (1) does not apply to the extent that the profit or advantage is a payment that:

(a) is made to the external administrator by or on behalf of the Commonwealth or an agency or authority of the Commonwealth; and

(b) is of a kind prescribed.

Offence

(6) A person commits an offence of strict liability if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (4) and (5) (see subsection 13.3(3) of the *Criminal Code*).

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Section 60-20

Effect of contravention of this section

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

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Division 65—Funds handling

65-1 Simplified outline of this Division

The external administrator of a company has duties to:

(a) promptly pay all company money into an account (called an administration account); and

(b) promptly deposit instruments such as securities with a bank; and

(c) keep the account separate and not pay any money that is not company money into the account; and

(d) only pay money out of the account if it is for a legitimate purpose.

The external administrator of a company may keep a single account for a group of related companies (called a pooled group).

People with a financial interest in the external administration of a company (such as creditors) may ask the Court to give directions to the external administrator about the way money and other property of the company is to be handled.

If the external administrator of a company does not comply with this Division, the external administrator may have to pay penalties, be paid less remuneration or be removed as external administrator.

65-5 External administrator must pay all money into an administration account

External administrator must pay money into the administration account

(1) The external administrator of a company must pay all money received by the external administrator on behalf of, or in relation

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to, the company into an administration account for the company within 5 business days after receipt.

Exception

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

(3) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

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

65-10 Administration accounts

(1) A bank account is an ***administration account*** for a company if:
  (a) the account is maintained in relation to the external administration of the company; and
  (b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.

(2) A bank account is an ***administration account*** for a member of a pooled group of companies if:
  (a) the account is maintained in relation to the external administration of the pooled group of companies; and
  (b) if any requirements are prescribed in relation to the administration accounts of companies under external administration, the account complies with those requirements.

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65-15 External administrator must not pay other money into the administration account

External administrator must not pay other money into the administration account

(1) The external administrator of a company must not pay any money into an administration account for the company if it is not received by the external administrator on behalf of, or in relation to:
  (a) the company; or
  (b) if the company is a member of a pooled group—another member of the pooled group.

Exception

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

(3) A person commits an offence of strict liability if:
  (a) the person is subject to the requirement under subsection (1); and
  (b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

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

65-20 Consequences for failure to pay money into administration account

Application of this section

(1) This section applies if:
  (a) an external administrator of a company:

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(i) is subject to a requirement under subsection 65-5(1) (paying money into administration account); and
(ii) fails to comply with the requirement in relation to an amount of money; and

(b) the amount exceeds:
(i) $50; or
(ii) if another amount is prescribed—that other amount.

Exception

(2) Subsection (1) does not apply if, on the application of the external administrator of the company, the Court is satisfied that the external administrator had sufficient reason for failing to comply with the requirement in relation to the amount.

External administrator must pay penalty on excess

(3) The external administrator must, as a penalty, pay interest to the Commonwealth on the excess, worked out:
(a) at the rate of 20% per year; or
(b) if another rate is prescribed—at that other rate;
for the period during which the external administrator fails to comply with the requirement.

(4) The external administrator is personally liable for, and is not entitled to be reimbursed out of the property of the company in relation to, the payment of that interest.

65-25 Paying money out of administration account

Money only to be paid out of administration account in accordance with this Act etc.

(1) An external administrator of a company must not pay any money out of the administration account for the company otherwise than:
(a) for purposes related to the external administration of the company; or
(b) in accordance with this Act; or

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(c) in accordance with a direction of the Court.

Offence

(2) A person commits an offence of strict liability if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

65-40 Handling securities

Securities must be deposited with administration account bank

(1) An external administrator of a company must deposit in a bank:
(a) the negotiable instruments; and
(b) any other securities;
payable to the company or the external administrator as soon as practicable after they are received by the external administrator.

Exception

(2) If the Court gives a direction that is inconsistent with subsection (1), that subsection does not apply to the extent of the inconsistency.

Offence

(3) A person commits an offence of strict liability if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

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Delivery of securities

(4) The negotiable instruments or other security must be delivered out on the signed request of the external administrator.

65-45 Handling of money and securities—Court directions

(1) The Court may, on application, give directions regarding the payment, deposit or custody of:
   (a) money; and
   (b) negotiable instruments and other securities;

   that are payable to, or held by, an external administrator of a company.

(2) The Court may, on application, give directions authorising the external administrator of a company to make payments into and out of a special bank account.

(3) Without limiting subsection (2), the Court may:
   (a) authorise the payments for the time and on the terms it thinks fit; and
   (b) if the Court thinks the account is no longer required—at any time order it to be closed.

(4) A copy of an order under paragraph (3)(b) must be served by the external administrator on the bank with which the special bank account was opened.

(5) An application under this section may be made by:
   (a) any person with a financial interest in the external administration of the company; or
   (b) an officer of the company.

(6) Paragraph (5)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

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65-50 Rules in relation to consequences for failure to comply with this Division

The Insolvency Practice Rules may provide for and in relation to:

(a) the payment by an external administrator of a company of interest at such rate, on such amount and in respect of such period as is prescribed; and

(b) disallowance of all or of such part as is prescribed of the remuneration of an external administrator of a company; and

(c) the removal from office of an external administrator of a company by the Court; and

(d) the payment by an external administrator of a company of any expenses occasioned by reason of his or her default;

in cases where an external administrator contravenes or fails to comply with this Division (including Insolvency Practice Rules made under this Division).

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Division 70—Information

Subdivision A—Introduction

70-1 Simplified outline of this Division

The external administrator of a company must:

(a) give annual reports of the administration (called annual administrative returns) to ASIC; and

(b) give a report of the administration to ASIC when the administration ends; and

(c) keep books of meetings and other company affairs; and

(d) allow those books to be audited if required to do so; and

(e) allow access to those books by creditors; and

(f) give creditors, members and others requested information, documents and reports relating to the administration.

The committee of inspection (if there is one) may also request information, documents and reports from the external administrator under Division 80.

If the external administrator does not comply with a request, ASIC may direct the external administrator to do so. If the external administrator does not comply with the direction, ASIC may ask the Court to order compliance. Alternatively, the person who requested the information may ask the Court to order compliance with the request.

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Subdivision B—Administration returns

70-5 Annual administration return

Application of this section

(1) This section applies if a person is the external administrator of a company during all or part of an administration return year for the external administrator for the company.

(2) However, this section does not apply if:
  (a) the external administration of the company ends during the administration return year; and
  (b) the person is the external administrator of the company when the external administration of the company ends.

Note: If a person is the external administrator of a company when the external administration of the company ends, the person must instead lodge a return under section 70-6.

Annual administration return to be lodged

(3) The person must lodge a return in relation to the external administration of the company by the person during the year or part of the year (as the case requires).

(4) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 3 months after the end of the year.

Note: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

*Meaning of **administration return year***

(5) Each of the following is an ***administration return year*** for an external administrator for a company:

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(a) the period of 12 months beginning on the day on which the person first began to be an external administrator of the company;
(b) each subsequent period of 12 months.

Notice of lodgement to be given

(6) The person must give notice that the return has been lodged:
(a) in a members' voluntary winding up—to the members of the company; and
(b) in a creditors' voluntary winding up—to the creditors; and
(c) in a court-ordered winding up—to the creditors; and
(d) if the external administrator is appointed as a provisional liquidator—to the Court; and
(e) if the company is under administration or has executed a deed of company arrangement—to the company; and
(f) if the company is under restructuring or has made a restructuring plan—to the company;

when next forwarding any report, notice of meeting, notice of call or dividend.

Returns for pooled groups

(7) If 2 or more companies are members of a pooled group, then the returns under subsection (3) for those companies may be set out in the same document.

70-6 End of administration return

Application of this section

(1) This section applies if the external administration of a company ends.

End of administration return to be lodged

(2) The person who is the external administrator of the company when the external administration of the company ends (the ***last external***

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administrator) must lodge a return in relation to the external administration of the company.

(3) The return must:
  (a) be in the approved form; and
  (b) be lodged with ASIC within 1 month after the end of the external administration of the company.

Note 1: Fees for lodging documents and late lodgement fees may be imposed under the *Corporations (Fees) Act 2001*.

Note 2: ASIC must deregister the company 3 months after the end of administration return is lodged (see section 509).

Notice of lodgement to be given

(4) The last external administrator must give notice that the return has been lodged to a person mentioned in subsection (5), if that person requests in writing that the last external administrator give the person such a notice.

(5) The persons who may request such a notice are:
  (a) in a members' voluntary winding up—the members of the company; and
  (b) in a creditors' voluntary winding up—the creditors; and
  (c) in a court-ordered winding up—the creditors; and
  (d) if the external administrator is appointed as a provisional liquidator—the Court; and
  (e) if the company is under administration or has executed a deed of company arrangement—the company; and
  (f) if the company is under restructuring or has made a restructuring plan—the company.

Returns for pooled groups

(6) If 2 or more companies are members of a pooled group, then the returns under subsection (2) for those companies may be set out in the same document.

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Subdivision C—Record-keeping

70-10 Administration books

External administrator must keep proper books

(1) An external administrator of a company must keep proper books in which the external administrator must cause to be made:
  (a) entries or minutes of proceedings at meetings relating to the external administration of the company; and
  (b) such other entries as are necessary to give a complete and correct record of the external administrator's administration of the company's affairs.

(2) The external administrator must:
  (a) ensure that the books are available at the external administrator's office for inspection; and
  (b) permit a creditor or contributory, or another person acting on the creditor's or contributory's behalf, to inspect the books at all reasonable times.

Exception

(3) Subsections (1) and (2) do not apply if the external administrator has a reasonable excuse.

(3A) Subsection (2) does not apply if the company is under restructuring or has made a restructuring plan that has not yet terminated.

Offence

(4) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1) or (2); and
  (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

70-15 Audit of administration books—ASIC

ASIC may cause books to be audited

(1) ASIC may cause the books referred to in section 70-5 (annual administration return), 70-6 (end of administration return) or 70-10 (administration books) to be audited by a registered company auditor.

Audit on the ASIC's initiative or on request

(2) The audit may be conducted:
  (a) on ASIC's own initiative; or
  (b) at the request of the company; or
  (c) at the request of a creditor; or
  (d) at the request of any other person prescribed.

Auditor must prepare a report

(3) The auditor must prepare a report on the audit.

ASIC must give a copy of the report

(4) If ASIC causes books to be audited under subsection (1):
  (a) ASIC must give a copy of the report prepared by the auditor to:
    (i) the external administrator of the company; and
    (ii) the person who requested the report (if any); and
  (b) subsection 1289(5) applies in relation to the report prepared by the auditor as if it were a document required to be lodged.

Costs of an audit

(5) The costs of an audit under this section must be determined by ASIC and form part of the expenses of the external administration of the company.

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70-20 Audit of administration books—on order of the Court

(1) The Court may order that an audit of the books referred to in section 70-5 (annual administration return), 70-6 (end of administration return) or 70-10 (administration books) be conducted by a registered company auditor.

(2) The order may be made on application of:
  (a) any person with a financial interest in the external administration of the company; or
  (b) an officer of the company.

(3) Paragraph (2)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company under external administration.

(4) The Court may make such orders in relation to the audit as it thinks fit, including:
  (a) the preparation and provision of a report on the audit; and
  (b) orders as to the costs of the audit.

70-25 External administrator to comply with auditor requirements

Application of this section

(1) This section applies if books are audited under section 70-15 or 70-20.

External administrator must give assistance etc.

(2) The external administrator must give the auditor such books, information and assistance as the auditor reasonably requires.

Exception

(3) Subsection (2) does not apply if the external administrator has a reasonable excuse.

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Offence

(4) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (2); and
  (b) the person fails to comply with the requirement.

Penalty: 20 penalty units.

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

70-30 Transfer of books to new administrator

Application of this section

(1) This section applies if:
  (a) a person (the ***former administrator***) ceases to be the external administrator of a company; and
  (b) ASIC has not issued a notice to the former administrator under section 70-31; and
  (c) a registered liquidator (the ***new administrator***) is appointed as external administrator of the company instead.

Transfer of books to new administrator

(2) The former administrator must transfer to the new administrator, within the handover period, possession or control of any books relating to the external administration of the company that are in the former administrator's possession or control.

(3) The ***handover period*** is:
  (a) the period of 10 business days beginning on the day after the new administrator is appointed; or
  (b) if another period is agreed between the former administrator and the new administrator—that other period.

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(4) The former administrator may take a copy of any part of the books before transferring possession or control of them to the new administrator.

New administrator must accept the books

(5) The new administrator must take possession or accept control of any books relating to the external administration of the company.

New administrator must allow inspection etc.

(6) After possession or control of the books is transferred, the new administrator must allow the former administrator to inspect them at any reasonable time and take a copy of any part of the books.

Offence

(7) A person commits an offence if:
   (a) the person is subject to a requirement under subsection (2), (5) or (6); and
   (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

Lien against books not prejudiced

(8) If the new administrator is entitled to take possession or control of the books under this section:
   (a) a person is not entitled, as against the new administrator, to claim a lien on the books; and
   (b) such a lien is not otherwise prejudiced.

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70-31 Transfer of books to ASIC etc.

Transfer of books to ASIC

(1) If a person ceases to be the external administrator of a company, ASIC may, by written notice given to the person, require the person to:
   (a) if the person has books relating to the external administration of the company in his or her possession or control—transfer possession or control of those books to ASIC within the period specified in the notice; or
   (b) otherwise—notify ASIC, within the period and in the manner specified in the notice, that the person does not have books relating to the external administration of the company in the person's possession or control.

Offence

(2) A person commits an offence if:
   (a) the person is subject to a requirement under subsection (1); and
   (b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

ASIC must transfer books to new external administrator

(3) If:
   (a) possession or control of books relating to an external administration of a company is transferred to ASIC under this section; and
   (b) the books are in ASIC's possession or control; and
   (c) a person (the ***new administrator***) is or becomes the external administrator of the company;

ASIC must, as soon as practicable, transfer possession or control of those books to the new administrator.

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ASIC must transfer books to company

(4) If:
  (a) possession or control of books relating to a company is transferred to ASIC under this section; and
  (b) the books are in ASIC's possession or control; and
  (c) the company ceases to be a company under external administration;

ASIC must, as soon as practicable, transfer possession or control of those books to the company.

Lien against books not prejudiced

(5) If ASIC is entitled to take possession or control of the books under this section:
  (a) a person is not entitled, as against ASIC, to claim a lien on the books; and
  (b) such a lien is not otherwise prejudiced.

(6) If ASIC is required to give possession or control of the books to the new administrator under this section:
  (a) a person is not entitled, as against the new administrator, to claim a lien on the books; and
  (b) such a lien is not otherwise prejudiced.

Notice is not a legislative instrument

(7) A notice under subsection (1) is not a legislative instrument.

Retention period for books

(8) ASIC must retain all books of the company, and of the external administration of the company:
  (a) that are relevant to affairs of the company; and
  (b) possession or control of which is transferred to ASIC under this section; and
  (c) possession or control of which is not transferred to another entity under this section, or under any other law;

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for a period (the ***retention period***) of 2 years after the end of the external administration of the company.

Destruction of books at end of retention period

(9) ASIC may destroy the books at the end of the retention period.

Relationship with other laws

(10) Subsections (8) and (9) do not apply to the extent that ASIC is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

70-35 Retention and destruction of books

Retention period for books

(1) The last external administrator of a company must retain all books of the company, and of the external administration of the company, that:
   (a) are relevant to affairs of the company; and
   (b) are in the external administrator's possession or control at the end of the external administration;

   for a period (the ***retention period***) of 5 years from the end of the external administration.

Exception—reasonable excuse

(2) Subsection (1) does not apply if the external administrator has a reasonable excuse.

Exception—consent of ASIC etc.

(3) Despite subsection (1), the books may be destroyed within the retention period:
   (a) in the case of a members' voluntary winding up—as the company by resolution directs; and
   (b) in the case of a creditor's voluntary winding up or a court-ordered winding up:

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(i) if there is a committee of inspection—as the committee directs; and

(ii) otherwise—as the creditors by resolution direct; and

(c) if the external administrator is appointed as a provisional liquidator—as the Court directs;

if ASIC consents to the destruction.

Destruction of books at end of retention period

(4) The external administrator may destroy the books at the end of the retention period.

Offence

(5) A person commits an offence if:

(a) the person is subject to a requirement under subsection (1); and

(b) the person intentionally or recklessly fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see subsection 13.3(3) of the *Criminal Code*).

Relationship with other laws

(6) Subsections (3) and (4) do not apply to the extent that the external administrator is under an obligation to retain the books, or a part of the books, under another provision of this Act or under any other law.

70-36 Books of company in external administration—evidence

If a company is in external administration, all books of the company, and of the external administrator of the company, that are relevant to affairs of the company at or after the start of the external administration are, as between the contributories of the

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company, prima facie evidence of the truth of all matters purporting to be recorded in those books.

Subdivision D—Giving information etc. to creditors and others

70-40 Right of creditors to request information etc. from external administrator

(1) The creditors may by resolution request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the creditors.

(2) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

70-45 Right of individual creditor to request information etc. from external administrator

(1) A creditor may request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the creditor.

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(2) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

70-46 Right of members to request information etc. from external administrator in a members' voluntary winding up

(1) This section applies in relation to a members' voluntary winding up.

(2) The members of the company may by resolution request the external administrator of the company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;

  to the members.

(3) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a

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company to comply with a request of a kind mentioned in subsection (2).

70-47 Right of individual member to request information etc. from external administrator in a members' voluntary winding up

(1) This section applies in relation to a members' voluntary winding up.

(2) A member of the company may request the external administrator of a company to:
  (a) give information; or
  (b) provide a report; or
  (c) produce a document;
to the member.

(3) The external administrator must comply with the request unless:
  (a) the information, report or document is not relevant to the external administration of the company; or
  (b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or
  (c) it is otherwise not reasonable for the external administrator to comply with the request.

(4) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (2).

70-50 Reporting to creditors and members

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
  (a) to give information; and
  (b) to provide reports; and

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(c) to produce documents;

to creditors or members.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:

(a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a creditor or member; and

(b) the manner and form in which information is to be given, a report provided or a document produced; and

(c) the timeframes in which information is to be given, a report provided or a document produced; and

(d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:

(a) make different provision in relation to different kinds of external administration; and

(b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:

(i) the creditors; or

(ii) the members; or

(iii) if there is a committee of inspection—the committee.

Subdivision E—Other requests for information etc.

70-55 Commonwealth may request information etc.

Application of this section

(1) This section applies if either:

(a) a former employee of a company under external administration has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or

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(b) the Commonwealth considers that such a claim is likely to be made.

Commonwealth may request information etc.

(2) The Commonwealth may request the external administrator of the company to provide specified information, reports or documents in relation to the external administration.

(3) The external administrator must comply with the request.

(4) The Insolvency Practice Rules may provide for and in relation to who is to bear the cost of providing the information, reports or documents.

Subdivision F—Reporting to ASIC

70-60 Insolvency Practice Rules may provide for reporting to ASIC

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of an external administrator of a company:
   (a) to give information; and
   (b) to provide reports; and
   (c) to produce documents;
   to ASIC.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
   (a) the manner and form in which information is to be given, a report provided or a document produced; and
   (b) the timeframes in which information is to be given, a report provided or a document produced; and
   (c) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may make different provision in relation to different kinds of external administration.

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Note: A failure to give information, provide a report or produce a document to ASIC in accordance with the Insolvency Practice Rules may lead to disciplinary action under Subdivision B of Division 40 of Part 2 of this Schedule.

Subdivision G—External administrator may be compelled to comply with requests for information etc.

70-65 Application of this Subdivision

(1) This Subdivision applies if the external administrator of a company refuses a request made by a person under:
  (a) Subdivision D; or
  (b) a rule made under section 70-50;
  (c) Subdivision E; or
  (d) section 80-40;
to give information, provide a report or produce a document.

(2) In this Subdivision:
  (a) the information, report or document is referred to as the ***relevant material***; and
  (b) the request is referred to as the ***request for relevant material***; and
  (c) giving the information, providing the report or producing the document is referred to as ***giving*** the relevant material.

70-70 ASIC may direct external administrator to comply with the request for relevant material

(1) ASIC may, in writing, direct the external administrator to give all or part of the relevant material to the person or persons who made the request for the relevant material within 5 business days after the direction is given.

(2) A direction under subsection (1) is not a legislative instrument.

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70-75 ASIC must notify external administrator before giving a direction under section 70-70

(1) Before giving the external administrator a direction under section 70-70, ASIC must give the external administrator notice in writing:

(a) stating that ASIC proposes to give the external administrator a direction under that section; and

(b) identifying:

(i) the relevant material, or the part of the relevant material, that ASIC proposes to direct be given; and

(ii) the person or persons to whom ASIC proposes to direct that the relevant material, or that part of the relevant material, be given; and

(c) inviting the external administrator to make a written submission to ASIC within 10 business days after the notice is given, stating:

(i) whether the external administrator has any objection to giving the relevant material, or that part of the relevant material, to a person or persons as proposed; and

(ii) if the external administrator has such an objection—the reasons for that objection.

(2) If the external administrator objects to giving the relevant material, or part of the relevant material, to a person, ASIC must take into account the reasons for that objection when deciding whether to direct that the relevant material, or that part of the relevant material, be given to the person.

(3) A notice under subsection (1) is not a legislative instrument.

70-80 ASIC must not direct external administrator to give the relevant material if external administrator entitled not to comply with the request

ASIC must not give a direction under section 70-70 to give the relevant material, or part of the relevant material, to a person if

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ASIC is satisfied that the external administrator was entitled, under a provision of this Act or any other law, not to comply with the request for the relevant material, or that part of the relevant material, to the person.

70-85 ASIC may impose conditions on use of the relevant material

ASIC may, by notice, impose conditions

(1) ASIC may, by notice in writing to the person or persons to whom the relevant material is to be given, impose conditions on the use and disclosure of the relevant material, or part of the relevant material, by the person or persons.

Offence

(2) A person commits an offence if:
  (a) ASIC directs that the relevant material, or part of the relevant material, be given to the person; and
  (b) ASIC has given the person notice under subsection (1) imposing a condition in relation to the use or disclosure of that material by the person; and
  (c) the person does not comply with the condition.

Penalty: 3 months imprisonment.

Notice is not a legislative instrument

(3) A notice under subsection (1) is not a legislative instrument.

70-90 Court may order relevant material to be given

(1) The person or persons who made the request for the relevant material may apply to the Court for an order that the external administrator give the person or persons all or part of the relevant material.

(2) If:

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(a) ASIC gives the external administrator a direction under section 70-70 in relation to all or part of the relevant material; and

(b) the external administrator does not comply with the direction;

ASIC may apply to the Court for an order that the external administrator comply with the direction.

(3) On application under subsection (1) or (2), the Court may:

(a) order the external administrator to give the person, or any or all of the persons, who made the request for the relevant material all or part of that material; and

(b) make such other orders, including orders as to costs, as it thinks fit.

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Division 75—Meetings

75-1 Simplified outline of this Division

In most cases, the external administrator of a company may convene creditor or company meetings at any time and must convene them in particular circumstances, for example when directed to do so by certain creditors or by ASIC.

The restructuring practitioner for a company or for a restructuring plan may convene a meeting of creditors in exceptional circumstances if it is in the interests of creditors to do so.

Under Chapter 5 of this Act, there are other instances in which an external administrator must hold a meeting.

Requirements for convening and holding meetings (including notice, agenda, quorum, voting on proposals and costs) are set out in the Insolvency Practice Rules.

There is a mechanism for resolving a matter without holding a meeting.

75-5 Other obligations to convene meetings not affected

Nothing in this Division limits the operation of any other provision of this Act, or any other law, imposing an obligation to convene a meeting in relation to a company, or the external administration of a company.

75-10 External administrator may convene meetings

The external administrator of a company may convene:

(a) a meeting of the creditors; or

(b) in the case of a members' voluntary winding up—a general meeting of the company;

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at any time.

75-15 External administrator must convene meeting in certain circumstances

(1) The external administrator of a company must convene a meeting of the creditors if:
  (a) where there is a committee of inspection—the committee of inspection directs the external administrator to do so; or
  (b) the creditors direct the external administrator to do so by resolution; or
  (c) at least 25% in value of the creditors direct the external administrator to do so in writing; or
  (d) both of the following are satisfied:
    (i) less than 25%, but more than 10%, in value of the creditors direct the external administrator to do so in writing;
    (ii) security for the cost of holding the meeting is given to the external administrator before the meeting is convened; or
  (e) all of the following are satisfied:
    (i) the company is being wound up under a creditors' voluntary winding up;
    (ii) less than 25%, but more than 5%, in value of the creditors direct the external administrator to do so in writing;
    (iii) none of the creditors who give the direction is a related entity in relation to the company;
    (iv) the direction is given no more than 20 business days after the resolution for the voluntary winding up of the company is passed.

(2) However, the external administrator need not comply with the direction if the direction is not reasonable.

(3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.

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(4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims against the company that are known at the time the direction is given.

(5) This section does not apply if:
  (a) the external administrator is a provisional liquidator of the company; or
  (b) the external administrator is the administrator of the company and the company is under administration.

75-20 External administrator must convene meeting if required by ASIC

(1) ASIC may, in writing, direct an external administrator of a company to convene a meeting of the creditors.

(2) ASIC may include in the direction requirements to be complied with by the external administrator in notifying the creditors of the meeting and in conducting the meeting.

(3) The external administrator must comply with a direction given under subsection (1), and any requirements included in the direction under subsection (2).

(4) A direction given under subsection (1) is not a legislative instrument.

75-21 Restructuring and restructuring plans

(1) Sections 75-10, 75-15 and 75-20 do not apply to:
  (a) a company under restructuring; or
  (b) a company that has made a restructuring plan that has not yet terminated.

(2) However, the restructuring practitioner for a company, or for a restructuring plan, may convene a meeting of the creditors if the restructuring practitioner is satisfied that:
  (a) there are exceptional circumstances; and

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(b) it is in the interests of the creditors to do so.

75-25 External administrator's representative at meetings

(1) The external administrator of a company may, in writing, appoint a person to represent the external administrator at a meeting.

(2) Subsection (1) does not apply to a meeting of a kind prescribed.

(3) If the external administrator is not personally present at a meeting, then a reference in a provision of this Act to the external administrator of a company, in respect of matters occurring at or in connection with the meeting, is a reference to a person appointed to represent the external administrator at the meeting.

75-30 ASIC may attend meetings

(1) ASIC is entitled to attend any meeting of creditors or contributories held under this Act.

(2) Subject to any provision of this Act (including any provision in relation to voting), ASIC is entitled to participate in any meeting of creditors held under this Act.

75-35 Commonwealth may attend certain meetings etc.

Application of this section

(1) This section applies if:
  (a) a company is under external administration; and
  (b) either:
    (i) a former employee of the company has made a claim for financial assistance from the Commonwealth in relation to unpaid employment entitlements; or
    (ii) the Commonwealth considers that such a claim is likely to be made.

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Commonwealth may nominate representative for meetings

(2) The Commonwealth is entitled to nominate a representative to attend any meeting of creditors or contributories held in relation to the external administration.

75-40 Proposals to creditors or contributories without meeting

Proposal by notice to creditors

(1) The external administrator of a company may at any time put a proposal to the creditors or contributories by giving notice, in writing, under this section.

Content and service of notice

(2) The notice must:
  (a) contain a single proposal; and
  (b) include a statement of the reasons for the proposal and the likely impact it will have on creditors or contributories, as the case may be (if it is passed); and
  (c) be given to each creditor or contributory, as the case may be, who would be entitled to receive notice of a meeting of creditors or contributories, as the case may be; and
  (d) invite the creditor or contributory, as the case may be, to either:
    (i) vote Yes or No on the proposal; or
    (ii) object to the proposal being resolved without a meeting of creditors or contributories, as the case may be; and
  (e) specify a reasonable time by which replies must be received by the external administrator (in order to be taken into account).

Evidentiary certificate relating to proposals

(3) A certificate signed by the external administrator of the company stating any matter relating to a proposal under this section is prima facie evidence of the matter.

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Insolvency Practice Rules relating to proposals

(4) The Insolvency Practice Rules may provide for and in relation to proposals without meeting under this section.

(5) Without limiting subsection (4), the Insolvency Practice Rules may provide for and in relation to:
  (a) the circumstances in which a proposal is taken to be passed; and
  (b) whether a proposal, if passed, is to be taken to have been passed as a resolution or a special resolution; and
  (c) costs and security for those costs in relation to a proposal.

75-41 Outcome of voting at creditors' meeting determined by related entity—Court powers

Application of this section

(1) This section applies if, on the application of a creditor of a company under external administration, the external administrator of the company or ASIC, the Court is satisfied of the following matters:
  (a) a proposal has been voted on by creditors (either at a meeting of the creditors or under section 75-40 without a meeting);
  (b) if the vote or votes that a particular related creditor, or particular related creditors, of the company cast on the proposal had been disregarded for the purposes of determining whether or not the proposal was passed, the proposal:
    (i) if it was in fact passed—would not have been passed; or
    (ii) if in fact it was not passed—would have been passed;
  or the question would have had to be decided on a casting vote;
  (c) the passing of the proposal, or the failure to pass it, as the case requires:

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(i) is contrary to the interests of the creditors as a group or of that class of creditors as a group, as the case may be; or

(ii) has prejudiced, or is reasonably likely to prejudice, the interests of the creditors who voted against the proposal, or for it, as the case may be, to an extent that is unreasonable having regard to the matters in subsection (2).

Unreasonable prejudice to interests of creditors—matters to be taken into account

(2) For the purposes of subparagraph (1)(c)(ii), the matters are:

(a) the benefits resulting to the related creditor, or to some or all of the related creditors, from the proposal if passed, or from the failure to pass the proposal, as the case may be; and

(b) the nature of the relationship between the related creditor and the company, or of the respective relationships between the related creditors and the company; and

(c) any other relevant matter.

Court may make orders

(3) The Court may make one or more of the following:

(a) an order that the proposal be considered and voted on at a meeting of the creditors convened and held as specified in the order;

(b) an order directing that the related creditor is not, or such of the related creditors as the order specifies are not, entitled to vote on:

(i) the proposal; or

(ii) a resolution to amend or vary the proposal;

(c) if the proposal was passed—an order setting aside the resolution passing the proposal;

(d) such other orders as the Court thinks fit.

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Definition—related creditor

(4) In this section:

related creditor, for the purposes of a vote, in relation to a company, means a person who, when the vote was cast, was a related entity, and a creditor, of the company.

75-42 Creditors' resolution passed because of casting vote—Court review

Application of this section

(1) This section applies if:
  (a) a resolution is passed at a meeting of creditors of a company under external administration; and
  (b) the resolution is passed because the person presiding at the meeting exercises a casting vote.

Application to the Court

(2) ASIC may apply to the Court for an order setting aside or varying the resolution.

(3) A person (other than ASIC) may apply to the Court for an order setting aside or varying the resolution, but only if:
  (a) the person voted against the resolution in some capacity (even if the person voted for the resolution in another capacity); or
  (b) a person voted against the resolution on the first-mentioned person's behalf.

Court may make orders

(4) On application under subsection (2) or (3), the Court may:
  (a) by order set aside or vary the resolution; and
  (b) if it does so—make such further orders, and give such directions, as it thinks fit.

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(5) On and after the making of an order varying the resolution, the resolution has effect as varied by the order.

75-43 Proposed creditors' resolution not passed because of casting vote—Court's powers

Application of this section

(1) This section applies if:
  (a) a resolution is not passed at a meeting of creditors of a company under external administration; and
  (b) the resolution is not passed because the person presiding at the meeting exercises a casting vote, or refuses or fails to exercise such a vote.

Application to the Court

(2) ASIC may apply to the Court for an order under subsection (4).

(3) A person (other than ASIC) may apply to the Court for an order under subsection (4), but only if:
  (a) the person voted for the proposed resolution in some capacity (even if the person voted against the proposed resolution in another capacity); or
  (b) a person voted for the proposed resolution on the first-mentioned person's behalf.

Court may make orders

(4) On application under subsection (2) or (3), the Court may:
  (a) order that the proposed resolution is taken to have been passed at the meeting; and
  (b) if it does so—make such further orders, and give such directions, as it thinks fit.

(5) If an order is made under paragraph (4)(a), the proposed resolution:
  (a) is taken for all purposes (other than those of subsection (1)) to have been passed at the meeting; and

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(b) is taken to have taken effect:
(i) if the order specifies a time when the proposed resolution is taken to have taken effect—at that time, even if it is earlier than the making of the order; or
(ii) otherwise—on the making of the order.

75-44 Interim order on application under section 75-41, 75-42 or 75-43

(1) If:
(a) an application under section 75-41, 75-42 or 75-43 has not yet been determined; and
(b) the Court is of the opinion that it is desirable to do so;
the Court may make such interim orders as it thinks fit

(2) An interim order must be expressed to apply until the application is determined, but may be varied or discharged.

75-45 Order under section 75-41 or 75-42 does not affect act already done pursuant to resolution

An act done pursuant to a resolution as in force before the making, under section 75-41 or 75-42, of an order setting aside or varying the resolution is as valid and binding on and after the making of the order as if the order had not been made.

75-50 Rules relating to meetings

(1) The Insolvency Practice Rules may provide for and in relation to meetings concerning companies under external administration.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
(a) the circumstances in which meetings must or may be convened; and
(b) notice for convening meetings; and
(c) agenda; and

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(d) information to be given in connection with meetings; and
(e) who is to preside at meetings; and
(f) the number of creditors or contributories required to constitute a quorum; and
(g) proxies and attorneys; and
(h) motions; and
(i) voting (including casting votes); and
(j) the circumstances in which a resolution must or may be put to creditors or contributories in a meeting; and
(k) the circumstances in which a resolution or a special resolution put to creditors or contributories in a meeting is passed; and
(l) facilities, including electronic communication facilities, to be available at meetings; and
(m) minutes; and
(n) costs in relation to meetings and security for those costs.

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Division 80—Committees of inspection

80-1 Simplified outline of this Division

In most cases, creditors of a company under external administration may decide that there is to be a committee of inspection to monitor the administration and to give assistance to the external administrator.

Committees of inspection are not appointed for a company that is under restructuring or that has made a restructuring plan.

Appointing the committee

Each of the following have rights to appoint members to the committee (and to remove those members and fill the vacancy):

(a) the creditors by resolution;

(b) a single creditor who is owed, or a group of creditors who together are owed, a large amount;

(c) a single employee who is owed, or a group of employees who together are owed, a large amount.

Once a person exercises a right in one capacity to appoint a member, the person cannot exercise a right in another capacity to do so. A person can exercise the right in a particular capacity to appoint only one person (unless the person is filling a vacancy in that appointment).

If a company is in a related group of companies (called a pooled group), creditors of all the companies may decide together that there is to be a committee of inspection for the group and appoint members of the committee.

Procedures and powers

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This Division also deals with the procedures and powers of committees of inspection (including requesting information, documents and reports from the external administrator and obtaining specialist advice).

An external administrator of a company must have regard to directions of the committee but is not obliged to comply.

Review

The Court may inquire into and make orders about the conduct of committees of inspection.

80-5 Application

Application of whole of Division

(1A) This Division does not apply to:
- (a) a company under restructuring; or
- (b) a company that has made a restructuring plan that has not yet terminated.

Application of sections 80-10 to 80-25

(1) The rules in sections 80-10 to 80-25 apply if the external administrator of a company convenes a meeting of creditors for the purpose of determining either or both of the following:
- (a) whether there is to be a committee of inspection for the company;
- (b) if there is, or is to be, a committee of inspection—who are to be appointed members of the committee.

(2) However, those rules do not apply if the company is a member of a pooled group.

Note: Committees of inspection for pooled groups are dealt with in sections 80-26 and 80-27.

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80-10 Committee of inspection—company not a member of a pooled group

The creditors of a company may, by resolution, determine that there is to be a committee of inspection in relation to the external administration of the company.

80-15 Appointment and removal of members of committee of inspection by creditors generally

(1) The creditors of a company may, by resolution, appoint members of a committee of inspection in relation to the external administration of the company.

(2) The creditors of a company may by resolution:
   (a) remove a person appointed as a member of the committee under this section; and
   (b) appoint another person to fill a vacancy in the office of a member of the committee of inspection appointed under this section.

(3) A person is not entitled to vote on a resolution to appoint or remove a member of a committee of inspection under this section if:
   (a) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-20; or
   (b) the person, acting either alone or with others, appoints a person as a member of the committee under section 80-25.

80-20 Appointment of committee member by large creditor

(1) A creditor representing at least 10% in value of the creditors, or a group of creditors who together represent at least 10% in value of the creditors, of a company may appoint a person as a member of a committee of inspection in relation to the external administration of the company.

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(2) If a creditor or a group of creditors appoints a person as a member of a committee of inspection under this section, the creditor or group of creditors may:
   (a) remove the person as a member of the committee; and
   (b) appoint another person to fill a vacancy in the office of that member of the committee.

(3) A creditor, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:
   (a) the creditor votes on a resolution to appoint or remove a member of the committee under section 80-15; or
   (b) the creditor, acting either alone or with others, appoints a member of the committee under subsection 80-25(1); or
   (c) the creditor, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

80-25 Appointment of committee member by employees

(1) Either:
   (a) an employee of the company; or
   (b) employees of the company;

   representing at least 50% in value of entitlements owed to or in respect of employees by the company may appoint a person as a member of the committee of inspection to represent the employees.

(2) If an employee or a group of employees appoints a person as a member of a committee of inspection under this section, the employee or group of employees may:
   (a) remove the person as a member of the committee; and
   (b) appoint another person to fill a vacancy in the office of that member of the committee.

(3) An employee, acting either alone or with others, is not entitled to appoint a person as a member of a committee of inspection under subsection (1) if:

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(a) the employee votes on a resolution to appoint or remove a member of the committee under section 80-15; or
(b) the employee, acting either alone or with others, appoints a member of the committee under subsection 80-20(1); or
(c) the employee, acting either alone or with others, has already appointed a member of the committee under subsection (1) of this section.

(4) In this section:

employee of a company has the same meaning as in Part 5.8A.

entitlements of an employee of a company has the same meaning as in Part 5.8A.

80-26 Committee of inspection—pooled groups

Application of this section

(1) This section applies if each company that is a member of a pooled group is being wound up.

Meeting to form a committee of inspection for a pooled group

(2) The external administrator or external administrators must, if directed to do so under section 80-27, convene a meeting, on a consolidated basis, of the creditors of all of the companies for the purposes of determining either or both of the following:
(a) whether there is to be a committee of inspection for the pooled group;
(b) if there is, or is to be, a committee of inspection for the pooled group—who are to be appointed members of the committee.

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Committee of inspection for a pooled group becomes the committee of inspection for each member of the pooled group

(3) A committee of inspection for a pooled group is taken to be a committee of inspection for each company that is a member of the pooled group.

Existing committee of inspection for a member of a pooled group ceases to exist

(4) If:
  (a) at the meeting, it is resolved that there is to be a committee of inspection for the pooled group; and
  (b) immediately before the meeting, a committee of inspection was in existence for a company that is a member of the pooled group;

the committee mentioned in paragraph (b) ceases to exist when the resolution mentioned in paragraph (a) is passed.

Rules relating to companies under external administration who are members of a pooled group

(5) The Insolvency Practice Rules may provide for and in relation to meetings in relation to the external administration of companies that are members of a pooled group (***pooled group meetings***).

(6) Without limiting subsection (5), the Insolvency Practice Rules may provide for and in relation to:
  (a) other circumstances in which pooled group meetings must or may be convened; and
  (b) voting (including casting votes) at pooled group meetings; and
  (c) the circumstances in which a resolution or a special resolution put to creditors or contributories in a pooled group meeting is passed; and
  (d) costs in relation to pooled group meetings and security for those costs.

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80-27 External administrator must convene meeting in certain circumstances

(1) The external administrator, or the external administrators, of the members of a pooled group must convene a meeting under section 80-26 if:

(a) where there is a committee of inspection for a member of the pooled group—the committee of inspection directs the external administrator, or external administrators, to do so; or

(b) the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so, by resolution; or

(c) at least 25% in value of the creditors of one of the members of the pooled group, direct the external administrator, or external administrators, to do so in writing; or

(d) both of the following are satisfied:

(i) less than 25%, but more than 10%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;

(ii) security for the cost of holding the meeting is given to the external administrator, or external administrators, before the meeting is convened; or

(e) all of the following are satisfied:

(i) the members of the pooled group are each being wound up under a creditors' voluntary winding up;

(ii) less than 25%, but more than 5%, in value of the creditors of one of the members of the pooled group direct the external administrator, or external administrators, to do so in writing;

(iii) none of the creditors who give the direction is a related entity in relation to that member of the pooled group;

(iv) the direction is given no more than 20 business days after the last resolution for the voluntary winding up of the members of the pooled group is passed.

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(2) However, the external administrator, or external administrators, need not comply with the direction if the direction is not reasonable.

(3) The Insolvency Practice Rules may prescribe circumstances in which a direction is, or is not, reasonable.

(4) For the purposes of paragraphs (1)(c), (d) and (e), the value of the creditors is to be worked out by reference to the value of the creditors' claims (that are known at the time the direction is given) against the member of the pooled group.

(5) This section does not apply if:
  (a) one of the external administrators is a provisional liquidator of a member of the pooled group; or
  (b) one of the external administrators is the administrator of a member of the pooled group and the member is under administration.

80-30 Committees of inspection—procedures etc.

(1) Subject to subsection (2), a committee of inspection is to determine its own procedures.

(2) The Insolvency Practice Rules may provide for and in relation to committees of inspection.

(3) Without limiting subsection (2), the Insolvency Practice Rules may provide for and in relation to:
  (a) eligibility to be appointed as a member of a committee of inspection; and
  (b) the convening of, conduct of, and procedure and voting at, meetings; and
  (c) resignation and removal of members; and
  (d) vacancies in membership.

80-35 Functions of committee of inspection

(1) A committee of inspection has the following functions:

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(a) to advise and assist the external administrator of the company;
(b) to give directions to the external administrator of the company;
(c) to monitor the conduct of the external administration of the company;
(d) such other functions as are conferred on the committee by this Act;
(e) to do anything incidental or conducive to the performance of any of the above functions.

(2) An external administrator of a company must have regard to any directions given to the external administrator by the committee of inspection, but the external administrator is not required to comply with such directions.

(3) If an external administrator of a company does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with the direction.

80-40 Committee of inspection may request information etc.

(1) A committee of inspection may request the external administrator of a company to:
(a) give information; or
(b) provide a report; or
(c) produce a document;
to the committee.

(2) The external administrator must comply with the request unless:
(a) the information, report or document is not relevant to the external administration of the company; or
(b) the external administrator would breach his or her duties in relation to the external administration of the company if the external administrator complied with the request; or

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(c) it is otherwise not reasonable for the external administrator to comply with the request.

(3) The Insolvency Practice Rules may prescribe circumstances in which it is, or is not, reasonable for an external administrator of a company to comply with a request of a kind mentioned in subsection (1).

80-45 Reporting to committee of inspection

(1) The Insolvency Practice Rules may provide for and in relation to the obligations of external administrators of companies:
(a) to give information; and
(b) to provide reports; and
(c) to produce documents;
to committees of inspection.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to:
(a) other circumstances in which the external administrator of a company must give information, provide a report or produce a document to a committee of inspection; and
(b) the manner and form in which information is to be given, a report provided or a document produced; and
(c) the timeframes in which information is to be given, a report provided or a document produced; and
(d) who is to bear the cost of giving information, providing a report or producing a document.

(3) The Insolvency Practice Rules may:
(a) make different provision in relation to different classes of company or external administration of a company; and
(b) provide that specified requirements imposed under the Insolvency Practice Rules may be replaced or modified, by resolution, by:
(i) the creditors; or
(ii) the committee of inspection.

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80-50 Committee of inspection may obtain specialist advice or assistance

(1) A committee of inspection may resolve that a member of the committee obtain, on behalf of the committee, such advice or assistance as the committee considers desirable in relation to the conduct of the external administration.

(2) The committee of inspection must obtain the approval of the external administrator of the company or the Court before expenses are incurred in obtaining the advice or assistance.

(3) To avoid doubt, an expense incurred under subsection (2) is to be taken to be an expense incurred by a person as a member of the committee, unless the Court orders otherwise.

80-55 Obligations of members of committee of inspection

Deriving profit or advantage from the company

(1) A member of a committee of inspection must not directly or indirectly derive any profit or advantage from the external administration of the company.

Circumstances in which profit or advantage is taken to be derived

(2) To avoid doubt, a member of a committee of inspection is taken to derive a profit or advantage from the external administration of the company if:
   (a) the member directly or indirectly derives a profit or advantage from a transaction (including a sale or purchase) entered into for or on account of the company; or
   (b) the member directly or indirectly derives a profit or advantage from a creditor of the company; or
   (c) a related entity of the member directly or indirectly derives a profit or advantage from the external administration of the company.

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Exceptions

(3) Subsection (1) does not apply if the creditors resolve otherwise.

(4) The member of the committee is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (1) does not apply to the extent that:
  (a) another provision of this Act, or of another law, requires or permits the member of the committee of inspection to derive the profit or advantage; or
  (b) the Court gives leave to the member of the committee to derive the profit or advantage.

Note: Subsection (1) would not, for example, prevent a creditor from recovering debts proved in a winding up, as this is permitted under Part 5.6 of Chapter 5.

(6) Despite paragraph (2)(c), subsection (1) does not apply to the extent that:
  (a) the profit or advantage arises because the external administrator employs or engages a person to provide services in connection with the external administration of the company; and
  (b) the person is a related entity of a member of the committee of inspection; and
  (c) one of the following applies:
    (i) the member does not know, and could not reasonably be expected to know, that the external administrator has employed or engaged a related entity of the member;
    (ii) the creditors, by resolution, agree to the related entity being employed or engaged.

Offence

(7) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person fails to comply with the requirement.

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Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3), (5) and (6) (see subsection 13.3(3) of the *Criminal Code*).

Effect of contravention of this section

(8) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

80-60 Obligations of creditor appointing a member of committee of inspection

Application of this section

(1) This section applies if a creditor representing at least 10% in value of the creditors of a company appoints a person under section 80-20 as a member of a committee of inspection in relation to the external administration of the company.

(2) The creditor must not directly or indirectly become the purchaser of any part of the property of the company.

Exceptions

(3) Subsection (2) does not apply if the creditors resolve otherwise.

(4) The creditor is not entitled to vote on the resolution referred to in subsection (3).

(5) Subsection (2) does not apply to the extent that:
   (a) another provision of this Act, or of another law, requires or permits the creditor to purchase the property; or
   (b) the Court gives leave to the creditor to purchase the property.

Offence

(6) A person commits an offence of strict liability if:
   (a) the person is subject to a requirement under subsection (2); and

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(b) the person fails to comply with the requirement.

Penalty: 50 penalty units.

Note: A defendant bears an evidential burden in relation to the matters in subsections (3) and (5) (see subsection 13.3(3) of the *Criminal Code*).

Effect of contravention of this section

(7) A transaction or any other arrangement entered into in contravention of this section may be set aside by the Court.

80-65 ASIC may attend committee meetings

ASIC is entitled to attend any meeting of a committee of inspection.

80-70 The Court may inquire into conduct of the committee

The Court may inquire into the conduct of a committee of inspection and make such orders as it thinks fit to ensure the proper conduct of the committee.

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Division 85—Directions by creditors

85-1 Simplified outline of this Division

The external administrator of a company must have regard to directions given to the administrator by the creditors of the company but is not obliged to comply with those directions.

85-5 External administrator to have regard to directions given by creditors

(1) The creditors of a company under external administration (other than a members' voluntary winding up) may, by resolution, give directions to the external administrator of the company in relation to the external administration.

(2) An external administrator of a company must have regard to any directions mentioned in subsection (1), but the external administrator is not required to comply with such directions.

(3) If the external administrator does not comply with a direction, the external administrator must make a written record of that fact, along with the external administrator's reasons for not complying with the direction.

(4) If there is a conflict between directions given by the creditors under subsection (1) and by the committee of inspection under section 80-35, directions given by the creditors override any directions given by the committee.

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Division 90—Review of the external administration of a company

Subdivision A—Introduction

90-1 Simplified outline of this Division

Review by the Court

The Court may inquire into the external administration of a company either on its own initiative or on the application of the company, the external administrator, ASIC or a person with a financial interest in the external administration of the company (such as a creditor of the company).

The Court has wide powers to make orders, including orders replacing the external administrator or dealing with losses resulting from a breach of duty by the external administrator.

Review by another registered liquidator

ASIC, the Court, creditors or members of a company may appoint a registered liquidator to review the external administration of the company in most cases. Such a review may look at a range of matters, including whether the remuneration of the external administrator is reasonable and whether costs and expenses have been properly incurred.

The Insolvency Practice Rules may set the powers and duties of a registered liquidator conducting such a review and may deal with issues relating to the review process.

If a provisional liquidator has been appointed for the company, review by another registered liquidator is not available.

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If the company is under restructuring or has made a restructuring plan that has not yet terminated, a reviewing liquidator can only be appointed by the Court.

Removal of external administrator by creditors

The creditors of a company under external administration (other than a company for which a provisional liquidator has been appointed) may remove the external administrator of the company and appoint another. However, the external administrator may apply to the Court to be reappointed.

Subdivision B—Court powers to inquire and make orders

90-5 Court may inquire on own initiative

(1) The Court may, on its own initiative during proceedings before the Court, inquire into the external administration of a company.

(2) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
   (a) give information; or
   (b) provide a report; or
   (c) produce a document;
   to the Court in relation to the external administration of the company.

(3) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

90-10 Court may inquire on application of creditors etc.

(1) The Court may, on the application of a person mentioned in subsection (2), inquire into the external administration of a company.

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(2) Each of the following persons may make an application for an inquiry:
   (a) a person with a financial interest in the external administration of the company;
   (b) an officer of the company;
   (c) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;
   (d) ASIC.

(3) Paragraph (2)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

(4) The Court may, for the purposes of such an inquiry, require a person who is or has at any time been the external administrator of the company to:
   (a) give information; or
   (b) provide a report; or
   (c) produce a document;

   to the Court in relation to the external administration of the company.

(5) If an application is made by a person referred to in paragraph (2)(c), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee unless otherwise ordered by the Court.

(6) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

90-15 Court may make orders in relation to external administration

Court may make orders

(1) The Court may make such orders as it thinks fit in relation to the external administration of a company.

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Orders on own initiative or on application

(2) The Court may exercise the power under subsection (1):
  (a) on its own initiative, during proceedings before the Court; or
  (b) on application under section 90-20.

Examples of orders that may be made

(3) Without limiting subsection (1), those orders may include any one or more of the following:
  (a) an order determining any question arising in the external administration of the company;
  (b) an order that a person cease to be the external administrator of the company;
  (c) an order that another registered liquidator be appointed as the external administrator of the company;
  (d) an order in relation to the costs of an action (including court action) taken by the external administrator of the company or another person in relation to the external administration of the company;
  (e) an order in relation to any loss that the company has sustained because of a breach of duty by the external administrator;
  (f) an order in relation to remuneration, including an order requiring a person to repay to a company, or the creditors of a company, remuneration paid to the person as external administrator of the company.

Matters that may be taken into account

(4) Without limiting the matters which the Court may take into account when making orders, the Court may take into account:
  (a) whether the liquidator has faithfully performed, or is faithfully performing, the liquidator's duties; and
  (b) whether an action or failure to act by the liquidator is in compliance with this Act and the Insolvency Practice Rules; and

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(c) whether an action or failure to act by the liquidator is in compliance with an order of the Court; and
(d) whether the company or any other person has suffered, or is likely to suffer, loss or damage because of an action or failure to act by the liquidator; and
(e) the seriousness of the consequences of any action or failure to act by the liquidator, including the effect of that action or failure to act on public confidence in registered liquidators as a group.

Costs orders

(5) Without limiting subsection (1), an order mentioned in paragraph (3)(d) in relation to the costs of an action may include an order that:
(a) the external administrator or another person is personally liable for some or all of those costs; and
(b) the external administrator or another person is not entitled to be reimbursed by the company or its creditors in relation to some or all of those costs.

Orders to make good loss sustained because of a breach of duty

(6) Without limiting subsection (1), an order mentioned in paragraph (3)(e) in relation to a loss may include an order that:
(a) the external administrator is personally liable to make good some or all of the loss; and
(b) the external administrator is not entitled to be reimbursed by the company or creditors in relation to the amount made good.

Section does not limit Court's powers

(7) This section does not limit the Court's powers under any other provision of this Act, or under any other law.

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90-20 Application for Court order

(1) Each of the following persons may apply for an order under section 90-15:

(a) a person with a financial interest in the external administration of the company;

(b) if the committee of inspection (if any) so resolves—a creditor, on behalf of the committee;

(c) ASIC;

(d) an officer of the company;

(e) if the application is in relation to a company that is a friendly society within the meaning of the *Life Insurance Act 1995* and which may be wound up voluntarily under subsection 180(2) of that Act—APRA.

(2) Paragraph (1)(d) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

(3) If an application is made by a person referred to in paragraph (1)(b), the reasonable expenses associated with the application are to be taken to be expenses incurred by a person as a member of the committee.

90-21 Meetings to ascertain wishes of creditors or contributories

(1) The Court may, as to all matters relating to the external administration of a company, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

(2) The Court may, if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be convened, held and conducted in such manner as the Court directs, and may appoint a person to act as chair of any such meeting and to report the result of the meeting to the Court.

(3) In the case of creditors, regard is to be had to the value of each creditor's debt.

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(4) In the case of contributories, regard is to be had to the number of votes conferred on each contributory by this Act or the company's constitution.

Subdivision C—Review by another registered liquidator

90-22 Application of this Subdivision

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

90-23 Appointment of reviewing liquidator by ASIC or the Court

Appointment by ASIC

(1) A registered liquidator may be appointed by ASIC to carry out a review into a matter that relates to the external administration of the company, if ASIC considers it appropriate to do so.

(2) ASIC may exercise the power under subsection (1):
  (a) on its own initiative; or
  (b) on application by a person with a financial interest in the external administration of the company; or
  (c) on the application of an officer of the company.

(3) An application under paragraph (2)(b) or (c) must be lodged with ASIC in the approved form.

(4) Paragraph (2)(c) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company under external administration.

(5) If ASIC appoints a registered liquidator to carry out a review, ASIC must specify:
  (a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and

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(b) the way in which the cost of carrying out the review is to be determined.

(5A) Subsections (1) to (5) do not apply to:
(a) a company under restructuring; or
(b) a company that has made a restructuring plan that has not yet terminated.

Appointment by the Court

(6) A registered liquidator may be appointed by the Court to carry out a review into a matter that relates to the external administration of the company.

(7) The Court may exercise the power under subsection (6):
(a) on application under subsection (8); and
(b) if the Court considers it appropriate to do so.

(8) Either of the following may make an application under this subsection:
(a) ASIC;
(b) a person with a financial interest in the external administration of the company.

(9) If the Court appoints a registered liquidator to carry out a review, the Court must specify:
(a) the matters in relation to the external administration of the company which the liquidator is appointed to review; and
(b) the way in which the cost of carrying out the review is to be determined.

Appointments by ASIC or by the Court—limit

(10) A matter referred to in paragraph (5)(a) or (9)(a) must not relate to remuneration which an external administrator of the company is entitled to receive under subsection 60-5(2) (remuneration if no remuneration determinations made).

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90-24 Appointment of reviewing liquidator by creditors etc.

Appointment to carry out review

(1) A registered liquidator may be appointed to carry out a review into either or both of the following matters:
  (a) remuneration of the external administrator of the company;
  (b) a cost or expense incurred by the external administrator of the company.

Appointment by resolution

(2) The appointment may be made by resolution of:
  (a) the creditors; or
  (b) if the company is being wound up under a members' voluntary winding up—the company;

(3) If the appointment is made by resolution, the resolution must specify:
  (a) the remuneration, costs or expenses which the liquidator is appointed to review; and
  (b) the way in which the cost of carrying out the review is to be determined.

Appointment by one or more creditors or members

(4) The appointment may be made by:
  (a) one or more of the creditors; or
  (b) if the company is being wound up under a members' voluntary winding up—one or more of the members.

(5) However, an appointment may only be made under subsection (4) if the external administrator of the company agrees to the appointment.

(6) The agreement must:
  (a) be in accordance with the Insolvency Practice Rules; and
  (b) specify:

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(i) the remuneration, costs or expenses which the liquidator is appointed to review; and
(ii) the way in which the cost of carrying out the review is to be determined.

Appointments by creditors etc.—limit

(7) Despite subsection (1), a registered liquidator appointed under this section has no power to review the remuneration to which the external administrator of a company is entitled under subsection 60-5(2) (remuneration if no remuneration determinations made).

Restructuring and restructuring plans

(8) This section does not apply to:
(a) a company under restructuring; or
(b) a company that has made a restructuring plan that has not yet terminated.

90-25 Reviewing liquidator must consent to appointment

A registered liquidator cannot be appointed under this Subdivision as a reviewing liquidator in relation to a matter unless:
(a) the liquidator has consented in writing to the appointment; and
(b) as at the time of the appointment, the liquidator has not withdrawn the consent.

90-26 Review

Review—general

(1) If a reviewing liquidator is appointed under this Subdivision in relation to a matter, the reviewing liquidator must carry out a review into that matter.

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Reviews relating to remuneration, costs or expenses

(2) If the matter is, or includes, remuneration of the external administrator of the company, the review may (but need not) include an assessment of whether the remuneration is reasonable.

(3) If the matter is, or includes, a cost or expense incurred by the external administrator of the company, the review must include an assessment of whether the cost or expense was properly incurred by the external administrator.

Note: Insolvency Practice Rules made under section 90-29 may provide for the meaning of ***properly incurred***.

(4) A reviewing liquidator must not review:
  (a) remuneration of an external administrator of the company that relates to a period; or
  (b) a cost or expense incurred by the external administrator of the company incurred during a period;

unless the period is:
  (c) for a reviewing liquidator appointed by the Court under subsection 90-23(6) or paragraph 90-28(2)(c) or (3)(b)—the period determined by the Court; or
  (d) otherwise—the prescribed period.

Report of review

(5) A reviewing liquidator must prepare a report on the review.

90-27 Who pays for a review?

(1) The cost of carrying out a review under this Subdivision:
  (a) in the case of a reviewing liquidator appointed with the agreement of the external administrator of the company under subsection 90-24(5)—is to be borne by the creditors or members referred to in that subsection; or
  (b) in any other case—forms part of the expenses of the external administration of the company.

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(2) Subsection (1) has effect subject to an order of the Court under section 90-28.

90-28 Court orders in relation to review

Application of this section

(1) This section applies if:
  (a) a reviewing liquidator has been appointed under this Subdivision in relation to one or more matters; and
  (b) the review has not been completed.

Court orders on application by the reviewing liquidator

(2) On application by the reviewing liquidator, the Court may make any or all of the following orders in relation to the review:
  (a) requiring the external administrator of the company or any other person to provide books, information or assistance to the reviewing liquidator;
  (b) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration of the company and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a);
  (c) accepting the resignation of the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;
  (d) any other order that the Court thinks fit.

Court orders on application by a person with a financial interest

(3) On application by a person mentioned in subsection (4), the Court may make any or all of the following orders in relation to the review:
  (a) requiring the reviewing liquidator to carry out a review of one or more matters that relate to the external administration and that are specified in the order instead of, or in addition to, the matters referred to in paragraph (1)(a) of this section;

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(b) removing from office the reviewing liquidator, and appointing another registered liquidator as reviewing liquidator for the matter or matters;

(c) any other order that the Court thinks fit.

(4) The persons who may make an application under subsection (3) are:

(a) a person with a financial interest in the external administration of the company; or

(b) an officer of the company.

(5) Paragraph (4)(b) has effect despite section 198G.

Note: Section 198G deals with powers of officers etc. while a company is under external administration.

90-29 Rules about reviews

(1) The Insolvency Practice Rules may provide for and in relation to reviews under this Subdivision.

(2) Without limiting subsection (1), the Insolvency Practice Rules may provide for and in relation to any or all of the following matters:

(a) the giving of notice to the external administrator of a company before appointing, or making an application for the appointment of, a reviewing liquidator under this Subdivision;

(b) the meaning, for the purposes of section 90-26, of ***properly incurred*** in relation to costs or expenses incurred by an external administrator of a company;

(c) the appointment of reviewing liquidators, including requirements as to who may be appointed and the provision of declarations of relevant relationships;

(d) the powers and duties of reviewing liquidators in carrying out a review;

(e) the form and content of reports by reviewing liquidators;

(f) the preparation and provision of reports by reviewing liquidators.

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Subdivision D—Removal by creditors

90-30 Application of this Subdivision

This Subdivision applies in relation to a company that is under external administration, other than a company in relation to which a provisional liquidator has been appointed.

90-35 Removal by creditors

Creditors may remove external administrator and appoint another

(1) The creditors may:
  (a) by resolution at a meeting, remove the external administrator of a company; and
  (b) by resolution at the same or a subsequent meeting, appoint another person as the external administrator of the company.

Note: For the general rules relating to meetings, see Division 75.

(2) However, the creditors may not do so unless at least 5 business days' notice of the meeting is given to all persons who are entitled to receive notice of creditors' meetings.

(3) The removal of an external administrator does not take effect until another person is appointed as external administrator of the company.

Former administrator may apply to Court to be reappointed

(4) A person (the ***former administrator***) who has been removed as external administrator of the company by resolution of the creditors may apply to the Court to be reappointed as external administrator of the company.

(5) However, if the former administrator makes such an application, the former administrator must:
  (a) record all costs incurred by the former administrator and the company in relation to the application; and

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(b) do so in a way that separates those costs from the costs incurred by the former administrator and the company in relation to other matters.

(6) The Court may order that the former administrator be reappointed as external administrator of the company if the Court is satisfied that the removal of the former administrator was an improper use of the powers of one or more creditors.

(7) The Court may make such other orders in relation to the application as it thinks fit including orders in relation to:

(a) the costs of the application; and

(b) the remuneration of the former administrator.

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Part 4—Other matters

Division 95—Introduction

95-1 Simplified outline of this Part

This Part deals with a variety of matters:

(a) an external administrator of a company may assign a right to sue; and

(b) forms are approved by ASIC (provision is made for what may be required in the form or to accompany the form); and

(c) the Minister has power to make rules to be called the Insolvency Practice Rules.

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Division 100—Other matters

100-5 External administrator may assign right to sue under this Act

(1) Subject to subsections (2) and (3), an external administrator of a company may assign any right to sue that is conferred on the external administrator by this Act.

(2) If the external administrator's action has already begun, the external administrator cannot assign the right to sue unless the external administrator has the approval of the Court.

(3) Before assigning any right under subsection (1), the external administrator must give written notice to the creditors of the proposed assignment.

(4) If a right is assigned under this section, a reference in this Act to the external administrator in relation to the action is taken to be a reference to the person to whom the right has been assigned.

100-6 Approved forms

(1) A document that this Schedule requires to be lodged with ASIC in an approved form must:
  (a) be in the form approved by ASIC for the document; and
  (b) include the information, statements, explanations or other matters required by the form; and
  (c) be accompanied by any other material required by the form.

(2) A reference in this Schedule to a document that has been lodged (being a document to which subsection (1) applies), includes a reference to any other material lodged with the document as required by the relevant form.

(3) If:
  (a) this Schedule requires a document to be lodged with ASIC in an approved form; and

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(b) a provision of this Schedule specifies information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the approved form (and so the approved form may also require information etc. to be included in the form or material to accompany the form).

(4) The Insolvency Practice Rules may provide for and in relation to:

(a) methods of verifying any information required by or in approved forms; and

(b) the manner in which, the persons by whom, and the directions or requirements in accordance with which, approved forms are required or permitted to be signed, prepared, or completed.

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Division 105—The Insolvency Practice Rules

105-1 The Insolvency Practice Rules

(1) The Minister may, by legislative instrument, make rules providing for matters:
  (a) required or permitted by this Schedule to be provided by the rules; or
  (b) necessary or convenient to be provided in order to carry out or give effect to this Schedule.

(2) Rules made under subsection (1) may include offences.

(3) The penalties for offences described in subsection (2) must not be more than 50 penalty units for an individual or 500 penalty units for a body corporate.

(4) To avoid doubt, the rules may not do the following:
  (a) create a civil penalty;
  (b) provide powers of:
    (i) arrest or detention; or
    (ii) entry, search or seizure;
  (c) impose a tax;
  (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  (e) directly amend the text of this Act.

(5) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

(6) Despite subsection 1345A(1), the Minister's power to make rules under this section may not be delegated to any other person.

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Schedule 3—Penalties

Note: See sections 1311 to 1311E.

Penalties	
Provision	**Penalty**
Section 111AU	5 years imprisonment
Subsection 113(1)	1 year imprisonment
Subsection 113(3)	20 penalty units
Subsection 115(1)	20 penalty units
Subsection 117(5)	30 penalty units
Subsection 123(3)	30 penalty units
Subsection 136(5)	20 penalty units
Subsection 139(1)	20 penalty units
Subsections 142(1) and (2)	60 penalty units
Subsection 143(1)	20 penalty units
Subsections 144(1) and (2)	30 penalty units
Subsections 145(1) and (3)	60 penalty units
Subsection 146(1)	60 penalty units
Subsections 148(2), (3), (4) and (5)	30 penalty units
Subsection 150(2)	20 penalty units
Subsection 151(2)	20 penalty units
Subsections 153(1) and (2)	30 penalty units
Subsection 156(1)	30 penalty units
Subsection 157(2)	20 penalty units
Subsection 158(2)	120 penalty units
Subsections 161A(2) and (3)	30 penalty units
Subsection 162(3)	20 penalty units
Subsection 163(5)	30 penalty units
Subsection 165(2)	120 penalty units
Section 168	30 penalty units
Subsection 170(3)	30 penalty units
Subsections 172(1), (1A) and (2)	30 penalty units

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Penalties	
Provision	**Penalty**
Subsections 173(1), (3) and (9)	30 penalty units
Subsection 174(1)	30 penalty units
Subsection 177(1)	50 penalty units
Subsection 177(1AA)	50 penalty units
Subsection 178A(1)	60 penalty units
Subsection 178C(1)	60 penalty units
Subsection 184(1)	15 years imprisonment
Subsection 184(2)	15 years imprisonment
Subsection 184(3)	15 years imprisonment
Subsection 191(1)	30 penalty units
Subsection 195(1)	20 penalty units
Subsection 199B(1)	20 penalty units
Subsection 200B(1)	(a) for an individual—6 months imprisonment, 180 penalty units, or both; and (b) for a body corporate—1,800 penalty units
Subsection 200C(1)	(a) for an individual—6 months imprisonment, 180 penalty units, or both; and (b) for a body corporate—1,800 penalty units
Section 200D	180 penalty units
Subsection 201D(1)	30 penalty units
Subsection 201D(2)	20 penalty units
Subsections 201R(2) and (3)	30 penalty units
Subsection 202B(1)	20 penalty units
Subsection 203AA(6)	120 penalty units
Subsections 203D(3) and (5)	20 penalty units
Subsections 204A(1) and (2)	20 penalty units
Subsections 204C(1) and (2)	20 penalty units
Subsections 205B(1), (2), (4) and (5)	120 penalty units
Subsections 205C(1) and (2)	30 penalty units
Subsection 205E(2)	30 penalty units
Subsection 205F(1)	30 penalty units

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Penalties	
Provision	**Penalty**
Subsection 205G(9)	2 years imprisonment
Subsection 205G(10)	30 penalty units
Subsection 206A(1)	5 years imprisonment
Subsections 206J(4), (6) and (7)	60 penalty units
Subsection 206K(4)	60 penalty units
Subsections 206L(3) and (4)	60 penalty units
Subsection 206M(2)	60 penalty units
Subsection 209(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Section 224	5 years imprisonment
Subsections 225(3), (4) and (5)	20 penalty units
Subsection 235(1)	120 penalty units
Section 237	6 months imprisonment
Section 242	3 months imprisonment
Subsection 246B(3)	20 penalty units
Subsection 246D(6)	20 penalty units
Subsections 246F(1) and (3)	20 penalty units
Subsection 246G(1)	20 penalty units
Subsection 247C(1)	20 penalty units
Subsections 249E(3) and (4)	20 penalty units
Subsection 249K(1)	20 penalty units
Subsection 249Z(1)	20 penalty units
Subsections 249L(1) and (2)	30 penalty units
Subsections 250BB(2), (3) and (4)	20 penalty units
Subsection 250BD(1)	5 years imprisonment
Subsections 250N(1) and (2)	30 penalty units
Subsections 250P(3) and (4)	30 penalty units
Subsection 250PA(3)	30 penalty units
Subsections 250PA(4) and (6)	20 penalty units
Subsection 250PA(9)	30 penalty units

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Penalties	
Provision	**Penalty**
Subsection 250R(2)	30 penalty units
Subsection 250R(7)	5 years imprisonment
Subsections 250RA(1) and (3)	20 penalty units
Subsection 250S(1)	20 penalty units
Subsection 250SA(1)	20 penalty units
Subsection 250T(1)	20 penalty units
Subsection 250T(4)	30 penalty units
Subsection 250W(5)	20 penalty units
Subsections 251A(1) to (5)	30 penalty units
Subsections 251B(1), (3) and (4)	20 penalty units
Subsections 252C(3) and (4)	20 penalty units
Subsection 252H(1)	20 penalty units
Subsection 252X(1)	20 penalty units
Subsection 252Y(5)	20 penalty units
Subsections 253M(1), (2) and (3)	30 penalty units
Subsections 253N(1), (3) and (4)	20 penalty units
Subsection 254H(4)	20 penalty units
Subsection 254L(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 254N(2)	20 penalty units
Subsection 254Q(13)	20 penalty units
Section 254SA	2 years imprisonment
Section 254T	2 years imprisonment
Subsections 254X(1) and (2)	60 penalty units
Subsection 254Y(1)	20 penalty units
Subsection 256D(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 259B(6)	20 penalty units
Subsection 259D(4)	20 penalty units

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Penalties	
Provision	**Penalty**
Subsection 259F(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 260D(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 283AA(1)	60 penalty units
Subsection 283AA(3)	6 months imprisonment
Subsection 283AB(1)	60 penalty units
Subsection 283AC(1)	60 penalty units
Subsection 283AC(2)	60 penalty units
Subsection 283BH(1)	5 years imprisonment
Section 283BI	6 months imprisonment
Section 283CE	6 months imprisonment
Subsection 286(3)	2 years imprisonment
Subsection 286(4)	60 penalty units
Subsection 287(2)	60 penalty units
Subsection 288(1)	60 penalty units
Subsection 289(2)	60 penalty units
Subsection 294(1)	30 penalty units
Subsection 294B(1)	30 penalty units
Subsection 307A(3)	2 years imprisonment
Subsection 307A(4)	50 penalty units
Subsection 307B(1)	50 penalty units
Subsection 307B(3)	50 penalty units
Subsections 307C(1) and (3)	20 penalty units
Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4)	50 penalty units
Subsections 309(1), (2), (3), (4), (5), (5A) and (6)	50 penalty units
Subsections 311(1), (2) and (3)	1 year imprisonment
Subsection 312(1)	60 penalty units

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Penalties	
Provision	**Penalty**
Subsections 313(1) and (2)	30 penalty units
Subsections 314(1) and (1AB)	30 penalty units
Subsections 314A(1), (3) and (7)	30 penalty units
Subsections 316(2) and (3)	30 penalty units
Subsections 316A(3) and (4)	30 penalty units
Subsection 317(1)	30 penalty units
Subsections 318(1), (3) and (4)	60 penalty units
Subsections 319(1) and (1AA)	120 penalty units
Subsection 320(1)	120 penalty units
Subsections 321(1) and (1AA)	30 penalty units
Subsections 322(1), (1A) and (2)	30 penalty units
Subsection 323(1)	60 penalty units
Subsection 323B(1)	60 penalty units
Subsection 323D(3)	30 penalty units
Section 324BA	6 months imprisonment
Subsection 324BB(1)	6 months imprisonment
Subsection 324BB(2)	30 penalty units
Subsections 324BC(1) and (2)	6 months imprisonment
Subsection 324BC(3)	30 penalty units
Subsection 324CA(1)	6 months imprisonment
Subsections 324CA(1A) and (2)	30 penalty units
Subsection 324CB(1)	6 months imprisonment
Subsections 324CB(1A), (2) and (4)	30 penalty units
Subsection 324CC(1)	6 months imprisonment
Subsections 324CC(1A), (2) and (4)	30 penalty units
Subsection 324CE(1)	6 months imprisonment
Subsections 324CE(1A) and (2)	30 penalty units
Subsection 324CF(1)	6 months imprisonment
Subsections 324CF(1A) and (2)	30 penalty units
Subsection 324CG(1)	6 months imprisonment

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Penalties	
Provision	**Penalty**
Subsections 324CG(1A) and (2)	30 penalty units
Subsection 324CG(5)	6 months imprisonment
Subsections 324CG(5A) and (6)	30 penalty units
Section 324CI	6 months imprisonment
Section 324CJ	6 months imprisonment
Section 324CK	6 months imprisonment
Subsections 324CM(1), (2) and (3)	6 months imprisonment
Section 324DB	6 months imprisonment
Subsection 324DC(1)	6 months imprisonment
Subsection 324DC(2)	30 penalty units
Subsections 324DD(1) and (2)	6 months imprisonment
Subsection 324DD(3)	30 penalty units
Subsection 325(4)	6 months imprisonment
Subsection 327A(3)	6 months imprisonment
Subsections 327B(1) and (3)	6 months imprisonment
Subsection 327C(3)	6 months imprisonment
Subsection 328A(4)	6 months imprisonment
Subsection 328B(2)	6 months imprisonment
Subsection 328C(3)	6 months imprisonment
Subsection 328D(3)	6 months imprisonment
Subsections 331AAA(1) and (3)	6 months imprisonment
Subsections 331AAB(1) and (2)	6 months imprisonment
Subsection 332A(2)	20 penalty units
Subsection 332A(3)	20 penalty units
Subsection 342B(1)	30 penalty units
Subsection 344(2)	15 years imprisonment
Subsections 346C(1) and (2)	60 penalty units
Subsection 347A(1)	20 penalty units
Subsections 347B(1) and (2)	20 penalty units
Subsection 348D(1)	60 penalty units
Subsection 349A(1)	60 penalty units

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Penalties	
Provision	**Penalty**
Subsections 428(1), (2), (2B) and (2C)	20 penalty units
Paragraph 429(2)(b)	50 penalty units
Subsection 437D(5)	6 months imprisonment
Subsection 438B(4)	(a) if the offence relates to a contravention of a provision other than subsection 438B(2A)—120 penalty units; and (b) if the offence relates to a contravention of subsection 438B(2A)—20 penalty units
Subsection 438C(5)	120 penalty units
Subsection 446C(4)	60 penalty units
Subsection 448B(1)	60 penalty units
Subsection 448C(1)	60 penalty units
Subsections 450E(1) and (2)	20 penalty units
Subsections 453D(1), (2), (3), (4), (5) and (6)	20 penalty units
Subsection 453L(1)	6 months imprisonment
Subsection 456B(1)	50 penalty units
Subsection 456C(1)	50 penalty units
Subsections 456F(2), (3), (4), (5) and (6)	20 penalty units
Subsection 457B(1)	20 penalty units
Section 458H	20 penalty units
Subsection 475(9)	(a) if the offence relates to a contravention of a provision other than subsection 475(4)—60 penalty units; and (b) if the offence relates to a contravention of subsection 475(4)—50 penalty units
Subsection 486A(8)	2 years imprisonment
Section 494	1 year imprisonment
Subsections 496(4), (5), (6), (7) and (8)	20 penalty units
Subsection 497(1)	3 months imprisonment

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Penalties	
Provision	**Penalty**
Subsection 497(4)	50 penalty units
Subsection 497(7)	20 penalty units
Subsection 530A(6)	120 penalty units
Subsection 530B(3)	1 year imprisonment
Subsection 530B(6)	120 penalty units
Subsections 532(1), (2), (8) and (9)	30 penalty units
Subsection 541(1)	30 penalty units
Section 588FGAC	60 penalty units
Subsection 588G(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 588GAB(1)	10 years imprisonment
Subsection 588GAC(1)	10 years imprisonment
Subsection 590(1)	2 years imprisonment
Subsection 590(5)	1 year imprisonment
Subsection 592(1)	120 penalty units
Subsection 592(6)	2 years imprisonment
Subsection 595(1)	30 penalty units
Subsection 596(1)	2 years imprisonment
Subsections 596AB(1), (1A), (1B) and (1C)	15 years imprisonment
Subsection 596F(3)	2 years imprisonment
Subsections 597(6), (7), (10A) and (13)	2 years imprisonment
Subsection 597A(3)	2 years imprisonment
Subsection 601AD(5)	20 penalty units
Subsection 601BC(5)	30 penalty units
Subsections 601BH(1) and (2)	20 penalty units
Subsection 601BJ(3)	20 penalty units
Subsection 601BK(1)	20 penalty units
Subsection 601BP(1)	20 penalty units
Subsection 601BR(1)	20 penalty units

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Penalties	
Provision	**Penalty**
Subsections 601CW(9) and (10)	30 penalty units
Subsection 601CZB(1)	30 penalty units
Section 601CZC	30 penalty units
Subsection 601DD(1)	20 penalty units
Subsection 601DE(1)	30 penalty units
Subsection 601DH(1)	20 penalty units
Subsection 601ED(5)	5 years imprisonment
Subsection 601FD(4)	15 years imprisonment
Subsection 601FE(4)	15 years imprisonment
Subsection 601FF(3)	5 years imprisonment
Subsection 601FG(3)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 601FL(4)	2 years imprisonment
Subsection 601FM(3)	2 years imprisonment
Subsection 601FQ(6)	2 years imprisonment
Subsection 601HD(1)	60 penalty units
Subsections 601HG(1) and (3)	20 penalty units
Subsections 601HG(4), (4A) and (4B)	1 year imprisonment
Subsection 601HG(6)	60 penalty units
Subsection 601HG(7)	20 penalty units
Subsection 601JA(3)	2 years imprisonment
Subsection 601JA(4)	60 penalty units
Subsection 601JB(5)	60 penalty units
Subsection 601JB(6)	20 penalty units
Subsection 601JD(4)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Subsection 601KA(3)	60 penalty units
Subsection 601SBB(1)	50 penalty units

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Penalties	
Provision	**Penalty**
Subsection 601SBC(2)	50 penalty units
Subsection 601SCB(1)	50 penalty units
Subsection 601SCB(2)	50 penalty units
Subsection 601SCB(3)	1 year imprisonment
Subsection 601SCD(1)	(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and (b) for a body corporate—20,000 penalty units
Section 601TAA	1 year imprisonment
Subsection 601TAB(1)	1 year imprisonment
Subsection 601TBA(2)	1 year imprisonment
Subsection 601UAA(1)	15 years imprisonment
Subsection 601UAB(1)	15 years imprisonment
Section 601VAB	2 years imprisonment
Subsection 601VBD(8)	1 year imprisonment
Subsection 601VCC(2)	2 years imprisonment
Subsection 601WBE(5)	50 penalty units
Section 601WCF	1 year imprisonment
Section 601WCG	1 year imprisonment
Subsection 601WDA(1)	2 years imprisonment
Subsection 601WDA(2)	2 years imprisonment
Subsection 601WDA(3)	2 years imprisonment
Section 601XAB	1 year imprisonment
Subsection 606(4A)	5 years imprisonment
Subsection 606(4B)	60 penalty units
Subsection 622(1)	60 penalty units
Subsection 623(1)	60 penalty units
Subsection 624(2)	60 penalty units
Subsections 630(2), (3) and (4)	60 penalty units
Subsection 631(1)	2 years imprisonment
Subsection 631(2)	5 years imprisonment
Subsection 633(1) (table items 4, 5,	60 penalty units

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Penalties	
Provision	**Penalty**
7, 8, 9, 11, 12, 13 and 14)	
Subsection 635(1) (table items 5, 7, 8, 10, 11, 12, 13 and 14)	60 penalty units
Subsection 636(3)	60 penalty units
Subsection 636(4)	20 penalty units
Subsection 637(1)	60 penalty units
Subsection 637(2)	20 penalty units
Subsection 638(1)	60 penalty units
Subsection 638(3)	60 penalty units
Subsection 638(5)	60 penalty units
Subsection 638(6)	20 penalty units
Subsection 639(1)	60 penalty units
Subsection 639(2)	20 penalty units
Subsection 640(1)	60 penalty units
Subsection 641(1)	60 penalty units
Section 643	6 months imprisonment
Section 644	6 months imprisonment
Subsections 647(1), (2) and (3)	60 penalty units
Subsection 648A(1)	60 penalty units
Subsections 648E(1) and (2)	60 penalty units
Subsections 648G(5) and (9)	120 penalty units
Subsection 649C(2)	60 penalty units
Subsection 650B(3)	60 penalty units
Subsections 650E(5) and (6)	60 penalty units
Subsection 650F(3)	60 penalty units
Subsection 651A(4)	60 penalty units
Subsection 651C(1)	60 penalty units
Subsection 652C(3)	60 penalty units
Subsection 654A(1)	60 penalty units
Subsection 654C(1)	60 penalty units
Subsection 654C(3)	60 penalty units

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Penalties	
Provision	**Penalty**
Subsection 657F(1)	60 penalty units
Subsections 661B(1) and (2)	20 penalty units
Subsection 661D(1)	60 penalty units
Subsection 662A(1)	60 penalty units
Subsection 663A(1)	60 penalty units
Subsections 664D(1), (2) and (3)	60 penalty units
Subsections 664E(2), (3) and (4)	60 penalty units
Subsection 665A(2)	60 penalty units
Subsection 666A(1)	60 penalty units
Subsections 666B(2) and (3)	60 penalty units
Subsection 667A(3)	60 penalty units
Subsection 668A(1)	60 penalty units
Subsection 668A(2)	20 penalty units
Subsections 668A(3) and (4)	60 penalty units
Subsection 668B(1)	60 penalty units
Subsection 670A(3)	5 years imprisonment
Subsections 670C(1), (2) and (3)	60 penalty units
Subsection 671B(8)	2 years imprisonment
Subsection 671B(9)	60 penalty units
Subsection 672B(1)	60 penalty units
Subsection 672DA(1)	30 penalty units
Subsections 672DA(2), (3), (3A) and (4)	20 penalty units
Subsections 672DA(6), (7), (8) and (9)	30 penalty units
Subsection 674(2)	5 years imprisonment
Subsection 674(5)	2 years imprisonment
Subsection 675(2)	5 years imprisonment
Subsection 708AA(10)	2 years imprisonment
Subsection 708A(9)	2 years imprisonment
Subsection 721(5)	5 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 722(1)	60 penalty units
Subsection 722(2)	20 penalty units
Subsections 723(1), (2) and (3)	20 penalty units
Subsection 724(1)	60 penalty units
Subsection 725(1)	60 penalty units
Section 726	5 years imprisonment
Subsection 727(1)	15 years imprisonment
Subsection 727(2)	5 years imprisonment
Subsection 727(3)	5 years imprisonment
Subsection 727(4)	5 years imprisonment
Subsection 728(3)	15 years imprisonment
Subsection 730(1)	120 penalty units
Subsection 734(1)	60 penalty units
Subsection 734(2)	60 penalty units
Subsection 735(1)	30 penalty units
Subsection 736(1)	60 penalty units
Subsection 738L(3)	5 years imprisonment
Subsections 738M(1), (2) and (3)	20 penalty units
Subsection 738N(4)	6 months imprisonment
Subsection 738P(1)	6 months imprisonment
Subsection 738Q(1)	50 penalty units
Subsection 738Q(5)	1 year imprisonment
Subsection 738Q(7)	6 months imprisonment
Subsections 738R(1) and (2)	5 years imprisonment
Subsections 738V(1), (2) and (3)	50 penalty units
Subsections 738X(2) and (3)	50 penalty units
Subsection 738X(7)	30 penalty units
Subsection 738Y(4)	5 years imprisonment
Subsections 738ZA(1), (3), (4), (5), (6), (8) and (9)	1 year imprisonment

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Penalties	
Provision	**Penalty**
Subsections 738ZB(2), (3) and (4)	50 penalty units
Subsection 738ZC(1)	30 penalty units
Subsection 738ZE(2)	5 years imprisonment
Section 738ZF	5 years imprisonment
Subsection 738ZG(1)	30 penalty units
Subsection 791A(1)	5 years imprisonment
Section 791B	5 years imprisonment
Subsection 792B(1)	2 years imprisonment
Subsection 792B(2)	2 years imprisonment
Subsection 792B(3)	2 years imprisonment
Subsection 792B(4)	2 years imprisonment
Subsection 792B(5)	2 years imprisonment
Subsection 792C(1)	2 years imprisonment
Subsection 792D(1)	2 years imprisonment
Section 792E	2 years imprisonment
Subsection 792F(1)	2 years imprisonment
Subsection 792F(2)	50 penalty units
Subsection 792F(3)	2 years imprisonment
Subsection 792G(1)	2 years imprisonment
Subsection 792G(2)	2 years imprisonment
Section 792I	50 penalty units
Subsection 793D(3)	2 years imprisonment
Subsection 794B(3)	2 years imprisonment
Subsection 794D(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 794E(2)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and

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Penalties	
Provision	**Penalty**
	(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 798C(3)	2 years imprisonment
Subsection 798C(6)	2 years imprisonment
Subsection 798D(4)	2 years imprisonment
Subsection 798DA(4)	2 years imprisonment
Subsection 820A(1)	5 years imprisonment
Section 820B	5 years imprisonment
Subsection 821B(1)	2 years imprisonment
Subsection 821B(2)	2 years imprisonment
Subsection 821B(3)	2 years imprisonment
Subsection 821B(4)	2 years imprisonment
Subsection 821BA(1)	2 years imprisonment
Subsection 821C(1)	2 years imprisonment
Subsection 821C(3)	2 years imprisonment
Section 821D	2 years imprisonment
Subsection 821E(1)	2 years imprisonment
Subsection 821E(2)	2 years imprisonment
Subsection 821E(3)	2 years imprisonment
Subsection 822D(3)	2 years imprisonment
Subsection 823B(3)	2 years imprisonment
Subsection 823D(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 823E(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of

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Penalties	
Provision	**Penalty**
	which the offence is committed
Section 850C	4 years imprisonment
Subsection 851D(8)	2 years imprisonment
Subsection 852B(2)	4 years imprisonment
Subsection 853F(1)	5 years imprisonment
Subsection 853F(2)	5 years imprisonment
Subsection 854A(4)	2 years imprisonment
Subsection 892B(1)	5 years imprisonment
Subsection 892B(3)	5 years imprisonment
Subsection 892H(1)	5 years imprisonment
Subsection 892H(2)	5 years imprisonment
Subsection 892H(3)	5 years imprisonment
Subsection 892H(6)	1 year imprisonment
Subsection 892H(7)	1 year imprisonment
Subsection 892K(2)	5 years imprisonment
Subsections 904B(1) and (5)	1,000 penalty units
Subsections 904C(1) and (3)	100 penalty units
Subsection 904D(2)	100 penalty units
Section 904E	100 penalty units
Subsection 904G(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 904H(3)	100 penalty units
Subsection 904K(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 905A(2)	(a) for an individual—2 years imprisonment, or

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Penalties	
Provision	**Penalty**
	500 penalty units, or both; and (b) for a body corporate—5,000 penalty units
Section 907A	2 years imprisonment
Subsection 911A(1)	5 years imprisonment
Subsection 911B(1)	5 years imprisonment
Section 911C	2 years imprisonment
Subsection 912C(3)	2 years imprisonment
Subsection 912D(1B)	2 years imprisonment
Subsection 912D(2)	1 year imprisonment
Subsection 912DA(1)	30 penalty units
Subsection 912DB(1)	30 penalty units
Subsection 912E(1)	2 years imprisonment
Subsection 912F(1)	20 penalty units
Subsection 916A(3A)	2 years imprisonment
Subsection 916B(2A)	2 years imprisonment
Subsection 916B(5A)	1 year imprisonment
Subsection 916C(3)	2 years imprisonment
Subsection 916D(2A)	2 years imprisonment
Subsection 916F(1)	6 months imprisonment
Subsection 916F(1A)	6 months imprisonment
Subsection 916F(3)	60 penalty units
Subsection 916G(2)	1 year imprisonment
Subsection 916G(3)	1 year imprisonment
Subsection 920C(3)	5 years imprisonment
Subsection 922M(3)	50 penalty units
Subsection 923A(1)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923B(1)	(a) for an individual—10 penalty units for each

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Penalties	
Provision	**Penalty**
	day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(1)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; or (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 923C(2)	(a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 942B(8)	1 year imprisonment
Subsection 942C(8)	1 year imprisonment
Section 942E	2 years imprisonment
Section 943F	2 years imprisonment
Subsection 946AA(4)	50 penalty units
Subsections 946B(3A) and (9)	50 penalty units
Subsection 949A(2)	2 years imprisonment
Subsection 949A(5)	5 years imprisonment
Subsection 949B(2)	1 year imprisonment
Subsection 949B(4)	1 year imprisonment
Subsection 952C(1)	50 penalty units
Subsection 952C(3)	5 years imprisonment
Subsection 952D(1)	15 years imprisonment
Subsection 952D(2)	15 years imprisonment
Subsection 952E(6)	2 years imprisonment
Subsection 952F(2)	15 years imprisonment
Subsection 952F(3)	15 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 952F(4)	15 years imprisonment
Subsection 952G(2)	2 years imprisonment
Subsection 952G(4)	2 years imprisonment
Subsection 952G(6)	2 years imprisonment
Subsection 952H(2)	5 years imprisonment
Subsection 952I(1)	30 penalty units
Subsection 952I(2)	30 penalty units
Subsection 952I(3)	30 penalty units
Subsection 952I(4)	30 penalty units
Subsection 952J(1)	30 penalty units
Subsection 952JA(1)	30 penalty units
Section 952K	5 years imprisonment
Subsection 952L(1)	15 years imprisonment
Subsection 952L(2)	5 years imprisonment
Subsection 952L(3)	5 years imprisonment
Section 952M	5 years imprisonment
Subsection 962X(1)	5 years imprisonment
Subsection 982C(1)	2 years imprisonment
Subsection 982C(2)	2 years imprisonment
Section 982D	2 years imprisonment
Section 983C	6 months imprisonment
Subsection 984B(1)	(a) if the offence relates only to a contravention of the requirements referred to in paragraph 984B(1)(a)—50 penalty units; and (b) otherwise—2 years imprisonment
Subsection 985D(1)	50 penalty units
Subsection 985J(1)	50 penalty units
Subsection 985J(2)	50 penalty units
Subsection 985J(4)	50 penalty units
Subsection 985K(1)	2 years imprisonment
Subsection 988A(1)	5 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 989B(1)	5 years imprisonment
Subsection 989B(2)	5 years imprisonment
Subsection 989B(3)	5 years imprisonment
Subsection 989CA(3)	2 years imprisonment
Subsection 989CA(4)	50 penalty units
Subsection 990B(1)	5 years imprisonment
Subsection 990B(2)	5 years imprisonment
Subsection 990B(6)	6 months imprisonment
Subsection 990D(1)	2 years imprisonment
Subsection 990D(2)	2 years imprisonment
Paragraph 990F(a)	2 years imprisonment
Subsection 990I(3)	2 years imprisonment
Subsection 990K(1)	1 year imprisonment
Subsection 991B(2)	1 year imprisonment
Subsection 991E(1)	1 year imprisonment
Subsection 991E(3)	1 year imprisonment
Subsection 991F(1)	6 months imprisonment
Subsection 991F(2)	6 months imprisonment
Subsection 991F(3)	6 months imprisonment
Subsection 992A(1)	6 months imprisonment
Subsection 992A(3)	6 months imprisonment
Subsection 992AA(1)	6 months imprisonment
Subsection 993B(1)	50 penalty units
Subsection 993B(3)	15 years imprisonment
Subsection 993C(1)	50 penalty units
Subsection 993C(3)	5 years imprisonment
Subsection 993D(2)	5 years imprisonment
Subsection 993D(3)	50 penalty units
Subsection 994B(2)	5 years imprisonment
Subsection 994B(9)	1 year imprisonment
Subsection 994C(2)	1 year imprisonment

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Penalties	
Provision	**Penalty**
Subsections 994C(3), (5) and (6)	5 years imprisonment
Section 994D	5 years imprisonment
Subsections 994E(1) and (3)	5 years imprisonment
Subsections 994F(1), (3), (4), (5), (6) and (8)	1 year imprisonment
Section 994G	2 years imprisonment
Subsection 994H(3)	2 years imprisonment
Subsections 994J(7) and (8)	2 years imprisonment
Subsection 1012DAA(10)	2 years imprisonment
Subsection 1012DA(9)	2 years imprisonment
Subsection 1012H(2)	2 years imprisonment
Subsection 1013I(4)	2 years imprisonment
Subsection 1013IA(5)	2 years imprisonment
Subsection 1013K(1)	2 years imprisonment
Subsection 1013K(2)	2 years imprisonment
Subsection 1015B(1)	2 years imprisonment
Subsection 1015D(2)	2 years imprisonment
Subsection 1015D(3)	2 years imprisonment
Subsection 1015D(4)	2 years imprisonment
Subsection 1015E(1)	2 years imprisonment
Subsection 1016A(2)	5 years imprisonment
Subsection 1016A(3)	5 years imprisonment
Subsection 1016B(1)	2 years imprisonment
Section 1016C	2 years imprisonment
Subsection 1016D(1)	2 years imprisonment
Paragraph 1016D(2)(d)	2 years imprisonment
Subsection 1016E(2)	2 years imprisonment
Subsection 1017B(1)	5 years imprisonment
Subsection 1017C(2)	2 years imprisonment
Subsection 1017C(2A)	2 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 1017C(3)	2 years imprisonment
Subsection 1017C(3A)	2 years imprisonment
Subsection 1017C(5)	2 years imprisonment
Subsection 1017D(1)	2 years imprisonment
Subsection 1017DA(3)	50 penalty units
Subsection 1017E(3)	5 years imprisonment
Subsection 1017E(4)	5 years imprisonment
Subsection 1017F(2)	2 years imprisonment
Subsection 1017G(1)	5 years imprisonment
Subsection 1018A(1)	2 years imprisonment
Subsection 1018A(2)	2 years imprisonment
Subsection 1018B(1)	2 years imprisonment
Subsection 1020AB(3)	6 months imprisonment
Subsection 1020AC(2)	6 months imprisonment
Subsection 1020AD(2)	6 months imprisonment
Section 1020AE	6 months imprisonment
Subsection 1020AI(3)	50 penalty units
Subsection 1020AI(5)	2 years imprisonment
Subsection 1020AI(7)	5 years imprisonment
Section 1020AJ	2 years imprisonment
Subsection 1020A(4)	5 years imprisonment
Subsection 1020BAA(1)	5 years imprisonment
Subsection 1020B(2)	(a) for a first offence—6 months imprisonment; and (b) for a further offence—2 years imprisonment
Subsection 1020E(8)	2 years imprisonment
Subsection 1020E(9)	2 years imprisonment
Subsection 1021C(1)	50 penalty units
Subsection 1021C(3)	5 years imprisonment
Subsection 1021D(1)	15 years imprisonment
Subsection 1021D(2)	15 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 1021E(5)	2 years imprisonment
Subsection 1021F(1)	5 years imprisonment
Subsection 1021FA(1)	5 years imprisonment
Subsection 1021FA(2)	2 years imprisonment
Subsection 1021FB(1)	5 years imprisonment
Subsection 1021FB(2)	5 years imprisonment
Subsection 1021FB(3)	2 years imprisonment
Subsection 1021FB(6)	2 years imprisonment
Subsection 1021G(2)	5 years imprisonment
Subsection 1021H(1)	30 penalty units
Subsection 1021I(1)	5 years imprisonment
Subsection 1021J(1)	5 years imprisonment
Subsection 1021J(2)	5 years imprisonment
Subsection 1021J(3)	5 years imprisonment
Subsection 1021K(1)	5 years imprisonment
Subsection 1021L(1)	5 years imprisonment
Subsection 1021L(2)	5 years imprisonment
Subsection 1021M(1)	50 penalty units
Subsection 1021M(3)	2 years imprisonment
Section 1021N	2 years imprisonment
Subsection 1021NA(1)	2 years imprisonment
Subsection 1021NA(2)	5 years imprisonment
Subsection 1021NA(3)	2 years imprisonment
Subsection 1021NB(1)	2 years imprisonment
Subsection 1021NB(2)	5 years imprisonment
Subsection 1021NB(3)	2 years imprisonment
Subsection 1021O(1)	60 penalty units
Subsection 1021O(3)	5 years imprisonment
Subsection 1021P(1)	2 years imprisonment
Subsection 1021P(2)	2 years imprisonment

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Penalties	
Provision	**Penalty**
Subsection 1021P(3)	50 penalty units
Subsection 1021P(4)	2 years imprisonment
Subsection 1021P(5)	50 penalty units
Subsection 1021P(6)	50 penalty units
Subsections 1023P(1), (2) and (4)	5 years imprisonment
Section 1041A	15 years imprisonment
Subsection 1041B(1)	15 years imprisonment
Subsection 1041C(1)	15 years imprisonment
Section 1041D	15 years imprisonment
Subsection 1041E(1)	15 years imprisonment
Subsection 1041F(1)	15 years imprisonment
Section 1041G	15 years imprisonment
Subsection 1043A(1)	15 years imprisonment
Subsection 1043A(2)	15 years imprisonment
Subsection 1052B(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052BA(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1052C(6)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 1070B(1)	30 penalty units
Subsection 1070C(1)	30 penalty units

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Penalties	
Provision	**Penalty**
Subsection 1070D(3)	30 penalty units
Subsection 1071B(2)	30 penalty units
Section 1071E	30 penalty units
Subsection 1072E(11)	30 penalty units
Subsection 1072H(1)	30 penalty units
Subsection 1072H(3)	30 penalty units
Subsection 1072H(4)	30 penalty units
Subsection 1072H(5)	30 penalty units
Subsection 1072H(6)	30 penalty units
Subsection 1101B(10)	2 years imprisonment
Subsection 1101C(1)	1 year imprisonment
Subsection 1101C(2)	1 year imprisonment
Subsection 1101C(3)	1 year imprisonment
Subsection 1101E(1)	2 years imprisonment
Subsection 1101F(1A)	2 years imprisonment
Subsection 1101F(1)	2 years imprisonment
Section 1101G	1 year imprisonment
Subsection 1200N(7)	2 years imprisonment
Subsection 1200N(8)	2 years imprisonment
Subsection 1200Q(1)	5 years imprisonment
Subsection 1200Q(2)	5 years imprisonment
Section 1200S	2 years imprisonment
Subsection 1200U(6)	2 years imprisonment
Subsection 1200U(7)	2 years imprisonment
Subsection 1212C(1)	60 penalty units
Subsection 1215D(2)	2 years imprisonment
Subsection 1215D(3)	2 years imprisonment
Subsection 1215D(4)	2 years imprisonment
Subsection 1272C(1)	60 penalty units
Subsection 1272D(1)	60 penalty units

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Penalties	
Provision	**Penalty**
Subsection 1272G(1)	1 year imprisonment
Subsection 1272H(1)	1 year imprisonment
Subsections 1274(1) and (2)	1 year imprisonment
Subsections 1274(9), (13) and (16)	120 penalty units
Subsections 1299F(1), (3) and (5)	30 penalty units
Subsection 1299G(1)	20 penalty units
Subsection 1299G(4)	30 penalty units
Subsection 1300(2A)	30 penalty units
Subsection 1300(3)	20 penalty units
Subsection 1307(1)	5 years imprisonment
Subsection 1307(2)	5 years imprisonment
Subsection 1308B(1)	20 penalty units
Subsection 1308(1)	5 years imprisonment
Subsection 1308(3)	20 penalty units
Subsection 1309(11)	(a) in relation to a contravention of subsection 1309(1)—5 years imprisonment; and (b) in relation to a contravention of subsection 1309(2)—2 years imprisonment
Section 1310	2 years imprisonment
Subsection 1317AAE(1)	6 months imprisonment
Subsections 1317AC(1), (2) and (3)	2 years imprisonment
Subsections 1317AI(1), (2) and (3)	60 penalty units
Subsection 1323(9)	60 penalty units
Subsection 1412(3)	2 years imprisonment
Subsection 1424(3)	2 years imprisonment
Section 1432	30 penalty units
Subsection 1436(2)	30 penalty units
Subsection 1438(6)	50 penalty units

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Schedule 4—Transfer of financial institutions and friendly societies

Note: See section 1465A.

Part 1—Preliminary

1 Definitions

In this Schedule, except so far as the contrary intention appears:

AFIC Code of a State or Territory means the Australian Financial Institutions Commission Code as set out in the *Australian Financial Institutions Commission Act 1992* of Queensland as in force immediately before the transfer date and as applied as a law of the State or Territory.

building society of a State or Territory means a transferring financial institution authorised under the Financial Institutions Code of the State or Territory to operate as a building society immediately before the transfer date.

Financial Institutions Code of a State or Territory means the Financial Institutions Code set out in the *Financial Institutions (Queensland) Act 1992* as in force immediately before the transfer date and as applied as a law of the State or Territory.

Friendly Societies Code means the Friendly Societies Code set out in Schedule 1 to the **Friendly Societies (Victoria) Act 1996** as in force immediately before the transfer date.

Friendly Societies Code of a State or Territory means:

(a) the Friendly Societies Code as applied as a law of the State or Territory; or

(b) if the State is Western Australia—the Friendly Societies (Western Australia) Code set out in the *Friendly Societies (Western Australia) Act 1999*.

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member of a transferring financial institution means a person who, immediately before the transfer date, is a member of the institution under:

(a) the previous governing Code; or
(b) the rules of the institution.

membership share means a share in a company that was a transferring financial institution:

(a) that was taken to have been issued under clause 12 of the transfer provisions; and
(b) that carries the rights and obligations that were conferred or imposed on the person in a capacity other than that of shareholder, by:
    (i) the institution's rules (as in force immediately before the transfer date); and
    (ii) the previous governing Code; and
(c) on which no amount is paid; and
(d) on which no amount is unpaid; and
(e) that is not:
    (i) transferable or transmissible; or
    (ii) capable of devolution by will or by operation of law; and
(f) that can be cancelled as set out in subclause 12(3).

previous governing Code for a transferring financial institution means the Code or law under which the institution is registered immediately before the transfer date.

State Supervisory Authority (SSA) for a transferring financial institution means:

(a) the SSA for the institution within the meaning of the previous governing Code; or
(b) in the case of The Cairns Cooperative Weekly Penny Savings Bank Limited—the Queensland Office of Financial Supervision.

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transfer date means the date that is the transfer date for the purposes of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

transfer provisions of a State or Territory means Schedule 4 to the Corporations Law of the State or Territory.

transferring financial institution of a State or Territory means:

(a) a building society of the State or Territory (that is, a society that was registered under the Financial Institutions Code of the State or Territory, and authorised to operate as a building society, immediately before the transfer date); or

(b) a credit union of the State or Territory (that is, a society that was registered under the Financial Institutions Code of the State or Territory, and authorised to operate as a credit union, immediately before the transfer date); or

(c) a friendly society of the State or Territory (that is, a body that was registered as a friendly society under the Friendly Societies Code of the State or Territory immediately before the transfer date); or

(d) a body registered as an association under Part 12 of the Financial Institutions Code of the State or Territory immediately before the transfer date; or

(e) a body registered as a Special Services Provider under the AFIC Code of the State or Territory immediately before the transfer date; or

(f) a body registered as an association under Part 12 of the Friendly Societies Code of the State or Territory immediately before the transfer date; or

(g) The Cairns Cooperative Weekly Penny Savings Bank Limited referred to in section 263 of the *Financial Intermediaries Act 1996* of Queensland if:

  (i) the State is Queensland; and

  (ii) a determination by APRA under subitem 7(2) of the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999* is in force immediately before the transfer date.

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Note: If a determination is made, the Bank will be covered by the *Banking Act 1959* from the transfer date. APRA may only make a determination if the Treasurer and the Queensland Minister responsible for the administration of the *Financial Intermediaries Act 1996* of Queensland have agreed that the Bank should be covered by the *Banking Act 1959*.

transition period means the period of 18 months starting on the transfer date.

withdrawable share of a transferring financial institution of a State or Territory means a withdrawable share within the meaning of the Financial Institutions Code of the State or Territory as in force immediately before the transfer date.

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Part 2—Financial institutions that became companies

Division 1—Registration and its consequences

3 Background (registration of transferring financial institution as company)

(1) On the transfer date, each transferring financial institution of a State or Territory was taken to be registered as a company under the Corporations Law of the State or Territory under the name under which the institution was registered under the previous governing Code immediately before the transfer date.

(2) Subclause 3(2) of the transfer provisions governed the kind of company the transferring financial institution was registered as.

(3) Under clause 7 of the transfer provisions, ASIC:
  (a) gave the company an ACN; and
  (b) kept a record of the company's registration; and
  (c) issued a certificate to the company that stated:
    (i) the company's name; and
    (ii) the company's ACN; and
    (iii) the company's type; and
    (iv) that the company is registered as a company under the Corporations Law of the State or Territory.

4 Rules applied to transferring institution that was registered as a company under the transfer provisions

Application of section 1274 to registration documents

(1) Subsections 1274(2) and (5) apply to the record of the company's registration referred to in paragraph 3(3)(b) of this Schedule as if it were a document lodged with ASIC.

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ASIC may keep documents relating to company lodged while it was a registered body

(2) ASIC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

Application of replaceable rules

(3) The replaceable rules (as described in section 135) do not apply to the company, despite section 135, unless the company:
   (a) repealed its constitution after the transfer date and before the commencement of this Act; or
   (b) repeals its constitution on or after the commencement of this Act.

11 Transferring financial institution under external administration

Background

(1) Clause 11 of the transfer provisions provided that if, immediately before the transfer date, provisions of Chapter 5 of the Corporations Law of a State or Territory applied to:
   (a) a compromise or arrangement between a transferring financial institution of the State or Territory and its creditors; or
   (b) a reconstruction of a transferring financial institution of the State or Territory; or
   (c) a receiver or other controller of property of a transferring financial institution of the State or Territory; or
   (d) the winding-up or dissolution of a transferring financial institution of the State or Territory;

because of Part 9 of the Financial Institutions Code, or Part 9 of the Friendly Societies Code, of the State or Territory, those provisions of Chapter 5 continued to apply to that matter after the transfer date.

Note: Clause 11 of the transfer provisions also provided that:
   (a) a matter referred to in paragraph (1)(a), (b) or (d) included an application or other step preliminary to the matter; and

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(b) any act done before the transfer date under or for the purposes of the provisions of Chapter 5 as applied by the Code were to have effect as if it had been done under or for the purposes of Chapter 5 as it applied after the transfer date.

(2) Clause 11 of the transfer provisions also provided that if, before the transfer date, a liquidator of a transferring financial institution of a State or Territory had been appointed under:

(a) section 341 of the Financial Institutions Code of the State or Territory; or

(b) section 402 of the Friendly Societies Code of the State or Territory;

the institution could be wound up in accordance with the provisions of Chapter 5 of the Corporations Law of the State or Territory.

Continuing external administration under Chapter 5 of the Corporations Act 2001

(3) If, immediately before the commencement of this Act, provisions of Chapter 5 of the Corporations Law of a State or Territory applied to:

(a) a compromise or arrangement between a transferring financial institution of the State or Territory and its creditors; or

(b) a reconstruction of a transferring financial institution of the State or Territory; or

(c) a receiver or other controller of property of a transferring financial institution of the State or Territory; or

(d) the winding-up or dissolution of a transferring financial institution of the State or Territory;

because of clause 11 of the transfer provisions, the corresponding provisions of Chapter 5 of this Act apply (as a law of the Commonwealth) to that matter after the commencement of this Act.

(4) Subclause (3) does not limit the regulations that may be made under clause 28.

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(5) Any act done:

(a) before the transfer date under or for the purposes of the provisions of Chapter 5 of the Corporations Law of the State or Territory as applied by the Code; or

(b) on or after the transfer date and before the commencement of this Act for the purposes of the provisions of Chapter 5 of the Corporations Law of the State or Territory as applied by clause 11 of the transfer provisions;

has effect as if it had been done under or for the purposes of Chapter 5 of this Act as it applies after the commencement of this Act.

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Division 2—Membership

12 Institution that became a company limited by shares

Background

(1) Clause 12 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by shares under clause 3 of the transfer provisions.

(2) Clause 12 of the transfer provisions provided that:
   (a) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) became shares of the company; and
   (b) any withdrawable shares of the institution on issue immediately before the transfer date became redeemable preference shares of the company; and
   (c) in the case of a building society—each person who was a member of the society immediately before the transfer date, other than by virtue of only holding shares in the society, was taken to have been issued with a membership share on the transfer date; and
   (d) in any case other than that of a building society—any person:
      (i) who was a member of the institution immediately before the transfer date; and
      (ii) who did not hold any shares in the institution;

   was taken to have been issued with a membership share on the transfer date.

Joint members of institution that became a company limited by shares

(3) If a person who was taken to have been issued with a membership share was a joint member, they hold the membership share jointly with the other member or members of the joint membership. This

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is so, even if the other member, or another member, held shares in the institution immediately before the transfer date. However, the joint membership does not have any more votes because of the membership share or shares than it had immediately before the transfer date.

Cancellation shares

(4) A membership share can be cancelled at the option of the holder or the company in the circumstances (if any):
  (a) set out in the company's constitution; or
  (b) in which the member who holds the share could have had their membership of the institution cancelled immediately before the transfer date.

Part 2J.1 does not apply to the cancellation of a membership share.

13 Institution that became a company limited by guarantee

Background

(1) Clause 13 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by guarantee under clause 3 of the transfer provisions.

(2) Clause 13 of the transfer provisions provided that each person who was a member of the institution immediately before the transfer date was taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Guarantees

(3) Each person who becomes a member of the company after the commencement of this Act and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Note: Someone who became a member after the transfer date and this Act commences was taken to have given a guarantee by clause 13 of the

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transfer provisions. This guarantee is preserved by sections 1373 and 1399.

(4) If a person who is taken to have given a guarantee by subclause (2) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes because of giving the guarantee or guarantees than it had immediately before the transfer date.

14 Institution becoming a company limited by shares and guarantee

Background

(1) Clause 14 of the transfer provisions applied to a transferring financial institution of a State or Territory if the institution was taken to be registered as a company limited by shares and guarantee under clause 3 of the transfer provisions.

(2) Clause 14 of the transfer provisions provided that each person who was a member of the institution immediately before the transfer date was taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Guarantees

(3) Each person who becomes a member of the company after this Act commences and before the amount of the relevant guarantee is determined is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company).

Note: Someone who became a member after the transfer date and this Act commences was taken to have given a guarantee by clause 13 of the transfer provisions. This guarantee is preserved by sections 1373 and 1399.

(4) If a person who is taken to have given a guarantee by subclause (2) is a joint member, they are taken to have given the guarantee jointly with the other member or members of the joint membership. However, the joint membership does not have any more votes

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because of giving the guarantee or guarantees than it had immediately before the transfer date.

15 Redeemable preference shares that were withdrawable shares

(1) This Act applies to a redeemable preference share that was a withdrawable share of a transferring financial institution of a State or Territory immediately before the transfer date, except that:

(a) the share is redeemable on the same terms that the withdrawable share was withdrawable under the Financial Institutions Code of the State or Territory and the institution's rules or constitution; and

(b) the holder of the share continues to have the same rights and obligations that they had by holding the withdrawable share.

(2) The provisions of this Act that apply to redeemable preference shares apply:

(a) subject to subclause (1), to redeemable preference shares of a company registered under clause 3 of the transfer provisions; and

(b) to redeemable preference shares of a company (other than a company referred to in paragraph (a)) that is permitted to use the expression ***building society***, ***credit union*** or ***credit society*** under section 66 of the *Banking Act 1959*;

even if the shares are the only class of shares issued by the company.

16 Liability of members on winding up

(1) If a transferring financial institution of a State or Territory that was registered under clause 3 of the transfer provisions is wound up, each person:

(a) who was a past member of the institution at the time it became registered; and

(b) who did not again become a member; and

(c) who had not held shares in the institution;

is not liable under Division 2 of Part 5.6 on the winding up.

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Note: A person who was a past member at the time of registration and who held shares in the institution may be liable as a past member under Division 2 of Part 5.6.

(2) If a company that is registered under clause 3 of the transfer provisions is wound up, a person who is taken to have given a guarantee by subclause 13(1) or 14(1) of the transfer provisions, or clause 13 or 14 of this Schedule, is not liable under:

(a) section 515 merely because the person is or was a member who is taken to have given a guarantee; or

(b) section 517 or paragraph 518(b) merely because the person is taken to have given a guarantee.

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Division 3—Share capital

17 Share capital

Background (transfer of certain amounts to share capital)

(1) On registration of a transferring financial institution of a State or Territory as a company under clause 3 of the transfer provisions:
  (a) any amount of withdrawable share capital (within the meaning of the Financial Institutions Code of the State or Territory); and
  (b) any amount standing to the credit of its share premium account; and
  (c) any amount standing to the credit of its capital redemption reserve;

immediately before the transfer date became part of the company's share capital under clause 17 of the transfer provisions.

Use of amount standing to credit of share premium account

(2) The company may use the amount standing to the credit of its share premium account immediately before the transfer date (if any) to:
  (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before the transfer date; or
  (b) write off:
    (i) the preliminary expenses of the institution incurred before the transfer date; or
    (ii) expenses incurred, payments made, or discounts allowed before the transfer date, in respect of any issue of shares in, or debentures of, the institution.

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18 Application of no par value rule

(1) Section 254C applies to shares issued by a transferring financial institution of a State or Territory before the transfer date as well as shares issued on and after that.

(2) In relation to a share issued by the institution before the transfer date:
   (a) the amount paid on the share is the sum of all amounts paid to the institution at any time for the share (but not including any premium); and
   (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

19 Calls on partly-paid shares

The liability of a shareholder for calls in respect of money unpaid on shares issued before the transfer date by a transferring financial institution of a State or Territory (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

20 References in contracts and other documents to par value

(1) This clause applies for the purpose of interpreting and applying the following after the commencement of this Act:
   (a) a contract entered into by a transferring financial institution of a State or Territory before the transfer date (including the institution's constitution);
   (b) a trust deed or other document executed by or in relation to the institution before the transfer date.

Note: The interpretation and application of contracts and deeds before this Act commences was governed by clause 20 of the transfer provisions.

(2) A reference to the par value of a share issued by a transferring financial institution of a State or Territory is taken to be a reference to:

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(a) if the share is issued before the transfer date—the par value of the share immediately before then; or

(b) if the share is issued on or after the transfer date but shares of the same class were on issue immediately before then—the par value that the share would have had if it had been issued then; or

(c) if the share is issued on or after the transfer date and shares of the same class were not on issue immediately before then—the par value determined by the directors.

A reference to share premium is taken to be a reference to any residual share capital in relation to the share.

(3) A reference to a right to a return of capital on a share issued by the institution is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.

(4) A reference to the aggregate par value of the institution's issued share capital is taken to be a reference to that aggregate as it existed immediately before the transfer date and:

(a) increased to take account of the par value of any shares issued after then; and

(b) reduced to take account of the par value of any shares cancelled after then.

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Part 4—The transition period

25 ASIC may direct directors of a company to modify its constitution

(1) If a company registered under clause 3 of the transition provisions has not modified its constitution so that it complies with subclause 24(1) of the transition provisions by the end of the transition period, ASIC may direct, in writing, the directors of the company to:

(a) take the necessary or specified steps to:

(i) ensure that the company modifies its constitution so that it does comply; or

(ii) ensure that the company makes the modifications to its constitution that ASIC specifies; and

(b) take those steps within a specified time (which must be more than 28 days).

A direction may require the directors to take steps that are inconsistent with the company's constitution.

(2) ASIC may issue a direction under subclause (1) before the end of the transition period if requested by a majority of directors of the company.

(3) No civil or criminal liability arises from action taken by a director in good faith and in accordance with a direction issued under subclause (1).

(4) A person contravenes this subclause if, without reasonable excuse, they contravene a direction under subclause (1).

(5) A person who intentionally or recklessly contravenes a direction under subclause (1) is guilty of an offence.

Penalty: 2 years imprisonment.

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27 When certain modifications of a company's constitution under an exemption or declaration take effect

(1) If the constitution of a company registered under clause 3 of the transition provisions was modified under an exemption or declaration made under clause 26 of the transition provisions, and that modification varies or cancels, or allows the variation or cancellation of:

(a) rights attached to shares in a class of shares; or

(b) rights of members in a class of members;

the following provisions apply, and to the exclusion of section 246D if it would otherwise apply.

(2) If the company is not required to lodge a copy of the modification with ASIC by or under any other provision of this Act, the company must lodge a copy of the modification with ASIC within 14 days of the modification being made.

(3) If:

(a) members in the class do not all agree (whether by resolution or written consent) to the modification of the company's constitution; or

(b) the members in the class did not have an opportunity to vote on or consent to the modification;

10% or more of the members in the class may apply to the Court to have the modification set aside.

Note: If a company has only 1 class of shares, all members are members of the class.

(4) An application may only be made within 1 month after the modification is lodged.

(5) The modification takes effect:

(a) if no application is made to the Court to have it set aside—1 month after the modification is lodged; or

(b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.

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Clause 27

(6) The members of the class who want to have the modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.

(7) The Court may set aside the modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the modification if the Court is not satisfied of unfair prejudice.

(8) Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.

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Part 5—Disclosure of the proposed demutualisation

29 Disclosure for proposed demutualisation

(1) If:
  (a) a modification of the constitution of an unlisted company registered under clause 3 of the transfer provisions is proposed; and
  (b) the unlisted company is a mutual entity; and
  (c) the modification would have the effect that the unlisted company would cease to be a mutual entity;

the following rules apply:
  (f) notice of the meeting of the company's members at which the proposed modification is to be considered must be accompanied by the documents listed in subclause (4);
  (g) notice of the meeting may not be shortened under subsection 249H(2);
  (h) the company must lodge with ASIC the notice and the documents referred to in paragraphs (4)(a) and (c) within 7 days after notice of the meeting is given.

(3) ASIC may exempt a company from this Part under clause 30.

(4) The documents that must accompany the notice are:
  (a) a disclosure statement that:
    (i) satisfies clause 31; and
    (ii) ASIC has registered under clause 32; and
  (b) an estimate of the financial benefits (if any) the member will be offered if the proposed modification occurs; and
  (c) a report by an expert that:
    (i) states whether, in the expert's opinion, the proposed modification is in the best interests of the members of the company as a whole; and
    (ii) gives the expert's reasons for forming that opinion; and

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(iii) complies with subclauses 33(2) and (3).

(5) If the company contravenes subclause (1) it is not guilty of an offence.

(6) A person contravenes this subclause if they are involved in a contravention of subclause (1).

Note 1: This subclause is a civil penalty provision.

Note 2: Section 79 defines ***involved***.

(7) A person commits an offence if they are involved in a contravention of subclause (1) and the involvement is dishonest.

Penalty:
(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and
(b) for a body corporate—20,000 penalty units.

(8) In this clause:

reserves includes general reserves and retained earnings of the company.

unlisted company means a company (registered under clause 3) that does not have voting shares quoted on a prescribed financial market.

30 ASIC's exemption power

(1) If ASIC is satisfied that a company is not a mutual entity, it may exempt the company from this Part.

(6) The exemption must be in writing and ASIC must publish notice of it in the *Gazette*.

31 Coverage of disclosure statement

The disclosure statement must give all the information that members would reasonably require and expect to be given to make an informed decision about the proposed modification.

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32 Registration of disclosure statement

(1) ASIC must register the disclosure statement if satisfied that the statement adequately sets out or explains the following (if relevant):

(a) the variation or cancellation of members' rights;

(b) that the proposed modification will allow the variation or cancellation of members' rights;

(d) what financial benefits (if any) members will be offered if the proposed modification occurs and why the benefits are considered to be appropriate;

(e) the basis upon which members' entitlement to the financial benefits will be determined, including:

(i) any minimum period of membership that a member must satisfy to receive benefits; or

(ii) whether members must pay an amount or provide other value to receive benefits;

(f) any preferential allocation of benefits to members, or a class of members, and how that allocation is to be determined;

(g) any benefits officers of the company (including retiring officers) may receive (whether directly or indirectly) in connection with the proposed modification;

(h) any other proposed changes to the company that are related to the proposed modification (for example, whether the company proposes to list its securities for quotation on a prescribed financial market or merge with another company);

(i) the new name of the company, if the company's name is to be changed in connection with the proposed modification, or that it is not proposed to change the company's name;

(j) the procedural steps required to vary or cancel the members' rights;

(l) how voting on the proposed modification will take place.

(2) In deciding whether the disclosure statement adequately sets out or explains the matters in subclause (1), ASIC may also have regard to:

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(a) the readability of the statement; and
(b) whether the statement would be readily comprehensible by the members of the company concerned.

(3) The disclosure statement must include a statement to the effect that registration of the disclosure statement:
(a) is on the basis that the statement adequately sets out or explains the matters in subclause (1); and
(b) does not mean that ASIC has considered whether the proposed modification is in the best interests of the members of the company as a whole.

(4) Subclause (1) does not limit clause 31.

33 Expert's report

(1) If the company obtains 2 or more reports each of which could be used for the purposes of paragraph 29(4)(c), a copy of each report must:
(a) be lodged with ASIC; and
(b) be given to each member entitled to receive a disclosure statement.

Penalty: 6 months imprisonment.

(2) The report must be by an expert who is not an associate of the company.

(3) The report must set out details of:
(a) any relationship between the expert and the company, including any circumstances in which the expert gives it advice, or acts on its behalf, in the proper performance of the functions attaching to the expert's professional capacity or business relationship with the company; and
(b) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion; and

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(c) any fee, payment or other benefit (whether direct or indirect) that the expert has received or will or may receive in connection with making the report.

34 Unconscionable conduct in relation to demutualisations

(1) A person must not engage in:
  (a) conduct that is, in all the circumstances, unconscionable; or
  (b) conduct that is misleading or deceptive or is likely to mislead or deceive;

  in relation to:
  (c) a modification of the constitution of an unlisted company that is a modification to which this Part applies; or
  (d) anything done in reliance on, in conjunction with or in connection with the modification.

(2) In determining whether a person has engaged in conduct that contravenes paragraph (1)(a), have regard to:
  (a) whether the person, or someone acting for the person, exerted undue influence or pressure on, or used unfair tactics against, members of the company; and
  (b) whether the person, or someone acting for the person, engaged in conduct that resulted in a member or someone else gaining, or being in a position to gain, a benefit that the members generally did not, or would not be in a position to, gain.

  This subclause does not limit subclause (1).

(3) A person who contravenes subclause (1) is not guilty of an offence.

35 Orders the Court may make

(1) Without limiting the Court's powers under Part 9.5, if the Court is satisfied that a person has engaged in conduct constituting a contravention of subclause 34(1), the Court may make 1 or more of the following orders:

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(a) an order requiring the person or a person involved in the contravention to disclose to the public, to a particular person or to a particular class of persons, in the manner specified in the order, specified information, or information of a specified kind, (being information that is in the possession of the person to whom the order is directed or to which that person has access);

(b) an order requiring the person or a person involved in the contravention to publish, at their own expense, in a manner and at times specified in the order, advertisements the terms of which are specified in, or are to be determined in accordance with, the order;

(c) any order that it thinks necessary or desirable:

(i) to protect the rights or interests of any person affected by the conduct; or

(ii) to ensure, as far as possible, that a proposed modification proceeds in the manner in which it would have proceeded if the conduct had not been engaged in;

(d) without limiting the generality of paragraph (c):

(i) an order prohibiting the exercise of voting or other rights attached to specified shares; or

(ii) an order directing a company not to make payment, or to defer making payment, of any amount or amounts due from the company in respect of specified shares; or

(iii) an order prohibiting the acquisition or disposal of, or of an interest in, specified shares; or

(iv) an order directing the disposal of, or of an interest in, specified shares; or

(v) an order directing a company not to register a transfer or transmission of specified shares; or

(vi) an order that an exercise of the voting or other rights attached to specified shares be disregarded; or

(vii) an order directing a company not to issue shares to a person who holds shares in the company, being shares that were proposed to be issued to the person because the person holds shares in the company or pursuant to

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an offer or invitation made or issued to the person because the person holds shares in the company.

(2) Without limiting the Court's powers under Part 9.5, if, in a proceeding, the Court is satisfied that:

(a) a person has engaged in conduct constituting a contravention of subclause 34(1); and

(b) a member of the company has suffered, or is likely to suffer, loss or damage because of that conduct;

the Court may make the orders that it thinks are appropriate to compensate the member (in whole or in part) or to prevent or reduce the loss or damage, including:

(c) an order directing the person or a person who was involved in the contravention to refund money or return property to the member; and

(d) an order directing the person or a person who was involved in the contravention to pay to the member the amount of the loss or damage; and

(e) an order listed in paragraph (1)(d).

(3) An application for an order under this clause may be made by ASIC or a member of the company.

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Part 6—Continued application of fundraising provisions of the Friendly Societies Code

36 Friendly Societies Code to apply to offers of interests in benefit funds

(1) The following apply as a law of the Commonwealth as from the transfer date:
  (a) Divisions 2 and 3 of Part 4B of the Friendly Societies Code;
  (b) Division 2 of Part 1, and Division 1 of Part 4B, of that Code to the extent to which they provide for the interpretation of terms used in the Divisions referred to in paragraph (a);
  (c) sections 28, 29 and 128 of that Code to the extent to which they apply for the purposes of the Divisions referred to in paragraph (a);
  (d) the regulations in force immediately before the transfer date under Part 4B of that Code to the extent to which they were made for the purposes of the provisions referred to in paragraphs (a), (b) and (c);
  (e) standards adopted by that Code for the purposes of the provisions referred to in paragraphs (a), (b) and (c).

(2) The provisions referred to in subclause (1) apply as if:
  (a) references in the provisions to a society were references to a friendly society within the meaning of the *Life Insurance Act 1995*; and
  (b) references to a benefit fund were references to an approved benefit fund within the meaning of the *Life Insurance Act 1995*; and
  (c) references in the provisions to an SSA were references to ASIC; and
  (d) references in the provisions to lodging a document were references to lodging the document with ASIC; and

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(e) references in the provisions to the Code were references to this Act; and

(f) references in the provisions to Part 4B of the Code were references to the provisions applied by this clause; and

(g) references to a penalty of $20,000 were references to a penalty of 200 penalty units; and

(h) references to a penalty of $5,000 were references to a penalty of 50 penalty units; and

(i) references to a penalty of $2,500 were references to a penalty of 30 penalty units; and

(j) references to a penalty of $1,000 were references to a penalty of 30 penalty units; and

(k) subsection 135(2) of the Friendly Societies Code were omitted; and

(l) paragraph 137(1)(e) of the Friendly Societies Code were omitted and replaced with a provision that requires a disclosure document to contain any other information that ASIC requires to be included in the document; and

(m) subsection 137(3) of the Friendly Societies Code were omitted and replaced with a provision that requires each copy of a disclosure document to:

(i) state that the document has been lodged with ASIC; and

(ii) specify the date of lodgment; and

(iii) state that ASIC takes no responsibility as to the contents of the document.

(3) If there is an inconsistency between:

(a) the provisions of Division 2 of Part 1, or Division 1 of Part 4B, of the Friendly Societies Code; and

(b) the provisions of Chapter 1 of this Act;

the provisions of the Code prevail for the purposes of interpreting the provisions applied by subclause (1).

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Part 7—Transitional provisions

37 Unclaimed money

(1) On and from the transfer date, section 414 applies to a sum or other property that, immediately before the transfer date, is covered by section 414 as applied by:
  (a) section 337 of the Financial Institutions Code of a State or Territory; or
  (b) section 399 of the Friendly Societies Code of a State or Territory.

(2) On and from the transfer date, section 544 applies to an amount of money that, immediately before the transfer date, is covered by section 544 as applied by:
  (a) section 342 of the Financial Institutions Code of a State or Territory; or
  (b) section 403 of the Friendly Societies Code of a State or Territory.

(3) Sections 414 and 544, as applied by this clause, apply as if:
  (a) references to Part 9.7 were references to the unclaimed money law of the State or Territory; and
  (b) references to the Commission or ASIC were references to the Minister administering the unclaimed money law of the State or Territory.

(4) In this clause:

unclaimed money law means:
  (a) the *Unclaimed Money Act 1995* of New South Wales; or
  (b) the **Unclaimed Moneys Act 1962** of Victoria; or
  (c) Part 8 of the *Public Trustee Act 1978* of Queensland; or
  (d) the *Unclaimed Money Act 1990* of Western Australia; or
  (e) the *Unclaimed Moneys Act 1891* of South Australia; or

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(f) the *Unclaimed Moneys Act 1918* of Tasmania; or
(g) the *Unclaimed Moneys Act 1950* of the Australian Capital Territory; or
(h) the *Companies (Unclaimed Assets and Moneys) Act* of the Northern Territory.

38 Modification by regulations

(1) The regulations may modify the operation of this Act (including the provisions applied by clause 36) in relation to:
(a) a company registered under clause 3; or
(b) a company that is permitted to use the expression ***building society***, ***credit union*** or ***credit society*** under section 66 of the *Banking Act 1959*; or
(c) a company that is a friendly society for the purposes of the *Life Insurance Act 1995*; or
(d) a specified class of any of those companies.

(2) Regulations made for the purposes of this clause may only modify this Act in relation to the following matters:
(a) issuing, cancelling or redeeming membership shares or redeemable preference shares;
(b) inspection of the register of members required by section 169;
(c) giving notice of a meeting of a company's members;
(d) members' rights to request the directors to hold a general meeting or to move a resolution at a general meeting;
(e) issuing share certificates for membership shares or redeemable preference shares, or numbering those shares;
(f) the publication of the names and addresses of members in the annual return;
(g) the report to members required by section 314;
(h) disposing of securities in a company if the whereabouts of the holder of the securities is unknown as described in section 1343;

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(i) the treatment of members who hold shares jointly or who have jointly given a guarantee;
(j) selective buy-backs.

(3) Regulations made for the purposes of this clause may not:
(a) create an offence with a penalty greater than 10 penalty units; or
(b) increase the penalty for an existing offence; or
(c) substitute for an existing offence an offence with a penalty greater than the penalty for the existing offence; or
(d) modify an obligation, contravention of which will result in committing an offence, so as to make it more difficult to comply with.

39 Regulations may deal with transitional, saving or application matters

(1) The regulations may deal with matters of a transitional, saving or application nature relating to:
(a) the transfer of the registration of transferring financial institutions to this Act; or
(b) the amendments made by Schedule 3 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*.

(2) Without limiting subclause (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
(a) by applying (with or without modifications) to the matter:
(i) provisions of a law of the Commonwealth, or of a State or Territory; or
(ii) provisions of a repealed or amended law of the Commonwealth, or of a State or Territory, in the form that those provisions took before the repeal or amendment; or
(iii) a combination of provisions referred to in subparagraphs (i) and (ii);

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(b) by otherwise specifying rules for dealing with the matter;
(c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of this Act.

(3) Without limiting subclause (1) or (2), the regulations may provide for the continued effect, for the purposes of this Act, of a thing done or instrument made, or a class of things done or instruments made, before the transfer date under or for the purposes of a provision of a previous governing Code of a transferring financial institution of a State or Territory. In the case of an instrument, or class of instruments, the regulations may provide for the instrument or instruments to continue to have effect subject to modifications.

(4) Without limiting subclause (3), regulations providing for the continued effect of things done or instruments made may permit all or any of the following matters to be determined in writing by a specified person, or by a person in a specified class of persons:
(a) the identification of a thing done or instrument made, or a class of them, that is to continue to have effect;
(b) the purpose for which a thing done or instrument made, or a class of them, is to continue to have effect;
(c) any modifications subject to which an instrument made, or a class of instruments made, is to continue to have effect.

(5) Without limiting subclause (1) or (2), the regulations may provide for the application of Chapter 5 of this Act or a similar law about external administration (in whole or in part and with or without modification) to a transferring financial institution of a State or Territory if, immediately before the transfer date:
(a) the institution is under external administration (however described); and
(b) the provisions of Chapter 5 are not already applied to it, or in relation to it, by a law of the State or Territory.

(6) In this clause, a reference to a ***law***, whether of the Commonwealth or of a State or Territory, includes a reference to an instrument made under such a law.

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