



Corporations Law

As set out in section 82 of the *Corporations Act 1989*

Volume 4

Chapter 7—Securities

Contents

| | |
|--|------|
| Part 7.13—Title to, and transfer of, securities | 1377 |
| Division 1—Title to securities | 1377 |
| 1085 Nature of shares and other interests | 1377 |
| 1086 Numbering shares | 1377 |
| 1087 Certificate to be evidence of title | 1378 |
| 1089 Loss or destruction of certificates | 1378 |
| Division 2—Transfer of securities | 1380 |
| 1090 Definition | 1380 |
| 1091 Instrument of transfer | 1380 |
| 1091AA Transmission of shares on death (<i>replaceable rule—see section 135</i>) | 1382 |
| 1091AB Transmission of shares on bankruptcy (<i>replaceable rule—see section 135</i>) | 1383 |
| 1091A Rights of trustee of estate of bankrupt shareholder | 1383 |
| 1091B Transmission of shares on mental incapacity (<i>replaceable rule—see section 135</i>) | 1385 |
| 1091C Trustee etc. may be registered as owner of shares | 1385 |
| 1091D Registration of transfers (<i>replaceable rule—see section 135</i>) | 1387 |
| 1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (<i>replaceable rule—see section 135</i>) | 1388 |
| 1092 Registration of transfer at request of transferor | 1388 |
| 1093 Notice of refusal to register transfer | 1389 |
| 1094 Remedy for refusal to register transfer or transmission | 1389 |
| 1095 Certification of transfers | 1390 |
| 1096 Duties of company with respect to issue of certificates | 1391 |
| 1096A Notices relating to non-beneficial and beneficial ownership of shares | 1393 |
| Division 3—Transfer of marketable securities and marketable rights | 1397 |
| Subdivision A—Interpretation | 1397 |
| 1097 Interpretation | 1397 |
| 1097A Quoted securities and rights | 1399 |
| 1097B SCH business rules may extend meaning of quoted securities or quoted rights | 1400 |
| 1097C Commission may declare Law applies to securities as if they were quoted securities or rights | 1401 |
| 1097D Transfer that substantially complies with SCH business rules | 1401 |

| | | |
|--|---|------|
| 1098 | Document duly completed in accordance with a particular form | 1402 |
| 1099 | Stamping of documents..... | 1403 |
| Subdivision B—Sufficient transfers (transfers other than SCH-regulated transfers) | | 1403 |
| 1099A | Subdivision does not apply to SCH-regulated transfers | 1403 |
| 1100 | Sufficient transfers | 1403 |
| 1101 | What is a sufficient transfer of marketable securities or marketable rights: generally | 1404 |
| 1102 | What is a sufficient transfer by an authorised trustee corporation..... | 1404 |
| 1103 | Transferee’s execution of transfer of marketable securities | 1405 |
| 1104 | Transferee’s execution of transfer of marketable rights | 1405 |
| 1105 | Effect where document purports to bear transferor’s broker’s stamp..... | 1406 |
| 1106 | Warranties by securities exchange where document purports to bear its stamp | 1407 |
| 1107 | Indemnities by securities exchange and broker where documents purport to bear their stamps..... | 1407 |
| 1108 | Joint and several warranties and liabilities | 1408 |
| 1108A | Marketable securities and rights from other jurisdictions: effect of sections 1105 to 1108..... | 1409 |
| 1109 | Registration of certain instruments..... | 1409 |
| Subdivision C—SCH-regulated transfers | | 1410 |
| 1109A | Member organisation’s authority to enter into transaction continues despite client’s death..... | 1410 |
| 1109B | Authority to enter into transaction gives authority to transfer | 1410 |
| 1109C | Effect of proper SCH transfer | 1411 |
| 1109D | Effect of proper SCH transfer on transferee..... | 1411 |
| 1109E | Warranties by member organisation whose identification code is included in transfer document | 1412 |
| 1109F | Indemnities in respect of warranted matters..... | 1413 |
| 1109G | Joint and several warranties and liabilities | 1415 |
| 1109H | Quoted securities and rights from other jurisdictions: effect of sections 1109E, 1109F and 1109G..... | 1415 |
| 1109J | Securities clearing house entitled to assume its business rules complied with | 1415 |
| 1109K | SCH-regulated transfer not to be registered unless proper SCH transfer | 1416 |
| 1109L | Issuing body not to refuse to register proper SCH transfer..... | 1416 |
| 1109M | Trustees and legal representatives may be SCH participants etc. | 1416 |

| | | |
|---|---|------|
| 1109N | Determination of who holds quoted securities for the purposes of a meeting | 1417 |
| 1109P | Determination of who holds quoted securities for the purposes of conferring security benefits..... | 1418 |
| Subdivision D—Miscellaneous | | 1419 |
| 1110 | Operation of Division..... | 1419 |
| 1111 | Occupation need not appear in transfer document, register etc. | 1420 |
| 1112 | Offences: stamping of broker’s stamp on sufficient transfer | 1420 |
| 1112A | Offences: inclusion of identification codes in proper SCH transfers | 1422 |
| 1112B | Offences: contravention by broker of the SCH certificate cancellation provisions relating to use of cancellation stamps | 1422 |
| 1112C | Civil liability: contravention by broker of the SCH certificate cancellation provisions..... | 1422 |
| 1112D | Issuer protected from civil liability for broker’s contravention of SCH certificate cancellation provisions | 1423 |
| Division 4—Exemptions and modifications | | 1424 |
| 1113 | General powers of Commission | 1424 |
| 1113A | Power of Commission to extend application of Division 3 | 1425 |
| Part 7.14—Miscellaneous | | 1426 |
| 1114 | Power of Court to make certain orders..... | 1426 |
| 1115 | Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange” | 1429 |
| 1116 | Preservation and disposal of records etc..... | 1429 |
| 1117 | Concealing etc. of books relating to securities | 1430 |
| 1118 | Falsification of records..... | 1431 |
| 1119 | Precautions against falsification of records | 1431 |
| Chapter 8—The Futures Industry | | 1432 |
| Part 8.1—Interpretation | | 1432 |
| 1120 | Business rules: futures association | 1432 |
| 1121 | Business rules: clearing house..... | 1432 |
| 1122 | Business rules: futures exchange..... | 1432 |
| Part 8.2—Futures exchanges, clearing houses and futures associations | | 1433 |
| Division 1—Futures exchanges and exempt futures markets | | 1433 |
| 1123 | Conducting unauthorised futures markets | 1433 |
| 1126 | Approval of futures exchange | 1433 |
| 1127 | Exempt futures market | 1436 |

| | |
|---|------|
| Division 2—Clearing houses | 1437 |
| 1128 When a person may provide clearing house facilities | 1437 |
| 1131 Approval of clearing house | 1437 |
| Division 3—Futures associations | 1439 |
| 1132 Approval of futures association..... | 1439 |
| 1133 Suspension or cancellation of approval | 1442 |
| Division 4—General | 1443 |
| 1134 Publication of certain instruments..... | 1443 |
| 1135 Appeal to the Court against certain decisions of futures exchanges and futures associations | 1443 |
| 1136 Commission to be notified of amendments of business rules | 1445 |
| 1137 Orderly markets in futures contracts—functions and powers of futures exchanges and clearing houses..... | 1446 |
| 1138 Orderly markets in futures contracts—powers of Commission | 1446 |
| 1139 Futures exchanges and others to assist Commission | 1450 |
| 1140 Power of Court to order observance or enforcement of business rules of futures exchange, clearing house or futures association..... | 1451 |
| 1141 Gaming and wagering laws not applicable to certain futures contracts and Chapter 8 agreements | 1451 |
| 1141A Qualified privilege in respect of disciplinary proceedings | 1452 |
| Part 8.3—Participants in the futures industry | 1454 |
| Division 1—Futures brokers and futures advisers | 1454 |
| 1142 Futures brokers | 1454 |
| 1143 Futures advisers | 1454 |
| 1144 Application for a licence | 1454 |
| 1144A Grant of licence to natural person | 1454 |
| 1145 Grant of licence to body corporate | 1455 |
| 1145A Effect of certain provisions | 1456 |
| 1146 Licences under corresponding previous laws | 1456 |
| 1147 Conditions of licence: general..... | 1456 |
| 1148 Conditions of futures brokers licence: membership of futures organisation..... | 1457 |
| 1149 Conditions of futures brokers licence: assets and liabilities | 1457 |
| 1150 Conditions of licence: supervision of representatives | 1458 |
| 1151 Revocation and variation of licence conditions..... | 1459 |
| 1152 Futures organisations to be informed about conditions of futures brokers licence | 1459 |
| 1153 Licensee to notify breach of licence condition | 1459 |

| | | |
|--|---|------|
| 1154 | Commission may require licensed futures broker to give information | 1460 |
| 1155 | Register of Futures Licensees | 1460 |
| 1156 | Notifying change in particulars | 1461 |
| 1157 | Annual statement of licensee..... | 1461 |
| 1158 | Time for lodging annual statement..... | 1462 |
| Division 2—Agreements with unlicensed persons | | 1463 |
| Subdivision A—Agreements affected | | 1463 |
| 1159 | Excluded clients | 1463 |
| 1160 | Agreement about a dealing in breach of section 1142..... | 1463 |
| 1161 | Agreement with corporation acting in breach of section 1143 | 1463 |
| Subdivision B—Effect on agreements | | 1464 |
| 1164 | Client may give notice of rescission..... | 1464 |
| 1165 | Effect of notice under section 1164..... | 1465 |
| 1165A | Client may apply to Court for partial rescission..... | 1465 |
| 1166 | Court may make consequential orders..... | 1466 |
| 1167 | Agreement unenforceable against client..... | 1466 |
| 1168 | Non-licensee not entitled to recover commission..... | 1466 |
| 1169 | Onus of establishing non-application of section 1167 or 1168 | 1467 |
| 1170 | Client may recover commission paid to non-licensee | 1467 |
| 1171 | Remedies under this Division additional to other remedies | 1467 |
| Division 3—Futures representatives | | 1468 |
| 1172 | Representatives of futures brokers | 1468 |
| 1173 | Representatives of futures advisers | 1468 |
| 1174 | Defence | 1468 |
| 1175 | Body corporate not to act as representative..... | 1469 |
| 1176 | Licensee to keep register of holders of proper authorities | 1469 |
| 1177 | Licensee to notify Commission of location and contents of register | 1470 |
| 1178 | Inspection and copying of register | 1471 |
| 1180 | Commission may require production of authority..... | 1471 |
| 1181 | Commission may give licensee information about representative | 1472 |
| 1182 | Holder of authority may be required to return it..... | 1474 |
| Division 4—Liability of principals for representatives’ conduct | | 1475 |
| 1183 | Conduct engaged in as a representative..... | 1475 |
| 1184 | Liability where identity of principal unknown | 1475 |
| 1185 | Liability of principals where act done in reliance on representative’s conduct..... | 1475 |
| 1186 | Presumptions about certain matters..... | 1477 |

| | | |
|---|--|-------------|
| 1187 | No contracting out of liability for representative's conduct | 1478 |
| 1188 | Effect of Division..... | 1479 |
| Division 5—Excluding persons from the futures industry | | 1480 |
| 1189A | Power to revoke, without a hearing, licence held by natural person..... | 1480 |
| 1190 | Power to revoke, without a hearing, licence held by body corporate | 1480 |
| 1191 | Power to revoke licence after a hearing | 1480 |
| 1192 | Power to suspend licence instead of revoking it..... | 1482 |
| 1192A | Power to make banning order where licence revoked or suspended..... | 1482 |
| 1193 | Power to make banning order against unlicensed person | 1483 |
| 1194 | Nature of banning order | 1483 |
| 1195 | Exceptions to banning order..... | 1484 |
| 1196 | Variation or revocation of banning order on application | 1484 |
| 1197 | Revocation of banning order in certain cases | 1485 |
| 1198 | Effect and publication of orders under this Division..... | 1485 |
| 1199 | Contravention of banning order | 1486 |
| 1199A | Banned person ineligible for licence | 1486 |
| 1200 | Opportunity for hearing..... | 1486 |
| 1201 | Disqualification by the Court | 1487 |
| 1202 | Effect of orders under section 1201..... | 1488 |
| 1203 | Effect of previous orders under laws corresponding to section 1201 | 1488 |
| Part 8.4—Conduct of futures business | | 1490 |
| 1204 | Certain representations prohibited..... | 1490 |
| 1205 | Undesirable advertising..... | 1490 |
| 1205A | Application of sections 1206 and 1207: exempt brokers | 1491 |
| 1206 | Issue of contract notes..... | 1491 |
| 1207 | Futures broker to furnish monthly statement to client | 1494 |
| 1208 | Dealings by futures broker on own account | 1496 |
| 1209 | Segregation of client money and property..... | 1497 |
| 1210 | Futures broker to give certain information to prospective clients..... | 1505 |
| Part 8.5—Financial statements and audit | | 1506 |
| 1211 | Interpretation..... | 1506 |
| 1212 | Application of Part..... | 1506 |
| 1213 | Accounts to be kept by futures brokers | 1506 |
| 1214 | Property in custody of futures broker | 1509 |
| 1215 | Appointment of auditor by futures broker | 1510 |

| | | |
|------|---|------|
| 1216 | Removal and resignation of auditors | 1515 |
| 1217 | Fees and expenses of auditors | 1516 |
| 1218 | Futures brokers' accounts | 1516 |
| 1219 | Auditor's right of access to records, information etc..... | 1518 |
| 1220 | Auditor to report to Commission in certain cases | 1518 |
| 1221 | Certain matters to be reported to Commission | 1519 |
| 1222 | Defamation | 1519 |
| 1223 | This Part not to affect right of futures exchange or futures association to impose obligations etc. on members | 1520 |
| 1224 | Power of Court to restrain dealings with futures broker's bank accounts..... | 1521 |
| 1225 | Duty of banker or body corporate to make full disclosure..... | 1522 |
| 1226 | Power of Court to make further orders and give directions..... | 1522 |
| 1227 | Power of Court to make order relating to payment of money..... | 1523 |

Part 8.6—Fidelity funds

| | | |
|------|--|------|
| | | 1524 |
| 1228 | Establishment of fidelity funds | 1524 |
| 1229 | Money constituting fidelity fund..... | 1524 |
| 1230 | Fund to be kept in separate ADI account | 1525 |
| 1231 | Payments out of fund | 1525 |
| 1232 | Accounts of fund..... | 1526 |
| 1233 | Management sub-committee | 1526 |
| 1234 | Contribution to fund..... | 1527 |
| 1235 | Levy in addition to annual contributions | 1528 |
| 1236 | Contributions and levies not payable in certain cases | 1528 |
| 1237 | Power of futures organisation to make advances to fund | 1529 |
| 1238 | Investment of fund | 1529 |
| 1239 | Application of fund | 1529 |
| 1240 | Claims against fund..... | 1533 |
| 1241 | Rights of innocent partner in relation to fund..... | 1534 |
| 1242 | Notice calling for claims against fund..... | 1535 |
| 1243 | Power of board to settle claims | 1536 |
| 1244 | Form of order of Court establishing claim | 1537 |
| 1245 | Power of Board to require production of documents etc. | 1538 |
| 1246 | Subrogation of futures organisation to rights etc. of claimant on payment from fund..... | 1538 |
| 1247 | Payment of claims only from fund | 1538 |
| 1248 | Provisions where fund insufficient to meet claims or where claims exceed total amount payable | 1538 |
| 1249 | Power of futures organisation to enter into contracts of insurance or indemnity | 1539 |
| 1250 | Application of insurance money..... | 1540 |

| | |
|--|------|
| Part 8.7—Offences | 1541 |
| Division 1—Insider dealing | 1541 |
| 1251 Futures contract concerning a body corporate | 1541 |
| 1252 Person connected with a body corporate | 1541 |
| 1253 Persons precluded from dealing | 1542 |
| 1254 Body corporate precluded from dealing when officer precluded..... | 1543 |
| 1255 Exceptions: licensed futures brokers | 1544 |
| 1256 Prohibitions where dealing precluded | 1544 |
| 1257 Defence where other party to dealing also had the inside information | 1544 |
| Division 2—General | 1545 |
| 1258 Dealings by futures broker on behalf of others..... | 1545 |
| 1259 Futures market manipulation..... | 1545 |
| 1260 False trading and market rigging | 1545 |
| 1261 False or misleading statements etc. | 1546 |
| 1262 Fraudulently inducing person to deal in futures contracts | 1546 |
| 1263 Dissemination of information about illegal transactions | 1547 |
| 1264 Fraud in connection with dealings in futures contracts | 1548 |
| 1265 Compensation for loss etc. [<i>see</i> Note 5]..... | 1548 |
| 1266 Sequence of transmission and execution of orders | 1550 |
| 1267 Dealings by employees of futures brokers and futures advisers | 1552 |
| Part 8.8—Miscellaneous | 1555 |
| 1268 Power of Court to make certain orders..... | 1555 |
| 1269 Restrictions on use of titles “futures broker”, “futures exchange” etc. | 1557 |
| 1270 Preservation and disposal of records etc..... | 1558 |
| 1271 Concealing etc. books relating to futures contracts | 1559 |
| 1272 Falsification of records..... | 1559 |
| 1273 Precautions against falsification of records | 1560 |
| Chapter 9—Miscellaneous | 1561 |
| Part 9.1—Registers and registration of documents | 1561 |
| 1274 Registers | 1561 |
| 1274AA Register of disqualified company directors and other officers | 1566 |
| 1274A Obtaining information from certain registers | 1567 |
| 1274B Use, in court proceedings, of information from Commission’s national database | 1567 |
| 1274C ASIC certificate | 1568 |

| | | |
|--|---|-------------|
| 1275 | Relodging of lost registered documents | 1568 |
| Part 9.2—Registration of auditors and liquidators | | 1570 |
| Division 1—Interpretation | | 1570 |
| 1276 | Interpretation..... | 1570 |
| 1277 | Effect on other laws | 1570 |
| Division 2—Registration | | 1571 |
| 1278 | Auditor or liquidator registered under corresponding previous law | 1571 |
| 1279 | Application for registration as auditor or liquidator | 1571 |
| 1280 | Registration of auditors | 1571 |
| 1281 | Auditor-General deemed to be registered as auditor | 1573 |
| 1282 | Registration of liquidators | 1573 |
| 1283 | Registration of official liquidators | 1576 |
| 1284 | Security to be given by liquidators..... | 1576 |
| 1284A | Security given under previous law | 1576 |
| 1285 | Register of Auditors | 1577 |
| 1286 | Registers of Liquidators and Official Liquidators | 1578 |
| 1287 | Notification of certain matters | 1579 |
| 1288 | Triennial statements by registered auditors and liquidators..... | 1581 |
| 1289 | Auditors and other persons to enjoy qualified privilege in certain circumstances | 1582 |
| Division 3—Cancellation or suspension of registration | | 1583 |
| 1290 | Cancellation at request of registered person..... | 1583 |
| 1291 | Official liquidators..... | 1583 |
| 1292 | Powers of Board in relation to auditors and liquidators | 1584 |
| 1293 | Effect in certain cases of cancellation or suspension of registration under corresponding previous law..... | 1588 |
| 1294 | Board to give opportunity for hearing etc. | 1589 |
| 1295 | Board may remove suspension..... | 1589 |
| 1296 | Notice of Board’s decision..... | 1590 |
| 1297 | Time when Board’s decision comes into effect..... | 1590 |
| 1298 | Effect of suspension | 1591 |
| Part 9.3—Books | | 1592 |
| 1300 | Inspection of books | 1592 |
| 1301 | Location of books on computers | 1592 |
| 1302 | Location of registers | 1593 |
| 1303 | Court may compel compliance..... | 1594 |
| 1304 | Translations of instruments | 1595 |
| 1305 | Admissibility of books in evidence | 1595 |

| | | |
|---|---|------|
| 1306 | Form and evidentiary value of books | 1595 |
| 1307 | Falsification of books..... | 1596 |
| Part 9.4—Offences | | 1598 |
| Division 1—Specific offences | | 1598 |
| 1308 | False or misleading statements..... | 1598 |
| 1309 | False information etc..... | 1600 |
| 1310 | Obstructing or hindering Commission etc..... | 1602 |
| Division 2—Offences generally | | 1603 |
| 1310A | Offences under 2 or more Corporations Laws..... | 1603 |
| 1310B | Civil liability under 2 or more Corporations Laws..... | 1603 |
| 1311 | General penalty provisions..... | 1603 |
| 1312 | Penalties for bodies corporate | 1605 |
| 1313 | Penalty notices | 1605 |
| 1313A | Offences committed partly in and partly out of the jurisdiction | 1609 |
| 1313B | Reciprocity in relation to offences | 1609 |
| 1313C | Offences committed partly before and partly after the commencement of this Law | 1609 |
| 1314 | Continuing offences | 1610 |
| 1315 | Proceedings: how taken..... | 1613 |
| 1316 | Time for instituting criminal proceedings | 1614 |
| 1316A | Privilege against self-incrimination not available to bodies corporate in Corporations Law criminal proceedings..... | 1614 |
| 1317 | Certain persons to assist in prosecutions | 1615 |
| Part 9.4A—Review by Administrative Appeals Tribunal of certain decisions | | 1617 |
| 1317A | Interpretation..... | 1617 |
| 1317B | Applications for review..... | 1617 |
| 1317C | Excluded decisions..... | 1617 |
| 1317D | Notice of reviewable decision and review rights..... | 1618 |
| Part 9.4B—Civil consequences of contravening civil penalty provisions | | 1620 |
| 1317E | Declarations of contravention | 1620 |
| 1317F | Declaration of contravention is conclusive evidence..... | 1621 |
| 1317G | Pecuniary penalty orders | 1621 |
| 1317H | Compensation orders..... | 1621 |
| 1317J | Who may apply for a declaration or order..... | 1622 |
| 1317K | Time limit for application for a declaration or order..... | 1623 |

| | | |
|----------------------------------|--|------|
| 1317L | Civil evidence and procedure rules for declarations of contravention and civil penalty orders..... | 1623 |
| 1317M | Civil proceedings after criminal proceedings | 1623 |
| 1317N | Criminal proceedings during civil proceedings | 1623 |
| 1317P | Criminal proceedings after civil proceedings | 1624 |
| 1317Q | Evidence given in proceedings for penalty not admissible in criminal proceedings | 1624 |
| 1317R | ASIC requiring person to assist..... | 1624 |
| 1317S | Relief from liability for contravention of civil penalty provision | 1626 |
| Part 9.5—Powers of Courts | | 1628 |
| 1318 | Power to grant relief..... | 1628 |
| 1319 | Power of Court to give directions with respect to meetings ordered by the Court | 1629 |
| 1321 | Appeals from decisions of receivers, liquidators etc. | 1629 |
| 1322 | Irregularities..... | 1630 |
| 1323 | Power of Court to prohibit payment or transfer of money, securities, futures contracts or property..... | 1632 |
| 1324 | Injunctions | 1635 |
| 1324A | Provisions relating to prosecutions..... | 1638 |
| 1324B | Order to disclose information or publish advertisements | 1638 |
| 1325 | Other orders | 1639 |
| 1325A | Orders if contravention of Chapter 6, 6A, 6B or 6C..... | 1641 |
| 1325B | Court may order bidder to make offers | 1642 |
| 1325C | Unfair or unconscionable agreements, payments or benefits..... | 1642 |
| 1325D | Contravention due to inadvertence etc. | 1643 |
| 1325E | Orders to secure compliance | 1644 |
| 1326 | Effect of sections 1323, 1324 and 1325 | 1644 |
| 1327 | Power of Court to punish for contempt of Court..... | 1644 |
| 1328 | Court may resolve transitional difficulties | 1645 |
| Part 9.6—Proceedings | | 1646 |
| 1330 | Power of Commission to intervene in proceedings | 1646 |
| 1331 | Civil proceedings not to be stayed | 1646 |
| 1332 | Standard of proof | 1646 |
| 1333 | Evidence of contravention..... | 1647 |
| 1335 | Costs | 1647 |
| 1336 | Vesting of property | 1648 |
| 1336A | Certain proceedings to be proceedings by or against Commission | 1649 |

| | |
|---|------|
| Part 9.7—Unclaimed property | 1650 |
| 1339 Commission to deal with unclaimed property | 1650 |
| 1340 Commission not liable to pay calls on shares etc. | 1650 |
| 1341 Disposition of money in unclaimed money account..... | 1651 |
| 1342 Commonwealth or Commission not liable for loss or damage | 1652 |
| 1343 Disposal of securities if whereabouts of holder unknown | 1652 |
| 1343A Disposal of interests in registered scheme if whereabouts of member unknown..... | 1652 |
| Part 9.9—Miscellaneous | 1654 |
| 1345A Minister may delegate prescribed functions and powers under this Law | 1654 |
| 1346 Non-application of rule against perpetuities to certain schemes..... | 1654 |
| 1348 Operation of Life Insurance Act..... | 1655 |
| 1349 General transitional provisions..... | 1655 |
| Part 9.10—Fees for chargeable matters | 1656 |
| 1351 Fees payable..... | 1656 |
| 1352 Limits on fees payable for one matter | 1656 |
| 1354 Lodgment of document without payment of fee..... | 1656 |
| 1355 Doing act without payment of fee | 1657 |
| 1356 Effect of sections 1354 and 1355 | 1657 |
| 1357 Commission may require payment of deposit on account of fee | 1657 |
| 1358 Fee not ascertainable when it became payable | 1657 |
| 1359 Waiver and refund of fees | 1658 |
| 1360 Debts due to the Commonwealth | 1658 |
| 1361 This Part not to impose taxation..... | 1658 |
| 1362 Payment of fee does not give right to inspect or search | 1658 |
| Chapter 10—National scheme provisions | 1660 |
| 1362A Recognition of companies from other jurisdictions..... | 1660 |
| 1362B Transfer of registration..... | 1660 |
| 1362BA Compensation for compulsory acquisition | 1660 |
| Chapter 11—Application and transitional provisions | 1662 |
| Part 11.1—Introduction of the Corporations Law | 1662 |
| 1362CA Existing company..... | 1662 |
| 1362CB Existing company taken to be registered under the Corporations Law..... | 1662 |
| 1362CC Constitution of existing company..... | 1663 |

| | | |
|---|---|------|
| 1362CD | Application of Law to existing companies | 1663 |
| 1362CE | Acts preparatory to external administration of existing company..... | 1664 |
| 1362CF | Appointments of receivers | 1664 |
| 1362CG | Application of Division 2 of Part 5.6 | 1665 |
| 1362CH | Reinstatement of companies deregistered before commencement | 1665 |
| 1362CJ | Registrable Australian bodies and foreign companies..... | 1665 |
| Part 11.2—Commencement and application of certain changes to this Law | | 1667 |
| Division 1A—Preliminary | | 1667 |
| 1362D | Meaning of <i>amendment of this Law</i> | 1667 |
| Division 1—Changes resulting from the Corporations Legislation Amendment Act 1991 | | 1668 |
| 1363 | Commencement of certain changes..... | 1668 |
| 1364 | Application of changes to Parts 3.6 and 3.7 | 1668 |
| Division 2—Changes resulting from the Corporations (Unlisted Property Trusts) Amendment Act 1991 | | 1669 |
| 1365 | Commencement of changes to section 1069..... | 1669 |
| 1366 | Commencement of sections 1069A, 1069B and 1069C and Division 5A of Part 7.12 | 1669 |
| 1367 | Orders in relation to things done during retrospective operation of sections 1069A etc. and Subdivision C of Division 5A of Part 7.12 | 1669 |
| Division 3—Changes resulting from the Corporations Legislation Amendment Act (No. 2) 1991 | | 1671 |
| 1368 | Commencement of certain changes..... | 1671 |
| 1369 | Application of certain changes..... | 1672 |
| Division 4—Changes resulting from the Corporations Legislation (Evidence) Amendment Act 1992 | | 1673 |
| 1370 | Changes to section 597..... | 1673 |
| 1371 | Application of section 1316A | 1673 |
| Division 5—Changes resulting from the Corporate Law Reform Act 1992 | | 1674 |
| 1372 | Commencement of subsection 6(4) | 1674 |
| 1373 | Application of changes to section 187..... | 1674 |
| 1374 | Application of change to paragraph 230(1)(d) | 1674 |
| 1375 | Application of certain changes to section 232 | 1675 |
| 1376 | Application of sections 243H and 243ZE..... | 1675 |

| | | |
|------|--|------|
| 1377 | Application of subsection 307(2) | 1675 |
| 1378 | Application of change to section 318 | 1675 |
| 1379 | Application of certain changes to Part 5.2..... | 1676 |
| 1380 | Continued application of old Part 5.3 and related provisions | 1676 |
| 1381 | Certain provisions continue to apply in relation to official management..... | 1677 |
| 1382 | Application of new provisions relating to winding up..... | 1677 |
| 1383 | Continued application of old Parts 5.4, 5.5 and 5.6..... | 1678 |
| 1384 | Continued application of old sections 589, 590 and 592 | 1680 |
| 1385 | Continued effect of authorisations under subsections 597(1) and 598(1)..... | 1680 |
| 1386 | Continued application of old section 597 | 1681 |
| 1387 | Application of change to paragraph 1091(1A)(b)..... | 1681 |
| 1388 | Application of change to section 1301 | 1681 |
| 1389 | Application of Part 9.4B to contravention committed before that Part commenced..... | 1681 |

Division 6—Changes resulting from the Corporate Law Reform

Act 1994

| | | |
|------|--|------|
| | | 1683 |
| 1390 | Meaning of <i>Amending Act</i> | 1683 |
| 1391 | Application of changes to section 241..... | 1683 |
| 1392 | Application of section 241A | 1683 |
| 1393 | Application of changes to Parts 3.6 and 3.7 | 1683 |
| 1394 | Application of changes to Part 4.5 | 1684 |
| 1395 | Application of changes to section 779..... | 1684 |
| 1396 | Application of changes to section 1058..... | 1684 |
| 1397 | Application of change to subsection 1071(1) | 1685 |
| 1398 | Application of certain prospectus—related changes..... | 1685 |

Division 7—Amendments made by the Corporations Legislation

Amendment Act 1994

| | | |
|------|---|------|
| | | 1687 |
| 1399 | Meaning of <i>Amending Act</i> | 1687 |
| 1400 | Schedule 1—application of amendments made by Part 2 of the Schedule..... | 1687 |
| 1401 | Schedule 3—application of amendments | 1687 |
| 1402 | Schedule 4—application of amendments made by Part 2 of the Schedule..... | 1689 |
| 1403 | Schedule 5—application of amendments made by Part 3 of the Schedule..... | 1690 |
| 1404 | Schedule 7—transitional provisions relating to unclaimed property..... | 1690 |
| 1405 | Schedule 8—application and commencement of amendments..... | 1693 |

| | | |
|--|---|------|
| Division 8—Changes resulting from the First Corporate Law | | |
| | Simplification Act 1995 | 1694 |
| 1406 | Meaning of <i>Amending Act</i> | 1694 |
| 1407 | Proprietary companies limited both by shares and by guarantee..... | 1694 |
| 1408 | Application of amendments dealing with company accounts..... | 1694 |
| 1409 | Application of audit requirements for large proprietary companies..... | 1694 |
| 1410 | First annual return for proprietary companies under new provisions..... | 1695 |
| Division 9—Changes resulting from the Corporations Law | | |
| | Amendment Act 1997 | 1696 |
| 1411 | Effect of amendments on distributions etc. before commencement..... | 1696 |
| Division 10—Changes resulting from the Company Law Review | | |
| | Act 1998 | 1697 |
| 1412 | Meaning of <i>commencement, new Law and old Law</i> | 1697 |
| 1413 | Registration—existing companies continue to be registered..... | 1697 |
| 1414 | Registration—application orders under subsection 112(3) of the old Law..... | 1697 |
| 1415 | Basic features of a company—memorandum and articles are taken to be constitution..... | 1698 |
| 1416 | Basic features of a company—companies limited both by shares and by guarantee..... | 1698 |
| 1417 | Basic features of a company—acts before external administration of existing company..... | 1698 |
| 1418 | Basic features of a company—registered office..... | 1699 |
| 1419 | Basic features of a company—opening hours of registered office of public company..... | 1699 |
| 1420 | Basic features of a company—name, reservation of name and ACN continues..... | 1699 |
| 1421 | Members’ rights and remedies—applications for inspection orders under repealed provisions..... | 1700 |
| 1422 | Meetings—AGM before commencement..... | 1700 |
| 1423 | Meetings—first AGM for companies incorporated before commencement..... | 1700 |
| 1424 | Meetings—general transitional arrangements..... | 1700 |
| 1424A | Notices of meeting given before commencement..... | 1702 |
| 1425 | Nominal value..... | 1702 |
| 1426 | Share capital—calls on partly-paid shares..... | 1702 |
| 1427 | Share capital—provisions in constitution about amount of share capital and division into shares..... | 1703 |

| | | |
|------|---|------|
| 1428 | Share capital—conversion of stock into shares | 1704 |
| 1429 | Share capital—previous Law continues to apply to capital reductions initiated before commencement | 1704 |
| 1430 | Share capital—continued operation of other repealed provisions..... | 1704 |
| 1431 | Financial reports and audit—application of Chapter 2M to periods that end after commencement, and continued application of repealed provisions to past periods..... | 1705 |
| 1432 | Financial reports and audit—lodgment of accounts by public companies that are not disclosing entities | 1705 |
| 1433 | Financial reports and audit—continued operation of accounting standards | 1706 |
| 1434 | Financial reports and audit—continued operation of exemption orders..... | 1706 |
| 1435 | Annual returns—solvency resolution | 1706 |
| 1436 | Annual returns—application of annual return provisions | 1707 |
| 1437 | Deregistration—previous Law continues to apply to deregistrations initiated before commencement | 1707 |
| 1438 | Deregistration—property vested in ASIC under previous laws..... | 1707 |
| 1439 | Deregistration—reinstatement of registration where application under section 571 or subsection 574(3) made before commencement | 1708 |
| 1440 | Deregistration—deregistration of companies dissolved under the <i>State Bank (Corporatisation) Act 1994</i> of South Australia..... | 1708 |
| 1441 | Accounting standards made under section 32 of the Corporations Act 1989 | 1709 |
| 1442 | References in State laws and other documents..... | 1709 |

**Division 10A—Changes resulting from Schedule 5 to the
Company Law Review Act 1998**

| | | |
|------|--|------|
| | | 1711 |
| 1443 | Meaning of <i>commencement</i> , <i>new Law</i> and <i>old Law</i> | 1711 |
| 1444 | Share capital—application of new no par value rule to shares issued before commencement | 1711 |
| 1445 | Share capital—references to amount paid on shares issued before commencement | 1711 |
| 1446 | Share capital—transfer of money in share premium account and capital redemption reserve into the share capital account | 1712 |
| 1447 | Share capital—use of amount standing to credit of share premium account..... | 1712 |
| 1448 | Share capital—calls on partly-paid shares..... | 1712 |
| 1449 | Share capital—references in pre-commencement contracts and other documents to par value..... | 1712 |

| | | |
|------|---|------|
| 1450 | Share capital—previous Law continues to apply to capital reductions initiated before commencement | 1713 |
|------|---|------|

Division 11—Changes resulting from the Managed Investments

Act 1998 1714

| | | |
|------|--|------|
| 1451 | Definitions | 1714 |
| 1452 | Division applies to prescribed interests in existence immediately before commencement..... | 1714 |
| 1453 | Application of new Law to interests covered by approved deed immediately before commencement | 1715 |
| 1454 | Old Law continues to apply for 2 years or until scheme registered..... | 1715 |
| 1455 | Retirement from office of trustee or representative or management company..... | 1715 |
| 1456 | What happens when one of the bodies receives a retirement notice | 1716 |
| 1457 | What happens if neither of the bodies gives a retirement notice | 1717 |
| 1458 | Winding up of the undertaking..... | 1718 |
| 1459 | Other orders about winding up..... | 1718 |
| 1460 | Powers of proposed responsible entity | 1719 |
| 1461 | Meeting procedures..... | 1720 |
| 1462 | Transfer of rights, obligations and liabilities..... | 1720 |
| 1463 | Indemnification of trustee or representative for transfer of scheme property | 1720 |
| 1464 | Application of paragraphs 601JA(2)(c) and 601JB(2)(b) of new Law to officers or employees of body that does not become scheme’s responsible entity | 1720 |
| 1465 | References to prescribed interests etc. in existing laws and documents..... | 1721 |

Division 12—Changes resulting from the Corporate Law

Economic Reform Program Act 1999 1722

| | | |
|------|---|------|
| 1466 | Meaning of <i>commencement</i> , <i>new Law</i> and <i>old Law</i> | 1722 |
| 1467 | General—references to provisions of old Law in laws and other documents | 1722 |
| 1468 | General—references to old Law expressions used in existing laws and documents | 1723 |
| 1469 | Directors’ duties—application and transitional arrangements | 1724 |
| 1470 | Related party transactions—continued application of old Law | 1727 |
| 1471 | Oppressive conduct of affairs—applications made before commencement | 1728 |
| 1472 | Proceedings on behalf of a company—intervention in proceedings started before commencement..... | 1728 |

| | | |
|------|--|------|
| 1473 | Civil penalty provisions—application of new Law | 1728 |
| 1474 | Civil penalty orders made under old Law | 1728 |
| 1475 | Fundraising—general application | 1729 |
| 1476 | Fundraising—application of new section 712 | 1729 |
| 1477 | Fundraising—registration of managed investment schemes..... | 1729 |
| 1478 | Fundraising—saving orders, notices etc. given under old law | 1730 |
| 1479 | Continued operation of some provisions of the old Law | 1730 |
| 1480 | Fundraising—application of section 111AF of the new Law | 1730 |
| 1481 | Debentures—application and transitional provisions | 1731 |
| 1482 | Debentures—saving orders, notices etc. given under old Law | 1731 |
| 1483 | Takeovers—general rule (takeovers started before new provisions commence covered by old law) | 1732 |
| 1484 | Takeovers—old Law continues to apply to certain Panel proceedings | 1732 |
| 1485 | Takeovers—application of new provisions to interests acquired before commencement..... | 1732 |
| 1486 | Takeovers—section 1043B notices | 1732 |
| 1487 | Takeovers—saving orders, notices etc. given under old law | 1733 |
| 1488 | Takeovers—notification obligations under Parts 6.7 and 6.8 of the old law | 1733 |
| 1489 | Takeovers—ASIC power to pass on information obtained under the old Law | 1734 |
| 1490 | Takeovers—application of section 111AG of the new Law | 1734 |
| 1491 | Compulsory acquisitions—application of Part 6A.5 of the new Law | 1734 |
| 1492 | Compulsory acquisitions—unclaimed moneys | 1734 |
| 1493 | Accounting standards—standards in force before commencement | 1734 |

Division 11A—Transfer of financial institutions and friendly societies by the Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999

| | | |
|-------|--|------|
| | | 1735 |
| 1465A | Transfer of financial institutions and friendly societies..... | 1735 |

| | |
|--|------|
| Schedule 2—Forms of Transfer of Marketable Securities and Marketable Rights | 1736 |
| Schedule 3—Penalties | 1749 |
| Schedule 4—Transfer of financial institutions and friendly societies | 1771 |
| Part 1—Preliminary | 1771 |
| 1 Definitions | 1771 |
| 2 Objective..... | 1773 |
| Part 2—Transfer to Corporations Law registration | 1774 |
| Division 1—The transfer process | 1774 |
| 3 Registration of transferring financial institution as company | 1774 |
| 4 Documents to be lodged with ASIC by SSA..... | 1776 |
| 5 Documents to be lodged with ASIC by transferring financial institution | 1777 |
| 6 Company to set up registers and minute books | 1777 |
| 7 ASIC to complete formalities of registration | 1778 |
| 8 Registration of registered bodies..... | 1779 |
| Division 2—The consequences of the transfer | 1780 |
| Subdivision A—General | 1780 |
| 9 Effect of registration under clause 3..... | 1780 |
| 10 Provisions applying to company limited by shares and by guarantee..... | 1781 |
| 11 Transferring financial institution under external administration | 1781 |
| Subdivision B—Membership | 1782 |
| 12 Institution becoming a company limited by shares..... | 1782 |
| 13 Institution becoming a company limited by guarantee | 1784 |
| 14 Institution becoming a company limited by shares and guarantee..... | 1785 |
| 15 Redeemable preference shares that were withdrawable shares..... | 1785 |
| 16 Liability of members on winding up | 1786 |
| Subdivision C—Share capital | 1787 |
| 17 Share capital..... | 1787 |
| 18 Application of no par value rule..... | 1787 |
| 19 Calls on partly-paid shares | 1788 |
| 20 References in contracts and other documents to par value | 1788 |

| | |
|--|------|
| Subdivision D—Charges | 1789 |
| 21 Registration of prior charges | 1789 |
| Part 3—Terminating the application of the Codes to financial institutions and friendly societies | 1790 |
| 22 Cancellation of Code registrations | 1790 |
| 23 No new registrations under the Codes..... | 1790 |
| Part 4—The transition period | 1791 |
| 24 Modifications of constitution | 1791 |
| 25 ASIC may direct directors of a company to modify its constitution | 1791 |
| 26 ASIC’s power to make exemption and modification orders for the transition period..... | 1792 |
| 27 When certain modifications of a company’s constitution under an exemption or declaration take effect..... | 1793 |
| 28 Modification by regulations for the transition period..... | 1794 |
| Part 5—Demutualisations | 1796 |
| 29 Disclosure for proposed demutualisation | 1796 |
| 30 ASIC’s exemption power..... | 1798 |
| 31 Coverage of disclosure statement..... | 1799 |
| 32 Registration of disclosure statement..... | 1799 |
| 33 Expert’s report | 1801 |
| 34 Unconscionable conduct in relation to demutualisations..... | 1801 |
| 35 Orders the Court may make | 1802 |
| Part 6—Continued application of fundraising provisions of the Friendly Societies Code | 1805 |
| 36 Friendly Societies Code to apply to offers of interests in benefit funds | 1805 |
| Part 7—Transitional provisions | 1807 |
| 37 Unclaimed money | 1807 |
| 38 Modification by regulations | 1808 |
| 39 Regulations may deal with transitional, saving or application matters | 1809 |
| 40 Court may resolve transitional difficulties | 1810 |

Part 7.13—Title to, and transfer of, securities

Division 1—Title to securities

1085 Nature of shares and other interests

- (1) A share or other interest of a member in a company:
 - (a) is personal property;
 - (b) is transferable or transmissible as provided by the company's constitution, or, if they are applicable, the SCH business rules; and
 - (c) subject to the company's constitution (if any) and any replaceable rules that apply to the company, and, if they are applicable, the SCH business rules, is capable of devolution by will or by operation of law.
- (2) Subject to subsection (1):
 - (a) the laws applicable to ownership of and dealing with personal property apply to a share or other interest of a member in a company as they apply to other property; and
 - (b) equitable interests in respect of a share or other interest of a member in a company may be created, dealt with and enforced as in the case of other personal property.
- (3) For the purposes of any law, a share or other interest of a member in a company is taken to be situated:
 - (a) if the share or other interest is entered on the register kept under section 169—in the State or Territory where that register is kept; or
 - (b) if the share or other interest is entered on an overseas branch register kept under section 178—in the foreign country where that register is kept.

1086 Numbering shares

- (1) Each share in a company shall be distinguished by an appropriate number.
- (2) Despite subsection (1):

Section 1087

- (a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class, are fully paid up and rank equally for all purposes, none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; and
- (b) if all the issued shares in a company are evidenced by certificates in accordance with the provisions of section 1087, each certificate is distinguished by an appropriate number and that number is recorded in the register of members, none of those shares is required to have a distinguishing number; and
- (c) a share need not have a distinguishing number if the SCH business rules provide that it need not have such a number.

1087 Certificate to be evidence of title

- (1) A certificate issued after the commencement of Schedule 5 to the *Company Law Review Act 1998* specifying shares held by a member of a company must state:
 - (a) the name of the company and its jurisdiction of registration; and
 - (b) the class of the shares; and
 - (c) the unpaid on the shares.
- (2) A certificate issued in accordance with subsection (1) or a corresponding previous law specifying shares held by a member of a company is *prima facie* evidence of the title of the member to the shares.
- (3) A failure to comply with subsection (1) does not affect the rights of a holder of shares.

1089 Loss or destruction of certificates

- (1) Subject to subsection (2), where a certificate or other document of title to shares, debentures or interests in a managed investment scheme is lost or destroyed, the company shall, on application by the owner of the shares, debentures or interests, issue a duplicate certificate or document to the owner:

- (a) if the company requires the payment of an amount not exceeding the prescribed amount—within 21 days after the payment is received by the company or within such longer period as the Commission approves; or
 - (b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as the Commission approves.
- (2) The application shall be accompanied by:
- (a) a statement in writing that the certificate or document has been lost or destroyed, and has not been pledged, sold or otherwise disposed of, and, if lost, that proper searches have been made; and
 - (b) an undertaking in writing that if it is found or received by the owner it will be returned to the company.
- (3) The directors of a company may, before accepting an application for the issue of a duplicate certificate or document, require the applicant:
- (a) to cause an advertisement to be inserted in a daily newspaper circulating in a place specified by the directors stating that the certificate or document has been lost or destroyed and that the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate; or
 - (b) to furnish a bond for an amount equal to at least the current market value of the shares, debentures or interests indemnifying the company against loss following the production of the original certificate or document;
- or to do both those things.
- (4) If:
- (a) a certificate of title to shares, debentures or interests is cancelled under the SCH certificate cancellation provisions; and
 - (b) having regard to those provisions, the certificate should not have been cancelled;
- this section applies to the certificate as though it were destroyed on its cancellation.

Division 2—Transfer of securities

1090 Definition

In this Division:

interest includes an interest in a managed investment scheme.

1091 Instrument of transfer

(1AA) This section does not apply to an SCH-regulated transfer.

(1) Notwithstanding anything in its constitution or in a deed relating to debentures or interests, a company shall not register a transfer of shares, debentures or interests unless a proper instrument of transfer has been delivered to the company.

(1A) An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (1) unless:

- (a) in the case of a transfer of marketable securities within the meaning of Division 3 of Part 7.13—it is a sufficient transfer of the marketable securities under that Division; or
- (b) in any case—it shows the jurisdiction of registration of the company concerned.

(2) Subsection (1) does not prejudice the power of the company to register as a shareholder, debenture holder or interest holder a person to whom the right to any shares in, debentures of, or interests made available by, the company has devolved by will or by operation of law.

(3) A transfer of shares, debentures or interests of a dead holder made by his or her personal representative is, although the personal representative is not himself, herself or itself registered as the holder of those shares, debentures or interests, as valid as if he, she or it had been so registered at the time of the execution of the instrument of transfer.

(4) Where the personal representative of a dead holder duly constituted as such under a law of another jurisdiction:

Section 1091

- (a) executes an instrument of transfer of a share, debenture or interest of the dead holder to himself, herself or itself or to another person; and
- (b) delivers the instrument to the company, together with a statement in writing made by the personal representative to the effect that, to the best of the personal representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in this jurisdiction and no application for such a grant will be made, being a statement made within the period of 3 months immediately before the date of delivery of the statement to the company;

the company shall register the transfer and pay to the personal representative any dividends or other money accrued in respect of the share, debenture or interest up to the time of the execution of the instrument, but this subsection does not operate so as to require the company to do an act or thing that it would not have been required to do if the personal representative were the personal representative of the dead holder duly constituted under a law of this jurisdiction.

- (5) A transfer or payment made under subsection (4) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were the personal representative of the dead holder duly constituted under a law of this jurisdiction.
- (6) For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a share, debenture or interest in place of the dead person shall be deemed to be an instrument of transfer effecting a transfer of the share, debenture or interest to the personal representative.
- (7) The production to a company of a document that is, under the law of a jurisdiction, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person shall be accepted by the company, notwithstanding anything in its constitution, or in a deed relating to debentures or interests, as sufficient evidence of the grant.

Section 1091AA

1091AA Transmission of shares on death (*replaceable rule—see section 135*)

If shares not held jointly

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
 - (a) the personal representative may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.
- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

1091AB Transmission of shares on bankruptcy (*replaceable rule—see section 135*)

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person.
- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.
- (3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (4) This section has effect subject to the *Bankruptcy Act 1966*.

1091A Rights of trustee of estate of bankrupt shareholder

- (1) Where:
 - (a) because of the *Bankruptcy Act 1966*, a share in a company, being part of the property of a bankrupt, vests in the trustee of the bankrupt's estate; and
 - (b) the bankrupt is the registered holder of that share;this section applies whether or not the trustee has been registered as the holder of the share.
- (2) On producing such information as the company's directors properly require, the trustee is entitled to:
 - (a) the same dividends and other benefits; and
 - (b) the same rights, for example, but without limitation, rights in relation to:
 - (i) meetings of the company; or
 - (ii) documents, including notices of such meetings; or
 - (iii) voting; or

Section 1091A

- (iv) inspection of the company's records;
as the bankrupt would be entitled to if he or she were not a bankrupt.
- (3) The trustee has the same rights:
 - (a) to transfer the share; and
 - (b) to require a person to do an act or give a consent in connection with completing or registering a transfer of the share;as the bankrupt would have if he or she were not a bankrupt.
- (4) If the trustee transfers the share, the transfer is as valid as if the trustee had been registered as the holder of the share when the trustee executed the instrument of transfer.
- (5) A person or body whose consent or approval is required for the transfer of shares in the company must not unreasonably withhold consent or approval for the transfer of the share by the trustee.
- (6) A person who contravenes subsection (5) is not guilty of an offence.
- (7) If:
 - (a) the company's constitution requires:
 - (i) the share to be offered for purchase to a member of the company; or
 - (ii) an invitation to buy the share to be issued to such a member; and
 - (b) as at the end of a reasonable period after the trustee so offers the share, or so issues such an invitation, no such member has agreed to buy the share from the trustee at a reasonable price;the trustee may sell and transfer the share to a person other than such a member.
- (8) A provision of the company's constitution is void as against the trustee in so far as, apart from this section, it would affect rights attached to the share:
 - (a) because the bankrupt is a bankrupt; or

Section 1091B

- (b) because of some event that led to the bankrupt becoming, or that indicated that the bankrupt was about to become, or might be about to become, a bankrupt; or
 - (c) for reasons including a reason referred to in paragraph (a) or (b).
- (9) Nothing in this section limits the generality of anything else in it.
- (10) This section has effect despite anything in the company's constitution.

1091B Transmission of shares on mental incapacity (*replaceable rule—see section 135*)

- (1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
- (a) the person may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.
- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

1091C Trustee etc. may be registered as owner of shares

- (1) In this section:
- share*, in relation to a body corporate, means a share in the body that is registered in a register kept in Australia.
- (2) A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be

Section 1091C

registered as the holder of that share as trustee, executor or administrator of that estate.

- (3) A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of that share as trustee, executor or administrator of that estate.

- (4) Where:

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is the registered holder of a share in a corporation;

the first-mentioned person may be registered as the holder of that share as administrator of that estate.

- (5) Where:

- (a) a person is appointed, under a law of a State or Territory relating to the administration of the estates of a person who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is entitled in equity to a share in a corporation;

the first-mentioned person may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.

- (6) Where:

- (a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
- (b) the bankrupt is the registered holder of that share;

the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

- (7) Where:

Section 1091D

- (a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
 - (b) the bankrupt is entitled in equity to that share;

the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.
- (8) A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection, subject:
 - (a) to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and
 - (b) to no other liabilities in respect of the share.
- (9) Shares in a corporation registered in a register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register in such a way as to identify them as being held in respect of the trust.
- (10) Except as provided in this section and section 216B:
 - (a) no notice of a trust, whether express, implied or constructive, shall be entered on a register kept in Australia or be receivable by the Commission;
 - (b) no liabilities are affected by anything done under a preceding subsection of this section or under section 216B; and
 - (c) nothing so done affects the body corporate concerned with notice of a trust.
- (11) A person shall, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so hold the shares.

1091D Registration of transfers (*replaceable rule—see section 135*)

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they

Section 1091E

are being transferred is entered in the register of members in respect of the shares.

- (2) The directors are not required to register a transfer of shares in the company unless:
 - (a) the transfer and any share certificate have been lodged at the company's registered office; and
 - (b) any fee payable on registration of the transfer has been paid; and
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- (3) The directors may refuse to register a transfer of shares in the company if:
 - (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (*replaceable rule—see section 135*)

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

1092 Registration of transfer at request of transferor

- (1) On the written request of the transferor of a share in, debenture of, or interest made available by, a company, the company shall enter in the appropriate register the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.
- (2) On the request in writing of the transferor of a share in, debenture of, or interest made available by, a company, the company shall, by written notice, require the person having the possession,

Section 1093

custody or control of the share certificate or debenture or any document evidencing title to the interest (as the case may be) and the instrument of transfer of the share, debenture or interest, or either of them, to bring it or them into the office of the company within a stated period, being not less than 7 and not more than 28 days after the date of the notice, to have the share certificate, debenture or document cancelled or rectified and the transfer registered or otherwise dealt with.

- (3) If a person refuses or fails to comply with a notice given under subsection (2), the transferor may apply to the Court for the issue of a summons for that person to appear before the Court and show cause why the documents mentioned in the notice should not be delivered up or produced as required by the notice.
- (4) Upon appearance of a person so summoned, the Court may examine the person upon oath or affirmation and receive other evidence or, if the person does not appear after being duly served with the summons, the Court may receive evidence in the person's absence, and, in either case, the Court may order the person to deliver up such documents to the company upon such terms or conditions as the Court considers just and reasonable, and the costs of the summons and of proceedings on the summons are in the discretion of the Court.
- (5) Lists of share certificates, debentures and other documents required to be brought in under this section and not brought in shall be exhibited in the office of the company and shall be advertised in the *Gazette* and in such newspapers and at such times as the company thinks fit.

1093 Notice of refusal to register transfer

If a company refuses to register a transfer of any shares in, debentures of, or interests made available by, the company, it shall, within 2 months after the date on which the transfer was lodged with it, send to the transferee notice of the refusal.

1094 Remedy for refusal to register transfer or transmission

- (1) Where a relevant authority in relation to a company refuses or fails to register, or refuses or fails to give its consent or approval to the

Section 1095

registration of, a transfer or transmission of shares in, debentures of, or an interest made available by, the company, the transferee or transmittee may apply to the Court for an order under this section.

- (2) Where, on an application made under subsection (1), the Court is satisfied that the refusal or failure was without just cause, the Court may:
- (a) order that the transfer or transmission be registered; or
 - (b) make such other order as it thinks just and reasonable, including, in the case of a transfer or transmission of shares, an order providing for the purchase of the shares by a specified member of the company or by the company and, in the case of a purchase by the company, providing for the reduction accordingly of the capital of the company.

- (3) In this section:

relevant authority, in relation to a company, means:

- (a) a person who has, 2 or more persons who together have, or a body that has, authority to register a transfer or transmission of shares in, debentures of, or interests made available by, the company; or
- (b) a person, 2 or more persons, or a body, whose consent or approval is required before a transfer or transmission of shares in, debentures of, or interests made available by, the company is registered.

1095 Certification of transfers

- (1) The certification by a company of an instrument of transfer of shares in, debentures of, or interests made available by, the company shall be taken as a representation by the company to any person acting on the faith of the certification that there have been produced to the company such documents as on the face of them show *prima facie* title to the shares, debentures or interests in the transferor named in the instrument of transfer but not as a representation that the transferor has any title to the shares, debentures or interests.
- (2) Where a person acts on the faith of a false certification by a company made negligently, the company is under the same

liability to the person as if the certification had been made fraudulently.

- (3) Where a certification is expressed to be limited to 42 days or any longer period from the date of certification, the company and its officers are not, in the absence of fraud, liable in respect of the registration of any transfer of shares, debentures or interests comprised in the certification after the end of the period so limited or any extension of that period given by the company if the instrument of transfer has not, within that period, been lodged with the company for registration.
- (4) For the purposes of this section:
 - (a) an instrument of transfer shall be deemed to be certified if it bears the words “certificate lodged” or words to the like effect;
 - (b) the certification of an instrument of transfer shall be deemed to be made by a company if:
 - (i) the person issuing the instrument is a person authorised to issue certified instruments of transfer on the company’s behalf; and
 - (ii) the certification is signed by a person authorised to certify transfers on the company’s behalf or by an officer of the company or of a body corporate so authorised; and
 - (c) a certification that purports to be authenticated by a person’s signature or initials (whether handwritten or not) shall be deemed to be signed by the person unless it is shown that the signature or initials was not or were not placed there by the person and was not or were not placed there by any other person authorised to use the signature or initials for the purpose of certifying transfers on the company’s behalf.

1096 Duties of company with respect to issue of certificates

- (1) Subject to subsection (1A), within 2 months after the allotment of any shares in, the issue of debentures of, or the making available of interests by, a company, the company shall:
 - (a) complete and have ready for delivery to the allottee, debenture holder or interest holder, as the case may be, (in

Section 1096

this subsection called the *relevant person*), all the appropriate certificates, debentures or other documents in connection with the allotment of the shares, the issue of the debentures or the making available of the interests unless, in the case of shares, the conditions of the allotment otherwise provide; and

- (b) unless otherwise instructed by the relevant person, send or deliver the completed certificates, debentures or other documents to the relevant person or, where the relevant person has instructed the company in writing to send them to a nominated person, to that person.
- (1A) If the SCH business rules include a provision to the effect that:
- (a) no document is required by subsection (1) to be completed and delivered by a company in relation to the allotment, issue or making available of a share, debenture or interest in specified circumstances; or
 - (b) the only document required by subsection (1) to be completed and delivered by a company in relation to the allotment, issue or making available of a share, debenture or interest in specified circumstances is such document as the provision requires;
- the provision has effect accordingly.
- (2) Within one month after the date on which a transfer of any shares, debentures or interests is lodged with a company (other than a transfer that the company is for any reason entitled to refuse to register and does not register) the company shall:
- (a) complete and have ready for delivery to the transferee all the appropriate certificates, debentures or other documents in connection with the transfer; and
 - (b) unless otherwise instructed by the transferee, send or deliver the completed certificates, debentures or other documents to the transferee or, where the transferee has instructed the company in writing to send them to a nominated person, to that person.
- (2A) The only document required by subsection (2) to be completed and delivered by a company in relation to an SCH-regulated transfer is such document (if any) as the SCH business rules require to be so completed and delivered.

- (3) A company need not comply:
- (a) with subsection (1) in relation to the allotment of any shares in, the issue of debentures of, or the making available of interests by, the company; or
 - (b) with subsection (2) in relation to a transfer of shares, debentures or interests;
- if the allottee, debenture holder or interest holder, or the transferee, as the case may be, is a person who has applied to the Commission for the making of a declaration under this subsection and has been declared by the Commission, by writing published in the *Gazette*, to be a person in relation to whom this section does not apply.
- (4) If a company on which a notice has been served requiring the company to remedy any contravention of a provision of this section fails to remedy the contravention within 10 days after the service of the notice, the Court may, on the application of the person entitled to have the certificates, debentures or other documents delivered to him, her or it, make an order directing the company and any officer of the company to remedy the contravention within such period as is specified in the order, and the order may provide that all costs of and incidental to the application shall be borne by the company or by any officer of the company who was involved in the contravention in such proportions as the Court thinks just and reasonable.

1096A Notices relating to non-beneficial and beneficial ownership of shares

- (1) Where, at a particular time:
- (a) an instrument of transfer of shares in a company is lodged, by or on behalf of the transferee, with the company for registration of the transfer;
 - (b) having regard to all relevant circumstances, it may reasonably be expected that, upon registration of the transfer, the transferee will hold non-beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares to which the instrument of transfer relates; and
 - (c) the instrument of transfer does not include a notice that:

Section 1096A

- (i) contains a statement to the effect that, upon registration of the transfer, the transferee will hold the relevant shares non-beneficially;
 - (ii) sets out particulars of the relevant shares; and
 - (iii) is signed by or on behalf of the transferee;the transferee contravenes this subsection.
- (2) The fact that a person has contravened subsection (1) does not affect the validity of the registration of a transfer of shares in a company.
- (3) Where:
 - (a) an instrument of transfer of shares in a company includes a notice of the kind referred to in paragraph (1)(c) and is lodged with the company for registration of the transfer; and
 - (b) upon registration of the transfer, the transferee holds beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares particulars of which are set out in the notice;then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:
 - (c) sets out the name and address of the transferee;
 - (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares beneficially;
 - (e) sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the transferee.
- (4) Where:
 - (a) an instrument of transfer of shares in a company is lodged with the company for registration of the transfer; and

- (b) upon registration of the transfer, the transferee holds non-beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares to which the instrument of transfer relates (other than, in a case where the instrument of transfer includes a notice of the kind referred to in paragraph (1)(c), the shares particulars of which are set out in the notice);

then, before the end of the period of 14 days beginning on registration of the transfer, the transferee shall, whether or not the transferee begins before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

- (c) sets out the name and address of the transferee;
- (d) contains a statement to the effect that, as from registration of the transfer, the transferee holds the relevant shares non-beneficially;
- (e) sets out particulars of the relevant shares; and
- (f) is signed by or on behalf of the transferee.

(5) Where:

- (a) at a particular time, a person holds beneficially shares in a company; and
- (b) immediately after that time, the person holds non-beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares referred to in paragraph (a);

then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares beneficially, give to the company a notice that:

- (c) sets out the name and address of the person;
- (d) contains a statement to the effect that, after that time, the person holds the relevant shares non-beneficially;
- (e) specifies that time and sets out particulars of the relevant shares; and
- (f) is signed by or on behalf of the person.

(6) Where:

- (a) at a particular time, a person holds non-beneficially shares in a company; and

Section 1096A

- (b) immediately after that time, the person holds beneficially particular shares (in this subsection called the *relevant shares*), being any of the shares referred to in paragraph (a); then, before the end of the period of 14 days beginning at that time, the person shall, whether or not the person recommences before the end of that period to hold any of the relevant shares non-beneficially, give to the company a notice that:
- (c) sets out the name and address of the person;
 - (d) contains a statement to the effect that, after that time, the person holds the relevant shares beneficially;
 - (e) specifies that time and sets out particulars of the relevant shares; and
 - (f) is signed by or on behalf of the person.
- (7) In proceedings under this section, a person shall, unless the contrary is established, be presumed to have been aware at a particular time of a circumstance of which an employee or agent of the person, being an employee or agent having duties or acting in relation to the transfer to, or ownership by, the person of a share or shares in the company concerned, was aware at that time.
- (8) In this section, unless the contrary intention appears:
any includes all.
- (9) For the purposes of this section and of section 216B:
- (a) where, at a particular time, a person:
 - (i) holds shares in a capacity other than that of sole beneficial owner; or
 - (ii) without limiting the generality of subparagraph (i), holds shares as trustee for, as nominee for, or otherwise on behalf of or on account of, another person;the first-mentioned person shall be taken to hold the shares non-beneficially at that time; and
 - (b) a person who holds shares at a particular time shall be taken to hold the shares beneficially at that time unless the person holds the shares non-beneficially at that time.

Division 3—Transfer of marketable securities and marketable rights

Subdivision A—Interpretation

1097 Interpretation

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

associate, in relation to a broker, means:

- (a) if the broker is a member of a firm of brokers and is not a broker's agent—any other member of the firm; or
- (b) if the broker is another broker's agent or employee—the other broker or, if the other broker is a member of a firm of brokers, any member of that firm.

beneficial owner, in relation to a marketable security or a marketable right, means a person for whom an authorised trustee corporation holds (whether alone or together with any other person or persons) the security or right in trust in the ordinary course of its business.

broker means a member of a securities exchange.

broker's agent means a broker's agent or employee.

Division 3 transfer means:

- (a) a sufficient transfer under this Division of marketable securities or marketable rights; or
- (b) a proper SCH transfer.

document, in relation to a transfer, includes, in the case of an SCH-regulated transfer, an electronic message or other electronic communication.

duly completed, in relation to a document, has a meaning affected by section 1098.

duly completed Part 1 means a document that has been duly completed in accordance with Part 1 of Form 1, 2, 3, 5, 6 or 7.

Section 1097

eligible body means:

- (a) a company; or
- (b) a body corporate (other than a company) that:
 - (i) is incorporated in this jurisdiction; and
 - (ii) is prescribed for the purposes of this paragraph; or
- (c) an unincorporated society, association or body, that:
 - (i) is formed or established in this jurisdiction; and
 - (ii) is included in the official list of a securities exchange; and
 - (iii) is prescribed for the purposes of this paragraph.

execution time, in relation to a document, means the time:

- (a) in the case of a sufficient transfer under section 1101—when the document was stamped with a stamp purporting to be that of the transferee's broker; or
- (b) in the case of a sufficient transfer under section 1102—when the document was executed by the transferor.

identification code, in relation to a member organisation, means a code that, for the purposes of the SCH business rules, is the member organisation's identification code, or one of its identification codes, as the case may be.

in accordance with includes to the effect of.

issuing body, in relation to a marketable security or a marketable right, means the body (whether incorporated or not) that, or other person who, issued or made available, or proposes to issue or make available, the security or right.

legal representative means the executor, original or by representation, of a will, or the administrator of the estate, of a dead person.

marketable right means a right, whether existing or future, and whether contingent or not, of a person to have a marketable security issued to the person, whether or not on payment of any money or for any other consideration.

marketable security means:

- (a) a share in, or a debenture of, an eligible body; or

(b) a prescribed security.

member organisation means a member organisation of a securities exchange.

prescribed security means an interest in a managed investment scheme that is prescribed for the purposes of this definition.

securities exchange means a prescribed body corporate.

stamp has the meaning given by section 1099.

transfer, in relation to a marketable security or a marketable right, includes:

- (a) in the case of a quoted security or a quoted right—any change in the ownership of the security or right; and
- (b) in the case of a marketable right—the renunciation and transfer of the right.

transfer document, in relation to a proper SCH transfer, means the document that is taken under the SCH business rules to effect the transfer.

- (2) A reference in this Division to a form by number is a reference to the form so numbered in Schedule 2 or to a form to the like effect.
- (3) A reference in a form in Schedule 2 to the full name of the transferor of marketable securities or marketable rights includes a reference to the name of the person shown in the records of the issuing body in relation to those securities or rights as the holder of those securities or rights.
- (4) If the SCH business rules include provisions determining:
 - (a) which member organisation effected a proper SCH transfer;
 - or
 - (b) when a proper SCH transfer takes effect;those provisions have effect for the purposes of this Division.

1097A Quoted securities and rights

- (1) A quoted security is a marketable security in a class of marketable securities listed for quotation on a stock market of a securities exchange.

Chapter 7 Securities

Part 7.13 Title to, and transfer of, securities

Division 3 Transfer of marketable securities and marketable rights

Section 1097B

- (2) A quoted right is a marketable right in a class of marketable rights listed for quotation on a stock market of a securities exchange.
- (3) For the purposes of subsections (1) and (2), securities or rights in a class of marketable securities or marketable rights are not taken to have stopped being listed for quotation on a stock market of a securities exchange merely because of a temporary suspension of quotation of securities or rights in that class.
- (4) If:
 - (a) there is a suspension of the quotation, on a stock market of a securities exchange, of marketable securities in a class of marketable securities, or of marketable rights in a class of marketable rights; and
 - (b) during the suspension, the issuing body in relation to the securities or rights ceases to be included in an official list of the securities exchange;then, for the purposes of subsections (1) and (2), marketable securities or marketable rights in that class are taken to stop being listed for quotation on a stock market of the securities exchange when the issuing body ceases to be so included.
- (5) Subsection (4) does not limit the circumstances in which marketable securities in a class of marketable securities, or marketable rights in a class of marketable rights, may be taken to have stopped being listed for quotation on a stock market of a securities exchange.

1097B SCH business rules may extend meaning of quoted securities or quoted rights

- (1) If the SCH business rules provide that marketable securities or marketable rights that stop being quoted securities or quoted rights are to be taken to continue to be quoted securities or quoted rights for a specified period, then, for the purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.
- (2) If the SCH business rules provide that marketable securities or marketable rights that:

- (a) are approved, by a securities exchange, to be listed for quotation on a stock market of a securities exchange, but that are not yet so listed; and
 - (b) have been issued;
- are to be taken to be quoted securities or quoted rights for a specified period, then, for the purposes of the provisions mentioned in subsection (3), those securities or rights are taken to be quoted securities or quoted rights during that period.
- (3) These are the provisions:
 - (a) the definitions of *proper SCH transfer*, *SCH certificate cancellation provisions*, *SCH-regulated transfer* and *SCH subregister* in section 9; and
 - (b) section 653A and the provisions of Parts 7.2A and 7.13, and of any regulations made for the purposes of those Parts.

1097C Commission may declare Law applies to securities as if they were quoted securities or rights

- (1) The Commission may, by writing, declare that this Law, and the regulations, or that specified provisions of this Law and the regulations, have effect (subject to any modifications specified in the declaration) in relation to particular securities, or a particular class of securities, that are not quoted securities or quoted rights as if those securities, or securities of that class, were quoted securities or quoted rights.
- (2) A declaration under subsection (1) has effect accordingly.
- (3) The Commission must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.

1097D Transfer that substantially complies with SCH business rules

For the purposes of this Division, if the securities clearing house determines under the SCH business rules that an SCH-regulated transfer substantially complies with the applicable provisions of those business rules, the transfer is taken to be, and always to have been, a proper SCH transfer.

Section 1098

1098 Document duly completed in accordance with a particular form

- (1) For the purposes of this Division, a document is not duly completed in accordance with one of Forms 1, 2, 3, 4, 5, 6, 7 and 8, or a part of one of those forms, unless it:
 - (a) where the form or part refers to the name and address of the transferee—purports to state that name and address;
 - (b) where the form or part refers to the transferor's broker's stamp—bears a stamp that purports to be such a stamp;
 - (c) where the form or part refers to the transferee's broker's stamp—bears a stamp that purports to be such a stamp; and
 - (d) where the form or part refers to a securities exchange stamp—bears a stamp that purports to be a stamp of a securities exchange.
- (2) Where a document (in this section called the *first document*) relates to particular marketable securities or marketable rights, subsections (3), (4) and (5) apply for the purposes of determining whether the first document and another document (in this section called the *second document*) are, or together with another document or documents are, a sufficient transfer of the securities or rights.
- (3) The first document is not duly completed in accordance with Part 3 of Form 1, 2, 3, 5, 6 or 7 unless, where that part refers to the transferee's broker's stamp, the first document bears a stamp that purports to be such a stamp and includes a string of characters that purports to be the transfer consolidation number of the first document.
- (4) The second document is not duly completed in accordance with Part 1 of Form 4 or 8 unless, where that part refers to a transfer consolidation number or transfer consolidation numbers, the second document sets out the string of characters referred to in subsection (3).
- (5) The second document shall not be taken not to be duly completed in accordance with Part 1 of Form 4 or 8 merely because of either or both of the following:

- (a) the second document sets out, where that part refers to a transfer consolidation number or transfer consolidation numbers, a string or strings of characters other than the string referred to in subsection (3);
- (b) the second document fails to set out correctly the number of marketable securities or marketable rights to which it relates.

1099 Stamping of documents

- (1) In this Division (other than section 1112):
 - (a) a reference to the stamping of a document is a reference to stamping in ink; and
 - (b) a reference to a stamp on a document, or to a stamp borne by a document, is a reference to a stamp stamped on the document in ink.
- (2) A reference in section 1112 to the stamping of a document is a reference to stamping the document:
 - (a) in ink;
 - (b) by affixing a stamp;
 - (c) by impressing a stamp; or
 - (d) in any other manner.

Subdivision B—Sufficient transfers (transfers other than SCH-regulated transfers)

1099A Subdivision does not apply to SCH-regulated transfers

Nothing in this Subdivision applies in relation to:

- (a) an SCH-regulated transfer; or
- (b) a document that relates to such a transfer.

1100 Sufficient transfers

- (1) A document that is under this Division a sufficient transfer of marketable securities may be used:
 - (a) as a proper instrument of transfer for the purposes of section 1091; and

Section 1101

- (b) as an instrument of transfer for the purposes of any other law or instrument governing or relating to those securities.
- (2) A document that is under this Division a sufficient transfer of marketable rights may be used as an instrument of transfer of those rights for the purposes of any law or instrument governing or relating to those rights or the marketable securities to which those rights relate.

1101 What is a sufficient transfer of marketable securities or marketable rights: generally

- (1) A document is a sufficient transfer of marketable securities if it relates to those securities and is duly completed in accordance with:
 - (a) Parts 1 and 2 of Form 1;
 - (b) Part 1 of Form 1 and Parts 1 and 2 of Form 2 or 3;
 - (c) Parts 1 and 3 of Form 1 and both parts of Form 4; or
 - (d) Part 1 of Form 1, Parts 1 and 3 of Form 2 or 3 and both parts of Form 4.
- (2) A document is a sufficient transfer of marketable rights if it relates to those rights and is duly completed in accordance with:
 - (a) Parts 1 and 2 of Form 5;
 - (b) Part 1 of Form 5 and Parts 1 and 2 of Form 6 or 7;
 - (c) Parts 1 and 3 of Form 5 and both parts of Form 8; or
 - (d) Part 1 of Form 5, Parts 1 and 3 of Form 6 or 7 and both parts of Form 8.

1102 What is a sufficient transfer by an authorised trustee corporation

- (1) In respect of the transfer of marketable securities, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) to the beneficial owner of the securities, a document is a sufficient transfer if it relates to those securities and is duly completed in accordance with Form 9.

- (2) In respect of the transfer of marketable rights, otherwise than by way of sale, gift or exchange, by an authorised trustee corporation (whether alone or together with any other person or persons) in favour of the beneficial owner of those rights, a document is a sufficient instrument of transfer if it relates to those rights and is duly completed in accordance with Form 10.

1103 Transferee's execution of transfer of marketable securities

- (1) This section applies where marketable securities are transferred by means of a sufficient transfer under this Division.
- (2) The transferee shall be deemed to have agreed at the execution time to accept the securities subject to the terms and conditions on which the transferor held them at that time, being the terms and conditions applicable as between the issuing body in relation to, and the holder for the time being of, the securities.
- (3) If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body's constitution.

1104 Transferee's execution of transfer of marketable rights

- (1) This section has effect where marketable rights relating to marketable securities are transferred by means of a sufficient transfer under this Division.
- (2) The transferee shall be deemed:
 - (a) to have applied at the execution time to the issuing body in relation to the securities for the allotment to him, her or it of the securities; and
 - (b) to have agreed at the execution time to accept the securities subject to the terms and conditions on which the issuing body offers them for subscription.
- (3) If the securities are shares, the transferee shall be deemed to have agreed at the execution time to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body's constitution.

Section 1105

1105 Effect where document purports to bear transferor's broker's stamp

- (1) This section applies where a document relating to marketable securities or marketable rights:
 - (a) is a duly completed Part 1; and
 - (b) bears a stamp that purports to be that of the transferor's broker.
- (2) Each associate (if any) of the broker (in this section called the *designated broker*) of whom the stamp referred to in paragraph (1)(b) purports to be the stamp and, unless the designated broker is a broker's agent, the designated broker shall be deemed to have warranted:
 - (a) that the statements in the document that purport to be certified by the transferor's broker are accurate; and
 - (b) that the transferor is:
 - (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
 - (ii) is entitled to the rights;as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.
- (3) If the document has been duly completed in accordance with Part 1 of Form 1 or 5, then:
 - (a) if, when the document was stamped with the stamp referred to in paragraph (1)(b), the designated broker had authority to sell the securities or rights, on the transferor's behalf, to:
 - (i) the transferee;
 - (ii) particular persons who include, or particular classes of persons at least one of which includes, the transferee; or
 - (iii) any person at all;the designated broker shall be deemed to have been authorised to execute, and to have executed, the document on the transferor's behalf; and
 - (b) each associate (if any) of the designated broker and, unless the designated broker is a broker's agent, the designated broker is or are, as the case requires, liable to indemnify:
 - (i) the issuing body in relation to the securities or rights;

- (ii) the transferor;
 - (iii) the transferee; and
 - (iv) the transferee's broker;
- against any loss or damage arising if:
- (v) the stamp referred to in paragraph (1)(b) is not in fact the designated broker's stamp; or
 - (vi) apart from the effect of paragraph (a) of this subsection, the designated broker was not authorised to execute the document on the transferor's behalf.

1106 Warranties by securities exchange where document purports to bear its stamp

- (1) This section applies where a document:
 - (a) has been duly completed in accordance with Part 1 of Form 3 or 7; and
 - (b) bears a stamp that purports to be that of a securities exchange.
- (2) The securities exchange shall be deemed to have warranted that:
 - (a) the statements in the document that purport to be certified by a securities exchange are accurate; and
 - (b) the transferor is:
 - (i) the registered holder of, or entitled to be registered as the holder of, the securities; or
 - (ii) entitled to the rights;as the case may be, and is legally entitled or authorised to sell or dispose of the securities or rights.

1107 Indemnities by securities exchange and broker where documents purport to bear their stamps

- (1) This section applies where:
 - (a) a document (in this section called the *first document*) relating to marketable securities or marketable rights:
 - (i) has been duly completed in accordance with Part 1 of Form 1 or 5; and
 - (ii) bears a stamp that purports to be that of the transferor's broker; and

Section 1108

- (b) another document:
 - (i) relates to any or all of the securities or rights;
 - (ii) has been duly completed in accordance with Part 1 of Form 3 or 7; and
 - (iii) bears a stamp that purports to be that of a particular securities exchange.
- (2) The securities exchange is liable to indemnify:
 - (a) the issuing body in relation to the securities or rights;
 - (b) the transferor in relation to the other document;
 - (c) the transferee in relation to the other document; and
 - (d) the broker of the transferee in relation to the other document;against any loss or damage arising if:
 - (e) the stamp referred to in subparagraph (1)(a)(ii) is not in fact the stamp of the broker (in this section called the *designated broker*) of whom it purports to be the stamp; or
 - (f) apart from the effect of paragraph 1105(3)(a), the designated broker was not authorised to execute the first document on behalf of the transferor in relation to the first document.
- (3) Each associate (if any) of the designated broker and, unless the designated broker is a broker's agent, the designated broker is or are, as the case requires, liable to indemnify the securities exchange against any loss or damage arising as mentioned in subsection (2).
- (4) Nothing in this section limits the operation of anything in section 1105 or 1106 or of anything else in this section.

1108 Joint and several warranties and liabilities

- (1) If 2 or more persons are deemed to have warranted as mentioned in paragraph 1105(2)(a) or (b), they shall be deemed to have so warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in paragraph 1105(3)(b) or subsection 1107(3), they are so liable jointly and severally.

**1108A Marketable securities and rights from other jurisdictions:
effect of sections 1105 to 1108**

- (1) Sections 1105 to 1108, inclusive, apply in relation to marketable securities, and marketable rights, within the meaning of Division 3 of Part 7.13 of the Corporations Law of another jurisdiction and, for the purposes of those sections as so applying:
 - (a) subject to paragraph (b) of this subsection, an expression has the same meaning in those sections as in that Division; and
 - (b) a reference in those sections to a document bearing a stamp of a particular kind is taken to be a reference to the document bearing a stamp of that kind that purports to have been stamped in this jurisdiction.
- (2) The effect that a provision has because of subsection (1) is additional to, and does not prejudice, the effect the provision otherwise has.

1109 Registration of certain instruments

An eligible body with which a sufficient transfer under this Division is lodged for the purpose of registering a transfer, or obtaining the allotment or issue, of marketable securities is, and its officers are, in the absence of knowledge to the contrary, entitled to assume without inquiry that:

- (a) in the case of a sufficient transfer under section 1101:
 - (i) a stamp on the document that purports to be the transferor's broker's stamp is the stamp of that broker;
 - (ii) a stamp on the document that purports to be the transferee's broker's stamp is the stamp of that broker; and
 - (iii) a stamp on the document that purports to be the stamp of a securities exchange is the stamp of that securities exchange; or
- (b) in the case of a sufficient transfer under section 1102:
 - (i) at the execution time, the authorised trustee corporation named in the instrument held (whether alone or together with any other person or persons) in the ordinary course of its business, in trust for or on behalf of the transferee,

Section 1109A

the marketable securities or marketable rights to which the sufficient transfer relates; and

- (ii) the transfer was not made by way of a sale, gift or exchange of the securities or rights.

Subdivision C—SCH-regulated transfers

1109A Member organisation’s authority to enter into transaction continues despite client’s death

If:

- (a) a person authorises a member organisation to enter into a transaction (for example, a sale) involving the disposal of quoted securities or quoted rights; and
- (b) the person dies before the member organisation enters into the transaction; and
- (c) the authority is still in force immediately before the person dies;

then:

- (d) the authority continues, despite the person’s death, as if the person were still alive, but can be revoked by the person’s legal representative just as the person could revoke it if the person were still alive; and
- (e) if the member organisation enters into the transaction while the authority so continues—the transaction is binding on the person’s legal representative.

1109B Authority to enter into transaction gives authority to transfer

- (1) If a person authorises a member organisation to enter into a transaction (for example, a sale) involving the disposal of quoted securities or quoted rights, the person is taken also to have authorised the member organisation to effect any proper SCH transfer of all or any of those securities or rights that the member organisation effects, even if the transfer has no connection with the transaction.

Note: The transfer may have no connection with the transaction because of the operation of the provisions of the SCH business rules referred to in subsection 954P(1).

- (2) The authority that the person is taken, by subsection (1), to have given:
 - (a) is revoked if, before the transaction is entered into, the authority to enter into the transaction is revoked or otherwise ceases to have effect; and
 - (b) cannot otherwise be revoked; and
 - (c) if the person dies after the transaction is entered into—continues in force, despite the person's death, as if the person were still alive (but cannot be revoked).

1109C Effect of proper SCH transfer

- (1) A proper SCH transfer of quoted securities is valid and effective for the purposes of any law or instrument governing or relating to the way in which the securities may be transferred.
- (2) A proper SCH transfer of quoted rights is valid and effective for the purposes of any law or instrument governing or relating to the way in which the rights may be transferred.

1109D Effect of proper SCH transfer on transferee

- (1) If a proper SCH transfer of quoted securities takes effect at a particular time:
 - (a) the transferee is taken to have agreed at that time to accept the securities subject to the terms and conditions on which the transferor held them immediately before that time, being the terms and conditions applicable as between the issuing body in relation to, and the holder for the time being of, the securities; and
 - (b) if the securities are shares—the transferee is also taken to have agreed at that time to become a member of the issuing body and to be bound by the issuing body's constitution.
- (2) If a proper SCH transfer of quoted rights relating to marketable securities takes effect at a particular time:
 - (a) the transferee is taken:
 - (i) to have applied at that time to the issuing body in relation to the securities for the allotment to him, her or it of the marketable securities; and

Section 1109E

- (ii) to have agreed at that time to accept the marketable securities subject to the terms and conditions on which the issuing body offers them for subscription; and
- (b) if the marketable securities are shares—the transferee is also taken to have agreed, at that time, to become a member of the issuing body and to be bound, on being registered as the holder of the shares, by the issuing body’s constitution.

1109E Warranties by member organisation whose identification code is included in transfer document

- (1) This section applies if the transfer document for a proper SCH transfer of quoted securities or quoted rights includes a member organisation’s identification code as the identification code of the member organisation effecting the transfer.
- (2) If the member organisation is the transferor, the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:
 - (a) the transfer was effected by the member organisation; and
 - (b) the transferor was legally entitled or authorised to transfer the securities or rights.
- (3) If:
 - (a) the member organisation is not the transferor; and
 - (b) the transfer is pursuant to a transaction in relation to which, or to transactions in relation to each of which, one of the following conditions is satisfied:
 - (i) the transaction was entered into in the ordinary course of trading on a stock market;
 - (ii) the transaction is, under the business rules or listing rules of a stock exchange, described, or to be described, as “special” when it is reported to the stock exchange;the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:
 - (c) the transferor was legally entitled or authorised to transfer the securities or rights; and
 - (d) the transfer was effected by the member organisation; and

- (e) the member organisation was authorised by the transferor to effect the transfer.
- (4) If:
- (a) the member organisation is not the transferor; and
 - (b) subsection (3) does not apply;
- the member organisation or, if it is a partnership, each of the partners in the member organisation, is taken to have warranted that:
- (c) the transfer was effected by the member organisation; and
 - (d) the member organisation was authorised by the transferor to effect the transfer.

1109F Indemnities in respect of warranted matters

- (1) If:
- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the transfer was effected by the member organisation; and
 - (b) the transfer was not effected by the member organisation;
- the member organisation, or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:
- (c) the issuing body in relation to the securities or rights; and
 - (d) the transferor; and
 - (e) the transferee; and
 - (f) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
 - (g) the securities clearing house;
- against any loss or damage arising from the transfer not having been effected by the first-mentioned member organisation.
- (2) If:
- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the

Section 1109F

transferor was legally entitled or authorised to transfer the securities or rights; and

- (b) the transferor was not legally entitled or authorised to transfer the securities or rights;

the member organisation, or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:

- (c) the issuing body in relation to the securities or rights; and
- (d) the transferee; and
- (e) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
- (f) the securities clearing house;

against any loss or damage arising from the transferor not having been legally entitled or authorised to transfer the securities or rights.

(3) If:

- (a) a member organisation, or each of the partners in a partnership that is a member organisation, is taken by section 1109E to have warranted, in relation to a proper SCH transfer of quoted securities or quoted rights, that the member organisation was authorised by the transferor to effect the transfer; and
- (b) the member organisation was not authorised by the transferor to effect the transfer;

the member organisation or, if it is a partnership, each of the partners in the member organisation, is liable to indemnify:

- (c) the issuing body in relation to the securities or rights; and
- (d) the transferor; and
- (e) the transferee; and
- (f) if a member organisation acted as the transferee's agent in the transfer—that member organisation; and
- (g) the securities clearing house;

against any loss or damage arising from the first-mentioned member organisation not having been authorised by the transferor to effect the transfer.

(4) The effect of section 1109B is to be disregarded in determining, for the purposes of this section, whether a person or partnership:

- (a) was legally entitled or authorised to transfer quoted securities or quoted rights; or
- (b) was authorised by another person or partnership to effect a transfer of quoted securities or quoted rights.

1109G Joint and several warranties and liabilities

- (1) If 2 or more persons are taken to have warranted as mentioned in subsection 1109E(2), (3) or (4), they are taken to have so warranted jointly and severally.
- (2) If 2 or more persons are liable as mentioned in subsection 1109F(1), (2) or (3), they are so liable jointly and severally.

1109H Quoted securities and rights from other jurisdictions: effect of sections 1109E, 1109F and 1109G

- (1) Sections 1109E, 1109F and 1109G apply in relation to quoted securities and quoted rights, within the meaning of the Corporations Law of another jurisdiction, and, for the purposes of those sections as so applying:
 - (a) subject to paragraph (b), an expression has the same meaning in those sections as in Division 3 of Part 7.13 of that Law; and
 - (b) a reference in section 1109E to a transfer document is taken to be a reference to a transfer document, within the meaning of that Division, that purports to have been completed in this jurisdiction.
- (2) The effect that a provision has because of subsection (1) is additional to, and does not prejudice, the effect the provision otherwise has.

1109J Securities clearing house entitled to assume its business rules complied with

- (1) The securities clearing house is entitled to assume without inquiry, in the absence of knowledge to the contrary, that anything purporting to be done under the SCH business rules in connection with a transfer of a quoted security or quoted right has been done in accordance with those rules.

Section 1109K

- (2) If, in reliance on subsection (1), the securities clearing house assumes that a thing was done in accordance with the SCH business rules then, for the purposes of this Law (including the definition of *proper SCH transfer* in section 9), the thing is taken to have been done in accordance with those rules.
- (3) If the securities clearing house is acting on behalf of the issuing body in relation to quoted securities or quoted rights when, in reliance on subsection (1), it assumes that a thing was done in accordance with the SCH business rules, then the issuing body is also taken to assume, and to be entitled to assume, that the thing was so done.

1109K SCH-regulated transfer not to be registered unless proper SCH transfer

- (1) The issuing body in relation to a quoted security or quoted right must not register, or otherwise give effect to, an SCH-regulated transfer of the security or right unless the transfer is a proper SCH transfer.
- (2) Subsection (1) has effect despite anything in:
 - (a) the body's constitution; or
 - (b) a deed relating to debentures; or
 - (c) the constitution of a registered scheme; or
 - (d) a deed relating to interests.

1109L Issuing body not to refuse to register proper SCH transfer

The issuing body in relation to a quoted security or a quoted right must not refuse or fail to register, or to give effect to, a proper SCH transfer of the security or right.

1109M Trustees and legal representatives may be SCH participants etc.

- (1) A trustee, or a legal representative of a dead person, who, as trustee or legal representative, holds a quoted security or a quoted right may:

- (a) subject to the requirements of the SCH business rules, be an SCH participant; and
 - (b) have the security or right converted into, and hold it in, a form in which it may be transferred in accordance with the SCH business rules.
- (2) Nothing in subsection (1) authorises the trustee or legal representative to do a thing that the trustee or legal representative is expressly prohibited from doing by any law or by the terms and conditions on which he, she or it holds office.

1109N Determination of who holds quoted securities for the purposes of a meeting

- (1) This section applies to a meeting of:
- (a) the holders of securities of a body corporate, provided some or all of the securities are quoted securities; or
 - (b) the holders of a class of securities of a body corporate, provided some or all of the securities in that class are quoted securities.
- (2) The convener of the meeting may determine that:
- (a) if paragraph (1)(a) applies—all the securities of the body corporate that are quoted securities at a specified time before the meeting; or
 - (b) if paragraph (1)(b) applies—all the securities of the body corporate in the relevant class that are quoted securities at a specified time before the meeting;
- are taken, for the purposes of the meeting, to be held by the persons who held them at the specified time.
- (3) The specified time must not be more than 48 hours before the meeting.
- (4) Subject to subsection (3), the specified time must satisfy any applicable requirements of the SCH business rules.
- (5) The determination must be made in accordance with any applicable requirements of the SCH business rules as to the way in which it must be made.

Section 1109P

- (6) The determination must be made before notice of the meeting is given.
- (7) Particulars of the determination must be included in the notice of the meeting, but a failure to do so does not invalidate the determination.
- (8) The determination has effect accordingly despite anything in:
 - (a) this Law or the regulations; and
 - (b) any other laws (written or unwritten) that apply to the meeting; and
 - (c) any documents (for example, the body corporate's constitution or any relevant trust deed) that apply to the meeting.

1109P Determination of who holds quoted securities for the purposes of conferring security benefits

- (1) If the SCH business rules include provisions relating to the determination, for the purposes of conferring security benefits, of who holds or is taken to hold quoted securities at a particular time, those provisions have effect accordingly despite anything in:
 - (a) this Law or the regulations; and
 - (b) any other laws (written or unwritten) that apply to the conferral; and
 - (c) any documents (for example, the body corporate's constitution or any relevant trust deed) that apply to the conferral.
- (2) For the purposes of this section, *conferring a security benefit* means:
 - (a) paying or transferring money or property to a person because the person holds or held a security; or
 - (b) issuing securities to a person because the person holds or held a security; or
 - (c) conferring a right on a person because the person holds or held a security.

Subdivision D—Miscellaneous

1110 Operation of Division

- (1) This Division applies in relation to a transfer of marketable securities or marketable rights despite anything to the contrary in this Law (other than this Division) or in another law or instrument relating to the transfer of the securities or rights.
- (2) Except as provided in this Division, this Division does not affect the terms and conditions on which marketable securities or marketable rights are sold.
- (3) Nothing in this Division (other than section 1109L) affects any right of an eligible body to refuse:
 - (a) to acknowledge or register a person as the holder of marketable securities; or
 - (b) to allot or issue marketable securities to a person;on a ground other than an objection to the form of document that is lodged with or sent to the eligible body and purports to transfer to the person the securities, or marketable rights relating to the securities.
- (4) The registration of a transfer, or the allotment or issue, of a marketable security by means of a Division 3 transfer does not breach any law, constitution, trust deed or other instrument relating to marketable securities.
- (5) Nothing in this Division (except section 1109K) prevents or affects the use of:
 - (a) any other form of transfer of marketable securities or marketable rights; or
 - (b) any other mode of executing a document transferring marketable securities or marketable rights;that is otherwise permitted by law.
- (6) A transfer of marketable securities or marketable rights by or to a trustee or legal representative may be effected by means of a Division 3 transfer despite any law or the provisions of the instrument (if any) creating, or having effect in relation to, the

Section 1111

trust or will under which the trustee or legal representative is appointed.

1111 Occupation need not appear in transfer document, register etc.

- (1) A document transferring marketable securities or marketable rights need not state the occupation of the transferor or transferee and, if the document is signed by a person, the signature need not be witnessed.
- (2) Subsection (1) applies despite anything in:
 - (a) the constitution of an eligible body; or
 - (b) the terms and conditions on which marketable securities or marketable rights are created or issued.
- (3) The omission from a register, certificate or other document relating to marketable securities of a statement of the occupation of a person who is, or is entitled to be, registered as the holder of the securities does not breach any law, constitution, trust deed or other document relating to the securities.

1112 Offences: stamping of broker's stamp on sufficient transfer

- (1) A broker must not, in this jurisdiction or elsewhere, stamp with a broker's stamp a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under this Division unless the document relates to a sale or purchase of the securities or rights, in the ordinary course of the broker's business, for a consideration of not less than their unencumbered market value at the time of the sale or purchase.
- (2) A person, must not, in this jurisdiction or elsewhere, stamp with a stamp that purports to be that of the transferor's broker a document that relates to marketable securities or marketable securities or marketable rights and may be used as a sufficient transfer under this Division unless:
 - (a) the stamp is in fact that of the transferor's broker;
 - (b) apart from the effect of paragraph 1105(3)(a), the transferor's broker is authorised to execute the document on the transferor's behalf; and

- (c) the person is the transferor's broker or is authorised so to stamp the document on the transferor's broker's behalf.
- (3) A securities exchange must not, in this jurisdiction or elsewhere, stamp with a stamp of the securities exchange a document that may be used as a sufficient transfer under this Division of marketable securities or marketable rights, unless:
 - (a) there has been lodged; or
 - (b) the securities exchange holds a duly completed Part 1 bearing a certificate that purports to be that of the transferor's broker and states that there has been or will be lodged;
with the issuing body in relation to the securities or rights a duly completed Part 1 relating to the securities or rights.
- (4) A person must not, in this jurisdiction or elsewhere execute a document that may be used as a sufficient transfer under section 1102 and relates to a transfer of marketable securities or of marketable rights:
 - (a) made by way of a sale, gift or exchange of the securities or rights; or
 - (b) to or in favour of a person who is not the beneficial owner of the securities or rights.
- (5) A person other than an authorised trustee corporation must not, in this jurisdiction or elsewhere, knowingly cause, authorise or permit to be executed a document that relates to marketable securities or marketable rights and may be used as a sufficient transfer under section 1102 but is not in fact a sufficient transfer under that section.
- (6) A person must not, in this jurisdiction or elsewhere, knowingly lodge or cause to be lodged with an eligible body a document that has been stamped in contravention of subsection (1), (2) or (3), or that has been executed in contravention of subsection (4), for the purpose of securing the registration of the transfer of, or the allotment or issue of, marketable securities to the transferee named in the document.

Section 1112A

1112A Offences: inclusion of identification codes in proper SCH transfers

A person must not, in this jurisdiction or elsewhere, include a member organisation's identification code in a document that may be used to effect a proper SCH transfer unless:

- (a) the person:
 - (i) is the member organisation or, if it is a partnership, is a partner in the member organisation; or
 - (ii) is authorised so to include the identification code by the member organisation; and
- (b) if:
 - (i) the identification code is so included as the identification code of the member organisation effecting the transfer; and
 - (ii) the member organisation is not the transferor; the member organisation is, apart from the effect of section 1109B, authorised by the transferor to effect the transfer.

1112B Offences: contravention by broker of the SCH certificate cancellation provisions relating to use of cancellation stamps

A broker must not, intentionally or recklessly, contravene the SCH certificate cancellation provisions by affixing, or failing to affix, a cancellation stamp to a certificate or other document of title to quoted securities or quoted rights.

1112C Civil liability: contravention by broker of the SCH certificate cancellation provisions

- (1) A person who suffers loss or damage because of conduct of a broker that was engaged in in contravention of the SCH certificate cancellation provisions may, unless the person was involved in the contravention, recover the amount of the loss or damage by action against the broker, whether or not the broker has been convicted of an offence in respect of the contravention.
- (2) An action under subsection (1) must be begun within 6 years after the day on which the cause of action arose.

- (3) This section does not affect a liability that a person has under any other law.
- (4) For the purposes of section 1310B, an action under subsection (1) is taken to be a proceeding in respect of loss or damage arising out of a contravention of this Law.

**1112D Issuer protected from civil liability for broker's
contravention of SCH certificate cancellation provisions**

If:

- (a) a broker contravenes the SCH certificate cancellation provisions in relation to particular quoted securities or quoted rights; and
- (b) the issuing body in relation to the securities or rights is not involved in the contravention;

the issuing body is not liable to an action or other proceeding for damages in relation to the broker's contravention.

Division 4—Exemptions and modifications

1113 General powers of Commission

(1) This section applies to Divisions 1, 2 and 3.

(1A) In this section:

securities includes marketable securities, and marketable rights, within the meaning of Division 3.

(2) The power of the Commission to grant an exemption or make a declaration under this section may be exercised in relation to securities or a class of securities only where the Commission is satisfied that:

- (a) if the exemption were granted or the declaration were made, the interests of the holders of those securities or of securities in that class would continue to have adequate protection; and
- (b) the granting of the exemption or the making of the declaration would make transfer of those securities, or of securities in that class, more efficient.

(3) The Commission may, by writing, exempt particular securities, or a particular class of securities, either generally or as otherwise provided in the exemption, and either unconditionally or subject to such conditions (if any) as are specified in the exemption, from the operation of all or any of the provisions of:

- (a) the Divisions of this Part to which this section applies; and
- (b) regulations made for the purposes of the provisions of those Divisions or any of them.

(4) A person shall not contravene a condition to which an exemption under subsection (3) is subject.

(5) Where a person has contravened a condition to which an exemption under subsection (3) is subject, the Court may, on the application of the Commission, order the person to comply with the condition.

(6) The Commission may, by writing, declare that a Division to which this section applies, and regulations made for the purposes of the

provisions of that Division or any of them, shall have effect in their application in relation to particular securities, or a particular class of securities, either generally or otherwise as provided in the declaration, as if a specified provision or provisions of that Division or of those regulations were omitted, modified or varied in a manner specified in the declaration, and, where such a declaration is made, that Division and those regulations have effect accordingly.

- (6A) Subsection (6) applies in relation to Division 3 as if the forms in Schedule 2 were provisions of that Division.

1113A Power of Commission to extend application of Division 3

- (1) The Commission may, by writing, declare that Division 3, and regulations made for the purposes of the provisions of that Division, are to apply to particular non-marketable securities, or a particular class of non-marketable securities, as if those securities, or securities of that class, were marketable securities or marketable rights within the meaning of that Division.
- (2) In a declaration under subsection (1), the Commission may also specify modifications of Division 3, and of regulations made for the purposes of the provisions of that Division, that are to have effect in relation to the application of that Division and those regulations to the non-marketable securities, or the class of non-marketable securities, to which the declaration relates.
- (3) A declaration under subsection (1) has effect accordingly.
- (4) The Commission must cause a copy of a declaration under subsection (1) to be published in the *Gazette*.
- (5) In this section:

non-marketable securities means securities that are not marketable securities or marketable rights within the meaning of Division 3.
- (7) The Commission shall cause a copy of an exemption or declaration under this section to be published in the *Gazette*.

Part 7.14—Miscellaneous

1114 Power of Court to make certain orders

(1) Where:

- (a) on the application of the Commission, it appears to the Court that a person:
 - (i) has contravened this Chapter, or any other law relating to trading or dealing in securities;
 - (ii) has contravened the conditions or restrictions of a licence, the business rules or listing rules of a securities exchange, or the SCH business rules; or
 - (iii) is about to do an act with respect to trading or dealing in securities that, if done, would be such a contravention; or
- (b) on the application of a securities exchange, it appears to the Court that a person has contravened the business rules or listing rules of the securities exchange; or
- (ba) on the application of the securities clearing house, it appears to the Court that a person has contravened the SCH business rules; or
- (bb) on the application of a person claiming to be aggrieved by an alleged contravention by another person of the business rules or listing rules of a securities exchange, it appears to the Court that:
 - (i) the other person did contravene those rules; and
 - (ii) the applicant is aggrieved by the contravention;

the Court may make such order or orders as it thinks fit, including, but without limiting the generality of the foregoing, one or more of the following orders:

- (c) in the case of persistent or continuing contraventions of this Chapter, or of any other law relating to trading or dealing in securities, of the conditions or restrictions of a licence, of the business rules or listing rules of a securities exchange, or of the SCH business rules—an order restraining a person from carrying on a business, or doing an act or classes of acts, in relation to securities;

Section 1114

- (ca) in the case of a contravention by a person of the business rules or listing rules of a securities exchange:
 - (i) an order giving directions concerning compliance with or enforcement of those rules to:
 - (A) the person; and
 - (B) if the person is a body corporate—the directors of the body corporate; and
 - (ii) if the contravention relates to the disclosure or provision of information—an order of either or both of the following kinds:
 - (A) an order requiring the person, or a person involved in the contravention, to disclose to the public or to specified persons, in accordance with the order, specified information which the person to whom the order is directed possesses or to which that person has access;
 - (B) an order requiring the person, or a person involved in the contravention, to publish advertisements in accordance with the order at that person's expense;
 - (d) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
 - (e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer on behalf of another person, whether in trust or otherwise;
 - (f) an order declaring a contract relating to securities to be void or voidable;
 - (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (h) any ancillary order considered to be just and reasonable in consequence of the making of an order under any of the preceding provisions of this subsection.
- (1A) For the purposes of paragraph (1)(bb), if a body corporate contravenes provisions of the business rules or listing rules of a securities exchange, a person who holds securities of the body

Section 1114

corporate that are quoted on a stock market of the securities exchange is taken to be a person aggrieved by the contravention.

- (1B) Subsection (1A) does not limit the circumstances in which a person may be aggrieved by a contravention for the purposes of paragraph (1)(bb).
- (2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, make an interim order, being an order of the kind applied for that is expressed to apply pending the determination of the application.
- (3) Where the Commission or the Exchange applies to the Court for an order under subsection (1), the Court shall not require the applicant or any other person, as a condition of making an interim order under subsection (2), to give any undertakings as to damages.
- (4) The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice any person.
- (5) Before making an order under subsection (1), the Court may direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (6) A person appointed by order of the Court under subsection (1) as a receiver of the property of a dealer:
- (a) may require the dealer to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;
 - (b) may acquire and take possession of any property of which the person has been appointed receiver;
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any way in which the dealer might lawfully have dealt with the property; and
 - (d) has such other powers in respect of the property as the Court specifies in the order.

Section 1115

- (7) In paragraph (1)(e) and subsection (6):

property, in relation to a dealer, includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a securities business carried on by the dealer.

- (8) A person shall not, without reasonable excuse, contravene:
- (a) an order under this section; or
 - (b) a requirement of a receiver appointed by order of the Court under subsection (1).
- (9) The Court may rescind or vary an order made by it under this section or suspend the operation of such an order.
- (10) In this section:

securities includes marketable securities and marketable rights within the meaning of Division 3 of Part 7.10.

1115 Restrictions on use of titles “stockbroker”, “sharebroker” and “stock exchange”

- (1) A person who is not a member of a stock exchange shall not take or use, or by inference adopt, the name or title of stockbroker or sharebroker or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the person is a stockbroker or a sharebroker.
- (3) A body corporate that is not a stock exchange shall not take or use, or by inference adopt, the name or title of stock exchange or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that the body corporate is a stock exchange.

1116 Preservation and disposal of records etc.

- (1) A person who is required by a provision of this Chapter to maintain, make or keep a register or any financial record or other record in relation to a business carried on by the person shall preserve that register or record for the prescribed period, whether

Section 1117

or not the person ceases to carry on that business before the end of that period.

- (2) The prescribed period for the purposes of subsection (1) is:
 - (a) in relation to a register or a record other than a financial record, the 5 years next after the day on which the last entry was made in the register or record; or
 - (b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.
- (3) Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a dealer who is a member of a securities exchange if the matters referred to in subsection 842(3) in relation to the contract note are recorded:
 - (a) by the securities exchange; or
 - (b) subject to such conditions (if any) as the Commission imposes, by the dealer;in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.
- (4) A matter that a securities exchange records under subsection (3) shall be deemed to have been so recorded with the member's authority.
- (5) The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is lodged under or for the purposes of this Chapter and has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

1117 Concealing etc. of books relating to securities

- (1) A person shall not:
 - (a) conceal, destroy, mutilate or alter a book relating to the business carried on by a dealer or required under this Chapter to be kept by the holder of a licence, by a person who holds a proper authority from the holder of a licence or by a financial journalist within the meaning of Part 7.7; or

- (b) where such a book is in this jurisdiction—send the book out of Australia.
- (2) In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person did not act with intent to defraud, to defeat the purposes of this Chapter or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power, under this Chapter.

1118 Falsification of records

- (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Chapter or a register or any accounting or other record referred to in section 1116 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person shall not:
 - (a) record or store by means of that device matter that the person knows to be false in a material particular or materially misleading;
 - (b) destroy, remove or falsify matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or
 - (c) fail to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter.
- (2) In a prosecution of a person for a contravention of subsection (1), it is a defence if it is proved that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

1119 Precautions against falsification of records

A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

Chapter 8—The Futures Industry

Part 8.1—Interpretation

1120 Business rules: futures association

For the purposes of this Chapter, the business rules of a body corporate that is, or proposes to be, a futures association are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern the activities and conduct of the body and its members in relation to the body's operation as a futures association.

1121 Business rules: clearing house

For the purposes of this Chapter, the business rules of a body corporate that provides, or proposes to provide, clearing house facilities for a futures market are such of the rules, regulations and by-laws made by the body or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members; and
- (b) the activities and conduct of other persons in relation to the body's provision of clearing house facilities for a futures market.

1122 Business rules: futures exchange

For the purposes of this Chapter, the business rules of a body corporate that conducts, or proposes to establish or conduct, a futures market are such of the rules, regulations and by-laws made by the body corporate or contained in its constitution as govern:

- (a) the activities and conduct of the body and its members;
- (b) the activities and conduct of each clearing house for the body; and
- (c) the activities and conduct of other persons in relation to each futures market run by the body.

Part 8.2—Futures exchanges, clearing houses and futures associations

Division 1—Futures exchanges and exempt futures markets

1123 Conducting unauthorised futures markets

A person must not establish or conduct, assist in establishing or conducting, or hold out that the person conducts, an unauthorised futures market.

1126 Approval of futures exchange

- (1) A body corporate may apply to the Commission in writing for approval by the Minister as a futures exchange.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a futures exchange if, and only if, he or she is satisfied that:
 - (c) the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons;
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that;
and
 - (B) natural persons who;
are, or propose to be, members;
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficiency, honesty and fair practice in relation to such dealing;
 - (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;

Section 1126

- (iv) for the exclusion of a person from membership where:
 - (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate;
or
 - (B) otherwise—the person or an employee of the person;is not of good character and high business integrity;
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules or of this Chapter;
- (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;
- (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person’s membership of the body may appeal against the decision to discipline the person;
- (viii) for the inspection and audit of the financial records that this Chapter requires members to keep;
- (ix) with respect to the classes of futures contracts that may be dealt in by members;
- (xi) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;
- (xii) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;
- (xiii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a

- futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of the futures exchange or recognised futures exchange, as the case may be;
- (xiv) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;
 - (xv) with respect to the conditions under which members may deal in futures contracts;
 - (xvi) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members;
 - (xvii) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings; and
 - (xviii) generally for carrying on the business of the proposed futures exchange with due regard for the interests and protection of the public;
- (d) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; and
 - (e) the interests of the public will be served by granting the application.
- (3) Where, immediately before the commencement of this section, a body corporate was a futures exchange within the meaning of a previous law of this jurisdiction corresponding to this Part, the Minister shall be deemed to have approved the body at that commencement as a futures exchange under subsection (2).

Section 1127

1127 Exempt futures market

- (1) The Minister may by writing declare a specified futures market to be, subject to any specified conditions, an exempt futures market.
- (1A) A person must not contravene a condition specified in a declaration in force under this section.
- (1B) If a person has contravened a condition specified in a declaration in force under this section, the Court may, on the Commission's application, order the person to comply with the condition.
- (2) Without limiting the matters to which the Minister may have regard in considering whether to vary or revoke a declaration in force under this section, he or she may, in so considering, have regard to a breach of a condition specified in the declaration.
- (3) A declaration by the Ministerial Council, under a previous law of this jurisdiction corresponding to subsection (1), of a futures market as an exempt futures market, being a declaration that was in force immediately before the commencement of this Part, has effect as if it were a declaration by the Minister under that subsection.

Division 2—Clearing houses

1128 When a person may provide clearing house facilities

A person must not provide, or hold out that the person provides, clearing house facilities for a futures market (other than an exempt futures market) unless:

- (a) the futures market is conducted by a futures exchange; and
- (b) the person is a body corporate; and
- (c) an approval of the person under section 1131 as a clearing house for that futures exchange is in force.

1131 Approval of clearing house

- (1) A body corporate that proposes to provide clearing house facilities for a futures market of a futures exchange may apply to the Commission in writing for approval by the Minister as a clearing house for that futures exchange.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a clearing house for the futures exchange if, and only if, he or she is satisfied that:
 - (b) the body's business rules are satisfactory, in particular such of those business rules as relate to the registration of futures contracts made on a futures market of the futures exchange;
 - (c) the body's business rules make satisfactory provision for the expulsion, suspension or disciplining of members for a contravention of the business rules or for a contravention of this Chapter; and
 - (d) the interests of the public will be served by granting the application.
- (3) Without limiting the matters to which the Minister may have regard in considering an application under subsection (1), he or she may, in considering the application, have regard to any business rules of the applicant that relate to the guaranteeing, to members of the applicant, of the performance of futures contracts made on a futures market of the futures exchange.

Chapter 8 The Futures Industry

Part 8.2 Futures exchanges, clearing houses and futures associations

Division 2 Clearing houses

Section 1131

- (4) Where, immediately before the commencement of this section, an approval of a body corporate as a clearing house for a futures exchange within the meaning of a previous law of this jurisdiction corresponding to subsection (2) was, or was deemed to be, in force under that law, the Minister shall be deemed to have approved the body at that commencement, as a clearing house for that futures exchange, under that subsection.

Division 3—Futures associations

1132 Approval of futures association

- (1) A body corporate that proposes to be a futures association may apply to the Commission in writing for approval by the Minister as a futures association.
- (2) Subject to section 102A, where a body applies under subsection (1) of this section, the Minister may by writing approve the body as a futures association if, and only if, he or she is satisfied that:
 - (c) that the body's nature is such that the body may properly exercise its functions as a futures association, being the functions of:
 - (i) regulating the association's affairs in the interests of the public; and
 - (ii) administering and enforcing the association's business rules;
 - (d) that the body's business rules make satisfactory provision:
 - (i) for the admission as members of persons licensed, or proposing to apply to be licensed, under Part 8.3, or of a specified class of such persons;
 - (ii) for the qualifications for membership, including the necessary standards of training and experience for:
 - (A) responsible officers of bodies corporate that;
and
 - (B) natural persons who;
are, or propose to be, members;
 - (iii) for the manner in which members are to conduct their business of dealing in futures contracts so as to ensure efficient, honest and fair practices in relation to such dealing;
 - (iiia) for the exclusion of a body corporate from membership where a responsible officer of the body corporate would be excluded from membership;
 - (iv) for the exclusion of a person from membership where:

Section 1132

- (A) if the person is a body corporate—a responsible officer, or an employee, of the body corporate;
or
- (B) otherwise—the person or an employee of the person;
is not of good character and high business integrity;
- (v) for the expulsion, suspension or disciplining of a member for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of the body’s business rules or of this Chapter;
- (vi) for an appropriate mechanism whereby a person whose application for membership of the body is refused, or whose membership of the body is cancelled or suspended, in circumstances where the person does not have a right to appeal to the Court under subsection 1135(1) against the decision to refuse the application, or to cancel or suspend the membership, as the case may be, may appeal against the decision;
- (vii) for an appropriate mechanism whereby a person who has been disciplined by the body otherwise than by way of cancellation or suspension of the person’s membership of the body may appeal against the decision to discipline the person;
- (viii) for the inspection and audit of the financial records that this Chapter requires members to keep;
- (x) prohibiting a member from accepting or executing, otherwise than in accordance with the business rules, instructions from another person to deal in futures contracts;
- (xi) prohibiting a member from dealing in futures contracts on behalf of another person otherwise than in accordance with instructions accepted by the member from the person;
- (xii) prohibiting a member from dealing in futures contracts, on behalf of another person, on a futures market of a futures exchange or of a recognised futures exchange, otherwise than in accordance with the business rules of

- the futures exchange or recognised futures exchange, as the case may be;
- (xiii) prohibiting a member, except as permitted by the business rules, from executing the instructions of another person to deal in futures contracts unless the instructions are executed in such a manner that the dealing is effected on a futures market of a futures exchange or of a recognised futures exchange or on an exempt futures market;
 - (xiv) for the equitable and expeditious settlement of claims and grievances between members, being claims and grievances relating to the transaction of business by members in their capacity as members; and
 - (xv) for appropriate mechanisms for the conciliation and settlement of disputes between members and their clients, being disputes concerning dealings in futures contracts by members on behalf of their clients or concerning transactions between members and their clients in connection with such dealings;
- (e) if the body is expected to be a futures organisation within the meaning of Part 8.6:
- (i) there will be enough money in the body's fidelity fund to make the payments out of the fund that may reasonably be expected to be necessary for the purposes of Part 8.6; or
 - (ii) the body will enter into a contract, in a form approved by the Minister, with an insurer approved by the Minister, under which the insurer undertakes to supplement the fund, if a claim is made on the fund, so that the total amount available to satisfy the claim will be not less than an amount so approved; and
- (f) that the interests of the public will be served by granting the application.
- (3) An approval by the Ministerial Council, under a previous law of this jurisdiction corresponding to subsection (2), of a body corporate as a futures association, being an approval that was in force immediately before the commencement of this section, has effect as if it were an approval by the Minister under that subsection.

Section 1133

1133 Suspension or cancellation of approval

- (1) The Minister may cause to be served on a body corporate a written notice requiring the body to show cause, at a hearing before a specified person, why the body's approval as a futures association should not be suspended or cancelled on specified grounds.
- (2) A notice under subsection (1) shall specify, and give reasonable notice of, the time and place at which the hearing is to occur, but the specified person may, with the body's consent, fix a different time, a different place, or both, for the hearing.
- (3) Where a notice is served under subsection (1), the specified person shall, after giving the body an opportunity to be heard at the hearing, submit to the Minister a report about the hearing and a recommendation about the matters to which the notice related.
- (4) After considering a report and recommendation under subsection (3), the Minister may:
 - (a) decide to take no further action in relation to the matter; or
 - (b) by writing, suspend for a specified period, or cancel, the body's approval as a futures association.
- (5) A body corporate shall be deemed not to be a futures association at any time during a period for which the body's approval as a futures association is suspended.
- (6) A body corporate's approval as a futures association shall not be suspended or cancelled except under this section.

Division 4—General

1134 Publication of certain instruments

The Commission shall cause a copy of an instrument executed under subsection 1126(2), 1127(1), 1131(2), 1132(2) or 1133(4) to be published in the *Gazette*.

1135 Appeal to the Court against certain decisions of futures exchanges and futures associations

- (1) Where a body corporate, being a futures exchange or futures association:
 - (a) decides, at a time when a person is a member of no futures organisation, to refuse an application by the person for membership of the body corporate; or
 - (b) decides, at a time when a person is a member of no other futures organisation, to suspend or cancel the person's membership of the body corporate;the body corporate shall, within 14 days after so deciding, give to the person, and to the Commission, a notice in writing setting out the decision and the reasons for the decision, and the person may, within the period of 21 days beginning when the notice is so given or within that period as extended by the Court, appeal to the Court against the decision by filing a written notice of appeal.
- (2) A person whose membership of a futures organisation is suspended for a period:
 - (a) shall be deemed, for the purposes of paragraph (1)(a), to be a member of that futures organisation throughout that period; and
 - (b) shall be deemed, for the purposes of paragraph (1)(b), not to be a member of that futures organisation at any time during that period.
- (3) A person shall, on the day on which the person files a notice of appeal with the Court under subsection (1), lodge a copy of the notice.

Section 1135

- (4) Where a body corporate decides as mentioned in paragraph (1)(b), then:
 - (a) subject to paragraph (c) of this subsection and to subsection (6), the decision takes effect at the end of the day on which a notice relating to the decision is given by the body corporate in accordance with subsection (1);
 - (b) if the person to whom the decision relates appeals to the Court under subsection (1) against the decision—the Court may, at any time before it determines the appeal, make such order as it thinks fit concerning the effect, pending determination of the appeal, of the decision, including, without limiting the generality of the foregoing, an order that is subject to conditions specified in the order; and
 - (c) an order made by the Court under paragraph (b) has effect accordingly.

- (5) The Court may, after hearing an appeal under subsection (1), dismiss the appeal or:
 - (a) in the case of an appeal against a decision to refuse an application for membership—decide that the application should be granted, or should be granted subject to specified conditions;
 - (b) in the case of an appeal against a decision to suspend for a period a person's membership—decide that the person's membership:
 - (i) should not be suspended; or
 - (ii) should be suspended for a specified lesser period; or
 - (c) in the case of an appeal against a decision to cancel a person's membership—decide that the person's membership:
 - (i) should not be cancelled; or
 - (ii) should not be cancelled, but should be suspended for a specified period.

- (6) Where, on an appeal against a decision of a body corporate, the Court decides as mentioned in paragraph (5)(a), (b) or (c), then, as from the day on which the appeal is decided:
 - (a) the first-mentioned decision ceases to have effect; and

- (b) the decision of the Court has effect, except for the purposes of subsection (1), as a decision of the body corporate and shall take effect accordingly.

1136 Commission to be notified of amendments of business rules

- (1) Where an amendment is made by way of rescission or alteration of, or addition to, the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, the futures exchange, clearing house or futures association, as the case may be, shall, forthwith after the making of the amendment, give written notice of the amendment to the Commission.
- (2) A notice under subsection (1) shall:
 - (a) set out the text of the amendment to which it relates;
 - (b) specify the date on which the amendment was made; and
 - (c) contain an explanation of the purpose of the amendment.
- (3) If a notice required by subsection (1) to be given in relation to an amendment is not given within 21 days after the making of the amendment, the amendment ceases to have effect.
- (4) Where the Commission receives a notice under this section, the Commission shall forthwith send a copy of the notice to the Minister.
- (5) The Minister may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.
- (6) Where the Minister disallows under this section the whole or a part of an amendment of the business rules of a body corporate, the Commission shall forthwith give notice of the disallowance to the body corporate and, upon receipt by the body corporate of the notice of disallowance, the amendment ceases, to the extent of the disallowance, to have effect.
- (7) If:
 - (a) a notice was duly given by a futures exchange to the NCSC before the commencement of this Part under a previous law corresponding to this section;

Section 1137

- (b) a period of 28 days after the receipt of the notice by the NCSC had not elapsed before that commencement; and
- (c) the Ministerial Council had not before that commencement disallowed the whole or a part of the amendment to which the notice related;

this section (other than paragraph (2)(b)) applies as if the amendment had been made or adopted, as the case may be, on the day of commencement of this Part.

1137 Orderly markets in futures contracts—functions and powers of futures exchanges and clearing houses

- (1) A futures exchange, and a clearing house for a futures exchange, shall, to the extent that it is reasonably practicable to do so, take all steps, and do all things, necessary to ensure an orderly and fair market for dealings in futures contracts on a futures market of the futures exchange.
- (2) A futures exchange may, for the purpose of performing its functions under subsection (1), give to a person who is not a member of the futures exchange but in whose name a futures contract entered into on a futures market of the futures exchange is registered a direction:
 - (a) to do a particular act or thing; or
 - (b) to refrain from doing a particular act or thing.
- (3) A person shall comply with a direction given to the person in accordance with subsection (2), but a person who contravenes this subsection is not guilty of an offence.

1138 Orderly markets in futures contracts—powers of Commission

- (1) Subject to subsections (2) and (6), the Commission may, in relation to a futures market of a futures exchange, give a direction in writing to the futures exchange:
 - (a) to close the futures market;
 - (b) to suspend dealing on the futures market in a specified class of futures contracts;
 - (c) to limit transactions on the futures market to the closing out of futures contracts;

- (d) to defer for a specified period the completion date for all futures contracts, or for a specified class of futures contracts, made on the futures market;
 - (e) to cause a specified futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be:
 - (i) closed out forthwith as the result of the matching up of the futures contract with a futures contract of the same kind whose price or value is equal to a price or value determined by the futures exchange; or
 - (ii) invoiced back to a specified date at a price or value determined by the futures exchange;
 - (f) to require a futures contract made on the futures market, or each futures contract included in a specified class of futures contracts so made, to be discharged by:
 - (i) the tendering of a merchantable lot of a commodity determined by the futures exchange, being a commodity of a quality or standard that is:
 - (A) different from the quality or standard of the commodity specified in the futures contract; and
 - (B) determined by the futures exchange; and
 - (ii) the tendering of a price adjusted by an amount that is:
 - (A) appropriate having regard to the quality or standard of the commodity referred to in subparagraph (i); and
 - (B) determined by the futures exchange; or
 - (g) to require a member of the futures exchange to act in a specified manner in relation to dealings in futures contracts on the futures market, or in relation to a specified class of such dealings.
- (2) The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange unless:
- (a) it has determined that a direction should be so given because it is of the opinion that:
 - (i) subsection 1137(1) has not been complied with in relation to that futures market;

Section 1138

- (ii) it is necessary to protect the interests of persons on behalf of whom futures contracts are or may be dealt with on that futures market; or
 - (iii) it would be in the public interest for a direction to be so given;
 - (b) it has given to the futures exchange a notice in writing stating that it has formed that opinion and specifying:
 - (i) its reasons for forming that opinion;
 - (ii) the direction that it considers should be so given; and
 - (iii) a time, or a date and time, before which it will not so give the direction;
 - (c) it has given a copy of the notice to each clearing house for that futures market; and
 - (d) the direction is so given after the time, or date and time, as the case may be, specified pursuant to subparagraph (b)(iii).
- (3) The Commission shall, before determining in relation to a futures market of a futures exchange as mentioned in paragraph (2)(a), consult the futures exchange and each clearing house for that futures market.
- (4) A failure by the Commission to comply with subsection (3) does not affect the validity of:
 - (a) a determination under paragraph (2)(a); or
 - (b) a direction given under subsection (1) pursuant to such a determination.
- (5) The Commission shall, as soon as practicable after giving a notice under paragraph (2)(b) in relation to a futures market of a futures exchange:
 - (a) give to the Minister a copy of the notice and a written report setting out the reasons for the giving of the notice;
 - (b) give a copy of the report to the futures exchange; and
 - (c) give a copy of the report to each clearing house for that futures market.
- (6) The Commission shall not give a direction under subsection (1) in relation to a futures market of a futures exchange if:
 - (a) the Minister has directed the Commission not to give the direction; or

- (b) the futures exchange has acted as if the direction had been given.
- (7) The Commission shall, as soon as practicable after giving a direction under subsection (1) in relation to a futures market of a futures exchange:
 - (a) give to the Minister a copy of the direction; and
 - (b) give to each clearing house for that futures market:
 - (i) a copy of the direction; and
 - (ii) a direction in writing prohibiting the clearing house from acting in a manner inconsistent with, and requiring the clearing house to do all that it is reasonably capable of doing to give effect to, the direction under subsection (1) while the last-mentioned direction remains in force.
- (8) The Minister may determine in writing the period throughout which a particular direction under subsection (1) is to remain in force.
- (9) A direction given under subsection (1) remains in force:
 - (a) in a case where a determination under subsection (8) is in force—throughout the period specified in the determination; or
 - (b) in any other case—unless sooner revoked, until the end of the period of 21 days, or such shorter period (if any) as is specified in the direction, commencing when the direction is given.
- (10) A futures exchange shall not, while a direction given under subsection (1) in relation to a futures market of the futures exchange remains in force, fail to comply with the direction.
- (11) A clearing house for a futures exchange shall not fail to comply with a direction given to the clearing house under subparagraph (7)(b)(ii).
- (12) A document may be given to a person under this section by sending to the person, by telegraph, telex, facsimile service or other similar means of communication, a message to the effect of the document.

Section 1139

- (13) Where, immediately before the commencement of this section:
- (a) a direction was in force under a previous law corresponding to subsection (1); or
 - (b) a determination was in force under a previous law corresponding to subsection (8);
- the direction or determination has effect after that commencement:
- (c) as if it had been given or made under that subsection; and
 - (d) with such modifications as the circumstances require.

1139 Futures exchanges and others to assist Commission

- (1) A futures exchange, a clearing house for a futures exchange, and a futures association, shall each provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions under this Chapter.
- (2) Where:
- (a) a body corporate, being a futures exchange, a clearing house for a futures exchange, or a futures association, decides to reprimand, fine, suspend, expel or otherwise take disciplinary action against, a member of the body corporate; and
 - (b) subsection 1135(1) does not require the body corporate to give to the Commission a notice relating to the decision;
- the body corporate shall, within 14 days after so deciding, give to the Commission a notice in writing setting out particulars of the name of the member, the decision, the reasons for the decision and, in the case of a decision to fine a member, the amount of the fine.
- (2A) A futures exchange, a clearing house for a futures exchange or a futures association that believes that a person has committed, is committing or is about to commit a serious contravention of its business rules, or the Corporations Law of this or any other jurisdiction, must, as soon as practicable, lodge a statement setting out:
- (a) particulars of the contravention that it believes the person has committed, is committing or is about to commit; and
 - (b) its reasons for that belief.

- (3) Where a clearing house for a futures exchange:
- (a) refuses to register a dealing in a futures contract; or
 - (b) closes out a futures contract because of a failure to meet a call for deposit or margin;
- it shall forthwith furnish the Commission with particulars of its action.
- (4) A person authorised by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Law to the trading floor of a futures market of a futures exchange.
- (5) A person who refuses or fails, without lawful excuse, to allow a person authorised by the Commission access in accordance with subsection (4) to the trading floor of a futures market of a futures exchange contravenes this subsection.

1140 Power of Court to order observance or enforcement of business rules of futures exchange, clearing house or futures association

Where a person who is under an obligation to comply with, observe, enforce or give effect to the business rules of a futures exchange, of a clearing house for a futures exchange, or of a futures association, fails to comply with, observe, enforce or give effect to those rules, the Court may, on the application of the futures exchange, clearing house or futures association, as the case may be, of the Commission, or of a person aggrieved by the failure, and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning compliance with, observance or enforcement of, or giving effect to, those rules.

1141 Gaming and wagering laws not applicable to certain futures contracts and Chapter 8 agreements

- (1) Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into of, or affects the validity or enforceability of, a futures contract made:

Section 1141A

- (a) on a futures market of a futures exchange or of a recognised futures exchange; or
 - (b) on an exempt futures market; or
 - (c) as permitted by the business rules of a futures association, of a futures exchange or of a recognised futures exchange.
- (2) Nothing in a law of this jurisdiction about gaming or wagering prevents the entering into, or affects the validity or enforceability, of a Chapter 8 agreement of a kind prescribed for the purposes of paragraph 72A(1)(b).

1141A Qualified privilege in respect of disciplinary proceedings

- (1) In this section:

disciplinary proceeding, in relation to a futures organisation, means:

- (a) a proceeding under the business rules of the futures organisation that may result in the disciplining of a member of the futures organisation; or
- (b) an appeal under the business rules of the futures organisation from a proceeding of a kind referred to in paragraph (a).

disciplining, in relation to a member of a futures organisation, includes expulsion from, or suspension of, membership of the futures organisation.

member, in relation to a futures organisation, includes a person who is under an obligation to comply with or enforce the business rules of the futures organisation.

- (2) A futures organisation, or a member, officer or employee of a futures organisation, has qualified privilege in respect of a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with, a disciplinary proceeding of the futures organisation.
- (3) A person has qualified privilege in respect of the publication of:
- (a) a statement made by a person, orally or in writing, in the course of, or otherwise for the purposes of or in connection with; or

- (b) a document prepared, given or produced by a person, in the course of, or otherwise for the purposes of or in connection with;
a disciplinary proceeding of a futures organisation.

Part 8.3—Participants in the futures industry

Division 1—Futures brokers and futures advisers

1142 Futures brokers

A person must not:

- (a) deal in a futures contract on another person's behalf; or
- (b) hold out that the person carries on a futures broking business;

unless the first-mentioned person holds a futures brokers licence or is an exempt broker.

1143 Futures advisers

A person must not:

- (a) carry on a futures advice business; or
- (b) hold out that the person is a futures adviser;

unless the person is a licensee or an exempt futures adviser.

1144 Application for a licence

- (1) A person may apply to the Commission, in the prescribed form and manner, for a futures brokers licence or a futures advisers licence.
- (2) The Commission may require an applicant for a licence to give the Commission such further information in relation to the application as the Commission thinks necessary.
- (3) An application duly made to the NCSC before the commencement of this Part under a previous law of this jurisdiction corresponding to subsection (1) that had not been dealt with by the NCSC before that commencement shall be deemed to be an application duly made to the Commission under that subsection.

1144A Grant of licence to natural person

- (1) This section applies where a natural person applies for a licence.

- (2) The Commission must grant the licence if:
 - (a) the application was made in accordance with section 1144;
and
 - (b) the person is not an insolvent under administration; and
 - (c) if the application is for a futures brokers licence—the person is a member of a futures organisation; and
 - (d) the Commission is satisfied that the person’s educational qualifications and experience are adequate having regard to the nature of the duties of a holder of a licence of the kind applied for; and
 - (e) the Commission has no reason to believe that the person is not of good fame and character; and
 - (f) the Commission has no reason to believe that the person will not perform those duties efficiently, honestly and fairly.
- (3) Otherwise, the Commission must refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(e) or (f), the Commission must have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.

1145 Grant of licence to body corporate

- (1) This section applies where a body corporate applies for a licence.
- (2) The Commission shall grant the licence if:
 - (a) the application was made in accordance with section 1144;
 - (c) the applicant is not an externally-administered body corporate;
 - (d) if the application is for a futures brokers licence—the applicant is a member of a futures organisation;
 - (e) the Commission is satisfied that the educational qualifications and experience of each responsible officer of the applicant are adequate having regard to the duties that the officer would perform in connection with the holding of the licence; and
 - (f) the Commission has no reason to believe that the applicant will not perform efficiently, honestly and fairly the duties of a holder of a licence of the kind applied for.

Section 1145A

- (3) Otherwise, the Commission shall refuse the application.
- (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(f), the Commission shall have regard, in relation to each responsible officer of the applicant, to:
 - (a) whether or not the officer is an insolvent under administration;
 - (b) any conviction of the officer, during the 10 years ending on the day of the application, of serious fraud;
 - (c) any reason the Commission has to believe that the officer is not of good fame and character; and
 - (d) any reason the Commission has to believe that the officer will not perform efficiently, honestly and fairly the duties that the officer would perform in connection with the holding of the licence.

1145A Effect of certain provisions

- (1) Sections 1144A and 1145 apply subject to sections 102A, 1199A, 1200 and 1202 and the regulations.
- (2) Nothing in subsection 1144A(4) or 1145(4) limits the matters to which the Commission may have regard:
 - (a) in deciding on an application for a licence; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1146 Licences under corresponding previous laws

Where, as at the commencement of this Division, a person held a futures brokers licence or futures advisers licence in force under a previous law of this jurisdiction corresponding to this Division, the licence has effect as if it were a futures brokers licence or futures advisers licence, as the case may be, granted under this Part.

1147 Conditions of licence: general

A licence is subject to:

- (a) such conditions and restrictions as are prescribed; and

- (b) subject to section 1200, such conditions and restrictions as the Commission imposes when granting the licence or while it is in force.

1148 Conditions of futures brokers licence: membership of futures organisation

- (1) A futures brokers licence is subject to:
 - (a) a condition that the licensee be, throughout the currency of the licence, a member of a futures organisation; and
 - (b) a condition that the licence is suspended throughout a period throughout which the licensee:
 - (i) is a member of no futures organisation; and
 - (ii) would, but for the suspension of the licensee's membership of a futures organisation, be a member of the last-mentioned futures organisation.
- (2) A person whose membership of a futures organisation is suspended for a period:
 - (a) is, for the purposes of paragraph (1)(a), a member of that futures organisation throughout that period; and
 - (b) is, for the purposes of paragraph (1)(b), a member of that futures organisation at no time during that period.

1149 Conditions of futures brokers licence: assets and liabilities

- (1) Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a futures brokers licence:
 - (a) a condition or restriction about limiting the liability that the licensee may incur in connection with a business of dealing in futures contracts;
 - (b) a condition or restriction about incurring, or a condition about disclosing, liabilities of the licensee that arise otherwise than in connection with such a business;
 - (c) a condition or restriction about the licensee's financial position, whether or not in relation to such a business;

Section 1150

- (d) without limiting the generality of paragraph (c), a condition that the licensee's assets include, or not include, specified assets;
 - (e) without limiting the generality of paragraph (c), a condition that the sum of the values of specified assets included in the licensee's assets be not less than, or not greater than, an amount ascertained in accordance with the condition.
- (2) A condition imposed by virtue of paragraph (1)(e) may provide for the values of assets to be ascertained, for the purposes of applying the condition, in a manner specified in, or determined in accordance with, the condition.
- (3) Without limiting the generality of paragraph (1)(e), a condition imposed by virtue of that paragraph may provide for the amount referred to in that paragraph to be a specified percentage of the sum of:
- (a) the values of all the licensee's assets;
 - (b) the values of specified assets included in the licensee's assets;
 - (c) the amounts of all the licensee's liabilities; or
 - (d) the amounts of specified liabilities included in the licensee's liabilities.

1150 Conditions of licence: supervision of representatives

Without limiting the generality of section 1147, one or more of the following may be imposed under that section on a licence:

- (a) a condition about what the licensee is to do to, by way of supervision or otherwise, in order to prevent the licensee's representatives from contravening:
 - (i) a futures law; or
 - (ii) other conditions of the licence;
- (b) a condition about what the licensee is to do to ensure that each representative of the licensee has adequate qualifications and experience having regard to what the representative will do on the licensee's behalf in connection with a futures broking business or futures advice business carried on by the licensee.

1151 Revocation and variation of licence conditions

Subject to section 1200, the Commission may at any time revoke or vary a condition of a licence unless it was imposed by the regulations.

1152 Futures organisations to be informed about conditions of futures brokers licence

- (1) As soon as practicable after imposing a condition on, or revoking or varying a condition of, a futures brokers licence, the Commission shall inform in writing:
 - (a) each futures organisation of which the licensee is a member; and
 - (b) each corporation that is a clearing house for a futures exchange of which the licensee is a member.
- (2) A contravention of subsection (1) does not affect the validity of an act done by the Commission.

1153 Licensee to notify breach of licence condition

- (1) Within one business day after the happening of an event constituting a contravention of a condition of a licence held by a corporation, the licensee shall give to:
 - (a) the Commission; and
 - (b) each futures organisation of which the licensee is a member; a written notice setting out particulars of the event.
- (2) It is a defence to a prosecution for failing to give a particular notice to a person as required by this section if it is proved that:
 - (a) when the requirement arose, the defendant was unaware of the event that gave rise to the requirement; and
 - (b) the defendant:
 - (i) did not become aware of the event before the date of the information; or
 - (ii) did become so aware before that date but gave the notice to that person as soon as reasonably practicable after becoming so aware.

Section 1154

1154 Commission may require licensed futures broker to give information

- (1) The Commission may, by writing given to the holder of a futures brokers licence, direct the holder to give the Commission specified information about, or a specified statement relating to, a business of dealing in futures contracts that the holder carries on or has carried on.
- (2) A direction under subsection (1) to give a specified statement may also direct the holder to cause the statement to be audited by a registered company auditor before it is given to the Commission.
- (3) A person shall comply with a direction under this section:
 - (a) if the direction specifies a reasonable period for compliance—within that period; or
 - (b) in any other case—within a reasonable period; or within that period as extended by the Commission by writing given to the person.

1155 Register of Futures Licensees

- (1) The Commission shall keep a Register of Futures Licensees for the purposes of this Part.
- (2) The Commission shall include in the Register, in relation to each licence, a copy of:
 - (a) the licence; and
 - (b) each instrument that imposes conditions on the licence, or revokes or varies conditions of the licence, after the licence is granted.
- (3) The Commission shall enter in the Register, in relation to each licence:
 - (a) the name of the licensee;
 - (b) if the licensee is a body corporate—the name of each director, and of each secretary, of the licensee;
 - (c) the day on which the licence was granted;
 - (d) in relation to each business to which the licence relates:

- (i) the address of the principal place of business at which the business is carried on;
 - (ii) the addresses of the other places (if any) at which the business is carried on; and
 - (iii) if the business is carried on under a name or style other than the name of the licensee—that name or style;
 - (e) in the case of a futures brokers licence—the name, and the address of the principal place of business, of each futures organisation of which the licensee is a member;
 - (f) particulars of any suspension of the licence; and
 - (g) such other matters (if any) as are prescribed.
- (4) Where a person ceases to hold a particular licence, the Commission shall remove from the Register the documents included in it, and the particulars entered in it, in relation to that licence.
- (5) A person may inspect, and may make copies of, or take extracts from, the Register.

1156 Notifying change in particulars

Within 21 days after:

- (a) the holder of a futures brokers licence ceases to carry on the business to which the licence relates;
- (b) the holder of a futures advisers licence ceases to act as, or to hold out that the holder is, a futures adviser; or
- (c) there is a change in a matter particulars of which are required by virtue of any of paragraphs 1155(3)(a) to (e), inclusive, to be entered, in relation to a licence, in the Register of Futures Licensees;

the holder of the licence shall give the Commission written particulars, in the prescribed form, of that fact, or of that change, as the case may be.

1157 Annual statement of licensee

- (1) A person who is or has been a licensee shall lodge, in respect of each year or part of a year during which the licence is or was in

Section 1158

force, a statement in the prescribed form that complies with this section.

- (2) The statement shall set out the number of persons:
 - (a) who, when the statement is lodged, hold; or
 - (b) who, when the person last ceased to be a licensee, held; as the case may be, proper authorities from the person.
- (3) The statement shall also contain such information as is prescribed.

1158 Time for lodging annual statement

- (1) A person required by section 1157 to lodge a statement shall lodge the statement:
 - (a) if the licence is a futures brokers licence—within the period within which the person must lodge with the Commission a profit and loss statement and balance sheet referred to in section 1218; or
 - (b) if the licence is a futures advisers licence—within the period of 1 month immediately before the anniversary of the day on which the licence was granted;or within that period as extended by the Commission by writing given to the person.
- (2) Where an extension was granted by the NCSC before the commencement of this Part under a previous law corresponding to this section and the period as extended ends after the commencement of this Part, the extension shall be deemed to have been granted by the Commission under this section.

Division 2—Agreements with unlicensed persons

Subdivision A—Agreements affected

1159 Excluded clients

In this Division:

excluded client means a person who is:

- (a) a futures broker;
- (b) a futures adviser; or
- (c) one of 2 or more persons who together constitute a futures broker or futures adviser.

1160 Agreement about a dealing in breach of section 1142

Where a person (in this section and Subdivision B called the *non-licensee*) and another person (in this section and Subdivision B called the *client*), not being an excluded client, enter into an agreement relating to a dealing or proposed dealing in a futures contract by the non-licensee on the client's behalf, being a dealing or proposed dealing involving a contravention by the non-licensee of section 1142, Subdivision B applies, whether or not anyone else is a party to the agreement.

1161 Agreement with corporation acting in breach of section 1143

Where, during a period when a person (in this section and Subdivision B called the *non-licensee*), in contravention of section 1143, carries on a futures advice business or holds out that the person is a futures adviser, the non-licensee and a client (other than an excluded client) of the non-licensee enter into an agreement that relates to advising the client about futures contracts or to giving the client futures reports, Subdivision B applies, whether or not anyone else is a party to the agreement.

Subdivision B—Effect on agreements

1164 Client may give notice of rescission

- (1) Subject to this section, the client may, whether before or after completion of the agreement, give to the non-licensee a written notice stating that the client wishes to rescind the agreement.
- (2) The client may only give a notice under this section within a reasonable period after becoming aware of the facts entitling the client to give the notice.
- (3) The client is not entitled to give a notice under this section if the client engages in conduct by engaging in which the client would, if the entitlement so to give a notice were a right to rescind the agreement for misrepresentation by the non-licensee, be taken to have affirmed the agreement.
- (4) The client is not entitled to give a notice under this section if, within a reasonable period before the agreement was entered into, the non-licensee informed the client (whether or not in writing) that:
 - (a) the non-licensee did not hold a futures brokers licence; or
 - (b) the non-licensee did not hold a futures brokers licence and did not hold a futures advisers licence;as the case requires.
- (5) If, at a time when a futures brokers licence or futures advisers licence held by the non-licensee was suspended, the non-licensee informed the client that the licence was suspended, the non-licensee is to be taken for the purposes of subsection (4) to have informed the client at that time that the non-licensee did not hold a futures brokers licence or futures advisers licence, as the case may be.
- (6) None of subsections (2), (3) and (4) limits the generality of either of the others.
- (7) Subject to this section, the client may give a notice under this section whether or not:
 - (a) the notice will result under section 1165 in rescission of the agreement; or

- (b) the Court will, if the notice so results, be empowered to make a particular order, or any order at all, under section 1166.

1165 Effect of notice under section 1164

A notice given under section 1164 rescinds the agreement unless rescission of the agreement would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1165A Client may apply to Court for partial rescission

- (1) If the client gives a notice under section 1164 but the notice does not rescind the agreement because rescission of it would prejudice a right or estate of the kind referred to in section 1165, the client may, within a reasonable period after giving the notice, apply to the Court for an order under subsection (4) of this section.
- (2) The Court may extend the period for making an application under subsection (1).
- (3) If an application is made under subsection (1), the Court may make such orders expressed to have effect until the determination of the application as it would have power to make if the notice had rescinded the agreement under section 1165 and the application were for orders under section 1166.
- (4) On an application under subsection (1), the Court may make an order:
 - (a) varying the agreement in such a way as to put the client in the same position, as nearly as can be done without prejudicing such a right or estate acquired before the order is made, as if the agreement had not been entered into; and
 - (b) declaring the agreement to have had effect as so varied at and after the time when it was originally made.
- (5) If the Court makes an order under subsection (4), the agreement shall be taken for the purposes of section 1166 to have been rescinded under section 1165.

Section 1166

- (6) An order under subsection (4) does not affect the application of section 1168 or 1170 in relation to the agreement as originally made or as varied by the order.

1166 Court may make consequential orders

- (1) Subject to subsection (2), on rescission of the agreement under section 1165, the Court may, on the application of the client or the non-licensee, make such orders as it would have power to make if the client had duly rescinded the agreement for misrepresentation by the non-licensee.
- (2) The Court is not empowered to make a particular order under subsection (1) if the order would prejudice a right, or an estate in property, acquired by a person (other than the non-licensee) in good faith, for valuable consideration and without notice of the facts entitling the client to give the notice.

1167 Agreement unenforceable against client

- (1) This section:
- (a) applies while both of the following are the case:
 - (i) the client is entitled to give a notice under section 1164;
 - (ii) a notice so given will result under section 1165 in rescission of the agreement; and
 - (b) applies after the agreement is rescinded under section 1165; but does not otherwise apply.
- (2) The non-licensee is not entitled, as against the client:
- (a) to enforce the agreement, whether directly or indirectly; or
 - (b) to rely on the agreement, whether directly or indirectly and whether by way of defence or otherwise.

1168 Non-licensee not entitled to recover commission

- (1) Without limiting the generality of section 1167, this section:
- (a) applies while the client is entitled to give a notice under section 1164; and

- (b) applies after the client so gives a notice, even if the notice does not result under section 1165 in rescission of the agreement;
but does not otherwise apply.
- (2) The non-licensee is not entitled to recover by any means (including, for example, set-off or a claim on a *quantum meruit*) any brokerage, commission or other fee for which the client would, but for this section, have been liable to the non-licensee under or in connection with the agreement.

1169 Onus of establishing non-application of section 1167 or 1168

For the purposes of determining, in a proceeding in a court, whether or not the non-licensee is, or was at a particular time, entitled as mentioned in subsection 1167(2) or 1168(2), it shall be presumed, unless the contrary is proved, that section 1167 or 1168, as the case may be, applies, or applied at that time, as the case may be.

1170 Client may recover commission paid to non-licensee

- (1) Without limiting the generality of section 1166, if the client gives a notice under section 1164, the client may, even if the notice does not result under section 1165 in rescission of the agreement, recover from the non-licensee as a debt the amount of any brokerage, commission or other fee that the client has paid to the non-licensee under or in connection with the agreement.
- (2) The Commission may, if it considers that it is in the public interest to do so, bring an action under subsection (1) in the name of, and for the benefit of, the client.

1171 Remedies under this Division additional to other remedies

The client's rights and remedies under this Division are additional to, and do not prejudice, any other right or remedy of the client.

Division 3—Futures representatives

1172 Representatives of futures brokers

A natural person shall not do an act as a representative of a futures broker (other than an exempt broker) unless:

- (a) the broker holds a futures brokers licence; and
- (b) the person holds a proper authority from the broker.

1173 Representatives of futures advisers

A natural person shall not do an act as a representative of a futures adviser (other than an exempt futures adviser) unless the futures adviser:

- (a) is also a futures broker and holds a futures brokers licence;
or
- (b) holds a futures advisers licence;

and the person holds a proper authority from the futures adviser.

1174 Defence

It is a defence to a prosecution for a contravention of section 1172 or 1173 constituted by an act done by a person as a representative of another person if it is proved that:

- (a) but for the revocation or suspension of a licence held by the other person, the act would not have been such a contravention;
- (b) when he or she did the act, the first-mentioned person:
 - (i) believed in good faith that the other person held the licence; and
 - (ii) was unaware of the revocation or suspension; and
- (c) in all the circumstances it was reasonable for the first-mentioned person so to believe and to be unaware of the revocation or suspension.

1175 Body corporate not to act as representative

A body corporate shall not do an act as a representative of a person.

1176 Licensee to keep register of holders of proper authorities

- (1) A licensee shall establish a register of the persons who hold proper authorities from the licensee and shall keep it in accordance with this section.
- (2) The register shall be in writing or in such other form as the Commission approves.
- (3) The register shall contain, in relation to each person (if any) who holds a proper authority from the licensee:
 - (a) a copy of the proper authority;
 - (b) the person's name;
 - (c) the person's current residential address;
 - (d) unless the person's current business address is the same as the licensee's—the person's current business address; and
 - (e) such other information (if any) as is prescribed.
- (4) A copy of a proper authority of a person from the licensee that subsection (3) requires the register to contain shall be included in the register within 2 business days after the person begins to hold that proper authority.
- (5) Information that subsection (3) requires the register to contain in relation to a person shall be entered in the register within 2 business days after:
 - (a) the person begins to hold a proper authority from the licensee; or
 - (b) the licensee receives the information;whichever happens later.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall:
 - (a) in any case:

Section 1177

- (i) include, in a part of the register separate from the part in which copies of proper authorities are included under subsection (4); and
 - (ii) remove from the last-mentioned part;
the copy of the proper authority that was included in the last-mentioned part; and
 - (b) unless, at the end of those 2 business days, the person again holds a proper authority from the licensee:
 - (i) enter, in a part of the register separate from the part in which information is entered under subsection (5); and
 - (ii) remove from the last-mentioned part;
the information that has been entered in the last-mentioned part in relation to the person.
- (7) Information that has been entered under paragraph (6) (b) in a separate part of the register shall be deemed for the purposes of subsections (3) and (5) not to be contained or entered in the register.
- (8) Where a licensee whom subsection (1) requires to establish a register already keeps one under this section or a corresponding previous law, the licensee need not establish a new register but must keep the existing one in accordance with this section.

1177 Licensee to notify Commission of location and contents of register

- (1) This section has effect where a licensee keeps a register under section 1176.
- (2) Within 14 days after establishing the register, the licensee shall lodge written notice of where the register is kept.
- (3) As soon as practicable after changing the place where the register is kept, the licensee shall lodge written notice of the new place where the register is kept.
- (4) Within 2 business days after the day on which a person begins to hold a particular proper authority from the licensee, the licensee shall, whether or not the person has previously held a proper authority from the licensee, lodge:

- (a) a copy of the first-mentioned proper authority; and
 - (b) a written notice stating that the person began to hold that proper authority on that day.
- (5) Within the period within which subsection 1176(5) requires the licensee to enter in the register information that the register is required by virtue of paragraph 1176(3)(b), (c), (d) or (e) to contain, the licensee shall lodge a written notice setting out the information and stating that the information has been, or is to be, entered in the register.
- (6) Within 2 business days after a person ceases to hold a proper authority from the licensee, the licensee shall, unless at the end of those 2 business days the person again holds a proper authority from the licensee, lodge a written notice stating that the person has ceased to hold such a proper authority.

1178 Inspection and copying of register

- (1) A licensee shall ensure that a register kept by it under section 1176 is open for inspection without charge.
- (2) A person may by writing request a licensee to give the person a copy of the whole, or of a specified part, of a register kept by the licensee under section 1176.
- (3) A licensee shall comply with a request under subsection (2) within 2 business days after:
- (a) if the licensee requires the person to pay for the copy an amount of not more than the prescribed amount—receiving the amount from the person; or
 - (b) otherwise—receiving the request.

1180 Commission may require production of authority

- (1) Where the Commission has reason to believe that a person:
- (a) holds a proper authority from a licensee; or
 - (b) has done an act as a representative of another person;
- then, whether or not the Commission knows who the licensee or other person is, it may require the first-mentioned person to produce:

Section 1181

- (c) any proper authority from a licensee; or
 - (d) any invalid futures authority from a person;
that the first-mentioned person holds.
- (2) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement under this section.

1181 Commission may give licensee information about representative

- (1) Where the Commission believes on reasonable grounds that:
- (a) a person (in this section called the *holder*) holds, or will hold, a proper authority from a licensee;
 - (b) having regard to that fact, the Commission should give to the licensee particular information that the Commission has about the person; and
 - (c) the information is true;
- the Commission may give the information to the licensee.
- (2) Where the Commission gives information under subsection (1), the licensee or an officer of the licensee may, for a purpose connected with:
- (a) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, the information; or
 - (b) the licensee taking action pursuant to such a decision;
- or for 2 or more such purposes, and for no other purpose, give to another person, make use of, or make a record of, some or all of the information.
- (3) A person to whom information has been given, in accordance with subsection (2) or this subsection, for a purpose or purposes may, for that purpose or one or more of those purposes, and for no other purpose, give to another person, make use of, or make a record of, that information.
- (4) Subject to subsections (2) and (3), a person shall not give to another person, make use of, or make a record of, information given by the Commission under subsection (1).

- (4A) Subsection 8(3) does not apply in relation to a reference in subsection (2), (3) or (4) of this section to a provision of this section.
- (5) A person has qualified privilege in respect of an act done by the person as permitted by subsection (2) or (3).
- (6) A person to whom information is given in accordance with this section shall not:
- (a) give any of the information to a court; or
 - (b) produce in a court a document that sets out some or all of the information;
- except:
- (c) for a purpose connected with:
 - (i) the licensee making a decision about what action (if any) to take in relation to the holder, having regard to, or to matters including, some or all of the information;
 - (ii) the licensee taking action pursuant to such a decision; or
 - (iii) proving in a proceeding in that court that particular action taken by the licensee in relation to the holder was so taken pursuant to such a decision;or for 2 or more such purposes, and for no other purpose;
 - (d) in a proceeding in that court, in so far as the proceeding relates to an alleged contravention of this section;
 - (e) in a proceeding in respect of an ancillary offence relating to an offence against this section; or
 - (f) in a proceeding in respect of the giving to a court of false information being or including some or all of the first-mentioned information.
- (7) A reference in this section to a person taking action in relation to another person is a reference to the first-mentioned person:
- (a) taking action by way of making, terminating, or varying the terms and conditions of; or
 - (b) otherwise taking action in relation to;
- a relevant agreement, in so far as the relevant agreement relates to the other person being employed by, or acting for or by arrangement with, the first-mentioned person in connection with a

Section 1182

futures broking business or futures advice business carried on by the first-mentioned person.

- (8) In addition, and without prejudice, to the effect it has of its own force, subsection (6) has by force of this subsection the effect it would have if:
- (a) the reference in it to information being given in accordance with this section were a reference to information being given in accordance with section 1181 of the Corporations Law of this jurisdiction; and
 - (b) a reference in it to a court were a reference to a court of an external Territory or of a country outside Australia and the external Territories; and
 - (c) paragraphs (6)(d) and (e) were omitted.

1182 Holder of authority may be required to return it

- (1) Where a person holds a proper authority from a licensee but is neither employed by, nor authorised to act for or by arrangement with, the licensee, the licensee may, by writing given to the person, require the person to give the proper authority to the licensee within a specified period of not less than 2 business days.
- (2) Where a person holds an invalid futures authority from another person, the other person may, by writing given to the first-mentioned person, require the first-mentioned person to give the invalid futures authority to the other person within a specified period of not less than 2 business days.
- (3) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made of the person in accordance with subsection (1) or (2).

Division 4—Liability of principals for representatives' conduct

1183 Conduct engaged in as a representative

Where a person engages in conduct as a representative of another person (in this section called the *principal*), then, as between the principal and a third person (other than the Commission), the principal is liable in respect of that conduct in the same manner, and to the same extent, as if the principal had engaged in it.

1184 Liability where identity of principal unknown

- (1) This section applies for the purposes of a proceeding in a court where:
 - (a) in this jurisdiction or elsewhere, a person (in this section called the *representative*) engages in particular conduct while the person is a representative of 2 or more persons (in this section called the *indemnifying principals*); and
 - (b) it is proved for the purposes of the proceeding that the representative engaged in the conduct as a representative of some person (in this section called the *unknown principal*) but it is not proved for those purposes who the unknown principal is.
- (2) If only one of the indemnifying principals is a party to the proceeding, he, she or it is liable in respect of that conduct as if he, she or it were the unknown principal.
- (3) If 2 or more of the indemnifying principals are parties to the proceeding, each of those parties is liable in respect of that conduct as if he, she or it were the unknown principal.

1185 Liability of principals where act done in reliance on representative's conduct

- (1) This section applies where:
 - (a) at a time when a person (in this section called the *representative*) is a representative of only one person (in this

Section 1185

section called the *indemnifying principal*) or of 2 or more persons (in this section called the *indemnifying principals*), the representative, in this jurisdiction or elsewhere:

- (i) engages in particular conduct; or
 - (ii) proposes, or represents that the representative proposes, to engage in particular conduct;
- (b) another person (in this section called the *client*) does, or omits to do, a particular act, in this jurisdiction or elsewhere, because the client believes at a particular time in good faith that the representative engaged in, or proposes to engage in, as the case may be, that conduct:
- (i) on behalf of some person (in this section called the *assumed principal*) whether or not identified, or identifiable, at that time by the client; and
 - (ii) in connection with a futures broking business or futures advice business carried on by the assumed principal; and
- (c) it is reasonable to expect that a person in the client's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief;
- whether or not that conduct is or would be within the scope of the representative's employment by, or authority from, any person.

(2) If:

- (a) subparagraph (1)(a)(i) applies; or
- (b) subparagraph (1)(a)(ii) applies and the representative engages in that conduct;

then, for the purposes of a proceeding in a court:

- (c) as between the indemnifying principal and the client or a person claiming through the client, the indemnifying principal is liable; or
- (d) as between any of the indemnifying principals and the client or a person claiming through the client, each of the indemnifying principals is liable;

as the case may be, in respect of that conduct in the same manner, and to the same extent, as if he, she or it had engaged in it.

(3) Without limiting the generality of subsection (2), the indemnifying principal, or each of the indemnifying principals, as the case may

be, is liable to pay damages to the client in respect of any loss or damage that the client suffers as a result of doing, or omitting to do, as the case may be, the act referred to in paragraph (1)(b).

(3A) Subsection (3) does not apply unless:

- (a) the conduct was engaged in, the proposed conduct would have been engaged in, or the representation was made, in this jurisdiction; or
- (b) the act referred to in paragraph (1)(b) was done, or would have been done, as the case may be, in this jurisdiction; or
- (c) some or all of the loss or damage was suffered in this jurisdiction.

(4) If:

- (a) there are 2 or more indemnifying principals;
- (b) 2 or more of them are parties (in this subsection called the *indemnifying parties*) to a proceeding in a court;
- (c) it is proved for the purposes of the proceeding:
 - (i) that the representative engaged in that conduct as a representative of some person; and
 - (ii) who that person is; and
- (d) that person is among the indemnifying parties;

subsections (2) and (3) do not apply, for the purposes of the proceeding, in relation to the indemnifying parties other than that person.

1186 Presumptions about certain matters

(1) Where it is proved, for the purposes of a proceeding in a court, that a person (in this subsection called the *representative*) engaged in particular conduct, in this jurisdiction or elsewhere, while the person was a representative of:

- (a) only one person (in this subsection called the *indemnifying principal*); or
- (b) 2 or more persons (in this subsection called the *indemnifying principals*);

then, unless the contrary is proved for the purposes of the proceeding, it shall be presumed for those purposes that the representative engaged in the conduct as a representative of:

Section 1187

- (c) the indemnifying principal; or
 - (d) as a representative of some person among the indemnifying principals;
- as the case may be.
- (2) Where, for the purposes of establishing in a proceeding in a court that section 1185 applies, it is proved that a person did, or omitted to do, a particular act because the person believed at a particular time in good faith that certain matters were the case, then, unless the contrary is proved for those purposes, it shall be presumed for those purposes that it is reasonable to expect that a person in the first-mentioned person's circumstances would so believe and would do, or omit to do, as the case may be, that act because of that belief.

1187 No contracting out of liability for representative's conduct

- (1) For the purposes of this section, a liability of a person:
- (a) in respect of conduct engaged in by another person as a representative of the first-mentioned person; or
 - (b) arising under section 1185 because another person has engaged in, proposed to engage in, or represented that the other person proposed to engage in, particular conduct;
- is a liability of the first-mentioned person in respect of the other person.
- (2) Subject to this section, an agreement is void in so far as it purports to exclude, restrict or otherwise affect a liability of a person in respect of another person, or to provide for a person to be indemnified in respect of a liability of the person in respect of another person.
- (3) Subsection (2) does not apply in relation to an agreement in so far as it:
- (a) is a contract of insurance;
 - (b) provides for a representative of a person to indemnify the person in respect of a liability of the person in respect of the representative; or

- (c) provides for a licensee from whom a person holds a proper authority to indemnify another such licensee in respect of a liability of the other licensee in respect of the person.
- (4) A person shall not make, offer to make, or invite another person to offer to make, in relation to a liability of the first-mentioned person in respect of a person, an agreement that is or would be void, in whole or in part, by virtue of subsection (2).

1188 Effect of Division

- (1) Where 2 or more persons are liable under this Division in respect of the same conduct or the same loss or damage, they are so liable jointly and severally.
- (2) Nothing in section 1183, 1184 or 1185:
 - (a) affects a liability arising otherwise than by virtue of this Division;
 - (b) notwithstanding paragraph (a) of this subsection, entitles a person to be compensated twice in respect of the same loss or damage; or
 - (c) makes a person guilty of an offence.

Division 5—Excluding persons from the futures industry

1189A Power to revoke, without a hearing, licence held by natural person

The Commission may, by written order, revoke a licence held by a natural person if the person:

- (a) becomes an insolvent under administration; or
- (b) is convicted of serious fraud; or
- (c) becomes incapable, through mental or physical incapacity, of managing his or her affairs; or
- (d) asks the Commission to revoke the licence.

1190 Power to revoke, without a hearing, licence held by body corporate

The Commission may, by written order, revoke a licence held by a body corporate if:

- (a) the body ceases to carry on business; or
- (b) the body becomes an externally-administered body corporate; or
- (c) the body asks the Commission to revoke the licence; or
- (d) a director, secretary or executive officer of the body contravenes this Law because:
 - (i) he or she does not hold a licence; or
 - (ii) a licence he or she holds is suspended.

1191 Power to revoke licence after a hearing

(1) Subject to section 1200, the Commission may, by written order, revoke a licence if:

- (a) the application for the licence contained matter that was false in a material particular or materially misleading;
- (b) there was an omission of material matter from the application for the licence;
- (c) the licensee contravenes a futures law;
- (d) the licensee contravenes a condition of the licence;

Section 1191

- (ea) the licensee is a natural person and the Commission has reason to believe that he or she is not of good fame and character;
 - (e) the licensee is a body corporate and the Commission is satisfied that the educational qualifications or experience of a person who:
 - (i) is an officer of the licensee; and
 - (ii) was not an officer of the licensee when the licence was granted;are or is inadequate having regard to the duties that the officer performs, or will perform, in connection with the holding of the licence;
 - (f) the licensee is a body corporate and the Commission is satisfied that:
 - (i) an officer of the licensee performs, or will perform, in connection with the holding of the licence, duties that are or include duties (in this paragraph called the *different duties*) other than those having regard to which the Commission was satisfied, before granting the licence, that the officer's educational qualifications and experience were adequate; and
 - (ii) the officer's educational qualifications or experience are or is inadequate having regard to the different duties;
 - (g) the licensee is a body corporate and:
 - (i) a licence held by a director, secretary or executive officer of the body is suspended or revoked; or
 - (ii) an order is made under section 1194 against such a director, secretary or executive officer;
 - (h) the Commission has reason to believe that the licensee has not performed efficiently, honestly and fairly the duties of a holder of a futures brokers licence or a futures advisers licence, as the case requires; or
 - (j) the Commission has reason to believe that the licensee will not perform those duties efficiently, honestly and fairly.
- (2) In determining whether or not it has reason to believe as mentioned in paragraph (1)(ea) or (j) in relation to a licensee, the Commission is not precluded from having regard to a matter that

Section 1192

arose before the time when the licence was granted unless the Commission was aware of the matter at that time.

1192 Power to suspend licence instead of revoking it

- (1) Subject to section 1200, where:
 - (a) section 1189A or 1190 empowers the Commission to revoke a licence otherwise than because the licensee has asked for the revocation; or
 - (b) the Commission is empowered by virtue of paragraph 1191(1)(c), (d), (e), (f), (g), (h) or (j) to revoke a licence; the Commission may, if it considers it desirable to do so, instead:
 - (c) by written order, suspend the licence for a specified period; or
 - (d) by written order, prohibit the licensee, either permanently or for a specified period, from doing specified acts, being acts that section 1142 or 1143 would prohibit the licensee from doing if the licensee did not hold the licence.
- (2) The Commission may at any time, by written order, vary or revoke an order in force under this section.
- (3) For the purposes of sections 1142, 1143, 1172 and 1173 a licensee shall be deemed not to hold the licence at any time during a period for which the licence is suspended.
- (4) Where an order in force under this section prohibits the licensee as mentioned in paragraph (1)(d):
 - (a) the licensee shall not contravene the order; and
 - (b) in relation to the doing by a person, as a representative of the licensee, of an act specified in the order, sections 1172 and 1173 apply, or apply during the period specified in the order, as the case requires, as if the licensee did not hold the licence.

1192A Power to make banning order where licence revoked or suspended

Subject to section 1200, where the Commission:

- (a) revokes under section 1189A; or

- (b) revokes because of paragraph 1191(1)(a), (b), (c), (d), (h) or (j); or
 - (c) revokes because of paragraph 1191(1)(ea); or
 - (d) suspends because of paragraph 1192(1)(a); or
 - (e) suspends because of paragraph 1192(1)(b);
- a licence held by a natural person, it may also make a banning order against the person.

1193 Power to make banning order against unlicensed person

Subject to section 1200, the Commission may make a banning order against a natural person (other than a licensee) if:

- (a) he or she becomes an insolvent under administration;
- (b) he or she is convicted of serious fraud;
- (c) he or she becomes incapable, through mental or physical incapacity, of managing his or her affairs;
- (d) he or she contravenes a futures law;
- (e) the Commission has reason to believe that he or she is not of good fame and character;
- (f) the Commission has reason to believe that he or she has not performed efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser; or
- (g) the Commission has reason to believe that he or she will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser.

1194 Nature of banning order

- (1) Where this Division empowers the Commission to make a banning order against a person, the Commission may, by written order, prohibit the person:
 - (a) in any case—permanently; or
 - (b) except where the Commission is empowered by virtue of paragraph 1193(e) to make the order—for a specified period; from doing an act as:
 - (c) a representative of a futures broker;

Section 1195

- (d) a representative of a futures adviser; or
 - (e) a representative of a futures broker or a futures adviser;
- whichever the order specifies.
- (2) The Commission shall not vary or revoke a banning order except under section 1195, 1196 or 1197.

1195 Exceptions to banning order

- (1) An order made against a person under subsection 1194(1) may include a provision that permits the person, subject to such conditions (if any) as are specified, to do, or to do in specified circumstances, specified acts that the order would otherwise prohibit the person from doing.
- (2) Subject to section 1200, the Commission may, at any time, by written order, vary a banning order against a person:
- (a) by adding a provision that permits the person as mentioned in subsection (1);
 - (b) by varying such a provision in relation to conditions, circumstances or acts specified in the provision;
 - (c) by omitting such a provision and substituting another such provision; or
 - (d) by omitting such a provision.

1196 Variation or revocation of banning order on application

- (1) Subject to sections 1197 and 1200, this section has effect where a person applies to the Commission to vary or revoke a banning order relating to the person.
- (2) If:
- (a) the person is not an insolvent under administration;
 - (b) the Commission has no reason to believe that the person is not of good fame and character; and
 - (c) the Commission has no reason to believe that the person will not perform efficiently, honestly and fairly the duties of:
 - (i) a representative of a futures broker; or
 - (ii) a representative of a futures adviser;
- the Commission shall, by written order:

- (d) if only one of subparagraphs (c)(i) and (ii) applies—vary the banning order so that it no longer prohibits the person from doing an act as a representative of a futures broker or of a futures adviser, as the case may be; or
 - (e) in any other case—revoke the banning order.
- (3) Otherwise, the Commission shall refuse the application.
 - (4) In determining whether or not it has reason to believe as mentioned in paragraph (2)(b) or (c), the Commission shall have regard to any conviction of the person, during the 10 years ending on the day of the application, of serious fraud.
 - (5) Nothing in subsection (4) limits the matters to which the Commission may have regard:
 - (a) in deciding on the application; or
 - (b) in connection with performing or exercising any other function or power under this Part.

1197 Revocation of banning order in certain cases

Where:

- (a) section 1196 requires the Commission to vary a banning order so that it no longer has a particular operation; and
 - (b) the order has no other operation;
- the Commission shall, by written order, instead revoke the banning order.

1198 Effect and publication of orders under this Division

- (1) An order by the Commission under this Division takes effect when served on the person to whom the order relates.
- (2) As soon as practicable on or after the day on which an order by the Commission under this Division takes effect, the Commission shall publish in the *Gazette* a notice that sets out a copy of:
 - (a) if the order is made under section 1189A, 1190, 1191, 1192 or 1194 or revokes a banning order—the first-mentioned order; or

Section 1199

- (b) if the order varies a banning order—the banning order as in force immediately after the first-mentioned order takes effect;
and states that the first-mentioned order, or the banning order as so in force, as the case may be, took effect on that day.
- (3) Where:
 - (a) but for this subsection, subsection (2) would require publication of a notice setting out a copy of a banning order as in force at a particular time;
 - (b) the banning order as so in force includes a provision that permits a person as mentioned in subsection 1195(1); and
 - (c) in the Commission’s opinion, the notice would be unreasonably long if it set out a copy of the whole of that provision;the notice may, instead of setting out a copy of that provision, set out a summary of the provision’s effect.

1199 Contravention of banning order

A person shall not contravene a banning order relating to the person.

1199A Banned person ineligible for licence

The Commission must not grant a futures brokers licence or a futures advisers licence to a person if a banning order prohibits the person (except as permitted by the order) from doing an act as a representative of a futures broker, or of a futures adviser, as the case may be.

1200 Opportunity for hearing

- (1) The Commission shall not:
 - (a) refuse an application for a licence on the ground, or grounds including the ground, that paragraph 1144A(2)(d), (e) or (f) or 1145(2)(e) or (f) does not apply in relation to the applicant;
 - (b) impose conditions on a licence;
 - (c) vary the conditions of a licence;

- (d) revoke or suspend a licence otherwise than by virtue of section 1189A or 1190 or paragraph 1192(1)(a);
 - (e) make, otherwise than by virtue of paragraph 1192A(a) or (d) or 1193(a), (b) or (c), an order under section 1194 against a person;
 - (f) make under subsection 1195(2) an order varying a banning order against a person; or
 - (g) refuse an application by a person under section 1196; unless the Commission complies with subsection (2) of this section.
- (2) The Commission shall give the applicant, licensee or person, as the case may be, an opportunity:
- (a) to appear at a hearing before the Commission that takes place in private; and
 - (b) to make submissions and give evidence to the Commission in relation to the matter.

1201 Disqualification by the Court

- (1) Where the Commission:
- (a) revokes under section 1189A, 1190 or 1191 a licence held by a person; or
 - (b) makes under section 1194 against a person an order that is to operate otherwise than only for a specified period;
- the Commission may apply to the Court for an order or orders under this section in relation to the person.
- (2) On an application under subsection (1), the Court may make one or more of the following:
- (a) an order disqualifying the person, permanently or for a specified period, from holding:
 - (i) a futures brokers licence;
 - (ii) a futures advisers licence; or
 - (iii) a futures brokers licence or a futures advisers licence; whichever the order specifies;
 - (b) an order prohibiting the person, permanently or for a specified period, from doing an act as:
 - (i) a representative of a futures broker;

Section 1202

- (ii) a representative of a futures adviser; or
 - (iii) a representative of a futures broker or of a futures adviser;
whichever the order specifies;
 - (c) such other order as it thinks fit;
or may refuse the application.
- (3) The Court may revoke or vary an order in force under subsection (2).

1202 Effect of orders under section 1201

- (1) The Commission shall not grant a futures brokers licence or a futures advisers licence to a person whom an order in force under section 1201 disqualifies from holding a futures brokers licence or a futures advisers licence, as the case may be.
- (2) A person shall not contravene an order that:
- (a) is of a kind referred to in paragraph 1201 (2) (b);
 - (b) is in force under section 1201; and
 - (c) relates to the person.

1203 Effect of previous orders under laws corresponding to section 1201

- (1) This section applies where, immediately before the commencement of section 1201, a person was, for the purposes of subsection 78(5) of the *Futures Industry Act 1986* or a previous corresponding law of this or any other jurisdiction, disqualified, or deemed to be disqualified, either permanently or for a period, because of an order of an Australian court, from holding:
- (a) a futures broker's licence;
 - (b) a futures adviser's licence;
 - (c) a futures broker's representatives licence; or
 - (d) a futures adviser's representatives licence;
- under that Act or a corresponding previous law.
- (2) As from that commencement, the order has effect for the purposes of this Law as if it were an order:

- (a) disqualifying the person, permanently or for that period, as the case may be, from holding:
 - (i) if paragraph (1)(a) applies—a futures brokers licence under this Act; or
 - (ii) if paragraph (1)(b) applies—a futures advisers licence under this Act; or
 - (b) prohibiting the person, permanently or for that period, as the case may be, from doing an act as:
 - (i) if paragraph (1)(c) applies—a representative of a futures broker; or
 - (ii) if paragraph (1)(d) applies—a representative of a futures adviser;
- as the case requires, being an order in force under subsection 1201(2).
- (3) The effect that the order has by force of subsection (2) is in addition to, and does not prejudice, its effect otherwise than by force of that subsection.

Part 8.4—Conduct of futures business

1204 Certain representations prohibited

- (1) A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.
- (2) A statement that a person is the holder of a licence is not a contravention of this section.

1205 Undesirable advertising

- (1) In this section:

publish, in relation to a statement, means:

- (a) insert the statement in a newspaper or periodical or cause it to be so inserted;
- (b) publicly exhibit the statement or cause it to be publicly exhibited; or
- (c) include the statement, or cause it to be included, in a document that, whether or not in response to a request, is sent or delivered to a person, or thrown or left upon premises in the occupation of a person.

broadcast, in relation to a statement, means broadcast the statement by wireless transmission or television or cause it to be so broadcast.

- (2) Where the Commission considers that, having regard to conduct that a person has engaged in, is engaging in, or proposes to engage in, it is in the public interest to do so, it may, by written order given to the person, prohibit the person from publishing or broadcasting statements about:
 - (a) futures contracts; or

Section 1205A

- (b) businesses carried on, or proposed to be carried on, by persons and involving dealing in futures contracts on behalf of other persons; or
 - (c) futures advice businesses or proposed futures advice businesses;
- unless the form and content of the statements have first been approved by the Commission.
- (3) An order under subsection (2) shall not be made unless the Commission has first given the person in relation to whom it proposes to make the order an opportunity to appear at a hearing before the Commission (being a hearing that takes place in private) and make submissions and give evidence to the Commission in relation to the matter.
 - (4) A person the subject of an order under subsection (2) shall comply with the order.
 - (5) For the purposes of this section, where a statement is published or broadcast and there is also published or broadcast in relation to the statement:
 - (a) the name or address of a person;
 - (b) the telephone or telex number of a person; or
 - (c) the post office or other delivery box number of a person;it shall be presumed, unless the contrary is proved, that the statement was published or broadcast by that person.

1205A Application of sections 1206 and 1207: exempt brokers

Neither of sections 1206 and 1207 applies in relation to an exempt broker, except in so far as the exempt broker carries on a futures broking business as a personal representative of a dead futures broker.

1206 Issue of contract notes

- (1) A futures broker shall, in respect of a transaction, being the acquisition or disposal of a futures contract, that is entered into by the broker on behalf of another person, give as soon as practicable:
 - (a) in a case where the transaction is not an operation by the broker on a discretionary account—to that other person; or

Section 1206

- (b) in a case where the transaction is an operation by the broker on a discretionary account—to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account, other than a person who agrees in the prescribed manner to waive the operation of this paragraph;
a contract note that complies with subsection (3), (4) or (5), as the case requires.
- (2) Subsection (1) does not require a futures broker to give a contract note to a person in respect of a transaction if the person was at the time of the transaction the holder of a futures brokers licence.
- (3) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of a futures contract (other than a futures option or an eligible exchange-traded option), shall include:
- (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;
 - (b) the name of the person to whom the broker gives the contract note;
 - (c) the day on which the transaction took place;
 - (d) a description of the futures contract sufficient to identify the nature of the transaction, including:
 - (i) in a case where the futures contract is a commodity agreement—a description of the commodity and a statement of the contract price;
 - (ii) in a case where the futures contract is an adjustment agreement:
 - (A) a description of the class of adjustment agreements in which the futures contract is included;
 - (B) a statement of the contract price; and
 - (C) if the transaction is the completion of the futures contract—the value or worth (as determined in accordance with the futures contract) of the futures contract at the time of that completion; and

- (iii) in a case where the transaction is a liquidating trade—
details of the liquidating trade and of the futures
contract that is intended to be closed out following the
entering into of the liquidating trade;
 - (e) the deposit paid or payable in respect of the transaction;
 - (f) the month and year for the performance or settlement of the
contract;
 - (g) in a case where the transaction took place on a futures
market of a futures exchange or of a recognised futures
exchange, or on an exempt futures market—a name or
abbreviation by which the futures exchange, recognised
futures exchange or exempt futures market, as the case may
be, is generally known;
 - (h) a statement of the amount of commission charged or the rate
(if any) at which the commission was charged; and
 - (j) a statement of the amounts (if any) of all stamp duties and
other duties and taxes payable in connection with the
transaction.
- (4) A contract note given by a futures broker under subsection (1) in
respect of a transaction, being the acquisition or disposal of a
futures option, shall include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h)
and (j);
 - (b) a description of the class of futures contracts in which is
included the futures contract to which the futures option
relates;
 - (c) the month and year for performance or settlement of the
futures contract to which the futures option relates;
 - (d) the date by which the purchaser of the futures option, in
order to exercise the futures option, must declare an
intention to exercise the futures option;
 - (e) a statement of the amount of the premium; and
 - (f) details of the price at which the purchaser of the futures
option has, by virtue of the futures option, an option or
Chapter 8 right to assume a bought position, or sold position,
as the case requires, in relation to the futures contract to
which the futures option relates.

Section 1207

- (5) A contract note given by a futures broker under subsection (1) in respect of a transaction, being the acquisition or disposal of an eligible exchange-traded option (in this subsection called the *option*), shall include:
- (a) the matters specified in paragraphs (3)(a), (b), (c), (g), (h) and (j);
 - (b) a description of the commodity or index to which the option relates;
 - (c) the date by which the purchaser of the option, in order to exercise the option, must declare an intention to exercise the option;
 - (d) a statement of the amount of the premium; and
 - (e) details of:
 - (i) in a case where the option relates to a commodity—the price at which the purchaser of the option has, by virtue of the option, an option or right to purchase, or sell, as the case requires, that commodity; or
 - (ii) in a case where the purchaser of the option has, by virtue of the option, an option or right to be paid an amount of money to be determined by reference to the amount by which a specified number is greater or less than the number of a specified index—the specified number and the manner in which that amount of money is to be determined.
- (6) A futures broker shall not include in a contract note given under subsection (1), as the name of a person with or on behalf of whom the broker has entered into the transaction, a name that the broker knows, or could reasonably be expected to know, is not a name by which that person is ordinarily known.
- (7) For the purposes of this section, a futures contract is included in the same class of futures contracts as another futures contract if, and only if, the first-mentioned futures contract is of the same kind as the other futures contract.

1207 Futures broker to furnish monthly statement to client

- (1) Where:

Section 1207

- (a) a futures broker has, at any time during a particular month, held money or property on account of a client; or
- (b) a futures broker has, before or during a particular month, acquired a futures contract on behalf of a client, and, as at the end of that month, the futures contract has not been disposed of;

the broker shall, within 7 days after the end of that month, send to the client a written statement setting out:

- (c) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;
 - (d) the opening cash balance for that month in the client's account;
 - (e) all deposits, credits, withdrawals and debits affecting the account during that month;
 - (f) the cash balance in the account at the end of that month;
 - (g) in relation to each futures contract that the broker has, before or during that month, acquired on behalf of the client and that, as at the end of that month, has not been disposed of, particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and
 - (h) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client.
- (2) Where a futures broker has, during a particular month, authority to operate on a discretionary account, the broker shall, within 7 days after the end of that month, send to the person, or to each person, as the case requires, who gave instructions to the broker authorising the broker to operate on the discretionary account a written statement setting out:
- (a) the name or style under which the broker carries on business as a futures broker and the address of the principal place at which the broker so carries on business;

Section 1208

- (b) the opening cash balance for that month in the account (in this subsection called the *account*) maintained by the broker in respect of the discretionary account;
- (c) all deposits, credits, withdrawals and debits affecting the account during that month;
- (d) the cash balance in the account at the end of that month;
- (e) in relation to each futures contract:
 - (i) that the broker has acquired before or during that month;
 - (ii) the acquisition of which was an operation by the broker on the discretionary account; and
 - (iii) that, as at the end of that month, has not been disposed of;
particulars of the futures contract, including the particulars required by virtue of paragraph 1206(3)(d), or paragraphs 1206(4)(b), (e) and (f) or (5)(b), (d) and (e), as the case requires, to be included in a contract note relating to the acquisition of the futures contract; and
- (f) details of each outstanding call for a deposit or margin in respect of a futures contract that the broker has acquired on behalf of the client and the acquisition of which was an operation by the broker on the discretionary account.

1208 Dealings by futures broker on own account

- (1) A futures broker shall maintain separately from other records such records as correctly record and explain dealings in futures contracts by the broker on the broker's own account including, but not limited to, records specifying:
 - (a) a description of each of those dealings together with the date on which and the time at which:
 - (i) the instructions (if any) for each of those dealings were received by the futures broker;
 - (ii) the instructions (if any) for each of those dealings were transmitted to the futures market on which the dealing was effected; and
 - (iii) the dealing was effected; and
 - (b) the source of the funds used for effecting those dealings.

- (2) A futures broker shall be deemed not to have maintained records in compliance with subsection (1) unless the entries in the records are made in writing in the English language or are made in such a manner as will enable them to be readily accessible and to be readily converted into writing in the English language.
- (3) A futures broker shall not knowingly take the other side of an order of a client of the broker in relation to a futures contract unless:
 - (a) the client has consented to the broker taking the other side of the order in relation to that futures contract; or
 - (b) in dealing in that futures contract on behalf of the client, the broker is to be taken, for the purposes of this Law, to be dealing in that futures contract on the broker's own account.
- (4) For the purposes of subsection (3), a futures broker takes the other side of an order of a client of the broker in relation to a futures contract where the broker:
 - (a) when dealing on the broker's own account, assumes a bought position or sold position in relation to the contract; and
 - (b) when dealing on the instructions of the client, assumes the opposite sold position or bought position in relation to the contract.

1209 Segregation of client money and property

- (1) In this section:

client, in relation to a futures broker, means a person on behalf of whom the broker deals, or from whom the broker accepts instructions to deal, in futures contracts, but does not include:

- (a) the broker;
- (b) if the broker is a body corporate—a director, or an officer, of the broker;
- (c) an employee of the broker;
- (d) if the broker is a body corporate—a body corporate that is related to the broker;
- (e) a person who is associated with, or who is a partner of, the broker; or

Section 1209

- (f) a body corporate in which the broker has, or the broker and partners of the broker together have, a controlling interest.

credit facility means a document evidencing the right of a person to obtain money on credit from another person, and, without limiting the generality of the foregoing, includes a letter of credit and a bank guarantee.

property includes credit facilities and securities.

relevant credit balance, in relation to a client of a futures broker, means the total of:

- (a) the amounts deposited by the broker in respect of the client in a clients' segregated account, or clients' segregated accounts, of the broker, less so much of those amounts as has been withdrawn from the account or accounts; and
- (b) the values of the items of property that:
 - (i) have, in respect of the client, been deposited by the broker in safe custody pursuant to subsection (3);
 - (ii) have not been withdrawn from safe custody; and
 - (iii) under the terms and conditions on which they were deposited with, or received by, the broker, are available to meet, or to provide security in connection with the meeting of, relevant liabilities of the client.

relevant liabilities, in relation to a client of a futures broker, means debts and liabilities of the client arising out of dealings in futures contracts effected by the broker on behalf of the client.

settling, in relation to a dealing in a futures contract, includes making delivery, or taking delivery, of a commodity to which the futures contract relates.

- (2) For the purposes of the definition of **relevant credit balance** in subsection (1), the value of an item of property at a particular time is:
 - (a) in the case of a credit facility—the amount of money that the person entitled to the right evidenced by the credit facility can, at that time or within a reasonable period after that time, obtain by virtue of that right; or

- (b) in any other case—the market value of the property as at the end of the last business day before that time.
- (3) Where, in connection with:
 - (a) dealings in futures contracts effected, whether in this jurisdiction or elsewhere or proposed to be effected, by a futures broker on behalf of a client of the broker; or
 - (b) instructions by a client of a futures broker to deal in futures contracts, whether in this jurisdiction or elsewhere;
money or property (other than property to which section 1214 applies) is deposited with the broker by the client, or is received by the broker for, or on behalf of, the client, the broker shall:
 - (c) in the case of money—deposit the money in a clients’ segregated account of the broker maintained in Australia or in the place where the money was deposited with, or received by, the broker; or
 - (d) in the case of property—deposit the property in safe custody, in Australia or in the place where the property was deposited with, or received by, the broker, in such a manner that the property is segregated from property other than property deposited by the broker in safe custody pursuant to this subsection;
on or before the next day after the money or property is deposited with, or received by, the broker that is a day on which the money or property can be deposited as first mentioned in paragraph (c) or (d).
- (4) Without limiting the generality of subsection (3), where, in connection with dealings in futures contracts effected, whether in this jurisdiction or elsewhere, by a futures broker, the broker receives from a person an amount of money some or all of which is attributable to dealings in futures contracts so effected on behalf of clients of the broker, the broker shall, on the next day on which the amount can be so deposited, deposit the amount in a clients’ segregated account of the broker maintained in Australia or in the place where the broker receives the amount.
- (4A) A clients’ segregated account of a futures broker must be designated as a clients’ segregated account, unless it is maintained outside Australia and the law in force in the place where it is maintained requires it to be designated in some other way.

Section 1209

- (4B) If:
- (a) a clients' segregated account of a futures broker is required by subsection (4A) to be designated as a clients' segregated account; and
 - (b) the account is designated in a way that complies substantially, but not completely, with that requirement; subsection (4A) is taken to be complied with in relation to the account.
- (5) Where, pursuant to this section, a futures broker deposits money in respect of a client in a clients' segregated account of the broker, the broker shall not withdraw any of the money except for the purpose of:
- (a) making a payment to, or in accordance with the written direction of, a person entitled to the money;
 - (b) making a payment for, or in connection with, the entering into, margining, guaranteeing, securing, transferring, adjusting or settling of dealings in futures contracts effected by the broker on behalf of clients only;
 - (c) defraying brokerage and other proper charges incurred in respect of dealings in futures contracts effected by the broker on behalf of the client;
 - (d) investing it:
 - (i) in any manner in which trustees are for the time being authorised by law to invest trust funds;
 - (ii) on deposit with an eligible money market dealer;
 - (iii) on deposit at interest with:
 - (A) an Australian ADI; or
 - (B) an approved foreign bank in relation to the broker;
 - (iv) on deposit with a clearing house for a futures exchange; or
 - (v) in the purchase of cash management trust interests;
 - (e) paying to the broker the amount of a fee that the broker may charge, or an amount to which the broker is entitled, under an agreement with the client made under subsection (7); or
 - (f) making a payment that is otherwise authorised by law;
- or as permitted by subsection (10).

- (5A) If, under subsection (5), a broker (the *paying broker*) withdraws money from a clients' segregated account and pays it to another broker (the *receiving broker*):
- (a) the paying broker must ensure that the receiving broker is notified, at the same time as the payment is made or as close to that time as is practicable, of the fact that the money has been withdrawn from a clients' segregated account of the paying broker and should be paid into a clients' segregated account of the receiving broker; and
 - (b) on or before the next day after the receiving broker receives the payment, the receiving broker must pay the money into a clients' segregated account of the receiving broker.
- (5B) A notification under paragraph (5A)(a) may be in writing or in an electronic or other form and may convey its message by express words, or by a code or some other means understood by the brokers concerned.
- (6) A futures broker must not deal with property deposited by the broker in safe custody under subsection (3) except:
- (a) in accordance with the terms and conditions on which it was deposited with, or received by, the broker; or
 - (b) for the purpose of meeting obligations incurred by the broker in connection with margining, guaranteeing, securing, transferring, adjusting or settling dealings in futures contracts effected by the broker on behalf of clients only.
- (7) A futures broker who invests as mentioned in paragraph (5)(d) money that was, in respect of a client of the broker, deposited by the broker under subsection (3):
- (a) may charge such fee (if any) for so investing the money; and
 - (b) is entitled to so much (if any) of the return on the money so invested;
- as the broker and the client agree in writing.
- (8) A futures broker must not invest an amount pursuant to paragraph (5)(d) by depositing it with a person for that person to invest unless:
- (a) the broker:

Section 1209

- (i) has informed the person that the amount has been withdrawn from a clients' segregated account of the broker and is money to which clients of the broker are entitled; and
 - (ii) has obtained from the person a written statement that is signed by the person, sets out the amount and acknowledges that the broker has informed the person as mentioned in subparagraph (i); or
 - (b) the investment is made by the broker paying the amount into an account maintained with the person in relation to which the following conditions are satisfied:
 - (i) the account is maintained for the sole purpose of having amounts invested in it pursuant to paragraph (5)(d);
 - (ii) the broker has informed the person that amounts paid into the account will be amounts withdrawn from a clients' segregated account of the broker and will be moneys to which clients of the broker are entitled;
 - (iii) the broker has obtained from the person a written statement signed by the person that acknowledges that the broker has informed the person as mentioned in subparagraph (ii).
- (9) Where, at a particular time, the total amount of the relevant liabilities of a client of a futures broker exceeds the relevant credit balance of the client, the broker may, in respect of the client, deposit in a clients' segregated account of the broker an amount of money not greater than the amount of the excess, and, if the broker does so, the amount so deposited shall, subject to subsection (10), be deemed to be money to which the client is entitled.
- (10) Where:
- (a) a futures broker has, in respect of a client of the broker, deposited an amount pursuant to subsection (9) in a clients' segregated account of the broker; and
 - (b) the relevant credit balance of the client exceeds by a particular amount the total amount of the relevant liabilities of the client;
- the broker may withdraw from the account so much of the amount referred to in paragraph (a) as does not exceed the amount first referred to in paragraph (b).

Section 1209

- (11) A futures broker shall keep in relation to the clients' segregated account, or clients' segregated accounts, of the broker financial records that:
- (a) are separate from any other financial records of the broker;
 - (b) record separately in respect of each client of the broker particulars of the amounts deposited in, and the amounts withdrawn from, the account or accounts in respect of the client; and
 - (c) record, separately from the particulars referred to in paragraph (b):
 - (i) particulars (including particulars of withdrawals) of so much of the amounts deposited as required by subsection (4) in the account or accounts as was not attributable to dealings in futures contracts effected by the broker on behalf of clients of the broker;
 - (ii) particulars of all amounts deposited in the account or accounts pursuant to subsection (9); and
 - (iii) particulars of all amounts withdrawn from the account or accounts pursuant to subsection (10).
- (12) A futures broker shall keep records that:
- (a) relate to deposits of property in safe custody by the broker pursuant to subsection (3); and
 - (b) record separately in respect of each client of the broker particulars of the property deposited in respect of the client.
- (13) Section 1213 applies, so far as it is capable of application, in relation to financial records, and other records, that are required by subsections (11) and (12), respectively, of this section to be kept by a futures broker, and so applies as if those accounting records and other records were financial records required by that section to be kept by the broker.
- (14) Subject to subsections (15) and (16), none of the following:
- (a) money deposited by a futures broker pursuant to this section in a clients' segregated account of the broker;
 - (b) property in which money deposited by a futures broker as mentioned in paragraph (a) of this subsection has been invested pursuant to paragraph (5)(d);

Section 1209

- (c) property deposited by a futures broker in safe custody pursuant to subsection (3);
is available for the payment of a debt or liability of the broker or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (15) Nothing in subsection (14) affects the right of a client of a futures broker to recover money or property to which the client is entitled.
- (16) Where a futures broker is entitled to withdraw money from a clients' segregated account of the broker for the purpose of making a payment to the broker, subsection (14) does not apply in relation to that money.
- (17) Where a futures broker invests money pursuant to paragraph (5)(d) by depositing it with a person for the person to invest, neither that money, nor any property in which the person invests any of that money, is available for the payment of a debt or liability of the person or is liable to be attached, or taken in execution, under the order or process of a court at the instance of a person suing in respect of such a debt or liability.
- (18) Nothing in this section affects a claim or lien that a futures broker has, under an agreement, under an Australian law or otherwise, against or on:
 - (a) money deposited by the broker pursuant to this section in a clients' segregated account of the broker;
 - (b) property in which such money has been invested pursuant to paragraph (5)(d); or
 - (c) property deposited by the broker in safe custody pursuant to subsection (3).
- (19) A futures broker must not pay an amount into a client's segregated account of the broker except as required or authorised by this section or the regulations.

1210 Futures broker to give certain information to prospective clients

A futures broker shall, before accepting a person as a client of the broker, give to the person:

- (a) a document that:
 - (i) explains the nature of futures contracts;
 - (ii) explains the nature of the obligations assumed by a person who instructs a futures broker to enter into a futures contract;
 - (iii) sets out a risk disclosure statement in the prescribed form; and
 - (iv) sets out the specifications, and details of the essential terms, of each kind of futures contract in which the broker deals on behalf of clients; and
- (b) a copy of each agreement into which the broker proposes, if the broker agrees to accept instructions from the person in relation to dealings in futures contracts, to require the person to enter.

Part 8.5—Financial statements and audit

1211 Interpretation

In this Part, unless the contrary intention appears, a reference to a book, futures contract or business of or in relation to a futures broker who carries on business in partnership is a reference to such a book, futures contract or business of or in relation to the partnership.

1212 Application of Part

- (1) This Part applies in relation to a futures broker in relation to his, her or its business of dealing in futures contracts, whether carried on in this jurisdiction or elsewhere.
- (2) This Part does not affect the operation of Chapter 2M in relation to a company that holds a futures brokers licence or in relation to a business of dealing in futures contracts that such a company carries on.

1213 Accounts to be kept by futures brokers

- (1) A futures broker shall:
 - (a) keep such financial records as correctly record and explain the transactions and financial position of the business of dealing in futures contracts carried on by the broker;
 - (b) keep financial records in such a manner as will enable true and fair profit and loss statements and balance sheets to be prepared from time to time; and
 - (c) keep financial records in such a manner as will enable profit and loss statements and balance sheets of the business of dealing in futures contracts carried on by the broker to be conveniently and properly audited.
- (2) Without limiting the generality of subsection (1), a futures broker shall be deemed not to have complied with that subsection in relation to records if those records:

- (a) are not kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;
- (b) are not kept in sufficient detail to show particulars of:
 - (i) all money received or paid by the broker, including money paid to, or disbursed from, an account of the kind referred to in paragraph 1209(3)(c);
 - (ii) all dealings in futures contracts made by the broker, the charges and credits arising from them, and the name of the person on whose behalf each dealing was effected;
 - (iii) all income received from commissions, interest and other sources, and all expenses, commissions and interest paid, by the broker;
 - (iv) all the assets and liabilities (including contingent liabilities) of the broker;
 - (v) all futures contracts to which the broker has become a party as a result of trading on the broker's own account;
 - (vi) all futures contracts dealt with by the broker pursuant to instructions given by another person, showing who gave the instructions;
 - (vii) all property that is property of the broker and in respect of which the business rules of a futures exchange authorise the making of a futures contract in the futures market of the futures exchange, showing by whom the property is held and, if held by some other person, whether or not the property is so held as security against loans or advances; and
 - (viii) all such property that is not property of the broker and for which the broker or any nominee controlled by the broker is accountable, showing by whom, and for whom, the property is held and the extent to which the property is either held for safe custody or deposited with a third party as security for loans or advances made to the broker;
- (c) are not kept in sufficient detail to show separately particulars of every transaction by the broker;
- (d) do not specify the day on which or the period during which each transaction by the broker took place; or

Section 1213

- (e) do not contain copies of acknowledgments of the receipts of property received by the broker from clients.
- (3) Without affecting the operation of subsections (1) and (2), a futures broker shall be deemed not to have complied with subsection (1) in relation to records if, in respect of a discretionary account on which the broker operates, those records are not kept in sufficient detail to show the particulars that the broker is required to furnish to clients in order to comply with subsection 1207(2).
- (4) Without affecting the operation of subsection (2) or (3), a futures broker shall keep records in sufficient detail to show separately particulars of all transactions by the broker:
 - (a) with, on behalf of, or on the account of, clients of the broker, excluding, in a case where the broker carries on business in partnership, the partners in the firm;
 - (b) in a case where the broker carries on business in partnership—on the broker's own account or with, on behalf of, or on the account of, the partners in the firm;
 - (c) in a case where the broker does not carry on business in partnership—on the broker's own account;
 - (d) with, on behalf of, or on the account of, other futures brokers;
 - (e) with, on behalf of, or on the account of, representatives of the broker; and
 - (f) with, on behalf of, or on the account of, employees of the broker.
- (5) An entry in the financial and other records of a futures broker required to be kept in accordance with this section, and any matter recorded by a futures exchange in relation to a member pursuant to subsection 1270(3) shall be deemed to have been made by, or with the authority of, the broker or member.
- (6) Where a record required by this section to be kept is not kept in writing in the English language, the futures broker shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.

- (7) Notwithstanding any other provision of this section, a futures broker shall not be deemed to have failed to keep a record referred to in subsection (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in futures contracts that is carried on by the broker.
- (8) If financial records or other records are kept by a futures broker at a place outside Australia, the broker shall cause to be sent to and kept at a place in Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss statements and balance-sheets to be prepared.
- (9) If any financial records of a futures broker are kept at a place outside Australia, the broker shall, if required by the Commission to produce those records at a place in Australia, comply with the requirement not later than 28 days after the requirement is made.

1214 Property in custody of futures broker

- (1) Where a futures broker receives for safe custody property:
 - (a) that is the property of another person (in this section called the *client*);
 - (b) that is, or is to be, delivered in accordance with a futures contract; and
 - (c) for which the broker or a nominee of the broker is accountable;the broker shall forthwith:
 - (d) if the client requests that the property be deposited in safe custody with the broker's bankers—cause it to be so deposited or notify the client of any failure to comply with the request, whether or not caused by a refusal by the bankers to comply with the request; or
 - (e) if the client does not make, or the bankers refuse to comply with, such a request and the business rules of the futures exchange that maintained or provided the futures market on which the contract was made enable the property to be deposited in safe custody—cause the property to be so deposited in accordance with those rules.

Section 1215

- (2) A futures broker shall not deposit as security for a loan or advance made to the broker property of a kind referred to in subsection (1) unless an amount is owed to the broker by the client in connection with a transaction entered into on the instructions of the client and the broker:
- (a) gives a written notice to the client identifying the property and stating that the broker intends to deposit the property as security for a loan or advance to the broker; and
 - (b) deposits the property as security for a loan or advance to the broker, being a loan or advance of an amount that does not exceed the amount owed to the broker by the client on the day of the receipt by the broker of the property.
- (3) Where:
- (a) a futures broker has given a notice to a person as mentioned in subsection (2) and has deposited the property referred to in the notice as security for a loan or advance; and
 - (b) the person:
 - (i) has paid to the broker the amount owed by the person to the broker at the time the property was so deposited; and
 - (ii) requests the broker to withdraw the property from deposit;
- the broker shall, as soon as practicable after the request, withdraw the property from deposit, but nothing in this subsection prevents the broker from redepositing the property, as permitted by subsection (2), as a security for a loan or advance.
- (4) Where a futures broker deposits as security for a loan or advance made to the broker property of a kind referred to in subsection (1), the broker shall, at the end of the period of 3 months after the day on which the property is deposited, and at the end of each subsequent period of 3 months if the property is still on deposit, send to the person whose property it is written notice to that effect.

1215 Appointment of auditor by futures broker

- (1) Within 1 month after becoming the holder of a futures brokers licence, a futures broker (other than an Australian ADI) shall appoint a person or persons, a firm or firms, or a person or persons

and a firm or firms, as auditor or auditors to audit the broker's financial statements.

(2) Subject to this section, a person shall not:

- (a) consent to be appointed as auditor of a futures broker; or
- (b) act as auditor of a futures broker; or
- (c) prepare a report required by this Law to be prepared by an auditor of a futures broker;

if:

- (d) the person is not a registered company auditor; or
- (e) the person, or a body corporate in which the person has a substantial holding, is indebted in an amount exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate related to the futures broker; or
- (f) the person is a partner or employee of the futures broker; or
- (g) in a case where the futures broker is a body corporate—the person is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body.

(3) Subject to this section, a firm shall not:

- (a) consent to be appointed as an auditor of a futures broker; or
- (b) act as auditor of a futures broker; or
- (c) prepare a report required by this Law to be prepared by an auditor of a futures broker;

unless:

- (d) at least one member of the firm is a registered company auditor who is ordinarily resident in Australia; and
- (e) where the business name under which the firm is carrying on business is not registered under a law of a State or Territory relating to the registration of business names—there has been lodged a return in the prescribed form showing, in relation to each member of the firm, the member's full name and address as at the time when the firm so consents, acts or prepares a report; and

Section 1215

- (f) no member of the firm, and no body corporate in which any member of the firm has a substantial holding, is indebted in an amount not exceeding \$5,000 to the futures broker or, if the futures broker is a body corporate, to a body corporate that is related to the futures broker; and
 - (ga) no member of the firm is a partner or employee of the futures broker; and
 - (g) in a case where the futures broker is a body corporate—no member of the firm is:
 - (i) an officer of the body; or
 - (ii) a partner, employer or employee of an officer of the body; or
 - (iii) a partner or employee of an employee of an officer of the body; and
 - (h) in a case where the futures broker is a body corporate—no officer of the body receives any remuneration from the firm for acting as a consultant to it on accounting or auditing matters.
- (4) For the purposes of paragraphs (2)(e) and (3)(f), disregard a debt owed by a natural person to a body corporate if:
- (a) the body corporate is:
 - (i) an Australian ADI; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.
- (5) For the purposes of subsections (2) and (3), a person shall be deemed to be an officer of a body corporate if:
- (a) the person is an officer of a related body corporate; or
 - (b) except where the Commission, if it thinks fit in the circumstances of the case, directs that this paragraph shall not apply in relation to the person—the person has, at any time within the immediately preceding period of 12 months,

Section 1215

been an officer or promoter of the body corporate or of a related body corporate.

- (6) For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of being or having been the liquidator of the body corporate or of a related body corporate.
- (7) For the purposes of this section, a person shall not be taken to be an officer of a body corporate by reason only of having been appointed as an auditor of that body corporate or of a related body corporate or, for any purpose relating to taxation, a public officer of a body corporate or by reason only of being or having been authorised to accept on behalf of the body corporate or a related body corporate service of process or any notices required to be served on the body corporate or related body corporate.
- (8) The appointment of a firm as auditor of a futures broker shall be deemed to be an appointment of all persons who are members of the firm and are registered company auditors, whether resident in Australia or not, at the date of the appointment.
- (9) Where a firm that has been appointed as auditor of a futures broker is reconstituted by reason of the death, retirement or withdrawal of a member or members or by reason of the admission of a new member or new members, or both:
 - (a) a person who was deemed under subsection (8) to be an auditor of the broker and who has so retired or withdrawn from the firm as previously constituted shall be deemed to have resigned as auditor of the company as from the day of the person's retirement or withdrawal but, unless that person was the only member of the firm who was a registered company auditor and, after the retirement or withdrawal of that person, there is no member of the firm who is a registered company auditor, section 1216 does not apply to that resignation;
 - (b) a person who is a registered company auditor and who is so admitted to the firm shall be deemed to have been appointed as an auditor of the broker as from the day of admission; and

Section 1215

- (c) the reconstitution of the firm does not affect the appointment of the continuing members of the firm who are registered company auditors as auditors of the broker;
but nothing in this subsection affects the operation of subsection (3).
- (10) Except as provided by subsection (9), the appointment of the members of a firm as auditors of a futures broker that is deemed by subsection (8) to have been made by reason of the appointment of the firm as auditor of the broker is not affected by the dissolution of the firm.
- (11) A report or notice that purports to be made or given by a firm appointed as auditor of a futures broker shall not be taken to be duly made or given unless it is signed, in the firm name and in the name of the member concerned, by a member of the firm who is a registered company auditor.
- (12) Where a person or firm is appointed as an auditor under subsection (1) (not being an appointment that is deemed to be made by virtue of subsection (9)) or under subsection (16), the futures broker shall, within 14 days after the appointment, lodge with the Commission a notice in writing stating that the broker has made the appointment and specifying the name of the person or firm.
- (13) Without limiting the generality of section 1311, if, in contravention of this section, a firm consents to be appointed, or acts as, an auditor of a futures broker or prepares a report required by this Law to be prepared by an auditor of a futures broker, each member of the firm is guilty of an offence.
- (14) A person shall not:
- (a) if the person has been appointed auditor of a futures broker—knowingly disqualify himself or herself while the appointment continues from acting as auditor of the broker;
or
 - (b) if the person is a member of a firm that has been appointed auditor of a futures broker—knowingly disqualify the firm while the appointment continues from acting as auditor of the broker.

Section 1216

- (15) An auditor of a futures broker holds office until death, until removal or resignation from office in accordance with section 1216 or until becoming prohibited from acting as auditor by reason of subsection (2) or (3).
- (16) Within 14 days after a vacancy occurs in the office of an auditor of a futures broker, if there is no surviving or continuing auditor of the broker, the broker shall appoint a person or persons, a firm or firms or a person or persons and a firm or firms to fill the vacancy.
- (17) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.
- (18) A futures broker shall not appoint a person or firm as auditor of the broker unless that person or firm has, before the appointment, consented by notice in writing given to the broker to act as auditor and has not withdrawn the consent by notice in writing given to the broker.
- (19) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 327 applies.

1216 Removal and resignation of auditors

- (1) A futures broker may, with the consent of the Commission, remove an auditor of the broker from office.
- (2) An auditor of a futures broker may, by notice in writing given to the broker, resign as auditor of the broker if:
 - (a) the auditor has, by notice in writing given to the Commission, applied for consent to the resignation and, at or about the same time as the notice was given to the Commission, notified the broker in writing of the application to the Commission; and
 - (b) the auditor has received the consent of the Commission.
- (3) The Commission shall, as soon as practicable after receiving a notice from an auditor under subsection (2), notify the auditor and the futures broker whether it consents to the resignation of the auditor.

Section 1217

- (4) A statement made by an auditor in an application to the Commission under subsection (2) or in answer to an inquiry by the Commission relating to the reasons for the application:
- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor other than proceedings for an offence against section 1308; and
 - (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 1308), action or suit against the auditor;
- and a certificate by the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.
- (5) Subject to subsection (6), the resignation of an auditor takes effect:
- (a) on the date (if any) specified for the purpose in the notice of resignation;
 - (b) on the date on which the Commission gives its consent to the resignation; or
 - (c) on the date (if any) fixed by the Commission for the purpose; whichever last occurs.
- (6) Where, on the retirement or withdrawal from a firm of a member, the firm will no longer be capable, by reason of the provisions of paragraph 1215(3)(d), of acting as auditor of a futures broker, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the broker, be deemed to be the auditor of the broker until the member obtains the consent of the Commission to the retirement or withdrawal.
- (7) This section does not apply in relation to a body corporate (except a proprietary company) in relation to which section 329 applies.

1217 Fees and expenses of auditors

The reasonable fees and expenses of an auditor of a futures broker are payable by the broker.

1218 Futures brokers' accounts

- (1) In this section:

financial year, in relation to a futures broker, means:

- (a) if the broker is a natural person—a period of 12 months ending on 30 June in a year; or
- (b) if the broker is a body corporate—a period that is a financial year of the body corporate because of the definition of ***financial year*** in section 9.

prescribed day, in relation to a financial year of a futures broker, means the day that is:

- (a) if the broker is a natural person—2 months; or
 - (b) if the broker is a body corporate—3 months;
- after the end of that financial year or, if an extension is approved under subsection (3), the day on which the extended period ends.
- (2) A futures broker (other than an Australian ADI) shall, in respect of each financial year, other than a financial year that ended before the date of commencement of this Law or ended on or after that date but before the date on which the broker commenced to carry on business as a futures broker, prepare a true and fair profit and loss statement and balance sheet on the basis of such accounting principles (if any) and containing such information and matters as are prescribed for the purposes of this subsection and lodge them with the Commission before the prescribed day for that financial year, together with an auditor's report containing such information and matters as are prescribed for the purposes of this subsection and such other information and matters as the auditor thinks fit to include in the report.
 - (3) The Commission may, on application made by a futures broker and the auditor of the broker before the end of the period referred to in paragraph (a) or (b), as the case requires, of the definition of ***prescribed day*** in subsection (1) or, if that period has been extended pursuant to an approval or approvals previously given under this subsection, before the end of the period as so extended, approve an extension or further extension of the period, and such an approval may be given subject to such conditions (if any) as the Commission imposes.
 - (4) Where an approval under subsection (3) in relation to a futures broker is given subject to conditions, the broker shall comply with those conditions.

Section 1219

1219 Auditor's right of access to records, information etc.

- (1) An auditor of a futures broker has a right of access at all reasonable times to the financial records and other records, including any register, of the broker, and is entitled to require from the broker or, in the case of a futures broker that is a body corporate, from any executive officer of the broker, such information and explanations as the auditor desires for the purposes of audit.
- (2) A futures broker, or an executive officer of a futures broker that is a body corporate, shall not, without lawful excuse:
 - (a) refuse or fail to allow an auditor of the broker access, in accordance with subsection (1), to financial records or other records, including any register, of the broker;
 - (b) refuse or fail to give information, or an explanation, as and when required under subsection (1); or
 - (c) otherwise hinder, obstruct or delay an auditor of the broker in the performance or exercise of the auditor's duties or powers.

1220 Auditor to report to Commission in certain cases

- (1) Where an auditor, in the performance of the duties of auditor of a futures broker, becomes aware of a prescribed matter, the auditor shall, within 7 days after becoming aware of that matter, lodge a written report on the matter and send a copy of the report to:
 - (a) the broker;
 - (b) each futures exchange of which the broker is a member and to each clearing house (if any) for that futures exchange; and
 - (c) each futures association of which the broker is a member, unless the futures association is also a futures exchange of which the broker is a member.
- (2) In this section, *prescribed matter* means a matter that, in the opinion of the auditor:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the futures broker to meet the broker's obligations as a broker;

- (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214; or
- (c) constitutes or may constitute a contravention of a condition of a licence held by the futures broker.

1221 Certain matters to be reported to Commission

- (1) Where, in relation to a futures broker who is a member of a futures exchange, the futures exchange becomes aware of a prescribed matter, the futures exchange shall, as soon as practicable after becoming aware of the matter, lodge a written report on the matter and send a copy of the report to the broker.
- (2) Subsection (1) applies:
 - (a) in relation to a clearing house for a futures exchange and a member of the clearing house; and
 - (b) in relation to a futures association and a member of the futures association (unless the futures association is also a futures exchange);in the same manner as it applies in relation to a futures exchange and a member of the futures exchange.
- (3) In this section, *prescribed matter*, in relation to a futures broker, means a matter that, in the opinion of the futures exchange, clearing house or futures association concerned:
 - (a) has adversely affected, is adversely affecting, or may adversely affect, the ability of the broker to meet the broker's obligations as a broker;
 - (b) constitutes or may constitute a contravention of section 1209, 1213 or 1214;
 - (c) constitutes or may constitute a contravention of a condition of a licence held by the broker; or
 - (d) constitutes a failure to make, in accordance with Part 8.6, contributions to a fidelity fund.

1222 Defamation

- (1) An auditor of a futures broker has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties of an auditor; or

Section 1223

- (b) the lodging of a report, or the sending of a report under section 1220 to the futures broker, a futures exchange, a clearing house for a futures exchange, or a futures association.
- (2) A futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, has qualified privilege in respect of:
 - (a) any statement made, orally or in writing, in the course of performing the duties imposed by section 1221; or
 - (b) the lodging of any report with the Commission, or the sending of any report to a futures broker, under section 1221.
- (3) A person has qualified privilege in respect of the publishing of:
 - (a) a statement made by an auditor of a futures broker as mentioned in paragraph (1)(a), or by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer, as mentioned in paragraph (2)(a);
 - (b) a document prepared by an auditor of a futures broker in the course of performing the duties of an auditor;
 - (c) a document prepared by a futures exchange, a clearing house for a futures exchange, a futures association, or an officer of a futures exchange, of a clearing house for a futures exchange, or of a futures association, in the course of performing the duties imposed by section 1221; or
 - (d) a document required by or under this Chapter to be lodged, whether or not the document has been lodged.

1223 This Part not to affect right of futures exchange or futures association to impose obligations etc. on members

Nothing in this Part prevents a futures exchange or futures association imposing on members of that futures exchange or futures association any obligations or requirements (not being obligations or requirements inconsistent with this Law) that the futures exchange or futures association thinks fit with respect to:

- (a) the audit of financial statements (including the audit of financial statements by an auditor appointed by the futures exchange or futures association);

- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

1224 Power of Court to restrain dealings with futures broker's bank accounts

- (1) Where the Court is satisfied that:
- (a) there are reasonable grounds for believing that:
 - (i) there is a deficiency in an account that is, or has at any time been, a clients' segregated account of a person; and
 - (ii) the person was, when the deficiency occurred, a futures broker or a member of a futures organisation;
 - (b) there has been, at a time when a person was a futures broker or a member of a futures organisation, undue delay, or unreasonable refusal, on the person's part in paying, applying or accounting for money as required by this Chapter or a corresponding previous law;
 - (c) a person has, at a time when the person was a futures broker or a member of a futures organisation, failed to pay money into a clients' segregated account of the person as required by this Chapter or a corresponding previous law; or
 - (d) a person who is, or has at any time been, a futures broker or a member of a futures organisation, is carrying on, or last carried on, as the case requires, a futures broking business otherwise than in partnership and:
 - (i) in any case—the last futures brokers licence held by the person has been revoked or suspended; or
 - (ii) in any case—the person no longer carries on a futures broking business; or
 - (iii) if the person is a natural person—the person has died, or is incapable, because of physical or mental incapacity, of managing his or her affairs;

the Court may by order restrain dealings in respect of specified bank accounts that the person holds or maintains (whether in Australia or elsewhere), subject to such terms and conditions as the Court imposes.

Section 1225

- (2) An order under subsection (1) may only be made on an application by the Commission or by the futures organisation (if any) concerned.
- (4) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (5) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission, as a condition of granting an interim order under subsection (4), to give any undertaking as to damages.

1225 Duty of banker or body corporate to make full disclosure

Where an order made under section 1224 is directed to a banker or a body corporate, the banker or body corporate shall:

- (a) disclose to the applicant for the order every account kept by the bank or body corporate in the name of the person to whom the order relates, and any account that the banker or body corporate reasonably suspects is held or kept by the bank or body corporate for the benefit of that person; and
- (b) permit the applicant for the order to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person or the like books in the possession of the body corporate.

1226 Power of Court to make further orders and give directions

Where an order is made under section 1224, the Court may, on the application of the Commission, a futures organisation or a person affected by the order, make further orders:

- (a) dealing with such ancillary matters as the Court considers necessary or desirable;
- (b) directing that all or any of the money in an account affected by an order so made be paid by the bank or body corporate to

- the Commission or a person nominated by the Commission, on such terms and conditions as the Court thinks fit; and
- (c) discharging or varying the order.

1227 Power of Court to make order relating to payment of money

- (1) An order made under section 1226 may include directions to the person to whom the money is paid directing that that person:
- (a) shall cause the money to be paid into a trust account;
 - (b) is authorised to prepare a scheme for distributing the money to persons who claim, during a period of 6 months after the Commission or that other person receives the money, to be entitled to the money and satisfy the Commission or that other person that they are so entitled; or
 - (c) where the money received is insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the money among the claimants in proportion to their proved claims and show in the scheme how the money is so apportioned.
- (2) Where a person prepares a scheme for distribution of money pursuant to subsection (1), the person shall apply to the Court for approval of the scheme and for directions with respect to it.
- (3) The Court may give such directions as to the money held in a trust account pursuant to subsection (1), as to the persons to whom and in what amounts the whole or any portion of that money shall be paid, and as to the payment of the balance of the money (if any) remaining in the account, as the Court thinks fit.

Part 8.6—Fidelity funds

1228 Establishment of fidelity funds

- (1) A futures organisation shall keep a fidelity fund, and the board of the futures organisation shall administer the fidelity fund.
- (2) The assets of a fidelity fund of a futures organisation are the property of the futures organisation, but shall be kept separately from all other property of the futures organisation and shall be held in trust for the purposes set out in this Part.
- (3) A futures organisation that, immediately before the commencement of this section, kept a fidelity fund under a previous law corresponding to this Part shall, after that commencement, keep that fidelity fund in accordance with, and for the purposes of, this Part.

1229 Money constituting fidelity fund

- (1) The fidelity fund of a futures organisation shall consist of:
 - (a) in the case of a fidelity fund established before the commencement of this Part—the money, and other property, of which the fund consisted immediately before that commencement;
 - (b) in the case of a fidelity fund established after the commencement of this Part—any amount that is paid to the credit of the fund by the futures organisation on the establishment of the fund;
 - (c) money paid to the futures organisation, in accordance with this Part or the business rules of the futures organisation, by contributing members of the futures organisation;
 - (d) the interests and profits from time to time accruing from the investment of the fidelity fund;
 - (e) money paid into the fidelity fund by the futures organisation;
 - (f) money recovered by or on behalf of the futures organisation in the exercise of a right of action conferred by this Part;

- (g) money paid by an insurer pursuant to a contract of insurance or indemnity entered into by the futures organisation under section 1249; and
 - (h) all other money lawfully paid into the fund.
- (2) Where a futures organisation has, under paragraph (1)(b) or a corresponding previous law, paid an amount to the credit of its fidelity fund:
- (a) the Minister may approve in writing, on such conditions (if any) as are specified in the approval, the repayment of the whole, or a specified part, of the amount from the fidelity fund to the general funds of the futures organisation; and
 - (b) if the Minister does so, the whole, or the specified part, as the case may be, of the amount may, in accordance with the conditions (if any) so specified, be so repaid.

1230 Fund to be kept in separate ADI account

The money in a fidelity fund shall, until invested or applied in accordance with this Part, be kept in a separate account with an Australian ADI.

1231 Payments out of fund

Subject to this Part, there shall be paid out of the fidelity fund of a futures organisation in such order as the board of the futures organisation deems proper:

- (a) the amount of all claims, including costs, allowed by the board or established against the futures organisation under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the futures organisation or the board of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the futures organisation under section 1249;

Section 1232

- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the futures organisation or the board in relation to the fund; and
- (e) all other money payable out of the fund in accordance with the provisions of this Chapter.

1232 Accounts of fund

- (1) A futures organisation shall establish and keep proper accounts of its fidelity fund and shall, within the period of 3 months that next succeeds the end of its financial year, cause a balance-sheet in respect of those accounts to be made out as at the end of that financial year.
- (2) A futures organisation shall appoint a registered company auditor to audit the accounts of the fidelity fund.
- (3) The auditor appointed by a futures organisation shall audit the accounts of the fidelity fund and shall audit each balance-sheet and cause a report on the accounts and balance-sheet to be laid before the board of the futures organisation not later than 1 month after the balance-sheet is made out.
- (4) A futures organisation shall give to the Commission a copy of each report laid before the board of the futures organisation under this section and of the balance-sheet to which the report relates within 14 days after the report was so laid before the board.

1233 Management sub-committee

- (1) The board of a futures organisation may, by resolution, appoint a management sub-committee of not fewer than 3 and not more than 5 persons, at least one of whom is also a member of the board.
- (2) The board of a futures organisation may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section).
- (3) A power, authority or discretion delegated under subsection (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been

conferred by this Part on a majority of the members of the sub-committee.

- (4) A delegation by the board of a futures organisation under this section may at any time, by resolution of the board, be varied or revoked.
- (5) The board of a futures organisation may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.
- (6) A delegation by the board of a futures organisation under this section does not prevent the exercise of a power, authority or discretion by that board.
- (7) A management sub-committee appointed by a futures organisation before the commencement of this Part under a corresponding previous law and in existence immediately before that commencement shall be deemed to have been appointed by the futures organisation on that commencement under this section.
- (8) If the board of a futures organisation referred to in subsection (7) had before the commencement of this Part delegated to a management sub-committee referred to in that subsection any powers, authorities or discretions under the corresponding previous law so referred to and had not revoked the delegation before that commencement, the board shall be deemed to have, on that commencement, delegated to the management sub-committee its corresponding powers, authorities and discretions under this Part.

1234 Contribution to fund

- (1) A person is not to be admitted to membership of a futures organisation unless:
 - (a) in any case—the person has paid to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$500, as the organisation determines in relation to the person or a class including the person; or
 - (b) if the organisation is not a futures exchange—the person is already a member of a futures exchange.

Section 1235

- (2) A contributing member of a futures organisation must, on or before 31 March in each year, pay to the organisation, as a contribution to its fidelity fund, such amount, being not less than \$100, as the organisation determines in relation to the contributing member or a class including the contributing member.
- (3) This section has effect subject to section 1236.

1235 Levy in addition to annual contributions

- (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 1231, the futures organisation may determine that a levy of a specified amount must be paid by specified contributing members of the organisation.
- (2) The amount of the levy must be paid within the time, and in the manner, specified by the futures organisation either generally or in relation to a particular case.
- (3) A person or partnership need not pay by way of levy under this section more than \$5,000 in total or more than \$1,000 in any period of 12 months.
- (4) An amount of levy paid under this section must be paid into the futures organisation's fidelity fund.
- (5) This section has effect subject to section 1236.

1236 Contributions and levies not payable in certain cases

- (1) A person or partnership need not pay a contribution under subsection 1234(1) or (2) or a levy under section 1235 unless a provision of an Act of this jurisdiction imposes the contribution or levy.
- (3) A futures organisation may determine in writing that subsection 1234(1) does not apply in relation to the futures organisation in relation to specified persons.
- (4) A futures organisation may determine in writing that subsection 1234(2) does not apply in relation to the futures organisation in

relation to specified contributing members of the futures organisation.

- (5) A determination in force under subsection (3) or (4) has effect accordingly.

1237 Power of futures organisation to make advances to fund

- (1) A futures organisation may, from its general funds, give or advance, on such terms as the board of the futures organisation thinks fit, any sums of money to its fidelity fund.
- (2) Money that is advanced under subsection (1) may at any time be repaid from the fidelity fund to the general funds of the futures organisation.

1238 Investment of fund

Money in a fidelity fund of a futures organisation that is not immediately required for the purposes of the fund may be invested by the futures organisation in any manner in which trustees are for the time being authorised by a law in force in a jurisdiction to invest trust funds or on deposit with an eligible money market dealer.

1239 Application of fund

- (1) Subject to this Part, where:
- (a) a person (in this subsection called the *futures person*) suffers pecuniary loss at a particular time because of a defalcation, or because of fraudulent misuse of money or other property, by:
- (i) a person who is at that time a contributing member of a futures organisation;
- (ii) a director, partner, officer or employee of a person who is at that time a contributing member of a futures organisation; or
- (iii) a partner in, or employee of, a partnership that is at that time a contributing member of a futures organisation;
- and

Section 1239

- (b) the loss is suffered in respect of money or other property that was, in connection with the contributing member's dealings in futures contracts (whether or not any of those dealings was effected on a futures market), entrusted to or received by the contributing member, or a director, partner, officer or employee of the contributing member (whether before or after the commencement of this section):
- (i) for or on behalf of the futures person or another person; or
 - (ii) because the contributing member was trustee of the money or other property;
- the fidelity fund of the futures organisation shall be applied for the purpose of compensating the futures person.
- (2) The reference in paragraph (1)(b) to a partner of a contributing member of a futures organisation is, in a case where the contributing member is a partnership, a reference to a partner in the partnership.
- (3) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act 1966* an amount not greater than the amount that the official receiver or trustee, as the case may be, certifies is required in order to make up or reduce the total deficiency arising because the available assets of a bankrupt who is a contributing member of the futures organisation are insufficient to satisfy the debts arising from dealings in futures contracts that have been proved in the bankruptcy by creditors of the bankrupt.
- (4) Subsection (3) applies in the case of a contributing member of a futures organisation who has made a composition with the member's creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act 1966* in like manner as that subsection applies in the case of a contributing member of a futures organisation who has become bankrupt and, for the purposes of that subsection as so applying by virtue of this subsection:

- (a) the reference in that subsection to a trustee shall be deemed to be a reference to a controlling trustee within the meaning of that Part;
 - (b) the reference to debts proved in the bankruptcy shall be deemed to be a reference to provable debts in relation to the composition or deed within the meaning of that Part; and
 - (c) a reference to the bankrupt shall be deemed to be a reference to the person who made the composition or executed the deed.
- (5) Subject to this Part, where a right to compensation does not arise under subsection (1), a fidelity fund of a futures organisation may, if the board of the futures organisation thinks fit, be applied for the purpose of paying to the liquidator of a body corporate that is a contributing member of the futures organisation and that has commenced to be wound up, an amount not greater than the amount that the liquidator certifies is required to make up or reduce the total deficiency arising because the available assets of the body corporate are insufficient to satisfy the debts of the body corporate arising from dealings in futures contracts that have been proved in the winding up by creditors of the body corporate.
- (6) Money paid pursuant to subsection (3) or (5) is so paid only on condition that it is applied by the official receiver, trustee or liquidator towards satisfaction of debts arising from dealings in futures contracts and for no other purpose.
- (7) Subject to subsection (9), the amount, or the sum of the amounts, paid under this Part out of a fidelity fund of a futures organisation:
- (a) for the purpose of compensating pecuniary loss as mentioned in subsection (1); or
 - (b) for the purpose of making payments under subsection (3) or (5);
- shall not exceed, in respect of a particular contributing member of the futures organisation:
- (c) unless paragraph (d) applies—\$500,000; or
 - (d) if some other amount is prescribed, for the purposes of this subsection, in relation to the futures organisation, a class of futures organisations that includes the futures organisation, or futures organisations generally—that amount.

Section 1239

- (8) For the purposes of calculating the sum referred to in subsection (7), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.
- (9) If a futures organisation considers, having regard to the ascertained or contingent liabilities of its fidelity fund, that the assets of the fund so permit, the futures organisation may apply out of the fund such sums in excess of the amount limited by or under this section as the futures organisation, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as mentioned in subsection (1) or making a payment under subsection (3) or (5).
- (10) Where:
 - (a) money or other property has been entrusted to, or received by:
 - (i) a person or partnership;
 - (ii) a director, partner, officer or employee of a person; or
 - (iii) a partner in or employee of, a partnership;being a person who, or a partnership that, has at any time been but is no longer a contributing member of a futures organisation;
 - (b) immediately before that person or partnership last ceased to be a member or member organisation of the futures organisation, he, she or it was a contributing member of the futures organisation;
 - (c) because of a defalcation, or the fraudulent misuse of money or other property by:
 - (i) that person or a director, partner, officer or employee of that person; or
 - (ii) a partner in, or employee of, that partnership;as the case may be, the person by or from whom the money or other property was so entrusted or received suffered pecuniary loss; and

Section 1240

(d) at the time when the money or other property was so entrusted or received, the person suffering the pecuniary loss believed, on reasonable grounds, that that person or partnership was at that time a member or member organisation of the futures organisation;

that person or partnership shall, for the purposes of this section (other than this subsection and subsection (11)), be deemed to have been, when the pecuniary loss was suffered, a contributing member of the futures organisation.

(11) Where:

(a) a person who or a partnership that has at any time been, but is no longer, a contributing member of a futures organisation has incurred a debt arising from dealings in futures contracts; and

(b) at the time when the debt was incurred, the creditor, or one or more of the creditors, in relation to the debt believed on reasonable grounds that that person or partnership was at that time a member or member organisation of the futures organisation;

a reference in this section (other than subsection (10) and this subsection) to a contributing member of the futures organisation shall, for the purpose of determining the application of subsection (3) or (5) in relation to that creditor or those creditors, as the case may be, in relation to that debt, be deemed to include a reference to that person or partnership.

(12) A reference in this section to a defalcation, or to a fraudulent misuse of money or other property, is a reference to a defalcation, or to such a fraudulent misuse, wherever and whenever occurring.

1240 Claims against fund

(1) Subject to this Part, a person who suffers pecuniary loss as mentioned in subsection 1239(1) is entitled to claim compensation from the fidelity fund of a futures organisation whose fidelity fund is, pursuant to that subsection, required to be applied to compensate the person, and to take proceedings in the Court as provided in this Part against the futures organisation to establish that claim.

Section 1241

- (2) A person does not have a claim against a fidelity fund of a futures organisation in respect of:
 - (a) pecuniary loss suffered before 1 July 1986; or
 - (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the sole control of a member organisation of the futures organisation.
- (3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a futures organisation is the amount of the actual pecuniary loss suffered by the claimant (including the reasonable costs of, and disbursements incidental to, the making and proof of the claim) less the total amount or value of all amounts or other benefits received or receivable by the claimant from a source other than the fund in reduction of the loss.
- (4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the prescribed rate calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.
- (5) A claim duly made before the commencement of this Part against the fidelity fund of a futures organisation under a previous law corresponding to this section shall be deemed to have been duly made against that fidelity fund under this section.

1241 Rights of innocent partner in relation to fund

- (1) Where all persons who have submitted claims pursuant to section 1240 have been fully compensated in accordance with the provisions of this Part for pecuniary loss in relation to a contributing member of a futures organisation, being pecuniary loss as mentioned in subsection 1239(1) suffered in relation to money or other property, any partner of the contributing member who has made payment to a person in compensation for loss suffered by the person in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund of the futures organisation if the board of the futures organisation, having

regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

- (2) If a partner of a contributing member of a futures organisation feels aggrieved by the determination of a board under subsection (1), the partner may, within 28 days after receipt of notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.
- (3) The appellant shall, on the day on which the appellant lodges notice of appeal with the Court, lodge a copy of the notice with the futures organisation concerned.
- (4) The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same manner and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction and if the Court is of the opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of money or other property from which the pecuniary loss arose and that the appellant acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by the appellant, be subrogated to the rights and remedies, in relation to the fidelity fund of the futures organisation concerned, of the person to whom the appellant made such a payment.

1242 Notice calling for claims against fund

- (1) A futures organisation may cause to be published in a daily newspaper circulating generally in each State and Territory, a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.
- (2) A claim for compensation from a fidelity fund of a futures organisation in respect of a pecuniary loss shall be made in writing to the futures organisation:
 - (a) where a notice under subsection (1) has been published, on or before the date specified in the notice; or

Section 1243

- (b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss; and a claim that is not so made is barred unless the futures organisation otherwise determines.
- (3) A futures organisation, a member of a board of a futures organisation, or a member or employee of a futures organisation, has qualified privilege in respect of the publication of a notice under subsection (1).
- (4) A notice duly published by a futures organisation, before the commencement of this Part, under a previous law corresponding to subsection (1) shall be deemed to have been duly published under that subsection.

1243 Power of board to settle claims

- (1) Subject to this Part, the board of a futures organisation may allow and settle a proper claim for compensation from a fidelity fund of the futures organisation at any time after the occurrence of the pecuniary loss in respect of which the claim arose.
- (2) Subject to subsection (3), a person shall not commence proceedings under this Part against a futures organisation without leave of the board unless:
 - (a) the board has disallowed the person's claim; and
 - (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the member of the futures organisation in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant, other than any right or remedy that the claimant may have, under section 1240 or a corresponding previous law, against a person other than the futures organisation.
- (3) A person who has been refused leave by the board of a futures organisation under subsection (2) may apply to the Court for leave to commence proceedings against the futures organisation and the Court may make such order in the matter as it thinks fit.

Section 1244

- (4) The board of a futures organisation, after disallowing, whether wholly or partly, a claim for compensation from the fidelity fund of the futures organisation, shall serve notice of the disallowance in the prescribed form on the claimant or on the claimant's solicitor.
- (5) Proceedings against a futures organisation in respect of a claim that has been disallowed by the board of the futures organisation shall not be commenced after the end of 3 months after the service of the notice of disallowance referred to in subsection (4).
- (6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the futures organisation.
- (7) The board or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the board or the Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

1244 Form of order of Court establishing claim

- (1) Where, in proceedings brought to establish a claim, the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order:
 - (a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and
 - (b) direct the board to allow the claim as so declared and deal with it in accordance with the provisions of this Part.

Section 1245

- (2) In any such proceedings all questions of costs are in the discretion of the Court.

1245 Power of Board to require production of documents etc.

The board of a futures organisation may at any time require a person to produce and deliver any documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a contributing member of the futures organisation or a partner or the partners in a partnership that is a contributing member of the futures organisation or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of such documents or statements of evidence by the first-mentioned person, the board may disallow any claim by the first-mentioned person under this Part.

1246 Subrogation of futures organisation to rights etc. of claimant on payment from fund

On payment out of a fidelity fund of a futures organisation of any money in respect of a claim under this Part, the futures organisation is subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by the claimant from the defalcation or fraudulent misuse of property.

1247 Payment of claims only from fund

Money or other property belonging to a futures organisation, other than its fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the board of the futures organisation or is made the subject of an order of the Court.

1248 Provisions where fund insufficient to meet claims or where claims exceed total amount payable

- (1) Where the amount in a fidelity fund of a futures organisation is insufficient to pay the whole of the amount of all claims against it

that have been allowed or in respect of which orders of the Court have been made, the amount in the fund shall, subject to subsection (2), be apportioned among the claimants in such manner as the board of the futures organisation thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fund and paid out of the fund when money is available in the fund.

- (2) Where the aggregate of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcations or fraudulent misuses of property by or in connection with a contributing member of a futures organisation exceeds the total amount that may, pursuant to section 1239, be paid under this Part in respect of that contributing member, the total amount shall be apportioned among the claimants in such manner as the board thinks equitable, and on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may thereafter arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that contributing member are discharged.

1249 Power of futures organisation to enter into contracts of insurance or indemnity

- (1) A futures organisation may enter into a contract with a person carrying on fidelity insurance business whereby the futures organisation will be insured or indemnified, to the extent and in the manner provided by the contract, against liability in respect of claims under this Part.
- (2) Such a contract may be entered into in relation to contributing members of the futures organisation generally, or in relation to particular contributing members named in the contract, or in relation to contributing members generally with the exclusion of particular contributing members named in the contract.
- (3) A futures organisation, a member or employee of a futures organisation or of the board of a futures organisation, or a member of the management sub-committee of the board of a futures organisation, has qualified privilege in respect of the publication

Section 1250

of a statement that a contract entered into under this section does, or does not, as the case may be, apply in relation to that member.

1250 Application of insurance money

A claimant against a fidelity fund of a futures organisation does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any money paid by the insurer in accordance with such a contract.

Part 8.7—Offences

Division 1—Insider dealing

1251 Futures contract concerning a body corporate

For the purposes of this Division, a futures contract concerns a body corporate if, and only if:

- (a) the futures contract is a commodity agreement and a commodity to which it relates is securities of the body; or
- (b) the futures contract is an adjustment agreement and a state of affairs to which it relates concerns the price of securities of the body, or the prices of a class of securities that includes securities of the body, at a particular time.

1252 Person connected with a body corporate

- (1) For the purposes of this Division, a person is connected with a body corporate (in this subsection called the *relevant body corporate*) if the person is a natural person and:
 - (a) is an officer of the relevant body corporate or of a related body corporate;
 - (b) has a substantial holding in the relevant body corporate or in a related body corporate; or
 - (c) occupies a position that may reasonably be expected to give the person access to information of a kind referred to in subsection 1253(1) or (2) by virtue of:
 - (i) any professional or business relationship existing between the person (or the person's employer or a body corporate of which the person is an officer) and the relevant body corporate or a related body corporate; or
 - (ii) the person being an officer of a body corporate that has a substantial holding in the relevant body corporate or in a related body corporate.
- (2) For the purposes of subsection (1), *officer*, in relation to a body corporate, includes:

Section 1253

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver, or a receiver and manager, of property of the body corporate;
- (c) an administrator of the body corporate;
- (ca) an administrator of a deed of company arrangement executed by the body corporate;
- (d) a liquidator of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and another person or other persons.

1253 Persons precluded from dealing

- (1) For the purposes of this Part, a person is precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with the body, the person has inside information in relation to that futures contract.
- (2) For the purposes of this Part, a person is also precluded on a particular day from dealing in a futures contract concerning a body corporate if, by virtue of being, or having been at any time during the 6 months ending on that day, connected with another body corporate, the person has information that:
 - (a) is inside information in relation to that futures contract; and
 - (b) relates to any transaction (actual or expected) involving both those bodies, or involving one of them and securities of the other.
- (3) For the purposes of this Part, a person is also precluded from dealing in a futures contract if the person:
 - (a) has inside information in relation to the futures contract;
 - (b) obtained the information, directly or indirectly, from another person;
 - (c) is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is precluded by subsection (1) or (2) from dealing in the futures contract; and
 - (d) when the information was so obtained:

- (i) was an associate of the other person; or
- (ii) had with the other person an arrangement for the communication of information of a kind referred to in subsection (1) or (2) with a view to a dealing, by the first-mentioned person, by the other person, or by both of them together, in that futures contract or a futures contract of the same kind as that futures contract.

1254 Body corporate precluded from dealing when officer precluded

- (1) Without prejudice to subsection 1253(3), but subject to this section, while an officer of a body corporate is precluded from dealing in a futures contract, the body is, for the purposes of this Part, also precluded from dealing in the futures contract.
- (2) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing at a particular time in a futures contract if:
 - (a) the decision to deal in the futures contract at that time was taken on the body's behalf by a person other than the officer;
 - (b) the body had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to that person by a person who had the information; and
 - (c) the information was not so communicated and no such advice was so given.
- (3) A body corporate is not, merely because of information that an officer of the body has, precluded by subsection (1) from dealing in a futures contract concerning another body corporate if the information:
 - (a) was obtained by the officer in the course of performing duties as an officer of the first-mentioned body; and
 - (b) relates only to a proposed dealing by the first-mentioned body in securities of, or a futures contract concerning, the other body.

Section 1255

1255 Exceptions: licensed futures brokers

For the purposes of this Part, a person who holds a futures brokers licence is not precluded from dealing in a futures contract concerning a body corporate if:

- (a) the licensee enters into the dealing as agent for another person pursuant to a specific instruction by that other person to enter into that dealing;
- (b) the licensee has not given any advice to the other person in relation to dealing in a futures contract concerning the body corporate; and
- (c) the other person is not, in relation to the dealing, an associate of the licensee.

1256 Prohibitions where dealing precluded

- (1) A person must not, while precluded from dealing in a futures contract, deal in that futures contract.
- (2) A person who, because of having particular information, is precluded from dealing in a futures contract, must not, while so precluded, communicate the information to another person if the first-mentioned person knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing in that futures contract.

1257 Defence where other party to dealing also had the inside information

Where a prosecution is begun against a person for an offence because the person had particular information and dealt in a futures contract in contravention of section 1256, it is a defence if it is proved that the other party to the dealing knew, or ought reasonably to have known, the information before entering into the dealing.

Division 2—General

1258 Dealings by futures broker on behalf of others

A futures broker shall not deal in a futures contract on behalf of another person unless the dealing is effected:

- (a) on a futures market of a futures exchange or recognised futures exchange;
- (b) on an exempt futures market; or
- (c) as permitted by the business rules of a futures organisation of which the broker is a member.

1259 Futures market manipulation

A person must not, in this jurisdiction or elsewhere, take part in, be concerned in, or carry out, whether directly or indirectly:

- (a) a transaction (whether a dealing in a futures contract or not) that has, is intended to have, or is likely to have; or
- (b) 2 or more transactions (whether any of them is a dealing in a futures contract or not) that have, are intended to have, or are likely to have:

the effect of:

- (c) creating an artificial price for dealings in futures contracts on a futures market in this jurisdiction; or
- (d) maintaining at a level that is artificial (whether or not it was previously artificial) a price for dealings in futures contracts on a futures market in this jurisdiction.

1260 False trading and market rigging

- (1) A person must not, in this jurisdiction or elsewhere, create, cause to be created, or do anything that is calculated to create, a false or misleading appearance:
 - (a) of active dealing in futures contracts on a futures market in this jurisdiction; or
 - (b) with respect to the market for, or the price for dealings in, futures contracts on a futures market in this jurisdiction.

Section 1261

- (2) A person must not, in this jurisdiction or elsewhere, by any fictitious or artificial transactions or devices, maintain, inflate, depress, or cause fluctuations in, the price for dealings in futures contracts on a futures market in this jurisdiction.
- (3) In determining whether a transaction is fictitious or artificial for the purposes of subsection (2), the fact that the transaction is, or was at any time, intended by the parties who entered into it to have effect according to its terms is not conclusive.

1261 False or misleading statements etc.

A person contravenes this section if the person:

- (a) in this jurisdiction or elsewhere, makes a statement, or disseminates information, that is false or misleading in a material particular and is likely:
 - (i) to induce other persons to deal in futures contracts on a futures market in this jurisdiction; or
 - (ii) to have the effect of raising, lowering, maintaining or stabilising the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction; and
- (b) when making the statement, or disseminating the information:
 - (i) is recklessly indifferent as to whether the statement or information is true or false; or
 - (ii) knows, or ought reasonably to know, that the statement is false or misleading in a material particular.

1262 Fraudulently inducing person to deal in futures contracts

- (1) A person must not:
 - (a) by making or publishing any statement, promise or forecast that the person knows to be misleading, false or deceptive;
 - (b) by any dishonest concealment of material facts;
 - (c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive; or

- (d) by recording or storing in, or by means of, any mechanical, electronic or other device information that the person knows to be false or misleading in a material particular;
induce or attempt to induce another person to deal in a futures contract or a class of futures contracts.
- (7) It is a defence to a prosecution for an offence under this section constituted by recording or storing information as mentioned in paragraph (1)(d) if it is proved that, when the defendant so recorded or stored the information, the defendant had no reasonable grounds for expecting that the information would be available to any person.

1263 Dissemination of information about illegal transactions

Where:

- (a) in this jurisdiction or elsewhere, a person circulates or disseminates, or authorises or is concerned in the circulation or dissemination of, any statement or information to the effect that the price for dealings in futures contracts, or in a class of futures contracts, on a futures market in this jurisdiction will, or is likely to, rise or fall or be maintained because of a transaction, or other act or thing done, in relation to such futures contracts or futures contracts included in that class, being a transaction, or other act or thing, that constitutes a contravention of section 1259, 1260, 1261 or 1262; and
- (b) the person, or an associate of the person:
- (i) has entered into such a transaction or done such an act or thing; or
 - (ii) has received, or expects to receive, directly or indirectly, a consideration or benefit for circulating or disseminating, or authorising or being concerned in the circulation or dissemination of, the statement or information;

the first-mentioned person contravenes this section.

Section 1264

1264 Fraud in connection with dealings in futures contracts

- (1) Where, in connection with a dealing or proposed dealing in a futures contract by a futures broker on behalf of a client of the broker, a person who:
- (a) is the broker or an employee or agent of the broker; or
 - (b) has an interest, or is otherwise concerned in, the dealing or proposed dealing;
- does any of the following:
- (c) defrauds the client;
 - (d) does an act, or omits to do an act, knowing that the client will be deceived or misled, or with reckless indifference as to whether or not the client will be deceived or misled, as a result of the act or omission;
 - (e) (without limiting the generality of paragraph (d)) makes a statement, promise or forecast to the client, or makes an entry in a record relating to the client or persons including the client:
 - (i) knowing that the statement, promise, forecast or entry is false, misleading or deceptive in a material particular; or
 - (ii) with reckless indifference as to whether or not the statement, promise, forecast or entry is false, misleading or deceptive in a material particular;
- the person contravenes this section.

1265 Compensation for loss etc. [see Note 5]

- (1) Where:
- (a) a person who, because of having particular information, is precluded by section 1253 from dealing in a futures contract deals, in contravention of section 1256, in that futures contract; or
 - (b) a person, being a body corporate, deals, in contravention of section 1256, in a futures contract at a time when an officer of the body is, because of having particular information, precluded from dealing in that futures contract;
- the person is liable (whether or not the person has been convicted of an offence in respect of the contravention) to compensate any

Section 1265

other party to the dealing who did not have that information for any loss sustained by that party because of any difference between the price at which the dealing took place and the price at which it would be likely to have taken place if that information had been generally available.

- (2) A person who contravenes any of sections 1259 to 1264 (inclusive) (whether or not the person has been convicted of an offence in respect of the contravention) is liable to pay compensation to any other person who, in dealing in futures contracts, suffers loss because of the difference between the price at which the dealing takes place and the price at which it would be likely to have taken place if the contravention had not occurred.
- (3) The amount of compensation for which a person is liable under subsection (1) or (2) is:
 - (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation; or
 - (b) if the first-mentioned person has been found by a court to be liable, or has been ordered by a court, to pay an amount or amounts to any other person or persons under this Part or under subsection 232(7) or a corresponding previous law because of the same act or transaction—the amount of that loss less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable, or has been so ordered, to pay.
- (4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
- (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of the dealing in which the loss occurred.
- (6) The Commission may, if it considers it to be in the public interest to do so, bring an action in the name of, and for the benefit of, a person for recovery of compensation for a loss referred to in subsection (1) and suffered by that person.

Section 1266

- (7) Nothing in subsection (1) affects any liability that a person may incur under any other law.

1266 Sequence of transmission and execution of orders

- (1) In this section, a reference to the transmission by a futures broker of instructions to deal in a class of futures contracts is a reference:
- (a) where the broker has direct access to the futures market on which the instructions are to be executed—to the transmission of the instructions to that futures market; or
 - (b) where the broker has access to the futures market on which the instructions are to be executed only through another futures broker—to the transmission of the instructions to that other futures broker.
- (2) Subject to subsection (3), a futures broker shall transmit in the sequence in which they are received by the broker all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.
- (3) Where a futures broker proposes to deal in a class of futures contracts on the broker's own account and the person by whom or on whose instructions the instructions for the dealing are to be transmitted is aware of instructions of a client of the broker to deal in that class of futures contracts at or near the market price for a futures contract of that class prevailing at that time (being instructions that have not been transmitted), that person shall not transmit, and shall not give instructions to any other person to transmit, the instructions to give effect to the proposal of the broker to deal in that class of futures contracts before the instructions of the client are transmitted.
- (4) A futures broker, or a director, partner, officer or employee of a futures broker, shall not, except:
- (a) to the extent necessary to execute the instructions concerned;
 - (b) as required by this Law or any other law; or
 - (c) as required by the business rules of a futures organisation of which the broker is a member;
- disclose to any other futures broker, or to a person engaged or employed in the business of the first-mentioned broker or of any

other futures broker, instructions of a client to deal in a class of futures contracts.

- (5) A member of a futures exchange who is concerned in the execution, on a trading floor of the futures exchange, of instructions to deal in futures contracts shall execute in the order in which they are received by the member all instructions to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions.
- (6) Where:
- (a) during a particular period, a futures broker transmits instructions (whether or not those instructions consist of, or include, instructions giving effect to a proposal of the broker to deal in the class of contracts concerned on the broker's own account) to deal in a class of futures contracts at or near the market price for a futures contract of that class prevailing immediately before execution of the instructions; and
 - (b) dealings in that class of futures contracts are effected pursuant to those instructions;
- the broker shall, except so far as the business rules of a futures organisation of which the broker is a member otherwise provide, allocate the dealings to those instructions:
- (c) in the sequence in which the dealings were effected; and
 - (d) in the sequence in which the broker transmitted those instructions.
- (7) A futures broker shall maintain, in accordance with the regulations, records that set out the prescribed particulars of:
- (a) instructions by a client to deal in futures contracts;
 - (b) the date and time of receipt, transmission and execution of those instructions;
 - (c) the person by whom those instructions are received, the person by whom they are transmitted and the person by whom they are executed;
 - (d) the date and time of receipt, transmission and execution of instructions to deal in futures contracts on the broker's own account; and

Section 1267

(e) the person by whom instructions of the kind referred to in paragraph (d) are received, the person by whom they are transmitted and the person by whom they are executed; and shall retain those records for the prescribed period.

(8) Where:

(a) a futures broker transmits for execution on a futures market outside Australia and the external Territories instructions to deal in futures contracts; and

(b) it is not reasonably practicable for the broker to set out in the records maintained by the broker pursuant to subsection (7) the prescribed particulars of the date and time of execution of those instructions;

the broker shall so set out those particulars as precisely as is reasonably practicable.

1267 Dealings by employees of futures brokers and futures advisers

(1) A person who is a futures broker or a futures adviser and an employee of that person shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

(2) A person who is a partner in a partnership that carries on a business of dealing in futures contracts and an employee of the partnership shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

(3) A person who is a partner in a partnership that carries on a futures advice business and an employee of the partnership shall not, as principals, jointly deal in, or agree to deal in, futures contracts.

(4) A person who is a futures broker or a futures adviser shall not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:

(a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or

(b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.

- (5) A person who is a partner in a partnership that carries on a business of dealing in futures contracts shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
- (6) A person who is a partner in a partnership that carries on a futures advice business shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if:
- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to deal in futures contracts; or
 - (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of dealing in futures contracts.
- (7) A person who is an employee of a member organisation of a futures exchange in connection with a business of dealing in futures contracts carried on by the member organisation shall not, as principal, deal, or agree to deal, in futures contracts unless the member organisation acts as the agent of the person in respect of the transaction.
- (8) A reference in subsection (1) or (4) to an employee of a person who is a futures broker or a futures adviser includes, in the case of a body corporate that is a futures broker or a futures adviser, a reference to an officer of the body corporate.
- (9) The reference in subsection (7) to an employee of a member organisation of a futures exchange includes:
- (a) in the case of a member organisation that is a body corporate; and

Section 1267

- (b) in the case of a member organisation that is a partnership in which a partner is a body corporate;
a reference to an officer of the body corporate.
- (10) A reference in this section to an employee of a futures broker, a futures adviser, a partnership or a member organisation of a futures exchange includes a reference to a person who, pursuant to a subsisting agreement, performs services for the futures broker, futures adviser, partnership or member organisation in connection with dealings in futures contracts by the futures broker, futures adviser, partnership or member organisation.

Part 8.8—Miscellaneous

1268 Power of Court to make certain orders

(1) Where:

- (a) on the application of the Commission, it appears to the Court that a person has contravened this Chapter, or any other law in force in this jurisdiction relating to dealing in futures contracts, or has contravened the conditions of a licence, the business rules of a futures exchange, a clearing house or a futures association or is about to do an act with respect to dealing in futures contracts that, if done, would be such a contravention; or
- (b) on the application of a futures exchange, clearing house or futures association, it appears to the Court that a person has contravened the business rules of the futures exchange, clearing house or futures association, as the case may be;

the Court may make such order or orders as it thinks fit including, but without limiting the generality of the foregoing, one or more of the following orders:

- (c) in the case of persistent or continuing breaches of this Chapter, or of any other law in force in this jurisdiction relating to dealing in futures contracts, or the conditions or restrictions of a licence, or of the business rules of a futures exchange, clearing house or futures association—an order restraining a person from carrying on a business of dealing in futures contracts, acting as a futures adviser, holding himself, herself or itself out as so carrying on business or so acting, or from doing an act as a representative of a futures broker or of a futures adviser;
- (d) an order restraining a person from acquiring, disposing of or otherwise dealing in any class of futures contracts that is specified in the order;
- (e) an order appointing a receiver of property of a futures broker or of property that is held by a futures broker for or on behalf of another person, whether as trustee or otherwise;
- (f) an order declaring a futures contract to be void or voidable;

Section 1268

- (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
 - (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding paragraphs.
- (2) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
- (3) Where the Commission makes an application to the Court for the making of an order under subsection (1), the Court shall not require the Commission or any other person, as a condition of granting an interim order under subsection (2), to give any undertaking as to damages.
- (4) The Court shall not make an order under subsection (1) if it is satisfied that the order would unfairly prejudice a person.
- (5) The Court may, before making an order under subsection (1), direct that notice of the application be given to such persons as it thinks fit or direct that notice of the application be published in such manner as it thinks fit, or both.
- (6) A person appointed by order of the Court under subsection (1) as a receiver of property of a futures broker:
- (a) may require the broker to deliver to the person any property of which the person has been appointed receiver or to give to the person all information concerning that property that may reasonably be required;
 - (b) may acquire and take possession of any property of which the person has been appointed receiver;
 - (c) may deal with any property that the person has acquired or of which the person has taken possession in any manner in which the broker might lawfully have dealt with the property; and

- (d) has such other powers in respect of the property as the Court specifies in the order.
- (7) In paragraph (1)(e) and subsection (6), *property*, in relation to a futures broker, includes money or other property entrusted to or received on behalf of any other person by the broker or another person in the course of or in connection with a business of dealing in futures contracts carried on by the futures broker.
- (8) A person shall not, without reasonable excuse, contravene:
 - (a) an order under this section that is applicable to the person; or
 - (b) a requirement of a receiver appointed by order of the Court under subsection (1).
- (9) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

1269 Restrictions on use of titles “futures broker”, “futures exchange” etc.

- (1) A person who is not the holder of a futures brokers licence shall not take or use, or by inference adopt, the name or title of futures broker, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the person is a futures broker.
- (2) A person who is not the holder of a futures brokers licence shall not:
 - (a) take or use, or by inference adopt; or
 - (b) have attached to, or exhibited at, any place;a name, title or description implying, or tending to create the belief, that the person is the holder of a futures brokers licence.
- (3) A body corporate that is not:
 - (a) a futures exchange; or
 - (b) a recognised futures exchange;shall not take or use, or by inference adopt, the name or title of futures exchange, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is:
 - (c) a futures exchange; or

Section 1270

- (d) a recognised futures exchange.
- (4) A body corporate that is not a futures association shall not take or use, or by inference adopt, the name or title of futures association, or take or use, or have attached to, or exhibited at, any place, a name, title or description implying, or tending to create the belief, that the body is a futures association.

1270 Preservation and disposal of records etc.

- (1) A person who is required by a provision of this Law to maintain, make or keep a register or a financial or other record in relation to a business carried on by the person shall preserve that register or record for the prescribed period, whether or not the person ceases to carry on that business before the end of that period.
- (2) The prescribed period for the purposes of subsection (1) is:
 - (a) in relation to a register or a record other than a financial record, the period of 5 years next after the day on which the last entry was made in the register or record; or
 - (b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.
- (3) Subsections (1) and (2) do not apply in relation to a contract note or copy of a contract note received or issued by a futures broker who is a member of a futures exchange if the matters required by subsection 1206(4), (5) or (6), as the case requires, to be included in the contract note are recorded:
 - (a) by the futures exchange; or
 - (b) subject to such conditions (if any) as the Commission imposes, by the broker;in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.
- (4) The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with the Commission under or for the purposes of this Law and that has been in the possession of the Commission for such period as is prescribed for the purposes of this subsection, either generally or in relation to a particular document or class of documents.

1271 Concealing etc. books relating to futures contracts

- (1) A person who:
 - (a) in any case—conceals, destroys, mutilates or alters a book relating to the business carried on by a futures broker or required under this Law to be kept by the holder of a licence;
or
 - (b) where such a book is in this jurisdiction—sends or takes, or causes the sending or taking of, the book out of Australia;
contravenes this subsection.
- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person did not act with intent to defraud, to defeat the purposes of this Law or the ASIC Law or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under this Law or the ASIC Law.

1272 Falsification of records

- (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Law or a register or any accounting or other record referred to in section 1270 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:
 - (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;
 - (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling other matter to be recorded or stored, by means of that device; or
 - (c) fails to record or store matter by means of that device with intent to falsify any entry made or intended to be compiled, wholly or in part, from that matter;
contravenes this subsection.

Section 1273

- (2) In a prosecution of a person for an offence under subsection (1), it is a defence if it is established that the person acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

1273 Precautions against falsification of records

A person required by this Chapter to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

Chapter 9—Miscellaneous

Part 9.1—Registers and registration of documents

1274 Registers

- (1) The Commission shall, subject to this Law, keep such registers as it considers necessary in such form as it thinks fit.
- (2) A person may:
 - (a) inspect any document lodged with the Commission, not being:
 - (iaa) a notice lodged under subsection 205D(3);
 - (i) an application under section 1279;
 - (ia) a document lodged under a provision of Chapter 7 (other than subsection 776(2B), section 1001B or Part 7.13) or Chapter 8;
 - (ii) a document lodged under section 1287 or 1288;
 - (iii) a document lodged under paragraph 1296(2)(b);
 - (iv) a report made or lodged under section 422, 438D, 452 or 533; or
 - (v) a document that has been destroyed or otherwise disposed of;
 - (b) require a certificate of the registration of a company or any other certificate authorised by this Law to be given by the Commission; or
 - (c) require a copy of or extract from any document that the person is entitled to inspect pursuant to paragraph (a) or any certificate referred to in paragraph (b) to be given, or given and certified, by the Commission.
- (2A) For the purposes of subsection (2), a document given to the Commission under subsection 776(2B) is taken to be a document lodged with the Commission.
- (3) If a reproduction or transparency of a document or certificate is produced for inspection, a person is not entitled pursuant to

Section 1274

paragraph (2)(a) to require the production of the original of that document or certificate.

- (4) The reference in paragraph (2)(c) to a document or certificate includes, where a reproduction or transparency of that document or certificate has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency and, where such a reproduction or transparency has been so incorporated, a person is not entitled pursuant to that paragraph to a copy of or extract from the original of that document or certificate.
- (4A) A person is not entitled under paragraph (2)(a) to require the production of the original of a document or certificate if the Commission keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate and:
- (a) the Commission produces to the person for inspection a writing that sets out what purports to be the contents of the document or certificate; or
 - (b) the Commission causes to be displayed for the person what purports to be the contents of the document or certificate and, as at the time of the displaying, the person has not asked for the production of a writing of the kind referred to in paragraph (a).
- (4B) Where:
- (a) a person makes under paragraph (2)(c) a requirement that relates to a document or certificate; and
 - (b) the Commission keeps by means of a mechanical, electronic or other device a record of information set out in the document or certificate; and
 - (c) pursuant to that requirement, the Commission gives a writing or document that sets out what purports to be the contents of:
 - (i) the whole of the document or certificate; or
 - (ii) a part of the document or certificate;
- then, for the purposes of that paragraph, the Commission shall be taken to have given, pursuant to that requirement:
- (d) if subparagraph (c)(i) applies—a copy of the document or certificate; or

- (e) if subparagraph (c)(ii) applies—an extract from the document or certificate setting out that part of it.
- (4C) Where:
- (a) the requirement referred to in paragraph (4B)(a) includes a requirement that the copy or extract be certified; and
 - (b) pursuant to that requirement, the Commission gives a writing or document as mentioned in paragraph (4B)(c);
- then:
- (c) the Commission may certify that the writing or document sets out the contents of the whole or part of the document or certificate, as the case requires; and
 - (d) the writing or document is, in a proceeding in a court, admissible as *prima facie* evidence of the information contained in it.
- (5) A copy of or extract from any document lodged with the Commission, and certified by the Commission, is, in any proceeding, admissible in evidence as of equal validity with the original document.
- (6) The reference in subsection (5) to a document includes, where a reproduction or transparency of that document has been incorporated with a register kept by the Commission, a reference to that reproduction or transparency.
- (7) In any proceeding:
- (a) a certificate by the Commission that, at a date or during a period specified in the certificate, no company was registered under this Law by a name specified in the certificate shall be received as *prima facie* evidence that at that date or during that period, as the case may be, no company was registered by that name under this Law; and
 - (b) a certificate by the Commission that a requirement of this Law specified in the certificate:
 - (i) had or had not been complied with at a date or within a period specified in the certificate; or

Section 1274

- (ii) had been complied with at a date specified in the certificate but not before that date;
shall be received as *prima facie* evidence of matters specified in the certificate; and
 - (c) a certificate by the Commission that, during a period specified in the certificate, a particular company was registered, or taken to be registered, under this Law is to be received as *prima facie* evidence that, during that period, that company was registered under this Law.
- (7A) A certificate issued by ASIC stating that a company has been registered under the Corporations Law of any jurisdiction is conclusive evidence that:
 - (a) all requirements of that Law for its registration have been complied with; and
 - (b) the company was duly registered as a company under that Law on the date specified in the certificate.
- (8) If the Commission is of opinion that a document submitted for lodgment:
 - (a) contains matter contrary to law;
 - (b) contains matter that, in a material particular, is false or misleading in the form or context in which it is included;
 - (c) because of an omission or misdescription has not been duly completed;
 - (d) contravenes this Law; or
 - (e) contains an error, alteration or erasure;the Commission may refuse to register or receive the document and may request:
 - (f) that the document be appropriately amended or completed and resubmitted;
 - (g) that a fresh document be submitted in its place; or
 - (h) where the document has not been duly completed, that a supplementary document in the prescribed form be lodged.
- (9) The Commission may require a person who submits a document for lodgment to produce to the Commission such other document, or to furnish to the Commission such information, as the

Commission thinks necessary in order to form an opinion whether it may refuse to receive or register the first-mentioned document.

- (10) The Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of:
- (a) in relation to a body corporate:
 - (i) any return of allotment of shares for cash that has been lodged for not less than 2 years;
 - (ii) any annual return or balance-sheet that has been lodged for not less than 7 years or any document creating or evidencing a charge, or the complete or partial satisfaction of a charge, where a memorandum of satisfaction of the charge has been registered for not less than 7 years; or
 - (iii) any other document (other than the constitution or any other document affecting it) that has been lodged or registered for not less than 15 years;
 - (c) any document a transparency of which has been incorporated with a register kept by the Commission.
- (11) If a body corporate or other person, having made default in complying with:
- (a) any provision of this Law or of any other law that requires the lodging in any manner of any return, account or other document or the giving of notice to the Commission of any matter; or
 - (b) any request of the Commission to amend or complete and resubmit any document or to submit a fresh document;
- fails to make good the default within 14 days after the service on the body or person of a notice requiring it to be done, a court may, on an application by any member or creditor of the body or by the Commission, make an order directing the body or any officer of the body or the person to make good the default within such time as is specified in the order.
- (12) Any such order may provide that all costs of and incidental to the application shall be borne by the body or by any officers of the body responsible for the default or by the person.
- (13) A person shall not contravene an order made under subsection (11).

Section 1274AA

- (14) Nothing in this section prejudices the operation of any law imposing penalties on a body corporate or its officers or on another person in respect of a default mentioned in subsection (11).
- (15) Where information about a person is included on a register kept by the Commission, the Commission may at any time, in writing, require that person to give the Commission specified information about the person, being information of the kind included on that register.
- (16) The person must provide the information within such reasonable period, and in such form, as are specified by the Commission.
- (17) Without limiting the generality of subsection (1), the Commission may use a register, or information obtained from a register, kept by the NCSC or by an authority of this jurisdiction, as the basis of a register to be kept by the Commission.
- (18) References in this Law to documents lodged, made or otherwise dealt with under a provision of this Law include references to documents lodged, made or otherwise dealt with under a corresponding provision of a previous law, to the extent that such documents have been incorporated in a register kept by the Commission.

1274AA Register of disqualified company directors and other officers

- (1) ASIC must keep a register of persons who have been disqualified from managing corporations under this Part or prohibited from managing a corporation under any previous Law.
- (2) The register must contain a copy of:
 - (a) each order made by the Court disqualifying a person from managing a corporation, or prohibiting a person from managing a corporation, under a corresponding previous law of this jurisdiction before the commencement of this Part; and
 - (b) every notice that was served under:
 - (i) section 206F; or

Section 1274A

- (ii) a previous law of this jurisdiction before the commencement of this Part that corresponds to section 206F; and
 - (c) every order lodged under section 206G.
- (3) Subsections 1274(2) and (5) apply to a copy of an order or notice as if that copy were a document lodged with ASIC.

1274A Obtaining information from certain registers

- (1) In this section:

data processor means a mechanical, electronic or other device for the processing of data.

register means a register kept by the Commission under this Law.

search includes inspect.

- (2) The Commission may permit a person to search, otherwise than by using a data processor, a prescribed register.
- (3) The Commission may permit a person to search a prescribed register by using a data processor in order to obtain prescribed information from the register.
- (4) The Commission may make available to a person prescribed information (in the form of a document or otherwise) that the Commission has obtained from a prescribed register by using a data processor.
- (5) Nothing in this section limits:
- (a) a power or function that the Commission has apart from this section; or
 - (b) a right that a person has apart from this section.

1274B Use, in court proceedings, of information from Commission's national database

- (1) In this section:

data processor means a mechanical, electronic or other device for processing data.

Section 1274C

- (2) In a proceeding in a court, a writing that purports to have been prepared by the Commission is admissible as *prima facie* evidence of the matters stated in so much of the writing as sets out what purports to be information obtained by the Commission, by using a data processor, from the national database. In other words, the writing is proof of such a matter in the absence of evidence to the contrary.
- (3) A writing need not bear a certificate or signature in order to be taken to purport to have been prepared by the Commission.
- (4) Nothing in this section limits, or is limited by, section 1274 or 1274A.

1274C ASIC certificate

ASIC may certify that a person was a director or secretary of a company at a particular time or during a particular period. In the absence of evidence to the contrary, a certificate is proof of the matters stated in it.

Note: See section 1274B for the evidentiary status of documents prepared by ASIC from the national database.

1275 Relodging of lost registered documents

- (1) Where a document forming part of the constitution of, or any other document relating to, a body corporate has, since being lodged, been lost or destroyed, a person may apply to the Commission for leave to lodge a copy of the document as originally lodged.
- (2) Where such an application is made, the Commission may direct that notice of the application be given to such persons and in such manner as it thinks fit.
- (3) Whether or not an application has been made to the Commission under subsection (1), the Commission, upon being satisfied:
 - (a) that an original document has been lost or destroyed;
 - (b) of the date of the lodging of that document; and

- (c) that a copy of that document produced to the Commission is a correct copy;
may certify upon the copy that it is so satisfied and grant leave for the copy to be lodged in the manner required by law in respect of the original.
- (4) Upon the lodgment the copy has, and shall be deemed to have had from such date as is mentioned in the certificate as the date of the lodging of the original, the same force and effect for all purposes as the original.
- (5) A decision of the Tribunal varying or setting aside a decision of the Commission to certify and grant leave under subsection (3) may be lodged with the Commission and shall be registered by it, but no payments, contracts, dealings, acts or things made, had or done in good faith before the registration of the Tribunal's decision and upon the faith of and in reliance upon the certificate shall be invalidated or affected by the Tribunal's decision.
- (6) Where a transparency of a document referred to in subsection (1) has been incorporated with a register kept by the Commission and is lost or destroyed as referred to in that subsection, this section applies as if the document of which it is a transparency had been so lost or destroyed.

Part 9.2—Registration of auditors and liquidators

Division 1—Interpretation

1276 Interpretation

In this Part, unless the contrary intention appears:

body corporate includes a Part 5.7 body.

decision, in relation to the Board, means, in Division 3, a decision of the Board under that Division and includes a refusal to exercise a power under section 1292.

registered means registered under Division 2.

1277 Effect on other laws

This Part is not intended to exclude or limit the operation of another law of this jurisdiction that can operate concurrently with it.

Division 2—Registration

1278 Auditor or liquidator registered under corresponding previous law

For the purposes of this Law, where, immediately before the commencement of this section, a person was registered as an auditor, as a liquidator, as a liquidator of a specified body corporate, or as an official liquidator, under a previous law of this jurisdiction corresponding to this Division (whether or not the person's registration was suspended at that commencement), the Commission is taken to have registered the person, at that commencement, under this Division as an auditor, as a liquidator, as a liquidator of that body, or as an official liquidator, as the case may be.

1279 Application for registration as auditor or liquidator

- (1) A natural person may make an application to the Commission:
 - (a) for registration as an auditor;
 - (b) for registration as a liquidator; or
 - (c) for registration as a liquidator of a specified body corporate, being a body corporate that is to be wound up under this Law.
- (2) An application under this section shall be made in writing as prescribed and shall contain such information as is prescribed.
- (3) An application that was duly made to the NCSC, before the commencement of this section, under a previous law of this jurisdiction corresponding to subsection (1), and that the NCSC had not dealt with before that commencement, is taken to be an application duly made to the Commission under this section.

1280 Registration of auditors

- (2) Subject to this section, where an application for registration as an auditor is made under section 1279, the Commission shall grant the application and register the applicant as an auditor if:

Section 1280

- (a) the applicant:
 - (i) is a member of the The Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body;
 - (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy (including auditing) of not less than 3 years duration and in commercial law (including company law) of not less than 2 years duration; or
 - (iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);
 - (b) the Commission is satisfied that the applicant has had such practical experience in auditing as is prescribed; and
 - (c) the Commission is satisfied that the applicant is capable of performing the duties of an auditor and is otherwise a fit and proper person to be registered as an auditor;
- but otherwise the Commission shall refuse the application.
- (3) The Commission shall not register as an auditor a person who is disqualified from managing corporations under Part 2D.6.
 - (4) Subject to subsection (8), the Commission may refuse to register as an auditor a person who is not resident in Australia.
 - (5) Where the Commission grants an application by a person for registration as an auditor, the Commission shall cause to be issued to the person a certificate by the Commission stating that the person has been registered as an auditor and specifying the day on which the application was granted.
 - (7) A registration under this section shall be deemed to have taken effect at the beginning of the day specified in the certificate as the day on which the application for registration was granted and remains in force until:

- (a) the registration is cancelled by the Commission or the Board;
or
 - (b) the person who is registered dies.
- (8) The Commission shall not refuse to register a person as an auditor unless the Commission has given the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.
- (9) Where the Commission refuses an application by a person for registration as an auditor, the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it.

1281 Auditor-General deemed to be registered as auditor

A person who holds office as, or is for the time being exercising the powers and performing the duties of:

- (a) the Auditor-General; or
- (b) the Auditor-General of a State or Territory;

shall be deemed, despite any other provision of this Part, to be registered as an auditor.

1282 Registration of liquidators

- (2) Subject to this section, where an application for registration as a liquidator is made under section 1279, the Commission shall grant the application if:
- (a) the applicant:
 - (i) is a member of The Institute of Chartered Accountants in Australia, the Australian Society of Certified Practising Accountants or any other prescribed body;
 - (ii) holds a degree, diploma or certificate from a prescribed university or another prescribed institution in Australia and has passed examinations in such subjects, under whatever name, as the appropriate authority of the university or other institution certifies to the Commission to represent a course of study in accountancy of not less than 3 years duration and in

Section 1282

commercial law (including company law) of not less than 2 years duration; or

(iii) has other qualifications and experience that, in the opinion of the Commission, are equivalent to the qualifications mentioned in subparagraph (i) or (ii);

(b) the Commission is satisfied as to the experience of the applicant in connection with the winding up of bodies corporate; and

(c) the Commission is satisfied that the applicant is capable of performing the duties of a liquidator and is otherwise a fit and proper person to be registered as a liquidator;

but otherwise the Commission shall refuse the application.

(3) Where an application for registration as a liquidator of a specified body corporate is made under section 1279, the Commission shall grant the application and register the applicant as a liquidator of that body if the Commission is satisfied that the applicant has sufficient experience and ability, and is a fit and proper person, to act as liquidator of the body, having regard to the nature of the property or business of the body and the interests of its creditors and contributories, but otherwise the Commission shall refuse the application.

(4) The Commission shall not register as a liquidator, or as a liquidator of a specified body corporate, a person who is disqualified from managing corporations under Part 2D.6.

(5) Subject to subsection (10), the Commission may refuse to register as a liquidator or as a liquidator of a specified body corporate a person who is not resident in Australia.

(6) Where:

(a) the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate; and

(b) the person has complied with the requirements of section 1284;

the Commission shall cause to be issued to the person a certificate by the Commission:

(c) stating that the person has been registered as a liquidator or as a liquidator of a specified body corporate;

- (d) specifying a day as the day of the beginning of the registration, being:
 - (i) the day on which the Commission granted the application; or
 - (ii) the day on which the person complied with the requirements of section 1284;whichever was the later; and
 - (e) in the case of a person who is registered under subsection (3) as a liquidator of a specified body corporate—setting out the name of that body.
- (8) The registration of a person as a liquidator under subsection (2) comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until:
- (a) the registration is cancelled by the Commission or by the Board; or
 - (b) the person dies.
- (9) The registration of a person as a liquidator of a specified body corporate under subsection (3) comes into force at the beginning of the day specified in the certificate as the day of the beginning of the registration and remains in force until:
- (a) the registration is cancelled by the Commission or by the Board;
 - (b) the person dies; or
 - (c) the body corporate is dissolved or deregistered.
- (10) The Commission shall not refuse to register a person as a liquidator, or as a liquidator of a specified body corporate, unless the Commission has given the person an opportunity to appear at a hearing before the Commission and to make submissions and give evidence to the Commission in relation to the matter.
- (11) Where the Commission refuses an application by a person for registration as a liquidator, or as a liquidator of a specified body corporate, the Commission shall, not later than 14 days after the decision, give to the person notice in writing setting out the decision and the reasons for it.

Section 1283

1283 Registration of official liquidators

- (1) The Commission may register as an official liquidator a natural person who is a registered liquidator.
- (2) A person who is registered as an official liquidator is entitled, upon request, to be issued with a certificate of his or her registration.
- (3) The Commission may register under subsection (1) as official liquidators as many registered liquidators as it thinks fit.

1284 Security to be given by liquidators

- (1) Where the Commission grants an application by a person for registration as a liquidator or as a liquidator of a specified body corporate, the person shall lodge and maintain with the Commission a security for the due performance of his or her duties as such a liquidator in such form and for such amount as is, from time to time, determined by the Commission in relation to that liquidator and with such surety or sureties (if any) as the Commission, from time to time, requires.
- (2) Where a security is lodged in accordance with subsection (1), the security may be applied by the Commission in such circumstances, for such purposes and in such manner as is prescribed.
- (3) The regulations may make provision in relation to:
 - (a) the discharge in whole or part by the Commission of securities lodged under this section; and
 - (b) the release by the Commission of sureties referred to in subsection (1) from all or any of their obligations as such sureties.

1284A Security given under previous law

- (1) This section applies where, immediately before the commencement of this section, a person maintained a security, under a previous law of this jurisdiction corresponding to section 1284, with the local authority within the meaning of that previous law.

- (2) After that commencement, the security has effect, with such modifications as are prescribed or the circumstances require, as if:
 - (a) it were a security lodged and maintained in accordance with section 1284; and
 - (b) the Commission were substituted for the local authority as a party to the security; and
 - (c) a reference in the security to the local authority were a reference to the Commission.
- (3) Without limiting subsection 1284(2), regulations for the purposes of that subsection may provide for the security to be applied in connection with an act done, an omission or event occurring, or a matter arising, before that commencement.

1285 Register of Auditors

- (1) The Commission shall cause a Register of Auditors to be kept for the purposes of this Law and shall cause to be entered in the Register in relation to a person who is registered as an auditor:
 - (a) the name of the person;
 - (b) the day on which the application by that person for registration as an auditor was granted;
 - (c) the address of the principal place where the person practises as an auditor and the address of the other places (if any) at which he or she so practises;
 - (d) if the person practises as an auditor as a member of a firm or under a name or style other than his or her own name—the name of that firm or the name or style under which he or she so practises; and
 - (e) particulars of any suspension of the person's registration, under Division 2 or a corresponding previous law, as an auditor and of any action taken in respect of the person under, or under a previous law corresponding to, paragraph 1292(9)(a), (b) or (c);and may cause to be entered in the Register in relation to a person who is registered as an auditor such other particulars as the Commission considers appropriate.
- (2) Where a person ceases to be registered as an auditor, the Commission shall cause to be removed from the Register of

Section 1286

Auditors the name of the person and any other particulars entered in the Register in relation to that person.

- (3) A person may inspect and make copies of, or take extracts from, the Register of Auditors.

1286 Registers of Liquidators and Official Liquidators

- (1) The Commission shall cause a Register of Liquidators to be kept for the purposes of this Law and shall cause to be entered in the Register:
- (a) in relation to a person who is registered as a liquidator:
 - (i) the name of the person;
 - (ii) the day of the beginning of the registration of that person as a liquidator;
 - (iii) the address of the principal place where the person practises as a liquidator and the addresses of the other places (if any) at which he or she so practises;
 - (iv) if the person practises as a liquidator as a member of a firm or under a name or style other than his or her own name—the name of that firm or the name or style under which he or she so practises; and
 - (v) particulars of any suspension of the registration of the person as a liquidator, of any suspension of a registration of the person, under a previous law corresponding to Division 2, as a liquidator or as a liquidator of a specified body corporate, and of any action taken in respect of the person under paragraph 1292(9)(a), (b) or (c) or under a corresponding previous law; and
 - (b) in relation to a person who is registered as a liquidator of a specified body corporate:
 - (i) the name of the person;
 - (ii) the name of the body corporate;
 - (iii) the day of commencement of the registration of the person as a liquidator of the body corporate;
 - (iv) the address of the principal place where the person proposes to perform his or her functions as the liquidator of the body corporate;

- (v) if the person practises a profession as a member of a firm or under a name or style other than his or her own name, being a profession by virtue of which he or she is qualified to be appointed as a liquidator of the body corporate—the name and address of that firm or the name or style under which he or she so practises; and
- (vi) particulars of any suspension or deemed suspension of the registration of the person as a liquidator of that body corporate, of any suspension of a registration of the person, under a previous law corresponding to Division 2, as a liquidator or as a liquidator of a specified body corporate, and of any action taken in respect of the person under paragraph 1292(9)(a), (b) or (c) or under a corresponding previous law;

and may cause to be entered in the Register in relation to a person who is registered as a liquidator, or as a liquidator of a specified body corporate, such other particulars as the Commission considers appropriate.

- (2) The Commission shall cause a Register of Official Liquidators to be kept for the purposes of this Law and shall cause to be entered in the Register the name, and such other particulars as the Commission considers appropriate, of any person registered as an official liquidator.
- (3) Where a person ceases to be registered as a liquidator, as a liquidator of a specified body corporate or as an official liquidator, the Commission shall cause to be removed from the Register of Liquidators or from the Register of Official Liquidators, as the case may be, the name of the person and any other particulars entered in that Register in relation to that person.
- (4) A person may inspect and make copies of, or take extracts from, the Register of Liquidators or the Register of Official Liquidators.

1287 Notification of certain matters

- (1) Where:
 - (a) a person who is a registered company auditor ceases to practise as an auditor; or

Section 1287

- (b) a change occurs in any matter particulars of which are required by paragraph 1285(1)(a), (c) or (d) to be entered in the Register of Auditors in relation to a person who is a registered company auditor;
- the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.
- (2) Where:
- (a) a person who is a registered liquidator ceases to practise as a liquidator; or
- (b) a change occurs in any matter particulars of which are required by subparagraph 1286(1)(a)(i), (iii) or (iv) to be entered in the Register of Liquidators in relation to a person who is a registered liquidator;
- the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.
- (3) Where:
- (a) a person who is registered as a liquidator of a specified body corporate ceases to act as a liquidator in the winding up of that body; or
- (b) a change occurs in any matter particulars of which are required by subparagraph 1286(1)(b)(i), (ii), (iv) or (v) to be entered in the Register of Liquidators in relation to a person who is registered as a liquidator of a specified body corporate;
- the person shall, not later than 21 days after the occurrence of the event concerned, lodge, in the prescribed form, particulars in writing of that event.
- (4) If a person who is registered as an auditor, as a liquidator or as a liquidator of a specified corporate body is disqualified from managing corporations under Part 2D.6, then, within a period of 3 days after they become disqualified, they must lodge written particulars in the prescribed form of the circumstances because of which they become disqualified.

1288 Triennial statements by registered auditors and liquidators

- (1) A person who is, under subsection 1278, taken to be registered as an auditor or liquidator under this Division must lodge a statement relating to the relevant period setting out such information as is prescribed.
- (2) A statement under subsection (1) must be lodged:
 - (a) within the period in which the person would have been required to lodge an equivalent statement under a corresponding provision of a previous law if this Law had not commenced; and
 - (b) within one month after the end of each subsequent relevant period.
- (3) A person who is a registered company auditor or registered liquidator (other than a person to whom subsection (1) applies) must, within one month after the end of:
 - (a) the period of 3 years beginning on the day on which the person's registration begins; and
 - (b) each subsequent period of 3 years;lodge a statement in respect of that period of 3 years setting out such information as is prescribed.
- (4) The Commission may, on the application of a registered company auditor or a registered liquidator made before the end of the period for lodging a statement under subsection (1) or (3), extend, or further extend, that period.
- (5) The Commission may, by notice in writing served on the person, require a person who is registered as a liquidator of a specified body corporate to lodge, within a period specified in the notice, a statement in respect of a period specified in the notice setting out such information as is prescribed.
- (6) In this section:

relevant period, in relation to a person who is taken to be registered as an auditor or liquidator under this Division, means:

 - (a) the period starting before this Law commenced in respect of which the person would have been required to lodge a

Section 1289

statement under corresponding to this section a previous law if this Law had not commenced; and

- (b) each subsequent period of 3 years.

1289 Auditors and other persons to enjoy qualified privilege in certain circumstances

- (1) An auditor has qualified privilege in respect of:

- (a) any statement that he or she makes, orally or in writing, in the course of his or her duties as auditor;
- (b) any statement that he or she makes, orally or in writing, on a directors' report under section 298 or 306 or on any statement, report or other document that is deemed, for any purpose, to be part of the first-mentioned report; or
- (c) notifying ASIC of a matter under section 311.

- (2) A person has qualified privilege in respect of:

- (a) the publishing of any document prepared by an auditor in the course of his or her duties and required by or under this Law to be lodged, whether or not the document has been lodged; or
- (b) the publishing of any statement made by an auditor as mentioned in subsection (1).

Division 3—Cancellation or suspension of registration

1290 Cancellation at request of registered person

- (1) Where a person who is registered as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator requests the Commission to cancel his or her registration, the Commission may cancel the registration of that person as an auditor, as a liquidator, as a liquidator of that body corporate or as an official liquidator, as the case may be.
- (2) A decision of the Commission under subsection (1) to cancel the registration of a person as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator comes into effect as soon as practicable upon the making of the decision.

1291 Official liquidators

- (1) The Commission may, at any time, cancel, or suspend for a specified period, the registration as an official liquidator of a person who is so registered.
- (2) The Commission may, at any time, require a person registered as an official liquidator to give an undertaking to refrain from engaging in specified conduct except on specified conditions.
- (3) Where the Commission decides to exercise a power under subsection (1) or (2), the Commission shall, not later than 14 days after the decision, give to the person a notice in writing setting out the decision and the reasons for it, but the validity of the decision is not affected by failure of the Commission to do so.
- (4) A decision of the Commission under subsection (1) to cancel or suspend the registration of a person as an official liquidator comes into effect at the end of the day on which there is given to the person a notice of the decision, being a notice of the kind referred to in subsection (3).

Section 1292

1292 Powers of Board in relation to auditors and liquidators

- (1) The Board may, if it is satisfied on an application by the Commission for a person who is registered as an auditor to be dealt with under this section that, before, at or after the commencement of this section:
 - (a) the person has:
 - (i) contravened section 1288 or a corresponding previous law; or
 - (ii) ceased to be resident in Australia;
 - (b) a registration of the person under a previous law corresponding to Division 2 has been cancelled or suspended;
 - (c) the person has been dealt with under a previous law corresponding to subsection (9) of this section; or
 - (d) the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
 - (i) the duties of an auditor; or
 - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered company auditor;or is otherwise not a fit and proper person to remain registered as an auditor;by order, cancel, or suspend for a specified period, the registration of the person as an auditor.

- (2) The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator to be dealt with under this section that, before, at or after the commencement of this section:
 - (a) the person has:
 - (i) contravened section 1288 or a corresponding previous law; or
 - (ii) ceased to be resident in Australia;
 - (b) a registration of the person under a previous law corresponding to Division 2 has been cancelled or suspended;
 - (c) the person has been dealt with under a previous law corresponding to subsection (9) of this section; or

- (d) that the person has failed, whether within or outside Australia, to carry out or perform adequately and properly:
- (i) the duties of a liquidator; or
 - (ii) any duties or functions required by an Australian law to be carried out or performed by a registered liquidator; or
- or is otherwise not a fit and proper person to remain registered as a liquidator;
- by order, cancel, or suspend for a specified period, the registration of the person as a liquidator.
- (3) The Board may, if it is satisfied on an application by the Commission for a person who is registered as a liquidator of a specified body corporate to be dealt with under this section that, before, at or after the commencement of this section:
- (a) the person has:
 - (i) contravened subsection 1288(5) or a corresponding previous law; or
 - (ii) ceased to be resident in Australia;
 - (b) a registration of the person under a previous law corresponding to Division 2 has been cancelled or suspended;
 - (c) the person has been dealt with under a previous law corresponding to subsection (9) of this section; or
 - (d) that the person has failed, whether within or outside Australia, to carry out adequately and properly the duties of a liquidator in respect of the winding up of that body corporate or is otherwise not a fit and proper person to remain registered as a liquidator of that body corporate;
- by order, cancel, or suspend for a specified period, the registration of the person as a liquidator of that body corporate.
- (4) Where:
- (a) the Commission applies to the Board for a person who is registered as an auditor to be dealt with under this section; and
 - (b) the person is also registered as a liquidator or as a liquidator of a specified body corporate;
- the Board may, in addition to making an order under subsection (1), if it is satisfied as to any of the matters specified in paragraph

Section 1292

(2)(a), (b), (c) or (d) or (3)(a), (b), (c) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as a liquidator or as a liquidator of that body, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Division, be deemed to have been made under subsection (2) or (3), as the case may be.

(5) Where:

- (a) the Commission applies to the Board for a person who is registered as a liquidator to be dealt with under this section; and
- (b) the person is also registered as an auditor or as a liquidator of a specified body corporate;

the Board may, in addition to making an order under subsection (2), if it is satisfied as to any of the matters specified in paragraph (1)(a), (b), (c) or (d) or (3)(a), (b), (c) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator of that body, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Division, be deemed to have been made under subsection (1) or (3), as the case may be.

(6) Where:

- (a) the Commission applies to the Board for a person who is registered as a liquidator of a specified body corporate to be dealt with under this section; and
- (b) the person is also registered as an auditor or as a liquidator;

the Board may, in addition to making an order under subsection (3), if it is satisfied as to any of the matters specified in paragraph (1)(a), (b), (c) or (d) or (2)(a), (b), (c) or (d), make an order cancelling, or suspending for a specified period, the registration of the person as an auditor or as a liquidator, as the case may be, and, where the Board makes such an order, the order shall, for the purposes of this Division, be deemed to have been made under subsection (1) or (2), as the case may be.

(7) The Board shall, if it is satisfied on an application by the Commission for a prescribed person to be dealt with under this section:

- (a) that the person is disqualified from managing corporations under Part 2D.6; or
 - (b) that the person is incapable, because of mental infirmity, of managing his or her affairs;
- by order, cancel each prescribed registration of the person.
- (8) In subsection (7) and in this subsection:
- prescribed person*** means a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate.
- prescribed registration***, in relation to a prescribed person, means a registration of the person as an auditor, as a liquidator or as the liquidator of a specified body corporate.
- (9) Where, on an application by the Commission for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the Board is satisfied that the person has failed to carry out or perform adequately and properly any of the duties or functions mentioned in paragraph (1)(d), (2)(d) or (3)(d), as the case may be, or is otherwise not a fit and proper person to remain registered as an auditor, liquidator or liquidator of that body, as the case may be, the Board may deal with the person in one or more of the following ways:
- (a) by admonishing or reprimanding the person;
 - (b) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;
 - (c) by requiring the person to give an undertaking to refrain from engaging in specified conduct except on specified conditions;
- and, if a person fails to give an undertaking when required to do so under paragraph (b) or (c), or contravenes an undertaking given pursuant to a requirement under that paragraph, the Board may, by order, cancel, or suspend for a specified period, the registration of the person as an auditor, as a liquidator or as a liquidator of a specified body corporate, as the case may be.
- (10) Where, on an application by the Commission for a person who is registered as an auditor, as a liquidator or as a liquidator of a specified body corporate to be dealt with under this section, the

Section 1293

Board is empowered to deal with the person as mentioned in subsection (9), the Board may so deal with the person:

- (a) if the Board is required to make an order under subsection (6) on the application—in addition to making such an order; or
 - (b) otherwise—in addition to, or instead of, cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of that body, as the case may be.
- (11) The Board may exercise any of its powers under this Division in relation to a person as a result of conduct engaged in by the person whether or not that conduct constituted or might have constituted an offence, and whether or not any proceedings have been brought or are to be brought in relation to that conduct.
- (12) This section has effect subject to section 1294.

1293 Effect in certain cases of cancellation or suspension of registration under corresponding previous law

- (1) This section applies where a registration (in this section called the *corresponding registration*) of a person under a previous law corresponding to Division 2:
- (a) is cancelled after the commencement of this section; or
 - (b) was suspended before, or is suspended at or after, that commencement;
- on an application made before that commencement.
- (2) If the corresponding registration is as an auditor the person's registration under Division 2 as an auditor:
- (a) is taken to be cancelled; or
 - (b) is taken to be suspended while the corresponding registration is suspended;
- as the case may be.
- (3) If the corresponding registration is as a liquidator, or as a liquidator of a specified body corporate:
- (a) the person's registration under Division 2 as a liquidator; and

- (b) each registration (if any) of the person under Division 2 as a liquidator of a specified body corporate;
are taken to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be.
- (4) If the corresponding registration is as an official liquidator, the person's registration under Division 2 as an official liquidator is taken to be cancelled, or to be suspended while the corresponding registration is suspended, as the case may be.
- (5) Nothing in this section prevents a person whose corresponding registration was suspended before or at the commencement of this section being taken to be registered under this Division as provided by section 1278, but nothing in that section affects the operation of this section in relation to that suspension.

1294 Board to give opportunity for hearing etc.

- (1) The Board shall not:
- (a) cancel or suspend the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate; or
 - (b) deal with a person in any of the ways mentioned in subsection 1292(9);
- unless the Board has given the person an opportunity to appear at a hearing held by the Board and to make submissions to, and adduce evidence before, the Board in relation to the matter.
- (2) Where subsection (1) requires the Board to give a person an opportunity to appear at a hearing and to make submissions to, and bring evidence before, the Board in relation to a matter, the Board shall give the Commission an opportunity to appear at the hearing and to make submissions to, and bring evidence before, the Board in relation to the matter.

1295 Board may remove suspension

- (1) Where a registration of a person is suspended, the Board may, on an application by the person or of its own motion, by order, terminate the suspension.

Section 1296

- (2) An order under subsection (1) has effect accordingly.

1296 Notice of Board's decision

- (1) Where the Board decides to exercise any of its powers under section 1292 in relation to a person, or decides that it is required to make an order under subsection 1292(7) in relation to a person, the Board shall, within 14 days after the decision:
- (a) give to the person a notice in writing setting out the decision and the reasons for it;
 - (b) lodge a copy of the notice referred to in paragraph (a); and
 - (c) cause to be published in the *Gazette* a notice in writing setting out the decision.
- (2) Where the Board decides to refuse to exercise its powers under section 1292 in relation to a person, or decides that it is not required to make an order under subsection 1292(7) in relation to a person, the Board shall, within 14 days after the decision:
- (a) give to the person a notice in writing setting out the decision and the reasons for it; and
 - (b) lodge a copy of the notice referred to in paragraph (a).
- (3) The validity of a decision of the Board is not affected by failure of the Board to comply with subsection (1) or (2), as the case requires, in relation to the decision.

1297 Time when Board's decision comes into effect

- (1) Subject to subsection (2) and to sections 41 and 44A of the *Administrative Appeals Tribunal Act 1975*, an order made by the Board cancelling or suspending the registration of a person as an auditor, as a liquidator or as a liquidator of a specified body corporate comes into effect at the end of the day on which there is given to the person a notice of the decision pursuant to which the order is made, being a notice of the kind referred to in paragraph 1296(1)(a).
- (2) Where the Board makes an order of a kind referred to in subsection (1), it may, in order to enable an application to be made to the Tribunal for review of the decision to make the order,

determine that the order is not to come into effect until a specified time or until the happening of a specified event.

- (3) The Board may at any time vary or revoke a determination made under subsection (2), including such a determination that has been varied at least once before.
- (4) A determination in force under subsection (2) has effect accordingly.

1298 Effect of suspension

A person whose registration as an auditor, as a liquidator, as a liquidator of a specified body corporate or as an official liquidator is suspended shall, except for the purposes of subsections 1285(2) and 1286(3), section 1287 (other than paragraphs 1287(1)(a), (2)(a) and (3)(a)), section 1288 and this Division, be deemed not to be registered as an auditor, liquidator, liquidator of that body corporate or official liquidator, as the case may be, so long as the registration is suspended.

Part 9.3—Books

1300 Inspection of books

- (1) A book that is by this Law required to be available for inspection shall, subject to and in accordance with this Law, be available for inspection at the place where, in accordance with this Law, it is kept and at all times when the registered office in Australia of the body corporate concerned is required to be open to the public.
- (2) If any register kept by a company or a foreign company for the purposes of this Law is kept at a place other than the registered office of the company or foreign company, that place shall be open to permit the register to be inspected during the same hours as those during which the registered office of the company or foreign company is required to be open to the public.
- (2A) If a person asks a proprietary company in writing to inspect a particular book of the company that the person has a right to inspect, the company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.
- (3) A person permitted by this Law to inspect a book may make copies of, or take extracts from, the book and any person who refuses or fails to allow a person so permitted to make a copy of, or take an extract from, the book is guilty of an offence.

1301 Location of books on computers

- (1) This section applies if:
 - (a) a corporation records, otherwise than in writing, matters (*the stored matters*) this Law requires to be contained in a book; and
 - (b) the record of the stored matters is kept at a place (*the place of storage*) other than the place (*the place of inspection*) where the book is, apart from this section, required to be kept; and

- (c) at the place of inspection means are provided by which the stored matters are made available for inspection in written form; and
 - (d) the corporation has lodged a notice:
 - (i) stating that this section is to apply in respect of:
 - (A) except where sub-subparagraph (B) applies—the book; or
 - (B) if the stored matters are only some of the information that is required to be contained in the book—the book and matters that are of the same kind as the stored matters; and
 - (ii) specifying the situation of the place of storage and the place of inspection.
- (2) Subject to subsection (4), the corporation is taken to have complied with the requirements of this Law as to the location of the book, but only in so far as the book is required to contain the stored matters.
- (3) Subject to subsection (4), for the purposes of the application of subsection 1085(3) and section 1300 in relation to the corporation and the book, the book is taken to be kept at the place of inspection, even though the record of the stored matters is kept at the place of storage.
- (4) If:
- (a) the situation of the place of storage or the place of inspection changes; and
 - (b) the corporation does not lodge notice of the change within 14 days after the change;
- this section, as it applies to the corporation because of the lodging of the notice referred to in paragraph (1)(d), ceases to so apply at the end of that period of 14 days.

1302 Location of registers

- (1) A register that is required by section 271 to be kept by a company shall be kept at the registered office or at an office at the principal place of business in Australia of the company but:

Section 1303

- (a) if the work of making up the register is done at another office of the company within Australia, it may be kept at that other office;
 - (b) if the company arranges with some other person to make up the register on its behalf and the office of that other person at which the work is done is within Australia, it may be kept at that office; or
 - (c) if the Commission approves, it may be kept at another office in Australia, being an office of the company or of another person.
- (3) If default is made in complying with subsection (1) in its application to any register of a company, the company, any officer of the company who is in default, and any person who has arranged with the company to make up the register on its behalf and is in default, are each guilty of an offence.
- (4) A company shall, within 7 days after any register of the company to which subsection (1) applies is first kept at an office other than the registered office or the principal office, as the case may be, lodge notice of the address of the office where the register is kept and shall, within 7 days after any change in the place at which the register is kept, lodge notice of the change.
- (5) If default is made in complying with subsection (4) in its application to any register of a company, the company and any officer of the company who is in default are each guilty of an offence.
- (7) In this section, unless the contrary intention appears, *company* includes a registered body.

1303 Court may compel compliance

If any person in contravention of this Law refuses to permit the inspection of any book or to supply a copy of any book, the Court may by order compel an immediate inspection of the book or order the copy to be supplied.

1304 Translations of instruments

- (1) Where under this Law a person is required to lodge an instrument or a certified copy of an instrument and the instrument is not written in English, the person shall lodge at the same time a certified translation of the instrument into English.
- (2) Where under this Law a body corporate is required to make an instrument available for inspection and the instrument is not written in English, the body corporate shall keep at its registered office or, if it does not have a registered office, at its principal office in Australia, a certified translation of the instrument into English.
- (3) In this section, *instrument* includes any certificate, contract or other document.

1305 Admissibility of books in evidence

- (1) A book:
 - (a) kept by a body corporate under a requirement of this Law; or
 - (b) kept by a corporation under a requirement of a previous law corresponding to a provision of this Law;is admissible in evidence in any proceeding and is *prima facie* evidence of any matter stated or recorded in the book.
- (2) A document purporting to be a book kept by a body corporate shall, unless the contrary is proved, be deemed to be a book kept as mentioned in subsection (1).

1306 Form and evidentiary value of books

- (1) A book that is required by this Law to be kept or prepared may be kept or prepared:
 - (a) by making entries in a bound or looseleaf book;
 - (b) by recording or storing the matters concerned by means of a mechanical, electronic or other device; or
 - (c) in any other manner approved by the Commission.
- (2) Subsection (1) does not authorise a book to be kept or prepared by a mechanical, electronic or other device unless:

Section 1307

- (a) the matters recorded or stored will be capable, at any time, of being reproduced in a written form; or
 - (b) a reproduction of those matters is kept in a written form approved by the Commission.
- (3) A corporation shall take all reasonable precautions, including such precautions (if any) as are prescribed, for guarding against damage to, destruction of or falsification of or in, and for discovery of falsification of or in, any book or part of a book required by this Law to be kept or prepared by the corporation.
- (4) Where a corporation records or stores any matters by means of a mechanical, electronic or other device, any duty imposed by this Law to make a book containing those matters available for inspection or to provide copies of the whole or a part of a book containing those matters shall be construed as a duty to make the matters available for inspection in written form or to provide a document containing a clear reproduction in writing of the whole or part of them, as the case may be.
- (4A) The regulations may provide for how up to date the information contained in an instrument prepared for the purposes of subsection (4) must be.
- (5) If:
- (a) because of this Law, a book that this Law requires to be kept or prepared is *prima facie* evidence of a matter; and
 - (b) the book, or a part of the book, is kept or prepared by recording or storing matters (including that matter) by means of a mechanical, electronic or other device;
- a written reproduction of that matter as so recorded or stored is *prima facie* evidence of that matter.
- (6) A writing that purports to reproduce a matter recorded or stored by means of a mechanical, electronic or other device shall, unless the contrary is established, be deemed to be a reproduction of that matter.

1307 Falsification of books

- (1) An officer, former officer, member or former member of a company who conceals, destroys, mutilates or falsifies any

securities of or belonging to the company or any books affecting or relating to affairs of the company is guilty of an offence.

- (2) Where matter that is used or intended to be used in connection with the keeping of any books affecting or relating to affairs of a company is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who:
- (a) records or stores by means of that device matter that the person knows to be false or misleading in a material particular;
 - (b) destroys, removes or falsifies matter that is recorded or stored by means of that device, or has been prepared for the purpose of being recorded or stored, or for use in compiling or recovering other matter to be recorded or stored by means of that device; or
 - (c) having a duty to record or store matter by means of that device, fails to record or store the matter by means of that device:
 - (i) with intent to falsify any entry made or intended to be compiled, wholly or in part, from matter so recorded or stored; or
 - (ii) knowing that the failure so to record or store the matter will render false or misleading in a material particular other matter so recorded or stored;
- contravenes this subsection.
- (3) It is a defence to a charge arising under subsection (1) or (2) if the defendant proves that he, she or it acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.
- (4) In this section, *officer*, in relation to a company, includes a receiver of property of the company who is not also a manager.

Part 9.4—Offences

Division 1—Specific offences

1308 False or misleading statements

- (1) A corporation must not advertise or publish:
 - (a) a statement of the amount of its capital that is misleading; or
 - (b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.
- (2) A person who, in a document required by or for the purposes of this Law or lodged with or submitted to the Commission, makes or authorises the making of a statement that to the person's knowledge is false or misleading in a material particular, or omits or authorises the omission of any matter or thing without which the document is to the person's knowledge misleading in a material respect, is guilty of an offence.
- (3) A person who makes or authorises the making of a statement that is based on information that to the person's knowledge:
 - (a) is false or misleading in a material particular; or
 - (b) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;shall, for the purposes of subsection (2), be deemed to have made or authorised the making of a statement that to the person's knowledge was false or misleading in a material particular.
- (3A) A person is not liable to be proceeded against for an offence in consequence of a regulation made under section 28 of the *Corporations Act 1989* of the Commonwealth, as that regulation applies for the purposes of the Corporations Law of this jurisdiction, as well as for an offence against subsection (2) of this section.
- (4) A person who, in a document required by or for the purposes of this Law or lodged:

- (a) makes or authorises the making of a statement that is false or misleading in a material particular; or
 - (b) omits or authorises the omission of any matter or thing without which the document is misleading in a material respect;
- without having taken reasonable steps to ensure that the statement was not false or misleading or to ensure that the statement did not omit any matter or thing without which the document would be misleading, as the case may be, is guilty of an offence.
- (5) A person who makes or authorises the making of a statement without having taken reasonable steps to ensure that the information on which the statement was based:
- (a) was not false or misleading in a material particular; and
 - (b) did not have omitted from it a matter or thing the omission of which would render the information misleading in a material respect;
- shall, for the purposes of subsection (4), be deemed to have made or authorised the making of a statement without having taken reasonable steps to ensure that the statement was not false or misleading.
- (6) For the purposes of subsections (2) and (4), where:
- (a) at a meeting, a person votes in favour of a resolution approving, or otherwise approves, a document required by or for the purposes of this Law or required to be lodged; and
 - (b) the document contains a statement that, to the person's knowledge, is false or misleading in a material particular, or omits any matter or thing without which the document is, to the person's knowledge, misleading in a material respect;
- the person shall be deemed to have authorised the making of the statement or the omission of the matter or thing.
- (7) For the purposes of this section, a statement, report or other document that:
- (a) relates to affairs of a company or of a subsidiary of a company;
 - (b) is not itself required by this Law to be laid before the company in general meeting; and

Section 1309

- (c) is attached to or included with a report of the directors sent under section 314 to members of the company or laid before the company at an annual general meeting of the company; shall be deemed to be part of the report referred to in paragraph (c).
- (8) A person shall not, in connection with an application for a securities licence or futures licence:
- (a) make a statement that is false or misleading in a material particular knowing it to be false or misleading; or
 - (b) omit to state any matter or thing knowing that because of that omission the application is misleading in a material respect.

1309 False information etc.

- (1) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:
- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;
 - (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
 - (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;
- being information, whether in documentary or any other form, that relates to the affairs of the corporation and that, to the knowledge of the officer:
- (d) is false or misleading in a material particular; or
 - (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;
- is guilty of an offence.
- (2) An officer of a corporation who makes available or furnishes information, or authorises or permits the making available or furnishing of information, to:
- (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

- (b) if the corporation is taken for the purposes of Chapter 2M to be controlled by another corporation—an auditor of the other corporation; or
 - (c) a securities exchange in Australia or elsewhere or an officer of such a securities exchange;
- being information, whether in documentary or any other form, relating to the affairs of the corporation that:
- (d) is false or misleading in a material particular; or
 - (e) has omitted from it a matter or thing the omission of which renders the information misleading in a material respect;
- without having taken reasonable steps to ensure that the information:
- (f) was not false or misleading in a material particular; and
 - (g) did not have omitted from it a matter or thing the omission of which rendered the information misleading in a material respect;
- is guilty of an offence.
- (3) The references in subsections (1) and (2) to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information relating to the affairs of a corporation include references to a person making available or furnishing, or authorising or permitting the making available or furnishing of, information as to the state of knowledge of that person with respect to the affairs of the corporation.
 - (4) Where information is made available or furnished to a person referred to in paragraph (1)(a), (b) or (c) or (2)(a), (b) or (c) in response to a question asked by that person, the question and the information shall be considered together in determining whether the information was false or misleading.
 - (5) A person shall not, for the purposes of this Law, lodge with a futures exchange, a clearing house for a futures exchange, or a futures association, a document that contains a statement that, to the person's knowledge, is false or misleading.

Section 1310

1310 Obstructing or hindering Commission etc.

A person shall not, without lawful excuse, obstruct or hinder the Commission, or any other person, in the performance or exercise of a function or power under this Law.

Division 2—Offences generally

1310A Offences under 2 or more Corporations Laws

Where:

- (a) an act or omission constitutes an offence under the Corporations Law of this jurisdiction and the Corporations Law of another jurisdiction; and
- (b) the offender has been punished for that offence under the law of the other jurisdiction;

the offender is not liable to be punished for the offence under the law of this jurisdiction.

1310B Civil liability under 2 or more Corporations Laws

In a proceeding under this Law in respect of loss or damage arising out of a contravention of this Law, it is a defence if it is proved:

- (a) that the plaintiff has recovered in respect of the loss or damage in an action brought under the Corporations Law of another jurisdiction; or
- (b) that:
 - (i) the plaintiff has brought proceedings under the Corporations Law of another jurisdiction to recover in respect of the loss or damage; and
 - (ii) judgment has been entered for the defendant in those proceedings.

1311 General penalty provisions

- (1) A person who:
 - (a) does an act or thing that the person is forbidden to do by or under a provision of this Law;
 - (b) does not do an act or thing that the person is required or directed to do by or under a provision of this Law; or
 - (c) otherwise contravenes a provision of this Law;is guilty of an offence by virtue of this subsection, unless that or another provision of this Law provides that the person:

Section 1311

- (d) is guilty of an offence; or
 - (e) is not guilty of an offence.
- (1A) Paragraphs (1)(a), (b) and (c) only apply to a provision in the following list if a penalty, pecuniary or otherwise, is set out in Schedule 3 immediately under a heading referring to that provision, or to a provision or provisions in which that provision is included:
- (a) Chapters 2A, 2B and 2C
 - (b) Parts 2F.2 and 2F.3
 - (c) Chapters 2G, 2H, 2J, 2M (other than Part 2M.4), 2N and 5A
 - (d) Parts 5B.1 and 5B.3
 - (e) Chapter 10
 - (f) Part 11.1.
- (2) Subject to section 1312, a person who is guilty of an offence against this Law, whether by virtue of subsection (1) or otherwise, is punishable, on conviction, by a penalty not exceeding the penalty applicable to the offence.
- (3) Where:
- (a) subsection (1) operates in relation to a provision of this Law so as to make a person guilty of an offence; or
 - (b) a provision of this Law (other than this section) provides that a person is, in circumstances referred to in the provision, guilty of an offence;
- and a penalty, pecuniary or otherwise, is set out in Schedule 3 immediately under a heading referring to that provision, or to a provision or provisions in which that provision is included, the penalty applicable to the offence is the penalty so set out.
- (3A) Where, because of Part 11.2, provisions of this Law, as in force at a particular time, continue to apply:
- (a) in relation to someone or something; or
 - (b) for particular purposes;
- then, for the purposes of those provisions as so applying:
- (c) Schedule 3 as in force at that time continues to have effect;
- and

- (d) Schedule 3 as in force at a later time does not have effect; except so far as the contrary intention appears in this Law.
- (4) Where a provision of this Law (other than this section) provides that the penalty applicable to a contravention of a particular provision of this Law is a specified penalty, pecuniary or otherwise, the penalty applicable to an offence constituted by a contravention of the particular provision is the specified penalty.
- (5) Except as provided in subsection (3) or (4) or in a provision of this Law (other than this section), the penalty applicable to the offence is a fine of 5 penalty units.

1312 Penalties for bodies corporate

Where a body corporate is convicted of an offence against this Law, the penalty that the court may impose is a fine not exceeding 5 times the maximum amount that, but for this section, the court could impose as a pecuniary penalty for that offence.

1313 Penalty notices

- (1) Where the Commission has reason to believe that a person has committed a prescribed offence, the Commission may, subject to subsection (2), give the person a notice in the prescribed form:
- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
 - (b) setting out the prescribed penalty in respect of the prescribed offence; and
 - (c) stating:
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing:
 - (A) that the obligation to do the act or thing continues despite the service of the notice or the payment of the prescribed penalty;
 - (B) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing,

Section 1313

- no further action will be taken against the person in relation to the prescribed offence; and
- (C) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
- (A) that if, within the period specified in the notice (being a period of at least 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
- (B) that if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.
- (2) Subsection (1) does not empower the Commission:
- (a) to give a person more than one notice under that subsection in relation to an alleged commission by that person of a particular prescribed offence; or
- (b) to give a person a notice under that subsection in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 1316.
- (3) A notice under subsection (1) may be given to a natural person either personally or by post.
- (4) Where a notice under subsection (1) is given to a person in relation to a prescribed offence constituted by a failure to do a particular act or thing:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;

- (b) if, at the end of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 1314 applies in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;
 - (c) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but had done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
 - (d) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (5) Where a notice under subsection (1) is given to a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing:
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
 - (b) if, at the end of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.
- (6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.

Section 1313

(7) Except as provided by paragraphs (4)(a) and (b) and (5)(a), this section does not affect the operation of any provision of this Law, of the regulations, of the rules or of any other Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.

(8) In this section:

authority includes a person.

prescribed offence means:

- (a) a subsection 1311(5) offence; or
- (b) an offence against this Law that the regulations prescribe for the purposes of this section.

prescribed penalty, in relation to a prescribed offence in relation to which the Commission may give, or has given, to a person a notice under subsection (1), means:

- (a) if the offence is a subsection 1311(5) offence:
 - (i) if the regulations prescribe in relation to the offence for the purposes of this paragraph an amount not exceeding one half the amount of the penalty applicable to the offence:
 - (A) if the person is a body corporate—a penalty of five times the amount so prescribed; or
 - (B) otherwise—a penalty of the amount so prescribed; or
 - (ii) otherwise:
 - (A) if the person is a body corporate—a penalty of 1.25 times the amount of the penalty applicable to the offence; or
 - (B) otherwise—a penalty of 0.25 times the amount of the penalty applicable to the offence; or

Note: Section 1311 provides for the penalty applicable to an offence.

- (b) otherwise—a penalty of the amount that the regulations prescribe in relation to the offence.

subsection 1311(5) offence means an offence the penalty applicable to which is provided for by subsection 1311(5).

1313A Offences committed partly in and partly out of the jurisdiction

Where:

- (a) a person does or omits to do an act outside this jurisdiction;
and
 - (b) if that person had done or omitted to do that act in this jurisdiction, the person would, by reason of also having done or omitted to do an act in the jurisdiction, have been guilty of an offence against this Law;
- the person is guilty of that offence.

1313B Reciprocity in relation to offences

Where:

- (a) a person does or omits to do an act within this jurisdiction;
and
 - (b) if that person had done or omitted to do that act in another jurisdiction, the person would have been guilty of an offence against a provision of the Corporations Law of another jurisdiction;
- the person is guilty of an offence against the corresponding provision of this Law.

1313C Offences committed partly before and partly after the commencement of this Law

(1) Where:

- (a) a person did or omitted to do an act before the commencement of this Law and did or omitted to do another act after the commencement of this Law; and
- (b) if the person had done or omitted to do both acts after the commencement of this Law, the person would have been guilty of an offence against a provision of this Law; and

Section 1314

- (c) if the person had done or omitted to do both acts before the commencement of this Law, the person would have been guilty of an offence under the corresponding provision of a previous law;
- the person is guilty of an offence against the provision of this Law referred to in paragraph (b).
- (2) A person is not liable to be punished for an offence against a provision of this Law constituted by the acts or omissions referred to in subsection (1) if the person has been punished for an offence under the corresponding provision of a previous law constituted by the same acts and omissions.

1314 Continuing offences

- (1) Where:
- (a) by or under a provision, an act is required to be done within a particular period or before a particular time;
 - (b) failure to do the act within that period or before that time constitutes an offence; and
 - (c) the act is not done within that period or before that time;
- then:
- (d) the obligation to do the act continues, after that period has ended or that time has passed, and whether or not a person is convicted of a primary substantive offence in relation to failure to do the act, until the act is done; and
 - (e) subsections (3) and (4) apply.
- (2) Where:
- (a) by or under a provision, an act is required to be done but neither a period within which, nor a time before which, the act is to be done is specified;
 - (b) failure to do the act constitutes an offence; and
 - (c) a person is convicted of a primary substantive offence in relation to failure to do the act;
- then:
- (d) the obligation to do the act continues, despite the conviction, until the act is done; and
 - (e) subsections (3) and (4) apply.

(3) Where:

- (a) at a particular time, a person is first convicted of a substantive offence, or is convicted of a second or subsequent substantive offence, in relation to failure to do the act; and
- (b) the failure to do the act continues after that time;

then:

- (c) the person is, in relation to failure to do the act, guilty of a further offence in respect of so much of the period throughout which the failure to do the act continues or elapses after that time and before the relevant day in relation to the further offence; and
- (d) for the purposes of this Law and of the *Crimes Act 1914*, the further offence shall be deemed to be constituted by failure to do the act during so much of that period as so elapses.

(4) Where:

- (a) the provision referred to in paragraph (1)(a) or (2)(a), as the case may be, provides that:

- (i) an officer of a body corporate; or
- (ii) a person;

who is in default, or is involved in a contravention constituted by the failure to do the act, is guilty of an offence or contravenes a provision of this Law; and

- (b) throughout a particular period (in this subsection called the *relevant period*):

- (i) the failure to do the act continues;
- (ii) a person (in this subsection called the *derivative offender*) is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the failure to do the act; and
- (iii) in a case where subparagraph (a)(i) applies—the derivative offender is an officer of the body;

then:

- (c) in a case where either or both of the following events occurs or occur:

Section 1314

(i) a person is convicted, before or during the relevant period, of a primary substantive offence in relation to failure to do the act;

(ii) the derivative offender is convicted, before or during the relevant period, of a primary derivative offence in relation to failure to do the act;

the derivative offender is, in relation to failure to do the act, guilty of an offence (in this paragraph called the **relevant offence**) in respect of so much (if any) of the relevant period as elapses:

(iii) after the conviction referred to in subparagraph (i) or(ii), or after the earlier of the convictions referred to in subparagraphs (i) and (ii), as the case may be; and

(iv) before the relevant day in relation to the relevant offence; and

(d) in a case where, at a particular time during the relevant period, the derivative offender is first convicted of a secondary derivative offence, or is convicted of a second or subsequent secondary derivative offence, in relation to failure to do the act—the derivative offender is, in relation to failure to do the act, guilty of a further offence in respect of so much of the relevant period as elapses after that time and before the relevant day in relation to the further offence.

(5) Where a person is guilty, by virtue of subsection (3) or (4), of an offence in respect of the whole or a part of a particular period, the penalty applicable to the offence is a fine of the amount obtained by multiplying half a penalty unit by the number of days in that period, or in that part of that period, as the case may be.

(6) In this section:

act includes thing.

primary derivative offence, in relation to failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) of which a person is guilty by virtue of being an officer of a corporation, or a person, who is in any way, by act or omission, directly or indirectly, knowingly concerned in or party to failure to do the act.

primary substantive offence, in relation to a failure to do an act, means an offence (other than an offence of which a person is guilty by virtue of this section) constituted by failure to do the act, or by failure to do the act within a particular period or before a particular time.

provision means a section, or a subsection of a section, of this Law.

relevant day, in relation to an offence of which a person is guilty by virtue of this section, means:

- (a) in a case where the information relating to the offence specifies a day in relation to the offence for the purposes of this section, being a day not later than the day on which the information is laid—the day the information so specifies; or
- (b) in any other case—the day on which the information relating to the offence is laid.

required includes directed.

secondary derivative offence, in relation to failure to do an act, means an offence or further offence of which a person is, in relation to failure to do the act, guilty by virtue of paragraph (4)(c) or (d).

substantive offence, in relation to failure to do an act, means:

- (a) a primary substantive offence in relation to failure to do the act; or
 - (b) a further offence of which a person is, in relation to failure to do the act, guilty by virtue of subsection (3).
- (7) For the purposes of subsection (4), a provision of this Law shall, whether or not it expressly provides as mentioned in paragraph (4)(a), be taken to provide that a person who is involved in a contravention constituted by a failure to do an act required by the provision contravenes that provision.

1315 Proceedings: how taken

- (1) Subject to this Law, in any proceedings for an offence against this Law, any information, charge, complaint or application may be laid or made by:

Section 1316

- (a) the Commission;
 - (b) a Commission delegate; or
 - (c) another person authorised in writing by the Minister to institute the proceedings.
- (2) A delegation for the purposes of paragraph (1)(b), or an authorisation for the purposes of paragraph (1)(c), may relate to all offences, or to specified offences, against this Law.
- (3) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

1316 Time for instituting criminal proceedings

Despite anything in any other law, proceedings for an offence against this Law may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the Minister's consent, at any later time.

1316A Privilege against self-incrimination not available to bodies corporate in Corporations Law criminal proceedings

- (1) In a Corporations Law criminal proceeding, a body corporate is not entitled to refuse or fail to comply with a requirement:
- (a) to answer a question or give information; or
 - (b) to produce a book or any other thing; or
 - (c) to do any other act whatever;
- on the ground that the answer or information, production of the book or other thing, or doing that other act, as the case may be, might tend:
- (d) to incriminate the body (whether in respect of an offence to which the proceeding relates or otherwise); or
 - (e) to make the body liable to a penalty (whether in respect of anything to which the proceeding relates or otherwise).
- (2) Subsection (1) applies whether or not the body concerned is a defendant in the proceeding or in any other proceeding.

- (3) In this section:

Corporations Law, in relation to a jurisdiction, has the same meaning as in Division 2 of Part 9 of the *Corporations Act 1989*.

Corporations Law criminal proceeding means:

- (a) a proceeding in a court when exercising jurisdiction in respect of a criminal matter arising under the Corporations Law of this jurisdiction; or
- (b) a proceeding in a court of this jurisdiction when exercising jurisdiction in respect of a criminal matter arising under the Corporations Law of any jurisdiction.

1317 Certain persons to assist in prosecutions

- (1) Where a prosecution in respect of an offence against this Law has been instituted, or the Commission is of the opinion that a prosecution in respect of an offence against this Law ought to be instituted, against a person (in this section referred to as the *defendant*), the Commission may:
 - (a) if the defendant is a natural person—require any person who is or was a partner, employee or agent of the defendant; or
 - (b) if the defendant is a body corporate—require any person who is or was an officer, employee or agent of the defendant;to assist in the prosecution, and the person who is so required shall give all assistance in connection with the prosecution that that person is reasonably able to give.
- (2) The Commission shall not make such a requirement as is mentioned in subsection (1) of a person who, in the opinion of the Commission, is or is likely to be a defendant in the proceedings or is or has been such a person's lawyer.

Section 1317

- (3) If a person to whom paragraph (1)(a) or (b) relates fails to give assistance as required by subsection (1), the person contravenes this section and, without affecting any penalty to which the person may be liable for the contravention, the Court may, on the application of the Commission, order the person to comply with the requirement within such time, and in such manner, as the Court orders.
- (4) In this section, *agent*, in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is an employee or an officer of the defendant or not.

Part 9.4A—Review by Administrative Appeals Tribunal of certain decisions

1317A Interpretation

In this Part:

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

1317B Applications for review

- (1) Subject to this Part, applications may be made to the Tribunal for review of a decision made under this Law by:
 - (a) the Minister;
 - (b) the Commission; or
 - (c) the Companies Auditors and Liquidators Disciplinary Board.
- (2) For the purposes of this Law and the *Administrative Appeals Tribunal Act 1975*, the Commission shall be taken to be a person whose interests are affected by a decision made under this Law by the Companies Auditors and Liquidators Disciplinary Board.

1317C Excluded decisions

Section 1317B does not apply in relation to:

- (a) a decision in respect of which any provision in the nature of an appeal or review is expressly provided by this Law; or
- (b) a decision that is declared by this Law to be conclusive or final or is embodied in a document declared by this Law to be conclusive evidence of an act, matter or thing; or
- (d) a decision made by the Commission in the performance of a function, or in the exercise of a power, under section 601CC or 601CL or Chapter 5A; or
- (e) a decision by the Commission to refuse to exercise a power under section 601CC or 601CL or Chapter 5A; or

Section 1317D

- (f) a decision to apply under section 596A or 596B for the Court to summon a person for examination about a corporation's examinable affairs; or
- (g) a decision to apply under section 597A for the Court to require a person to file an affidavit about a corporation's examinable affairs; or
- (ga) a decision of ASIC under section 655A; or
- (gb) a decision of ASIC under section 673 in relation to securities of the target of a takeover bid during the bid period; or
- (gc) a decision by ASIC whether to make an application under section 657C, 657G, 659B, 1325A, 1325B or 1325C; or
- (h) a decision to make a determination under subsection 1317D(3).

1317D Notice of reviewable decision and review rights

- (1) This section applies if the Minister, the Commission or the Companies Auditors and Liquidators Disciplinary Board (the *decision maker*) makes a decision to which section 1317B applies.
- (2) Subject to subsection (3), the decision maker must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:
 - (a) of the making of the decision; and
 - (b) of the person's right to have the decision reviewed by the Tribunal.
- (3) Subsection (2) does not require the decision maker to give notice to a person affected by the decision or to the persons in a class of persons affected by the decision, if the decision maker determines that giving notice to the person or persons is not warranted, having regard to:
 - (a) the cost of giving notice to the person or persons; and
 - (b) the way in which the interests of the person or persons are affected by the decision.
- (4) A failure to comply with this section does not affect the validity of the decision.

Section 1317D

- (5) The fact that a person has not been given notice of the decision because of a determination under subsection (3) constitutes special circumstances for the purposes of subsection 29(6) of the *Administrative Appeals Tribunal Act 1975*.

Section 1317E

Part 9.4B—Civil consequences of contravening civil penalty provisions

1317E Declarations of contravention

- (1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:
 - (a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers' duties)
 - (b) subsection 209(2) (related parties rules)
 - (c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions)
 - (d) subsection 344(1) (requirements for financial reports)
 - (e) subsection 588G(2) (insolvent trading)
 - (f) subsection 601FC(1)
 - (g) subsection 601FD(1)
 - (h) subsection 601FE(1)
 - (i) section 601FG
 - (j) subsection 601JD(1).
 - (k) subclause 29(6) of Schedule 4.

These provisions are the *civil penalty provisions*.

Note: Once a declaration has been made ASIC can then seek a pecuniary penalty order (section 1317G) or a disqualification order (section 206C).

- (2) A declaration of contravention must specify the following:
 - (a) the Court that made the declaration
 - (b) the civil penalty provision that was contravened
 - (c) the person who contravened the provision
 - (d) the conduct that constituted the contravention
 - (e) the corporation or registered scheme to which the conduct related.

1317F Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in subsection 1317E(2).

1317G Pecuniary penalty orders

- (1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:
 - (a) a declaration of contravention by the person has been made under section 1317E; and
 - (b) the contravention:
 - (i) materially prejudices the interests of the corporation or scheme, or its members; or
 - (ii) materially prejudices the corporation's ability to pay its creditors; or
 - (iii) is serious.
- (2) The penalty is a civil debt payable to ASIC on the Commonwealth's behalf. ASIC or the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317H Compensation orders

Compensation for damage suffered

- (1) A Court may order a person to compensate a corporation or registered scheme for damage suffered by the corporation or scheme if:
 - (a) the person has contravened a civil penalty provision in relation to the corporation or scheme; and
 - (b) the damage resulted from the contravention.The order must specify the amount of the compensation.

Damage includes profits

- (2) In determining the damage suffered by the corporation or scheme for the purposes of making a compensation order, include profits

Section 1317J

made by any person resulting from the contravention or the offence.

Damage includes diminution of value of scheme property

- (3) In determining the damage suffered by the scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.
- (4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

Recovery of damage

- (5) A compensation order may be enforced as if it were a judgment of the Court.

1317J Who may apply for a declaration or order

Application by ASIC

- (1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by corporation

- (2) The corporation, or the responsible entity for the registered scheme, may apply for a compensation order.
- (3) The corporation, or the responsible entity for the registered scheme, may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation or scheme. The corporation or responsible entity is entitled to be heard on all matters other than whether the declaration or order should be made.

No one else may apply

- (4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.
- (5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983* or that Act as applying as a law of this jurisdiction.

1317K Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

1317L Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

1317M Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

1317N Criminal proceedings during civil proceedings

- (1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

Section 1317P

- (2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

1317P Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a corporation under Part 2D.6.

1317Q Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information given or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

1317R ASIC requiring person to assist

- (1) ASIC may require a person to give all reasonable assistance in connection with:
- (a) an application for a declaration of contravention or a pecuniary penalty order; or

- (b) criminal proceedings for an offence against this Law.
- (2) ASIC can require the person to assist in connection with an application for a declaration or order if, and only if:
 - (a) it appears to ASIC that someone other than the person required to assist may have contravened a civil penalty provision; and
 - (b) ASIC suspects or believes that the person required to assist can give information relevant to the application.
- (3) ASIC can require the person to assist in connection with criminal proceedings if, and only if:
 - (a) it appears to ASIC that the person required to assist is unlikely to be a defendant in the proceedings; and
 - (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
 - (i) an employee or agent (including a banker or auditor) of the other person; or
 - (ii) if the other person is a corporation—an officer of the other person; or
 - (iii) if the other person is an individual—a partner of the other person.
- (4) ASIC can require the person to assist regardless of whether:
 - (a) an application for the declaration or penalty order has actually been made; or
 - (b) criminal proceedings for the offence have actually begun.
- (5) The person cannot be required to assist if they are or have been a lawyer for:
 - (a) in an application for a declaration or penalty order—the person suspected of the contravention; or
 - (b) in criminal proceedings—a defendant or likely defendant in the proceedings.
- (6) The requirement to assist must be given in writing.
- (7) The Court may order the person to comply with the requirement in a specified way. Only ASIC may apply to the Court for an order under this subsection.

Section 1317S

Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see section 104 and subsection 1311(1)).

- (8) This section does not limit and is not limited by section 49 of the ASIC Law.

1317S Relief from liability for contravention of civil penalty provision

- (1) In this section:

eligible proceedings:

- (a) means proceedings for a contravention of a civil penalty provision (including proceedings under section 588M, 588W or 1317H of the Corporations Law of this jurisdiction); and
- (b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under section 588K or 1317H of that Law).

- (2) If:

- (a) eligible proceedings are brought against a person; and
- (a) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:
 - (i) the person has acted honestly; and
 - (ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;

the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

- (3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of section 588G, the matters to which regard is to be had include, but are not limited to:
- (a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body; and

Section 1317S

- (b) when that action was taken; and
 - (c) the results of that action.
- (4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.
- (5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.
- (6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:
 - (a) a reference in that subsection to the court is a reference to the judge; and
 - (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.
- (7) Nothing in this section limits, or is limited by, section 1318.

Part 9.5—Powers of Courts

1318 Power to grant relief

- (1) If, in any civil proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty in a capacity as such a person, it appears to the court before which the proceedings are taken that the person is or may be liable in respect of the negligence, default or breach but that the person has acted honestly and that, having regard to all the circumstances of the case, including those connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach, the court may relieve the person either wholly or partly from liability on such terms as the court thinks fit.
- (2) Where a person to whom this section applies has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty in a capacity as such a person, the person may apply to the Court for relief, and the Court has the same power to relieve the person as it would have had under subsection (1) if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.
- (3) Where a case to which subsection (1) applies is being tried by a judge with a jury, the judge after hearing the evidence may, if he or she is satisfied that the defendant ought pursuant to that subsection to be relieved either wholly or partly from the liability sought to be enforced against the person, withdraw the case in whole or in part from the jury and forthwith direct judgment to be entered for the defendant on such terms as to costs or otherwise as the judge thinks proper.
- (4) This section applies to a person who is:
 - (a) an officer of a corporation;
 - (b) an auditor of a corporation, whether or not the person is an officer of the corporation;
 - (c) an expert in relation to a matter:
 - (i) relating to a corporation; and

- (ii) in relation to which the civil proceeding has been taken or the claim will or might arise; or
 - (d) a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under this Law in relation to a corporation.
- (5) For the purposes of this section, *officer* in relation to a corporation, means:
- (a) a director, secretary, executive officer or employee of the corporation;
 - (b) a receiver, or receiver and manager, of property of the corporation;
 - (c) an administrator of the corporation;
 - (ca) an administrator of a deed of company arrangement executed by the corporation;
 - (d) a liquidator of the corporation; and
 - (e) a trustee or other person administering a compromise or arrangement made between the corporation and another person or other persons.

1319 Power of Court to give directions with respect to meetings ordered by the Court

Where, under this Law, the Court orders a meeting to be convened, the Court may, subject to this Law, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting, as it thinks fit.

1321 Appeals from decisions of receivers, liquidators etc.

A person aggrieved by any act, omission or decision of:

- (a) a person administering a compromise, arrangement or scheme referred to in Part 5.1;
- (b) a receiver, or a receiver and manager, of property of a corporation;
- (c) an administrator of a company;
- (ca) an administrator of a deed of company arrangement executed by a company; or

Section 1322

(d) a liquidator or provisional liquidator of a company; may appeal to the Court in respect of the act, omission or decision and the Court may confirm, reverse or modify the act or decision, or remedy the omission, as the case may be, and make such orders and give such directions as it thinks fit.

1322 Irregularities

- (1) In this section, unless the contrary intention appears:
 - (a) a reference to a proceeding under this Law is a reference to any proceeding whether a legal proceeding or not; and
 - (b) a reference to a procedural irregularity includes a reference to:
 - (i) the absence of a quorum at a meeting of a corporation, at a meeting of directors or creditors of a corporation, at a joint meeting of creditors and members of a corporation or at a meeting of members of a registered scheme; and
 - (ii) a defect, irregularity or deficiency of notice or time.
- (2) A proceeding under this Law is not invalidated because of any procedural irregularity unless the Court is of the opinion that the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the Court and by order declares the proceeding to be invalid.
- (3) A meeting held for the purposes of this Law, or a meeting notice of which is required to be given in accordance with the provisions of this Law, or any proceeding at such a meeting, is not invalidated only because of the accidental omission to give notice of the meeting or the non-receipt by any person of notice of the meeting, unless the Court, on the application of the person concerned, a person entitled to attend the meeting or the Commission, declares proceedings at the meeting to be void.
- (3A) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if:
 - (a) the Court is of the opinion that:

Section 1322

- (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the Court; and
 - (b) the Court declares the meeting or proceeding (or that part of it) invalid.
- (3B) If voting rights are exercised in contravention of subsection 259D(3) (company controlling entity that holds shares in it), the meeting or the resolution on which the voting rights were exercised will only be invalid on that ground if:
 - (a) the court is of the opinion that:
 - (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the court; and
 - (b) the court declares the meeting or resolution invalid.
- (4) Subject to the following provisions of this section but without limiting the generality of any other provision of this Law, the Court may, on application by any interested person, make all or any of the following orders, either unconditionally or subject to such conditions as the Court imposes:
 - (a) an order declaring that any act, matter or thing purporting to have been done, or any proceeding purporting to have been instituted or taken, under this Law or in relation to a corporation is not invalid by reason of any contravention of a provision of this Law or a provision of the constitution of a corporation;
 - (b) an order directing the rectification of any register kept by the Commission under this Law;
 - (c) an order relieving a person in whole or in part from any civil liability in respect of a contravention or failure of a kind referred to in paragraph (a);
 - (d) an order extending the period for doing any act, matter or thing or instituting or taking any proceeding under this Law or in relation to a corporation (including an order extending a period where the period concerned ended before the application for the order was made) or abridging the period

Section 1323

for doing such an act, matter or thing or instituting or taking such a proceeding;
and may make such consequential or ancillary orders as the Court thinks fit.

- (5) An order may be made under paragraph (4)(a) or (c) notwithstanding that the contravention or failure referred to in the paragraph concerned resulted in the commission of an offence.
- (6) The Court shall not make an order under this section unless it is satisfied:
- (a) in the case of an order referred to in paragraph (4)(a):
 - (i) that the act, matter or thing, or the proceeding, referred to in that paragraph is essentially of a procedural nature;
 - (ii) that the person or persons concerned in or party to the contravention or failure acted honestly; or
 - (iii) that it is in the public interest that the order be made;
 - (b) in the case of an order referred to in paragraph (4)(c)—that the person subject to the civil liability concerned acted honestly; and
 - (c) in every case—that no substantial injustice has been or is likely to be caused to any person.

1323 Power of Court to prohibit payment or transfer of money, securities, futures contracts or property

- (1) Where:
- (a) an investigation is being carried out under the ASIC Law or this Law in relation to an act or omission by a person, being an act or omission that constitutes or may constitute a contravention of this Law;
 - (b) a prosecution has been begun against a person for a contravention of this Law; or
 - (c) a civil proceeding has been begun against a person under this Law;
- and the Court considers it necessary or desirable to do so for the purpose of protecting the interests of a person (in this section called an *aggrieved person*) to whom the person referred to in

Section 1323

paragraph (a), (b) or (c), as the case may be, (in this section called the *relevant person*), is liable, or may be or become liable, to pay money, whether in respect of a debt, by way of damages or compensation or otherwise, or to account for securities, futures contracts or other property, the Court may, on application by the Commission or by an aggrieved person, make one or more of the following orders:

- (d) an order prohibiting a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
- (e) an order prohibiting a person holding money, securities, futures contracts or other property, on behalf of the relevant person, or on behalf of an associate of the relevant person, from paying all or any of the money, or transferring, or otherwise parting with possession of, the securities, futures contracts or other property, to, or to another person at the direction or request of, the person on whose behalf the money, securities, futures contracts or other property, is or are held;
- (f) an order prohibiting the taking or sending out of this jurisdiction, or out of Australia, by a person of money of the relevant person or of an associate of the relevant person;
- (g) an order prohibiting the taking, sending or transfer by a person of securities, futures contracts or other property of the relevant person, or of an associate of the relevant person:
 - (i) from a place in this jurisdiction to a place outside this jurisdiction (including the transfer of securities from a register in this jurisdiction to a register outside this jurisdiction); or
 - (ii) from a place in Australia to a place outside Australia (including the transfer of securities from a register in Australia to a register outside Australia);
- (h) an order appointing:
 - (i) if the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or of part of the property of that person; or

Section 1323

- (ii) if the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or of part of the property of that person;
 - (j) if the relevant person is a natural person—an order requiring that person to deliver up to the Court his or her passport and such other documents as the Court thinks fit;
 - (k) if the relevant person is a natural person—an order prohibiting that person from leaving Australia without the consent of the Court.
- (2A) A reference in paragraph (1)(g) or (h) to property of a person includes a reference to property that the person holds otherwise than as sole beneficial owner, for example:
- (a) as trustee for, as nominee for, or otherwise on behalf of or on account of, another person; or
 - (b) in a fiduciary capacity.
- (2B) Subsection (2A) is to avoid doubt, is not to limit the generality of anything in subsection (1) and is not to affect by implication the interpretation of any other provision of this Law.
- (2) An order under subsection (1) prohibiting conduct may prohibit the conduct either absolutely or subject to conditions.
 - (3) Where an application is made to the Court for an order under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim order, being an order of the kind applied for that is expressed to have effect pending the determination of the application.
 - (4) On an application under subsection (1), the Court shall not require the applicant or any other person, as a condition of granting an interim order under subsection (3), to give an undertaking as to damages.
 - (5) Where the Court has made an order under this section on a person's application, the Court may, on application by that person or by any person affected by the order, make a further order discharging or varying the first-mentioned order.

Section 1324

- (6) An order made under subsection (1) or (2) may be expressed to operate for a specified period or until the order is discharged by a further order under this section.
- (7) Nothing in this section affects the powers that the Court has apart from this section.
- (8) This section has effect subject to the *Bankruptcy Act 1966*.
- (9) A person shall not contravene an order by the Court under this section that is applicable to the person.

1324 Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute:
 - (a) a contravention of this Law;
 - (b) attempting to contravene this Law;
 - (c) aiding, abetting, counselling or procuring a person to contravene this Law;
 - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Law;
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Law; or
 - (f) conspiring with others to contravene this Law;the Court may, on the application of the Commission, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.
- (1A) For the purposes of subsection (1):
 - (a) a contravention of this Law affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and
 - (b) a company's contravention of:
 - (i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or

Section 1324

- (ia) paragraph 256B(1)(b) (share capital reduction not to prejudice ability to pay creditors); or
 - (ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors);
- affects the interests of a creditor or member of the company;
and
- (c) a company's contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.

This subsection does not limit subsection (1) in any way.

- (1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:
- (a) a contravention of paragraph 256B(1)(a) or (b), section 257A or paragraph 260A(1)(a); or
 - (b) a contravention of a provision of this Law involving the insolvency of the company because of:
 - (i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or
 - (ii) the company buying back its shares; or
 - (iii) the company giving financial assistance to which Part 2J.3 applies;

the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

- (2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Law to do, the Court may, on the application of:
 - (a) the Commission; or
 - (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.
- (3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be

Section 1324

appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

- (4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).
- (6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind;
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (8) Where the Commission applies to the Court for the grant of an injunction under this section, the Court shall not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (9) In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.

Section 1324A

- (10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.

1324A Provisions relating to prosecutions

In the prosecution of a person for an offence in respect of a contravention of a provision of Chapter 5C or 6D or Part 7.11, the Court may do either or both of the following:

- (a) grant an injunction under section 1324 against the person in relation to:
- (i) the conduct that constitutes, or is alleged to constitute, the offence; or
 - (ii) other conduct of that kind
- (b) make an order under section 1324B in respect of the person.

1324B Order to disclose information or publish advertisements

Without limiting section 1324, if, on the application of ASIC, the Court is satisfied that a person has engaged in conduct constituting a contravention of a provision of Chapter 5C or 6D or Part 7.11, the Court may make either or both of the following orders against that person or a person involved in the contravention:

- (a) an order requiring the person to whom it is directed to disclose, in the manner specified in the order, to:
- (i) the public; or
 - (ii) a particular person; or
 - (iii) a particular class of persons;
- the information, or information of a kind, that is specified in the order and is in the person's possession or to which the person has access
- (b) an order requiring the person to whom it is directed to publish, at the person's own expense, in the manner and at times specified in the order, advertisements whose terms are specified in, or are to be determined in accordance with, the order.

1325 Other orders

- (1) Where, in a proceeding instituted under, or for a contravention of, Chapter 5C or 6D or Part 7.11, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of Chapter 5C or 6D or Part 7.11, the Court may, whether or not it grants an injunction, or makes an order, under any other provision of this Law, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.
- (2) The Court may, on the application of a person who has suffered, or is likely to suffer, loss or damage because of conduct of another person that was engaged in in contravention of Chapter 5C or 6D or Part 7.11, or on the application of the Commission in accordance with subsection (3) on behalf of such a person or 2 or more such persons, make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (5)) if the Court considers that the order or orders concerned will compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage, or will prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person.
- (3) Where, in a proceeding instituted for a contravention of Chapter 5C or 6D or Part 7.11 or instituted by the Commission under section 1324, a person is found to have engaged in conduct in contravention of Chapter 5C or 6D or Part 7.11, the Commission may make an application under subsection (2) on behalf of one or more persons identified in the application who have suffered, or are likely to suffer, loss or damage by the conduct, but the Commission shall not make such an application except with the consent in writing given before the application is made by the

Section 1325

person, or by each of the persons, on whose behalf the application is made.

- (4) An application under subsection (2) may be made within 6 years after the day on which the cause of action arose.
- (5) The orders referred to in subsections (1) and (2) are:
 - (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after a specified day before the order is made;
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after a specified day before the order is made;
 - (c) an order refusing to enforce any or all of the provisions of such a contract;
 - (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;
 - (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage; and
 - (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at the person's own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage.
- (6) Where an application is made for an order under this section against a person, the Court may make an order under section 1323 in respect of the person.

1325A Orders if contravention of Chapter 6, 6A, 6B or 6C

- (1) The Court may make any order or orders (including a remedial order) that it considers appropriate if a person:
- (a) contravenes a provision of Chapter 6, 6A, 6B or 6C; or
 - (b) contravenes a condition on a consent given by ASIC under section 652B; or
 - (c) states in a notice under section 672B about securities that they do not know particular information about:
 - (i) the securities; or
 - (ii) someone who has a relevant interest in, or has given instructions in relation to, the securities.

Note 1: Section 9 defines *remedial order*.

Note 2: Sections 659B and 659C deal with court proceedings during and after a takeover bid.

- (2) The Court may make any order or orders (including a remedial order) that it considers appropriate if:
- (a) the consideration offered under a takeover bid is or includes securities; and
 - (b) the offers under the bid or the bidder's statement states or implies that the securities are to be quoted on a stock market of a securities exchange (whether in Australia or elsewhere) and:
 - (i) an application for admission to quotation is not made within 7 days after the start of the bid period; or
 - (ii) permission for admission to quotation is not granted within 7 days after the end of the bid period.

Note: Section 9 defines *remedial order*.

- (3) An order under this section may be made on application by the following:
- (a) ASIC
 - (b) the company, or the responsible entity of the registered scheme, whose securities are involved in the contravention
 - (c) a member or former member of that company or scheme
 - (d) a person from whom the relevant interest in the securities were acquired
 - (e) a person whose interests are affected by the contravention.

Section 1325B

1325B Court may order bidder to make offers

- (1) If a bidder making a takeover bid for a class of securities contravenes section 631 by failing to make offers under the bid within time and ASIC applies for an order under this section, the Court may:
 - (a) order the bidder to send, to each holder of securities in that class, an offer to which the bidder's statement relates within a specified time; and
 - (b) make any ancillary orders it thinks appropriate including orders that the bidder:
 - (i) send notices setting out specified information with the offer; and
 - (ii) send copies of the notice within a specified period to the target and, if the target is listed, to the relevant securities exchange; and
 - (iii) lodge a copy of the notice with ASIC within a specified period.
- (2) Offers sent in accordance with an order under this section are taken to be made under a takeover bid.

1325C Unfair or unconscionable agreements, payments or benefits

- (1) The Court may make orders under subsection (2) if:
 - (a) a body corporate gives, or enters into an agreement to give, a director or secretary of the body corporate or a related body corporate a benefit (including a payment or an agreement to employ them, or engage their services, for a fixed period); and
 - (b) the agreement is entered into or the benefit is given:
 - (i) within 12 months after the start of the bid period for a takeover bid for the securities of the body corporate or a related body corporate; or
 - (ii) at a time when the directors of the body corporate have reason to believe that a takeover bid is to be made in respect of securities of the body corporate or a related body corporate; and

Section 1325D

- (c) the Court is satisfied that the agreement or benefit was unfair or unconscionable having regard to the interests of the body corporate.
- (2) The Court may:
 - (a) declare the agreement, or any part of it, to be void or to have always been void; or
 - (b) direct a person to whom a benefit is given, or another specified person, to:
 - (i) make a payment or transfer property to the body corporate; or
 - (ii) do any other act for the benefit of the body corporate; or
 - (c) make any other order it considers appropriate.
- (3) This section does not apply to an agreement or benefit that has been approved by an ordinary resolution of the body corporate (whether before or after the agreement was entered into or the benefit given) with no vote being cast by the person who is to receive the benefit or their associates.
- (4) An order under this section may be made on application by:
 - (a) the body corporate; or
 - (b) ASIC; or
 - (c) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or a related body corporate;within 12 months, or any longer period that the Court thinks appropriate in the circumstances, after the agreement is entered into or the benefit given.

1325D Contravention due to inadvertence etc.

- (1) The Court may declare that any act, document or matter:
 - (a) is not invalid merely because a person has contravened a provision of Chapter 6, 6A, 6B or 6C; and
 - (b) has had effect at all times as if there had been no contravention;if the Court is satisfied that the contravention ought to be excused in all the circumstances.

Section 1325E

- (2) An application for an order under subsection (1) may be made by any interested person.
- (3) If the Court is satisfied that in all the circumstances a contravention of a provision of Chapter 6, 6A, 6B or 6C ought to be excused, the Court must not make an order under section 1325A, 1325B or 1325C other than:
 - (a) an order restraining the exercise of voting or other rights attached to securities; or
 - (b) an order that an exercise of voting or other rights attached to securities be disregarded.
- (4) In determining whether or not a contravention of a provision by a person ought to be excused, have regard to the contravention being caused by any of the following:
 - (a) the person's inadvertence or mistake
 - (b) the person not having been aware of a relevant fact or occurrence
 - (c) circumstances beyond the control of the person.
- (5) This section applies notwithstanding anything contained in any other provision of this Chapter.

1325E Orders to secure compliance

In order to secure compliance with an order under section 1325A, 1325B or 1325C, the Court may direct a person to:

- (a) do a specified act; or
- (b) refrain from doing a specified act.

1326 Effect of sections 1323, 1324 and 1325

Nothing in any of sections 1323, 1324, 1324A, 1324B, and 1325 limits the generality of anything else in any of those sections.

1327 Power of Court to punish for contempt of Court

Nothing in a provision of this Law that provides:

- (a) that a person shall not contravene an order of the Court; or

- (b) that a person who contravenes an order of the Court contravenes a provision of this Law or is guilty of an offence;
affects the powers of the Court in relation to the punishment of contempts of the Court.

1328 Court may resolve transitional difficulties

- (1) Where any difficulty:
 - (a) arises in applying a provision of this Law in relation to a particular case in relation to which, if this Law had not been enacted, a previous law corresponding to that provision would have applied; or
 - (b) arises, because of a provision of this Law, in applying, in relation to a particular case, another such provision or a previous law corresponding to another such provision;
the Court may, on the application of an interested person, make such order as it thinks proper to remove the difficulty.
- (2) An order under this section has effect despite anything in a provision of this Law or in a corresponding previous law.
- (3) This section has effect subject to the Constitution.

Part 9.6—Proceedings

1330 Power of Commission to intervene in proceedings

- (1) The Commission may intervene in any proceeding relating to a matter arising under this Law.
- (2) Where the Commission intervenes in a proceeding referred to in subsection (1), the Commission shall be deemed to be a party to the proceeding and, subject to this Law, has all the rights, duties and liabilities of such a party.
- (3) Without limiting the generality of subsection (2), the Commission may appear and be represented in any proceeding in which it wishes to intervene pursuant to subsection (1):
 - (a) by a staff member of the Commission;
 - (b) by a natural person to whom, or by an officer or employee of a person or body to whom or to which, the Commission has delegated its functions and powers under this Law or such of those functions and powers as relate to a matter to which the proceeding relates; or
 - (c) by solicitor or counsel.

1331 Civil proceedings not to be stayed

No civil proceedings under this Law shall be stayed merely because the proceeding discloses, or arises out of, the commission of an offence.

1332 Standard of proof

Where, in proceedings other than proceedings for an offence, it is necessary to establish, or for the Court to be satisfied, for any purpose relating to a matter arising under this Law, that:

- (a) a person has contravened a provision of this Law;
- (b) default has been made in complying with a provision of this Law;

- (c) an act or omission was unlawful by virtue of a provision of this Law; or
- (d) a person has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to a contravention, or a default in complying with, a provision of this Law;

it is sufficient if the matter referred to in paragraph (a), (b), (c) or (d) is established, or the Court is so satisfied, as the case may be, on the balance of probabilities.

1333 Evidence of contravention

For the purposes of this Law, a certificate that:

- (a) purports to be signed by the Registrar or other proper officer of an Australian court; and
- (b) states:
 - (i) that a person was convicted by that court on a specified day of a specified offence; or
 - (ii) that a person charged before that court with a specified offence was, on a specified day, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence;

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence:

- (c) if subparagraph (b)(i) applies—that the person was convicted of the offence on that day; and
- (d) if the offence was constituted by a contravention of a provision of a law—that the person contravened that provision.

1335 Costs

- (1) Where a corporation is plaintiff in any action or other legal proceeding, the court having jurisdiction in the matter may, if it appears by credible testimony that there is reason to believe that the corporation will be unable to pay the costs of the defendant if successful in his, her or its defence, require sufficient security to

Section 1336

be given for those costs and stay all proceedings until the security is given.

- (2) The costs of any proceeding before a court under this Law shall be borne by such party to the proceeding as the court, in its discretion, directs.

1336 Vesting of property

- (1) Where an order is made by a court under this Law vesting property in a person:
- (a) subject to subsection (2), the property forthwith vests in the person named in the order without any conveyance, transfer or assignment; and
 - (b) the person who applied for the order shall, within 7 days after the passing and entering of the order, lodge an office copy of the order with such person (if any) as is specified for the purpose in the order.
- (2) Where:
- (a) the property to which an order referred to in subsection (1) relates is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (b) that law enables the registration of such an order;
- the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of the law referred to in paragraph (a) have been complied with.
- (3) Where:
- (a) property vests in a person by force of this Law;
 - (b) the property is property the transfer or transmission of which may be registered under a law of the Commonwealth, of a State or of a Territory; and
 - (c) that law enables the person to be registered as the owner of that property;
- that property, notwithstanding that it vests in equity in that person by force of this Law, does not vest in that person at law until the

requirements of the law referred to in paragraph (b) have been complied with.

1336A Certain proceedings to be proceedings by or against Commission

- (1) Where, before the commencement of this Law, a proceeding under a law of this jurisdiction had been commenced by or against the NCSC, the proceeding may be continued by or against the Commission.
- (2) Where, but for this Law, or but for this Law and relevant repeals, a proceeding under a law of this jurisdiction could have been commenced by or against the NCSC, the proceeding may be commenced by or against the Commission.
- (3) If, before 1 January 1991, a specified proceeding under a law of this jurisdiction was begun by or against an authority of this jurisdiction, the proceeding may be continued by or against the Commission.
- (4) If, but for this Law, or but for this Law and relevant repeals, a specified proceeding under a law of this jurisdiction could have been begun by or against an authority of this jurisdiction, the proceeding may be begun by or against the Commission.
- (5) In this section:

authority of this jurisdiction includes:

- (a) an officer of this jurisdiction; and
- (b) an officer of an authority of this jurisdiction.

relevant repeal means:

- (a) the repeal of the *National Companies and Securities Commission Act 1979*; or
- (b) the repeal of a law of this jurisdiction corresponding to a provision of that Act.

specified means specified in an application order.

Part 9.7—Unclaimed property

1339 Commission to deal with unclaimed property

- (1) The Commission holds unclaimed property on trust in accordance with, and for the purposes of, this Part.

Note: Division 2 of Part 8 of the *Australian Securities and Investments Commission Act 1989* contains provisions about property that the Commission receives or holds on trust.

- (2) If property becomes unclaimed property, the Commission must:
- (a) in the case of money—pay it into an unclaimed money account; or
 - (b) otherwise—sell or dispose of the property as it thinks fit and pay the proceeds into an unclaimed money account.

This subsection does not apply to unclaimed property so far as the property consists of an investment made as permitted by subsection 142(2) of the *Australian Securities and Investments Commission Act 1989*.

- (3) The Minister may apply as mentioned in subsection 135(1) of the *Australian Securities and Investments Commission Act 1989* income derived from investing, as permitted by subsection 142(2) of that Act, money that is unclaimed property.

Note: Subsection 135(1) of the *Australian Securities and Investments Commission Act 1989* provides for how the Commission may apply its own money.

- (4) If income is applied under subsection (3), a person is not liable to another person in respect of the income merely because the other person is entitled to money in an unclaimed money account.

1340 Commission not liable to pay calls on shares etc.

Where unclaimed property is or includes shares in a body corporate, the Commission is not subject to any obligation:

- (a) to pay any calls;
- (b) to make any contribution to the debts and liabilities of the body corporate;

(c) to discharge any other liability; or

(d) to do any other act or thing;

in respect of the shares, whether the obligation arises before or after the shares become unclaimed property, but this section does not affect the right of a body corporate to forfeit a share.

1341 Disposition of money in unclaimed money account

- (1) If money is not paid out of an unclaimed money account in accordance with this section or subsection 1339(3) within 6 years after it was originally paid into such an account under subsection 1339(2), it must be paid into the Consolidated Revenue Fund.
- (2) If:
 - (a) a person claims to be entitled to money paid into an unclaimed money account under subsection 1339(2); and
 - (b) the Commission is satisfied that the person is entitled to the money;the Commission must:
 - (c) unless paragraph (d) applies—pay the money to the person out of the relevant unclaimed money account; or
 - (d) if the money has been paid into the Consolidated Revenue Fund under subsection (1)—pay an equivalent amount to the person out of money appropriated by the Parliament for the purpose.
- (3) A person who is dissatisfied with the decision of the Commission in respect of a claim made by the person in accordance with subsection (2) may appeal to the Court and the Court may confirm, disallow or vary the decision of the Commission.
- (4) Where a person claims to be entitled to money that has been paid to another person in accordance with this section, the Commission is not under any liability to that first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that money from the other person.
- (5) Where a person claims to be entitled to money, being money an amount equivalent to which has been paid to another person in accordance with subsection (2) out of money appropriated by the Parliament for the purpose, the Commission is not under any

Section 1342

liability to that first-mentioned person in respect of that money, but, if the first-mentioned person is entitled to that money, that person may recover that equivalent amount from the other person.

1342 Commonwealth or Commission not liable for loss or damage

Neither the Commonwealth nor the Commission is liable for any loss or damage suffered by a person arising out of the exercise of, or the failure to exercise, any of the powers which are conferred on the Commission under this Part or which the Commission has in relation to unclaimed property.

1343 Disposal of securities if whereabouts of holder unknown

Where a person has been shown in an appropriate register of a company as the holder of securities of the company for a period of at least 6 years and the company has, for a period of at least 6 years:

- (a) had reasonable grounds for believing that the person was not residing at the address shown in the register as the person's address; and
- (b) on each occasion during that last-mentioned period when, whether or not in accordance with a provision of this Law, it sought to communicate with the person, being unable after the exercise of reasonable diligence to do so;

the company may, by executing a transfer for and on behalf of the person, transfer to the Commission:

- (c) the securities; and
- (d) any rights in respect of the securities;

to be dealt with under this Part.

1343A Disposal of interests in registered scheme if whereabouts of member unknown

If, during a period of at least 6 years while a person has been shown in the register of members of a registered scheme as the holder of interests in the scheme:

- (a) the responsible entity has had reasonable grounds for believing that the person was not residing at the address shown in the register as their address; and

Section 1343A

(b) the responsible entity's attempts to communicate with the person have been made using reasonable diligence but have all been unsuccessful;

the responsible entity may, by executing a transfer for and on behalf of the person, transfer the interests and any rights in respect of them to ASIC to be dealt with under this Part.

Part 9.9—Miscellaneous

1345A Minister may delegate prescribed functions and powers under this Law

- (1) The Minister may, by signed instrument, delegate to an officer of the Department such of the Minister's functions and powers under this Law as are prescribed.
- (2) A delegate is, in the performance or exercise of a delegated function or power, subject to the Minister's directions.

1346 Non-application of rule against perpetuities to certain schemes

- (1) The rules of law relating to perpetuities do not apply, and shall be deemed never to have applied, to the trusts of any fund or scheme for the benefit of any employee of a corporation, whether the fund or scheme was established before, or is established after, the commencement of this section.
- (2) In this section:
 - (a) a reference to a corporation includes a reference to a body corporate or society incorporated or formed, or otherwise duly constituted, whether before, at or after the commencement of this section, by or under:
 - (i) a law of the Commonwealth, of a State or Territory, of an excluded Territory or of a country outside Australia and the external Territories; or
 - (ii) letters patent or a royal charter; and
 - (b) a reference to a fund or scheme includes a reference to a provident, superannuation, sick, accident, assurance, unemployment, pension or co-operative benefit fund, scheme, arrangement or provision or other like fund, scheme, arrangement or provision; and
 - (c) a reference to an employee of a corporation includes a reference to:
 - (i) a director of the corporation; and

- (ii) a spouse, child, grandchild, parent or any dependant of an employee or of a director of the corporation.

1348 Operation of Life Insurance Act

Nothing in this Law shall be taken to affect any of the provisions of the *Life Insurance Act 1995*.

1349 General transitional provisions

- (1) For the purposes of this Law:
 - (a) an act or thing done by the NCSC, or by an authority of this jurisdiction specified in an application order, before the commencement of a provision of this Law under or for the purposes of a previous law corresponding to that provision has effect as if it had been done by the Commission under or for the purposes of that provision;
 - (b) a reference in a prospectus or any other document to the NCSC, except in relation to a time before the commencement of Chapter 7, is a reference to the Commission; and
 - (c) an act or thing done by the Ministerial Council before the commencement of a provision of this Law under or for the purposes of a previous law corresponding to that provision has effect as if it had been done by the Minister under or for the purposes of that provision.
- (2) A reference in subsection (1) to an act or thing done includes, but is not limited to, a direction given, a notice given or served, a consent or approval given, a declaration made, an exemption granted, a certificate given or issued or any other instrument executed.
- (3) A condition included in an instrument to which this section applies, or imposed in connection with such an instrument, under or for the purposes of a previous law corresponding to a provision of this Law, by the NCSC or the Ministerial Council has effect for the purposes of this Law as if it had been included or imposed by the Commission or the Minister, as the case may be, under or for the purposes of that provision.

Section 1351

Part 9.10—Fees for chargeable matters

1351 Fees payable

Subject to this Part, where:

- (a) the regulations prescribe a fee for a chargeable matter; and
- (b) the fee is imposed by a provision of an Act of this jurisdiction;

the fee must be paid to the Commonwealth for that matter.

1352 Limits on fees payable for one matter

- (1) Despite section 1351, where but for this section the fee, or the total of the fees, payable under that section for a chargeable matter would exceed \$25,000, so much of that fee, or of that total, as exceeds \$25,000 is not payable.
- (2) A fee is not payable under section 1351 for a chargeable matter if a corresponding fee has been paid, under a law corresponding to section 1351, for that chargeable matter.
- (3) Without limiting subsection (2), a fee is not payable under section 1351 in connection with the making or granting of an application to which section 102A applies if a corresponding fee has been paid, under a law corresponding to section 1351, in connection with the making or granting of a corresponding application made as mentioned in subsection 102A(4).

1354 Lodgment of document without payment of fee

- (1) This section applies where:
 - (a) a fee is payable under section 1351 for the lodgment of a document; and
 - (b) the document was submitted for lodgment without payment of the fee.
- (2) The document is not taken not to have been lodged merely because of non-payment of the fee.

- (3) However, if the amount of the fee is ascertainable, the fee is a debt due to the Commonwealth and payable by the person whom the Commission determines in writing to be the person who it is reasonable to expect would have paid the fee if the fee had been paid when the document was submitted for lodgment.

1355 Doing act without payment of fee

If a fee is payable under section 1351 for a matter involving the doing of an act by the Minister or ASIC, the Minister or ASIC may refuse to do that act until:

- (a) the fee is paid; or
- (b) if a deposit on account of the fee is required under section 1357—the deposit is paid.

1356 Effect of sections 1354 and 1355

Sections 1354 and 1355 have effect despite anything in another Part of this Law.

1357 Commission may require payment of deposit on account of fee

Where the amount of a fee payable under section 1351 for a matter involving the doing of an act by the Minister or the Commission cannot be ascertained, the Commission may, before the Minister or the Commission does the act, require the payment to the Commission, on account of the fee, of a deposit of a specified amount that the Commission considers it reasonable to expect will be the amount of the fee.

1358 Fee not ascertainable when it became payable

- (1) This section applies where the amount of a fee payable under section 1351 cannot be ascertained when the fee becomes payable, but at a later time becomes able to be ascertained.
- (2) If a person has paid a deposit on account of the fee, the Commission must apply towards payment of the fee so much of the deposit as does not exceed the amount of the fee and:

Section 1359

- (a) if the amount of the deposit exceeds the amount of the fee—
the Commission must refund to the person the amount of the
excess; or
 - (b) if the amount of the fee exceeds the amount of the deposit—
as from the later time, so much of the fee as exceeds the
amount of the deposit is a debt due to the Commonwealth
and payable by the person.
- (3) Otherwise, the fee is, as from the later time, a debt due to the
Commonwealth and payable by the person whom the Commission
determines in writing to be the person who it is reasonable to
expect would have paid the fee had the fee been able to be
ascertained when it became payable.

1359 Waiver and refund of fees

Nothing in this Part prevents the Commonwealth from:

- (a) waiving or reducing, in a particular case or in particular
classes of cases, fees that would otherwise be payable under
this Law; or
- (b) refunding, in whole or in part, in a particular case or in
particular classes of cases, fees paid under this Law.

1360 Debts due to the Commonwealth

The Commission may recover a debt due under this Part.

1361 This Part not to impose taxation

Nothing in this Part is to be taken to impose taxation.

1362 Payment of fee does not give right to inspect or search

To avoid doubt, nothing in this Part, and nothing done under this
Part:

- (a) imposes on the Commission a duty to allow the inspection or
search of a register or document, or to make available
information; or

Section 1362

(b) confers a right to inspect or search a register or document or to have information made available;
except so far as such a duty or right would, but for the effect of section 1355, exist under a provision of another Part of this Law or under some other law.

Chapter 10—National scheme provisions

1362A Recognition of companies from other jurisdictions

- (1) A company registered under the Corporations Law of another jurisdiction has in this jurisdiction the same legal personality, capacity, attributes, power and type as if it were a company registered under the Corporations Law of this jurisdiction. Its powers include the power to hold land in this jurisdiction.
- (2) Subsection (1) does not impose on the company an obligation that it would not have if that subsection had not been enacted.

1362B Transfer of registration

- (1) A company registered under the Corporations Law of another jurisdiction may transfer its registration to become registered as a company under the Corporations Law of this jurisdiction if:
 - (a) the transfer is in accordance with the regulations; and
 - (b) both the Minister and the Minister for the jurisdiction in which the company is currently registered have consented to the transfer.
- (2) Registration under subsection (1) does not:
 - (a) create a new legal entity; or
 - (b) affect the company's existing property, rights or obligations; or
 - (c) render defective any legal proceedings by or against the company and its members.
- (3) If a company becomes registered under section 1362B of the Corporations Law of another jurisdiction, it ceases to be registered as a company under the Corporations Law of this jurisdiction.

1362BA Compensation for compulsory acquisition

- (1) If:

Section 1362BA

- (a) apart from this section, the operation of this Law would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the person who acquires the property is liable to pay compensation of a reasonable amount to the person from whom the property is acquired in respect of the acquisition.
- (2) If the 2 people do not agree on the amount of the compensation, the person to whom compensation is payable may institute proceedings in the Court for the recovery of such reasonable amount as the court determines from the other person.
 - (3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.
 - (4) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution

Chapter 11—Application and transitional provisions

Part 11.1—Introduction of the Corporations Law

1362CA Existing company

This Part applies to a body corporate that was incorporated, immediately before Division 2 of Part 2.2 commenced (1 January 1991), under a previous law of this jurisdiction that corresponded to Chapter 2 (as in force immediately after that Division commenced).

1362CB Existing company taken to be registered under the Corporations Law

- (1) The body corporate was taken to have been registered as a company under Division 2 of Part 2.2 as from the commencement of that Division.
- (2) The company was taken to have been registered as the type of company that most nearly corresponded to the company's type under the corresponding previous law.
- (3) The company was taken to have been registered as:
 - (a) a proprietary company if it was a proprietary company under the corresponding previous law; or
 - (b) a public company in any other case.
- (4) A certificate issued under the corresponding previous law of any jurisdiction by the authority responsible for administering that law stating that the company was registered as a company under that law or another corresponding previous law is conclusive evidence that:
 - (a) all the requirements necessary for the registration of the company under that legislation have been complied with; and

- (b) all matters related to the registration of the company under that legislation have been complied with; and
- (c) the company was duly registered as a company under that legislation and was taken to be a company duly incorporated under that legislation on the date (if any) specified in the certificate.

1362CC Constitution of existing company

- (1) The provisions that formed part of the body corporate's memorandum immediately before the commencement of Division 2 of Part 2.2 were taken to become on the commencement of that Division:
 - (a) the company's memorandum if the company was a company limited by shares and was a proprietary company; or
 - (b) the company's registered memorandum in any other case.This had effect with any modifications that the circumstances required.
- (2) The provisions that formed part of the body corporate's articles immediately before the commencement of Division 2 of Part 2.2 were taken to become on the commencement of that Division:
 - (a) the company's articles if the company was a company limited by shares and was a proprietary company; or
 - (b) the company's registered articles;and to bind the company and its members accordingly. This had effect with any modifications that the circumstances required.

1362CD Application of Law to existing companies

- (1) Subject to this Law, a provision of this Law that applies to the body corporate as a company applies to the body corporate in relation to:
 - (a) the doing of an act or thing, an act or thing done, or a matter arising, before the commencement of Division 2 of Part 2.2; or
 - (b) acts, things or matters including such an act, thing or matter;unless:

Section 1362CE

- (c) before the commencement of that Division, an act was done for the purposes of complying with a previous law corresponding to that provision; and
 - (d) the act would, if the body corporate had been a company, and this Law had been in operation, when the act was done, have constituted compliance with that provision as so applying.
- (2) A provision applies as mentioned in subsection (1):
- (a) as if a reference in the provision to another provision of this Law included a reference to a previous law corresponding to that other provision; and
 - (b) with any other modifications that the circumstances require.

1362CE Acts preparatory to external administration of existing company

- (1) This section applies if an act or thing had been validly done before the commencement of Division 2 of Part 2.2 by or in relation to the body corporate under, or for the purposes of, a previous law corresponding to a provision of Chapter 5 (other than Part 5.2).
- (2) On and after the commencement of that Division, this Law (other than this Division) applies to the body corporate as if:
- (a) the body corporate had been a company, and this Law had been in operation, at the time when the act or thing was done; and
 - (b) the act or thing had been validly done at that time under or for the purposes of that provision of that Chapter.
- This has effect with any modifications that the circumstances require.
- (3) Nothing in this section makes a person guilty of a contravention of this Law in respect of an act or thing done, or an omission made, before the commencement of Division 2 of Part 2.2.

1362CF Appointments of receivers

Nothing in section 418 prevents a person from acting as a receiver of property of the body corporate under an appointment validly made before commencement.

1362CG Application of Division 2 of Part 5.6

Division 2 of Part 5.6 applies to the body corporate as if:

- (a) references in that Division to section 164 included references to a previous law corresponding to that section; and
- (b) references to becoming a limited company included a reference to becoming a limited company within the meaning of a previous law corresponding to section 164.

1362CH Reinstatement of companies deregistered before commencement

ASIC's powers under section 601AH extend to the reinstatement of the registration of a body corporate that:

- (a) was at some time before commencement incorporated or taken to be incorporated under a previous law of this jurisdiction corresponding to Chapter 2 of the old law; and
- (b) was deregistered before commencement.

Section 601AH applies to the reinstatement with any modifications that the circumstances require.

1362CJ Registrable Australian bodies and foreign companies

- (1) This section applies to each registrable body that was, immediately before commencement, registered under a previous law of this jurisdiction relating to foreign companies within the meaning of that law.
- (2) If the body was a registrable Australian body, ASIC was taken to have registered it under Division 1 of Part 4.1 at commencement.
- (3) If the body was a foreign company, ASIC was taken to have registered it under Division 2 of Part 4.1 at the commencement.
- (4) At commencement, the body's registered office for the purposes of section 359 was taken to be the place that, immediately before commencement, was taken by a previous law of this jurisdiction corresponding to subsection 601CX(2) to be the situation of the body's registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 601CX(1).

Section 1362CJ

- (5) Subsections 601CT(1) and (4) and 601CX(1) and (2) apply in relation to the body as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.
- (6) If the body is a registrable body under a law corresponding to Division 1 or 2 of Part 5B.2 but is not registered under that Division:
 - (a) subsection 601CX(2) does not apply to the body; and
 - (b) instead, each place that is taken by a law corresponding to subsection 601CX(2) to be the situation of the body's registered office for the purposes of a law corresponding to subsection 601CX(1) is taken to be the situation of a registered office of the body for the purposes of subsection 601CX(1).

Part 11.2—Commencement and application of certain changes to this Law

Division 1A—Preliminary

1362D Meaning of *amendment of this Law*

In this Part, a reference to an amendment of this Law, or of a provision of this Law, is a reference to a change to this Law, or to that provision, that results from an amendment of the Corporations Law set out in section 82 of the *Corporations Act 1989*.

Division 1—Changes resulting from the Corporations Legislation Amendment Act 1991

1363 Commencement of certain changes

The following provisions of this Law, as in force immediately after the commencement of section 6 of the *Corporations Legislation Amendment Act 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraph 8(5)(c);
- (b) paragraph (a) of the definition of *company* in section 9;
- (c) the definition of *prescribed interest* in section 9;
- (d) paragraph (c) of the definition of *proprietary company* in section 9;
- (e) paragraph 66(3)(ba);
- (f) paragraph 66A(4)(c);
- (g) section 68A;
- (h) subsection 186(2);
- (i) subsections 219(2A), (3), (4) and (5);
- (k) subsections 362(3A), (4), (5) and (6).

1364 Application of changes to Parts 3.6 and 3.7

- (1) Parts 3.6 and 3.7, as in force after the commencement of section 7 of the *Corporations Legislation Amendment Act 1991*, apply in relation to a company in relation to:
 - (a) the first financial year of the company that ends on or after 31 December 1991; and
 - (b) each later financial year of the company.
- (2) Parts 3.6 and 3.7, as in force before that commencement, continue to apply in relation to a company in relation to a financial year of the company that ended before 31 December 1991.

Division 2—Changes resulting from the Corporations (Unlisted Property Trusts) Amendment Act 1991

1365 Commencement of changes to section 1069

The following provisions of this Law, as in force immediately after the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*, are taken to have commenced on 1 January 1991:

- (a) paragraph 1069(1)(n);
- (b) subsections 1069(2A) and (2B).

1366 Commencement of sections 1069A, 1069B and 1069C and Division 5A of Part 7.12

Sections 1069A, 1069B and 1069C and Division 5A of Part 7.12 of this Law, as in force immediately after the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*, are taken to have commenced at 4.50 p.m. Australian Eastern Standard Time on 23 July 1991.

1367 Orders in relation to things done during retrospective operation of sections 1069A etc. and Subdivision C of Division 5A of Part 7.12

- (1) The Commission may make written orders in relation to:
 - (a) the effect, for the purposes of sections 1069A, 1069B and 1069C, of things done in relation to a deed to which section 1069A applies, otherwise than in accordance with those sections, during the period of retrospectivity; or
 - (b) the effect, for the purposes of Subdivision C of Division 5A of Part 7.12, of things done in relation to a Subdivision C trust, otherwise than in accordance with that Subdivision, during the period of retrospectivity.
- (2) The Commission may include in an order under paragraph (1)(a) a declaration to the effect that a provision of section 1069A, 1069B or 1069C has or had effect, in relation to the deed and the thing to

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 2 Changes resulting from the Corporations (Unlisted Property Trusts)

Amendment Act 1991

Section 1367

which the order relates, as if the provision were omitted, modified or varied in a manner specified in the order.

- (3) The Commission may include in an order under paragraph (1)(b) a declaration to the effect that a provision of Subdivision C of Division 5A of Part 7.12 has or had effect, in relation to the trust and the thing to which the order relates, as if the provision were omitted, modified or varied in a manner specified in the order.
- (4) The Commission must give a copy of an order to the management company or to the trustee or representative.
- (5) An order (including a declaration in an order) has effect accordingly.
- (6) In this section:

period of retrospectivity means the period starting at 4.50 p.m. Australian Eastern Standard Time on 23 July 1991 and ending at the commencement of the *Corporations (Unlisted Property Trusts) Amendment Act 1991*.

Subdivision C trust means a trust that is, for the purposes of Division 5A of Part 7.12, a Subdivision C trust.

Division 3—Changes resulting from the Corporations Legislation Amendment Act (No. 2) 1991

1368 Commencement of certain changes

- (1) The following provisions of this Law, as in force after the commencement of section 5 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:
 - (a) the definition of *property* in subsection 920(1);
 - (b) subsection 927(5A);
 - (c) paragraph 961A(b);
 - (d) paragraph 966A(b).
- (2) The following provisions of this Law, as in force after the commencement of section 6 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:
 - (a) subparagraph 1069(1)(e)(iii);
 - (b) paragraph 1069(1)(f).
- (3) The following provisions of this Law, as in force immediately after the commencement of section 8 of the *Corporations Legislation Amendment Act (No. 2) 1991*, are taken to have commenced on 1 January 1991:
 - (a) paragraphs (b) and (ba) of the definition of *company* in section 9;
 - (b) subsection 261(1);
 - (c) subsections 265(4), (5), (6) and (9);
 - (d) subsections 272(1) and (3);
 - (e) subsections 273(1) and (4);
 - (f) subsections 275(2) and (4);
 - (g) sections 275A, 276, 276AA and 276A.
- (4) The following provisions of this Law, as in force after the commencement of section 9 of the *Corporations Legislation*

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 3 Changes resulting from the Corporations Legislation Amendment Act (No. 2) 1991

Section 1369

Amendment Act (No. 2) 1991, are taken to have commenced on 1 January 1991:

- (a) paragraph (a) of the definition of *clients' segregated account* in section 9;
- (b) section 369;
- (c) paragraph 874(1)(b);
- (d) paragraph 1224(1)(c).

1369 Application of certain changes

- (1) In relation to a claim under Division 7 of Part 7.10 in respect of a loss that a person became aware of before the commencement of section 5 of the *Corporations Legislation Amendment Act (No. 2) 1991*:
 - (a) section 959 of this Law, as in force after that commencement, does not apply; and
 - (b) section 959 of this Law, as in force before that commencement, continues to apply.
- (2) In relation to a prospectus issued before the commencement of section 6 of the *Corporations Legislation Amendment Act (No. 2) 1991*:
 - (a) the following Division and sections of this Law, as in force after that commencement, do not apply:
 - (i) Division 4 of Part 7.11;
 - (ii) section 1029;
 - (iii) section 1029A;
 - (iv) section 1031;
 - (v) section 1040;
 - (vi) section 1041; and
 - (b) the following Division and sections of this Law as in force before that commencement continue to apply:
 - (i) Division 4 of Part 7.11;
 - (ii) section 1029;
 - (iii) section 1031;
 - (iv) section 1040;
 - (v) section 1041.

Division 4—Changes resulting from the Corporations Legislation (Evidence) Amendment Act 1992

1370 Changes to section 597

- (1) Subsections 597(12) and (12A), as in force after the commencement of section 7 of the *Corporations Legislation (Evidence) Amendment Act 1992* and before the commencement of section 117 of the *Corporate Law Reform Act 1992*, apply in relation to a question put, at or after the first-mentioned commencement, at an examination held under an order under subsection 597(3) of this Law, even if the examination began before the first-mentioned commencement.
- (2) Subsection 597(12), as in force before that commencement, continues to apply in relation to a question put, before that commencement, at an examination held under an order under subsection 597(3).

1371 Application of section 1316A

Section 1316A applies in relation to a requirement made at or after the commencement of section 8 of the *Corporations Legislation (Evidence) Amendment Act 1992*, even if the proceeding concerned began before that commencement.

Section 1372

Division 5—Changes resulting from the Corporate Law Reform Act 1992

1372 Commencement of subsection 6(4)

Subsection 6(4) is taken to have commenced on 27 June 1991.

1373 Application of changes to section 187

- (1) Subsections 187(3), (4) and (4A), as in force after the commencement of section 176 of the *Corporate Law Reform Act 1992*, apply in relation to an allotment made, or taken to have been made, at or after that commencement.
- (2) Subsections 187(3) and (4), as in force before that commencement, continue to apply in relation to an allotment made, or taken to have been made, before that commencement.

1374 Application of change to paragraph 230(1)(d)

- (1) Paragraph 230(1)(d), as in force after the commencement of section 10 of the *Corporate Law Reform Act 1992*, applies in relation to an act done, or an omission made, at or after that commencement.
- (2) Paragraph 230(1)(d), as in force before that commencement, continues to apply in relation to an act done, or a failure committed, by a person before that commencement, unless:
 - (a) the act or failure constituted a contravention of subsection 232(3) or (4) as so in force; and
 - (b) the person consents under subsection 1389(1) to Part 9.4B applying in relation to the contravention; and
 - (c) when the person so consents, no application made under subsection 230(1) in relation to the act or failure, and no appeal arising out of such an application, is pending.

1375 Application of certain changes to section 232

- (1) Subsection 232(3) of this Law, as in force before the commencement of section 11 of the *Corporate Law Reform Act 1992*, continues to apply in relation to a contravention of subsection 232(2) of this Law committed before that commencement.
- (2) Subsections 232(7), (8), (9) and (10) of this Law, as in force before the commencement of section 11 of the *Corporate Law Reform Act 1992*, continue to apply in relation to a contravention of section 232 of this Law committed before that commencement.

1376 Application of sections 243H and 243ZE

- (1) Sections 243H and 243ZE apply to a public company on and after 1 February 1994.
- (2) A majority of a public company's directors may elect in writing that sections 243H and 243ZE apply to the company on and after a specified day that is sooner than 1 February 1994.
- (3) An election has effect accordingly and cannot be revoked.

1377 Application of subsection 307(2)

Subsection 307(2) applies in relation to a company in relation to a financial year of the company that ends at or after the commencement of section 13 of the *Corporate Law Reform Act 1992*.

1378 Application of change to section 318

Subsection 318(2) of this Law, as in force before the commencement of section 14 of the *Corporate Law Reform Act 1992*, continues to apply in relation to a contravention of subsection 318(1) of this Law committed before that commencement.

Section 1379

1379 Application of certain changes to Part 5.2

- (1) The following apply in relation to a controller of property of a corporation if, and only if, the control day begins at or after the commencement of section 40 of the *Corporate Law Reform Act 1992*:
 - (a) sections 419A, 420A, 420B and 421A, subsection 428(2) and sections 434A, 434B and 434C of this Law;
 - (b) sections 423, 424, 426, 429, 430, 431, 432 and 434 of this Law, as in force after that commencement.
- (2) Sections 423, 424, 426, 429, 430, 431, 432 and 434, as in force before the commencement of section 40 of the *Corporate Law Reform Act 1992*, continue to apply in relation to a receiver, or receiver and manager, of property of a corporation if the control day began before that commencement.
- (3) Section 420C applies in relation to a receiver, or receiver and manager, of property of a corporation if, and only if, the control day begins at or after the commencement of section 41 of the *Corporate Law Reform Act 1992*, even if the corporation began to be wound up before that commencement.
- (4) Section 421, as in force after the commencement of section 42 of the *Corporate Law Reform Act 1992*:
 - (a) applies in relation to a receiver, or receiver and manager, of property of a corporation even if the control day began before that commencement; and
 - (b) applies in relation to any other controller of property of a corporation if, and only if, the control day began at or after that commencement.

1380 Continued application of old Part 5.3 and related provisions

- (1) If, before the commencement of section 56 of the *Corporate Law Reform Act 1992*, a company was placed under official management, Part 5.3 and paragraphs 462(2)(e), (f) and (g) of this Law, as in force before that commencement, continue to apply in relation to the company, but the company cannot again be placed under official management after that commencement.

- (2) While a company is under official management, an administrator of the company cannot be appointed under section 436A, 436B or 436C.

1381 Certain provisions continue to apply in relation to official management

Except so far as the contrary intention appears, in this Law (other than Part 5.3A, Division 1A of Part 5.6 and section 556):

- (a) a reference to an administrator of a body corporate being appointed under section 436A, 436B or 436C includes a reference to the body being placed under official management; and
- (b) a reference to a body corporate being under administration includes a reference to the body being under official management; and
- (c) a reference to a body corporate that is or has been under administration includes a reference to such a body that is, or has been, as the case may be, under official management; and
- (d) a reference to an administrator of a body corporate or of an entity, includes a reference to an official manager or deputy official manager of the body or entity;

even if the body or entity ceased before the commencement of section 56 of the *Corporate Law Reform Act 1992* to be under official management.

1382 Application of new provisions relating to winding up

Subject to sections 1383, 1384 and 1386, the following provisions:

- (a) Parts 5.4, 5.4A, 5.4B, 5.5 and 5.6;
- (b) sections 589, 590 and 592;
- (c) Division 1 of Part 5.9;
- (d) section 598;

as in force after the commencement of section 57 of the *Corporate Law Reform Act 1992*, apply, according to their tenor, in relation to:

- (e) acts done; and
- (f) omissions made; and

Section 1383

- (g) events occurring; and
 - (h) matters and things arising;
- whether before, at or after that commencement.

1383 Continued application of old Parts 5.4, 5.5 and 5.6

- (1) In this section:

old winding up law means Parts 5.4, 5.5 and 5.6 as in force before the relevant commencement.

relevant commencement means the commencement of section 57 of the *Corporate Law Reform Act 1992*.

- (2) If, before the relevant commencement, the Court ordered the winding up of a company, the old winding up law continues to apply for the purposes of the winding up.
- (3) If, before the relevant commencement, an application was made for the Court to order the winding up of a company, the old winding up law continues to apply for the purposes of:
- (a) determining, or otherwise disposing of, the application; and
 - (b) winding up the company under an order of the Court made on the application.
- (4) If, before the relevant commencement, a demand was served on a company under paragraph 460(2)(a), the old winding up law continues to apply for the purposes of:
- (a) making after that commencement, in reliance on the demand, an application for the Court to order the winding up of the company on the ground provided for by subsection 460(1); and
 - (b) determining, or otherwise disposing of, an application of that kind so made; and
 - (c) winding up the company under an order of the Court made on an application of that kind so made.
- (5) If, before the relevant commencement, a company passed a special resolution under section 491 that the company be wound up voluntarily, the old winding up law continues to apply for the purposes of:

- (a) the voluntary winding up; and
 - (b) making after that commencement an application for the Court to order the winding up of the company; and
 - (c) determining, or otherwise disposing of, an application of that kind made after that commencement; and
 - (d) winding up the company under an order of the Court made, after that commencement, on an application of that kind.
- (6) Even if the old winding up law continues to apply, because of this section, for particular purposes relating to a company, an administrator of the company may still be appointed under section 436A, 436B or 436C.
- (7) The old winding up law continues to apply, because of this section, as if:
- (a) despite subsection 6(4), there were inserted in section 9 (as in force before the relevant commencement) the definitions of **administration**, **administrator** and **deed of company arrangement** that section 29 of the *Corporate Law Reform Act 1992* inserts in section 9 of the Corporations Law set out in section 82 of the *Corporations Act 1989*; and
 - (b) despite subsection 6(4), section 82A of this Law (as so in force) were amended as set out in section 33 of that Act; and
 - (c) section 468 of this Law (as so in force) were amended as set out in section 65 of that Act; and
 - (d) section 481 of this Law (as so in force) were amended as set out in section 75 of that Act; and
 - (e) section 556 of this Law (as so in force) were amended by inserting after paragraph (1)(d) the following paragraphs:
 - “(da) if the company has been under administration, even if the administration ended before the relevant date—next, the costs, charges and expenses, of and incidental to the administration, properly and reasonably incurred by the administrator, including the administrator’s remuneration;
 - (db) if paragraph (da) applies—next, the debts for which paragraph 443D(a) entitles an administrator of the company to be indemnified, except costs, charges and expenses covered by paragraph (da) of this subsection;

Section 1384

- (dc) if the company has executed a deed of company arrangement, even if it terminated before the relevant date—next, the costs, charges and expenses, of and incidental to executing and giving effect to the deed, properly and reasonably incurred by an administrator of the company or of the deed, including the remuneration of the deed’s administrator;” and
 - (f) sections 57 to 64, inclusive, 66 to 74, inclusive, 76 to 109, inclusive, and 111, of that Act had not been enacted.
- (8) Subsection 565(4), as continuing to apply because of this section, has effect subject to Part 5.3A.

1384 Continued application of old sections 589, 590 and 592

- (1) If, immediately before the commencement of section 112 of the *Corporate Law Reform Act 1992*, a company or Part 5.7 body was a company to which sections 590 to 593 (inclusive) of this Law apply, then paragraph (a) of the definition of **relevant day** in subsection 589(5), and sections 590 and 592, of this Law, as in force before that commencement, continue to apply in relation to the company or body.
- (2) If, because of section 1383, provisions continue to apply for particular purposes relating to a company, paragraph (a) of the definition of **relevant day** in subsection 589(5), and sections 590 and 592, of this Law, as in force before the commencement of section 112 of the *Corporate Law Reform Act 1992*, also apply in relation to the company.
- (3) Provisions continue to apply, or apply, because of this section, as if paragraph 112(d), and sections 113 and 114, of the *Corporate Law Reform Act 1992* had not been enacted.

1385 Continued effect of authorisations under subsections 597(1) and 598(1)

An authorisation that, immediately before the commencement of section 117 or 119 of the *Corporate Law Reform Act 1992*, was in force under subsection 597(1) or 598(1), as the case may be, of this Law, has effect after that commencement as if a reference in it

to section 597 or 598, as the case may be, of this Law included a reference to Division 1 or 2, as the case may be, of Part 5.9 of this Law.

1386 Continued application of old section 597

- (1) If, before the commencement of section 117 of the *Corporate Law Reform Act 1992*, the Court made an order under subsection 597(3) of this Law, then section 597 of this Law, as in force before that commencement, continues to apply for the purposes of holding an examination under the order.
- (2) If, before that commencement, an application was made under subsection 597(2) of this Law, then section 597 of this Law, as in force before that commencement, continues to apply for the purposes of:
 - (a) determining, or otherwise disposing of, the application; and
 - (b) holding an examination under an order made under subsection 597(3) on the application.

1387 Application of change to paragraph 1091(1A)(b)

Paragraph 1091(1A)(b) of this Law, as in force immediately after the commencement of section 160 of the *Corporate Law Reform Act 1992*, is taken to have commenced on 1 January 1991.

1388 Application of change to section 1301

If, immediately before the commencement of section 171 of the *Corporate Law Reform Act 1992*, there was in force a notice lodged by a corporation for the purposes of paragraph 1301(3)(a) of this Law, section 1301 of this Law as in force after that commencement applies as if the notice were a notice lodged for the purposes of paragraph 1301(1)(d) of this Law as in force after that commencement.

1389 Application of Part 9.4B to contravention committed before that Part commenced

- (1) Subsections (2) and (3) of this section apply where:
 - (a) it is alleged or suspected that a person has contravened:

Section 1389

- (i) subsection 232(2), (4), (5) or (6); or
 - (ii) subsection 234(5); or
 - (iii) subsection 318(1);
 - before the commencement of Part 9.4B; and
 - (b) the person consents in writing to that Part applying in relation to the contravention.
- (2) The provisions of Part 9.4B (except sections 1317FA, 1317HA, 1317HB, 1317HD and 1317HF) apply in relation to the contravention as if they had been in force when it was committed.
- (3) In the case of a contravention of subsection 232(2), (4), (5) or (6):
- (a) the provisions of sections 1317HA and 1317HD and subsection 1317HF(1) apply in relation to the contravention as if they had been in force when it was committed; and
 - (b) despite subsection 1375(2), subsection 232(8) does not apply in relation to the contravention.
- (4) Sections 1317DB, 1317DC and 1317DD have effect for the purposes of this section as if this section were in Part 9.4B.
- (5) Except as provided in paragraph (3)(b), this section does not affect the operation of section 1375 or 1378.

Division 6—Changes resulting from the Corporate Law Reform Act 1994

1390 Meaning of *Amending Act*

In this Division:

Amending Act means the *Corporate Law Reform Act 1994*.

1391 Application of changes to section 241

- (1) Section 241, as in force after the commencement of item 2 of Schedule 3 to the Amending Act, applies in relation to a liability incurred at or after that commencement.
- (2) Section 241, as in force before that commencement, continues to apply in relation to a liability incurred before that commencement, but not in relation to a contract of insurance made at or after that commencement.

1392 Application of section 241A

Section 241A applies:

- (a) in relation to a contract of insurance made at or after the commencement of item 5 of Schedule 3 to the Amending Act; and
- (b) in relation to a liability, whether incurred before, at or after that commencement.

1393 Application of changes to Parts 3.6 and 3.7

- (1) Parts 3.6 and 3.7, as in force after the commencement of item 114 of Schedule 1 to the Amending Act, apply in relation to a body or an undertaking to which prescribed interests relate and:
 - (a) the first half-year (if any) of the body or undertaking that begins on or after the commencement of that item; and
 - (b) the first accounting period of the body or undertaking that is a financial year and begins on or after the commencement of that item; and

Section 1394

- (c) each later accounting period of the body or undertaking.
- (2) Without limiting subsection (1), section 317A also applies in relation to a company and the first financial year of the company that ends on or after the commencement of that item.
- (3) Parts 3.6 and 3.7, as in force before the commencement of that item, continue to apply in relation to a company and a financial year of the company that began before that commencement.

1394 Application of changes to Part 4.5

- (1) Part 4.5, as in force after the commencement of item 80 of Schedule 1 to the Amending Act, applies in relation to a prescribed corporation and each financial year of the corporation that begins on or after the commencement of that item.
- (2) Part 4.5, as in force before the commencement of that item, continues to apply in relation to a prescribed corporation and a financial year of the corporation that began before that commencement.

1395 Application of changes to section 779

- (1) Subsections 779(5) to (9), inclusive, apply to a publication, after the commencement of item 91 of Schedule 1 to the Amending Act, of information given, a document prepared, given or produced, or a statement made, whether before, at or after that commencement.
- (2) The definition of *delisting or suspension decision* in subsection 779(1) applies to a decision made before, at or after that commencement.

1396 Application of changes to section 1058

- (1) Section 1058, as in force after the commencement of item 95 of Schedule 1 to the Amending Act, applies in relation to a relevant guarantor body and each financial year of the body that begins on or after the commencement of that item.
- (2) Section 1058, as in force before the commencement of that item, continues to apply in relation to a borrowing corporation or a

relevant guarantor body and a financial year of the corporation or body that began before that commencement.

1397 Application of change to subsection 1071(1)

- (1) Subsection 1071(1), as in force after the commencement of item 104 of Schedule 1 to the Amending Act, applies in relation to a deed and each financial year of the deed that begins on or after the commencement of that item.
- (2) Subsection 1071(1), as in force before the commencement of that item, continues to apply in relation to a deed and a financial year of the deed that began before that commencement.

1398 Application of certain prospectus—related changes

- (1) In relation to a prospectus, within the meaning of this Law as in force before the commencement of item 65 of Schedule 2 to the Amending Act, issued before that commencement:
 - (a) the following provisions of this Law, as in force after that commencement, do not apply:
 - (i) the definitions of *excluded prospectus* and *prospectus* in section 9;
 - (ii) section 994;
 - (iii) sections 1006 to 1011 (inclusive);
 - (iv) sections 1021, 1022 and 1022A;
 - (v) sections 1023A to 1024G (inclusive);
 - (vi) section 1031;
 - (vii) sections 1039, 1040 and 1041;
 - (viii) section 1060;
 - (ix) Schedule 3, so far as it relates to any subsection of sections 1023A to 1024G (inclusive) as then in force; and
 - (b) the following provisions of this Law, as in force before that commencement, continue to apply:
 - (i) the definitions of *excluded prospectus*, *primary prospectus*, *prospectus*, *secondary prospectus* and *seller* in section 9;
 - (ii) section 994;

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 6 Changes resulting from the Corporate Law Reform Act 1994

Section 1398

- (iii) sections 1006 to 1011 (inclusive);
 - (iv) sections 1021, 1022 and 1022A;
 - (v) section 1024;
 - (vi) section 1031;
 - (vii) sections 1039, 1040 and 1041;
 - (viii) section 1060;
 - (ix) Schedule 3, so far as it relates to subsections 1024(1) and (4) as then in force.
- (2) In relation to a prospectus, within the meaning of this Law as in force before the commencement of item 65 of Schedule 2 to the Amending Act, lodged before that commencement:
- (a) the following provisions of this Law, as in force after that commencement, do not apply:
 - (i) section 622;
 - (ii) section 1029;
 - (iii) section 1033; and
 - (b) the following provisions of this Law, as in force before that commencement, continue to apply:
 - (i) section 622;
 - (ii) sections 1029 and 1029A;
 - (iii) section 1033.

Division 7—Amendments made by the Corporations Legislation Amendment Act 1994

1399 Meaning of *Amending Act*

In this Division:

Amending Act means the *Corporations Legislation Amendment Act 1994*.

1400 Schedule 1—application of amendments made by Part 2 of the Schedule

The amendments of this Law made by Part 2 of Schedule 1 to the Amending Act apply to proceedings commenced or recommenced after the commencement of those amendments, whether the cause of action arose before or after that commencement.

1401 Schedule 3—application of amendments

Law continues to apply to registered charges

- (1) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, a charge on property of a financial institution was registered under Part 3.5 of this Law, this Law continues to apply after that commencement in relation to the charge as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

Institutions cease to be registered under Division 1 of Part 4.1

- (2) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, a financial institution was registered under Division 1 of Part 4.1 of this Law, or under a corresponding previous law, the institution ceases to be so registered by force of this subsection on the commencement of that item.

Section 1401

But institutions taken to be registered bodies for the purposes of section 433

- (3) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, section 433 of this Law applied to a financial institution, then, for the purposes of that section as it applies after that commencement, the institution is taken to continue to be a registered body (within the meaning of that section) despite:
- (a) the amendment of this Law made by that item; and
 - (b) subsection (2) of this section.

Law continues to apply to approved compromises and arrangements

- (4) If, immediately before the commencement of item 3 of Schedule 3 to the Amending Act, an approval under subsection 411(6) of this law was in force in respect of a compromise or arrangement between a financial institution and its creditors or members, or a class of its creditors or members, (whether or not other Part 5.1 bodies are involved in the compromise or arrangement) this Law continues to apply after that commencement in relation to the compromise or arrangement as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

Law continues to apply to winding up already commenced

- (5) If:
- (a) the winding up of a financial institution under Chapter 5 of this Law (pursuant to Part 5.7) commenced before the commencement of item 3 of Schedule 3 to the Amending Act; and
 - (b) the winding up was still in progress immediately before that commencement;

this Law continues to apply after that commencement in relation to the winding up of the financial institution as if the amendment of this Law made by that item had not been made and despite subsection (2) of this section.

Law continues to apply to controller of property

- (6) If, immediately before the commencement of item 4 of Schedule 3 to the Amending Act:
- (a) there was a controller of property of a financial institution; and
 - (b) the control day began before that commencement;
- this Law (including Part 5.2 and section 1379) continues to apply in relation to the controller and the institution as if the amendments of this Law made by that item, and by item 6 of that Schedule, had not been made.

Division 5 of Part 5.7B continues to apply to debts already incurred

- (7) Division 5 of Part 5.7B of this Law applies, after the commencement of item 4 of Schedule 3 to the Amending Act, to a debt incurred before that commencement by a company that is a subsidiary of a financial institution as if the amendments of this Law made by that item, and by item 6 of that Schedule, had not been made.

Parts 7.11 and 7.12 do not apply to issues under disclosure statements already registered

- (8) If, after the commencement of item 4 of Schedule 3 to the Amending Act, a financial institution may, under Division 6 of Part 5 of any of the Financial Institutions Codes, issue securities pursuant to a disclosure statement registered under that Division before that commencement, then, despite the amendments of this Law made by that item, and by item 6 of that Schedule, Parts 7.11 and 7.12 of this Law do not apply to the issue of securities pursuant to the disclosure statement.

1402 Schedule 4—application of amendments made by Part 2 of the Schedule

The amendments of this Law made by Part 2 of Schedule 4 to the Amending Act apply to inquiries begun after the commencement of those amendments.

Section 1403

1403 Schedule 5—application of amendments made by Part 3 of the Schedule

The amendments of this Law made by Part 3 of Schedule 5 to the Amending Act apply to decisions made after the commencement of those amendments.

1404 Schedule 7—transitional provisions relating to unclaimed property

- (1) As soon as practicable after the relevant commencement, the money in the Account that was paid into it under this Law must be paid into an unclaimed money account.
- (2) For the purposes of subsections 1341(1) and (2) as in force after the relevant commencement, money that was paid into an unclaimed money account under subsection (1) of this section is taken to have been paid into that account under subsection 1339(2) on the day when it was paid to the credit of the Account under section 1339 as in force before the relevant commencement.
- (3) The Minister must pay into an unclaimed money account money that, immediately before the relevant commencement:
 - (a) he or she held; and
 - (b) was unclaimed property as defined by section 1337 as then in force.
- (4) If, immediately before the relevant commencement, the Minister:
 - (a) held property (other than money) that was unclaimed property as defined by section 1337 as then in force; and
 - (b) had not yet sold or disposed of the property under section 1339 as then in force;the property vests in the Commission, because of this subsection, at the relevant commencement.
- (5) Where:
 - (a) immediately before the relevant commencement, a transfer provision, as then in force, required or permitted a person to pay money or transfer property to the Minister; and
 - (b) as at the time immediately after the relevant commencement:

- (i) the person has not yet so paid the money or transferred the property; or
- (ii) the person has so paid the money or transferred the property but the payment or transfer has not yet taken effect;

then:

- (c) if the transfer provision is an order of the Court under paragraph 544(2)(c)—the order has effect after the relevant commencement as if it directed the person to pay the money to the Commission instead of to the Minister; or
- (d) if the transfer provision is subsection 577(4)—the Commission must instead deal with the money under Part 9.7 as in force after the relevant commencement; or
- (e) otherwise—the person must, or may, as the case may be, instead pay the money or transfer the property to the Commission in accordance with the transfer provision as in force after the relevant commencement;

unless subparagraph (b)(ii) of this subsection applies and the payment or transfer takes effect after the relevant commencement.

- (6) Where, before the relevant commencement, a person transferred property to the Minister under a transfer provision as then in force but the transfer only takes effect after the relevant commencement:
 - (a) if the property is money—the Minister must pay it into an unclaimed money account; or
 - (b) otherwise—the property vests in the Commission, because of this subsection, immediately after the transfer takes effect.
- (7) Subsection 544(3), as in force before the relevant commencement, continues to apply in relation to a payment to the Minister made under section 544 as so in force.
- (8) Subsection 702(5), as in force after the relevant commencement, applies in relation to a calendar year ending at or after the relevant commencement.
- (9) Subsections 702(8), (9) and (10), as in force after the relevant commencement:

Section 1404

- (a) apply in relation to a register given, or required to be given, whether before, at or after the relevant commencement, to the Minister or to the Commission; and
 - (b) so apply as if a register given, or required to be given, to the Minister had been given, or required to be given, to the Commission.
- (10) Subsections 1341(2) and (3), as in force before the relevant commencement, continue to apply in relation to a claim made under subsection 1341(2) as so in force. They so apply as if the second reference in subsection 1341(2), as so in force, to the Account were a reference to the unclaimed money account into which the money to which the claim relates has been paid.
- (11) Subsection 1341(4) or (5), as in force before the relevant commencement, continues to apply in relation to money that was paid, or money an amount equivalent to which was paid, as the case may be, as directed by the Minister.
- (12) Section 1342, as in force before the relevant commencement, continues to apply in relation to the powers that the Minister had:
- (a) under Part 9.7 as so in force; or
 - (b) in relation to unclaimed property as defined by section 1337 as so in force.
- (13) In this section:

relevant commencement means the commencement of item 3 of Schedule 7 to the Amending Act.

transfer includes pay.

transfer provision means any of the following:

- (a) subsection 414(15);
- (b) subsection 544(1);
- (c) an order of the Court made under paragraph 544(2)(c);
- (d) subsection 577(4);
- (e) subsection 702(6);
- (f) section 1343.

1405 Schedule 8—application and commencement of amendments

The amendments of section 1336A of this Law made by items 29 and 30 of Schedule 8 to the Amending Act are taken to have commenced on 1 January 1991.

Division 8—Changes resulting from the First Corporate Law Simplification Act 1995

1406 Meaning of *Amending Act*

In this Division:

Amending Act means the *First Corporate Law Simplification Act 1995*.

1407 Proprietary companies limited both by shares and by guarantee

Despite subparagraph 116(2)(a)(i), a company that was a proprietary company limited both by shares and by guarantee under this Law as in force immediately before the commencement of item 8 of Schedule 4 to the Amending Act can remain registered as a proprietary company until:

- (a) it ceases to be a company limited both by shares and by guarantee; or
- (b) it ceases to be a proprietary company.

1408 Application of amendments dealing with company accounts

The amendments made by the Amending Act to Parts 3.6 and 3.7 apply to each financial year of a company that ends on or after the commencement of this section.

1409 Application of audit requirements for large proprietary companies

Despite section 1408, the first financial year for which a large proprietary company that was an exempt proprietary company immediately before the commencement of this section must have its accounts audited under section 296 (as amended by the Amending Act) is the first financial year that starts after the commencement of this section.

1410 First annual return for proprietary companies under new provisions

- (1) To avoid any doubt, the first calendar year for which subsection 335(1A) applies is the one that ends on the first 31 December after the commencement of this section.
- (2) The first calendar year for which subsection 335(1A) applies to a company that is registered after the commencement of this section is the calendar year that ends on the first 31 December after its registration.

Note: Subsection 335(1A) was inserted by item 67 of Schedule 4 to the Amending Act.

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 9 Changes resulting from the Corporations Law Amendment Act 1997

Section 1411

**Division 9—Changes resulting from the Corporations Law
Amendment Act 1997**

**1411 Effect of amendments on distributions etc. before
commencement**

The validity of any action taken by a liquidator before the commencement of the *Corporations Law Amendment Act 1997* must not be called into question in any proceedings if the action would have been valid if the amendments made by that Act had been in force at the time of the action.

Division 10—Changes resulting from the Company Law Review Act 1998

1412 Meaning of *commencement*, *new Law* and *old Law*

In this Division:

commencement means the commencement of section 3 of the *Company Law Review Act 1998*.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before commencement.

1413 Registration—existing companies continue to be registered

A company that was registered or taken to be registered before commencement under Part 2.2 of the old Law continues to be registered as a company of whichever of the following types corresponds to its previous class and type:

- (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.

1414 Registration—application orders under subsection 112(3) of the old Law

An application order in force immediately before commencement under subsection 112(3) of the old Law continues to have effect after commencement as if it were an application order under section 115 of the new Law.

Section 1415

1415 Basic features of a company—memorandum and articles are taken to be constitution

The memorandum and articles of a company immediately before commencement are taken together to make up the company's constitution after commencement.

Note: A company could have had some or all of its articles implied by the operation of section 175 of the old Law.

1416 Basic features of a company—companies limited both by shares and by guarantee

- (1) This Law applies to a company limited by shares and by guarantee as if the following provisions of the old Law had not been repealed or amended:
 - (a) paragraph 260(5)(a)
 - (b) sections 516, 517 and 518.
- (2) This Law applies to the company as if the definition of *limited company* in section 9 were amended by adding at the end “or a company limited by shares and by guarantee”.
- (3) The company may change to one of the following types of companies under Part 2B.7 of the new Law:
 - (a) a proprietary company limited by shares
 - (b) a public company limited by shares
 - (c) a company limited by guarantee.
- (4) Part 2B.7 of the new Law applies to the change with any modifications that are necessary.

1417 Basic features of a company—acts before external administration of existing company

- (1) This section applies to an act or thing done by or in relation to a company that section 132 of the old Law applied to.
- (2) The new Law applies in relation to the company as if:
 - (a) the company had been a company, and this Law had been in force, at the time when that action was taken; and

(b) that action had been validly taken under, or for the purposes of, Chapter 5.

The new Law has effect with any modifications that are necessary.

- (3) Nothing in this section makes a person guilty of a contravention of this Law in respect of anything done or not done before 1 January 1991.

1418 Basic features of a company—registered office

The registered office of a company immediately before commencement continues to be the company's registered office after commencement.

1419 Basic features of a company—opening hours of registered office of public company

A notice lodged under subsection 218(2) or (4) of the old Law has effect after commencement as if it were lodged under subsection 145(3) of the new Law.

1420 Basic features of a company—name, reservation of name and ACN continues

- (1) The name of a company or body immediately before commencement continues to be the company's or body's name after commencement.
- (2) A name that was reserved in respect of a company or body immediately before commencement is taken after commencement to be reserved under section 152 or 601DA of the new Law, as applicable.
- (3) The registration number of a company registered before commencement is taken to be the company's ACN after commencement.

Section 1421

1421 Members' rights and remedies—applications for inspection orders under repealed provisions

An application made before commencement under section 317 of the old Law, but not decided, has effect as if it were an application for an order under section 247A of the new Law.

1422 Meetings—AGM before commencement

An AGM held before commencement can be taken into account for the purpose of deciding whether the requirements of section 250N of the new Law have been satisfied for a public company holding an AGM.

1423 Meetings—first AGM for companies incorporated before commencement

- (1) A company that was incorporated less than 18 months before commencement and that did not hold its first AGM by commencement must hold it within 18 months after its incorporation.
- (2) A company that was incorporated 18 months or more before commencement and that did not hold its first AGM by commencement must hold it within 7 days after commencement.

1424 Meetings—general transitional arrangements

The following table sets out how things that have been done before commencement under the old Law are to be dealt with after commencement—either under the old Law or the new Law.

| Meetings—general transitional arrangements | | [operative table] |
|---|---|--|
| | Thing done before commencement | How it is to be dealt with after commencement |
| 1 | Requisition made for a meeting under section 246. | The requisition is treated as if it were made under section 249D of the new Law. |

| Meetings—general transitional arrangements | | [operative table] |
|---|--|--|
| Thing done before commencement | How it is to be dealt with after commencement | |
| 2 | Notice was validly given of a meeting called under section 246 or 251. | The notice is treated as if it were made under a corresponding section of the new Law (section 249D or 249F respectively). If the notice complied with the requirements of the old Law, the meeting can be held at the expiry of the period provided for in the old Law. The new Law will operate in respect of the holding of the meeting. |
| 3 | In calling a meeting under section 251, the Court stipulated requirements for holding the meeting. | The requirements stipulated by the Court are treated as if they were made under section 1319 of the new Law. |
| 4 | An authority was granted to a person to act as a body corporate's representative as provided for in subsection 249(3). | The authority is treated as if it were made under section 250D of the new Law. |
| 5 | A person had applied to ASIC for an extension of time for holding an AGM. | The application is treated as if it were made under section 250P of the new Law. |
| 6 | An application was made by a person under subsection 251(1) for the Court to convene a meeting. | The application is treated as if it were made under section 249G of the new Law. |
| 7 | Notice given under section 254 of an intention to move a resolution under section 227 or 329 or to replace a director removed under section 227 was received by the company. | Notice properly given under the old Law has effect as if it were given under subsection 203D(2) (directors) or 329(1A) (auditors). The time period for notice given under the old Law continues to run as if section 254 of the old Law had not been repealed. |
| 8 | A resolution, document or agreement of the kind referred to in section 256 has been passed or made. | The resolution, agreement or document must be lodged within 1 month after the passing of the resolution or the making of the agreement or document. |

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 10 Changes resulting from the Company Law Review Act 1998

Section 1424A

| Meetings—general transitional arrangements | | [operative table] |
|---|---|--|
| | Thing done before commencement | How it is to be dealt with after commencement |
| 9 | A request was made by a member under subsection 256(3) but not complied with before commencement. | The company must deal with the request as provided for in section 256 of the old Law. |
| 10 | A general meeting or a directors' meeting was held or a general meeting was deemed to be held because of subsection 255(1). | The obligations arising under section 258 of the old Law as to the entering of the minutes in the minute books within 1 month after the meeting is held and the signing of the minutes continue as if section 258 of the old Law was not repealed. |
| 11 | A request was made by a member for a copy of minutes under subsection 259(2). | The request is treated as if it were made under section 251B of the new Law. |

1424A Notices of meeting given before commencement

Sections 249HA and 250BA of the new Law do not apply to a meeting of a company's members if the notice of the meeting was given before commencement.

1425 Nominal value

The nominal value of a share immediately after commencement is the nominal value it had immediately before commencement.

1426 Share capital—calls on partly-paid shares

A resolution to which subsection 188(2) applied immediately before commencement continues to have effect after commencement as if it were a special resolution under section 254N of the new Law.

1427 Share capital—provisions in constitution about amount of share capital and division into shares

- (1) Any provisions in a company's constitution stating the amount of the company's share capital, and dividing that share capital into shares of a fixed amount, are repealed on commencement.
- (2) If, before commencement (or within 3 months after commencement), a company receives a notice stating that this subsection is to apply to the company and that satisfies subsections (3) to (5), the following provision is inserted in the company's constitution on commencement (or when the notice is received if it is received after commencement) in place of the provision repealed by subsection (1):

“The company must not issue shares if the issue would make the total number of the company's issued shares in a particular class exceed the total number of shares of that class into which the company's authorised share capital was divided immediately before the commencement of Chapter 2H of the Corporations Law.”.

The provision has effect as a provision of the company's constitution and may be amended accordingly.
- (3) A notice for the purpose of subsection (2) must be:
 - (a) in writing; and
 - (b) signed by:
 - (i) members who hold shares carrying at least 5% of the votes that may be cast at a general meeting of the company; or
 - (ii) 100 members entitled to vote at a general meeting of the company.
- (4) The notice may consist of copies signed by different members provided each copy has identical wording.
- (5) The percentage of votes members hold is to be worked out as at the close of business on the day before the notice was given to the company.
- (6) If subsection (2) applies to insert the provision into a public company's constitution, within 14 days after the insertion of the

Section 1428

provision the company must lodge a notice with ASIC in the prescribed form that states that subsection (2) applies.

1428 Share capital—conversion of stock into shares

A company must convert stock in the company into shares within 5 months after the end of the first financial year to end after commencement. The conversion is to be by resolution passed in a general meeting. The company may disregard any stock that could only be converted into a fraction of a share. Until all the stock is converted, the register of members must continue to show the amount of stock, or the number of stock units, held by each member who holds stock and indicate any stock that a member does not hold beneficially.

1429 Share capital—previous Law continues to apply to capital reductions initiated before commencement

If a company has called a meeting before commencement for the purpose of section 195 of the old Law to consider a special resolution for a reduction of its share capital, the old Law continues to apply to the reduction of capital.

1430 Share capital—continued operation of other repealed provisions

The old Law continues to apply to:

- (a) a body corporate's obligation under section 185 of the old Law to dispose of shares and any related voting restrictions; and
- (b) an application for an order, or an order made, under section 194 of the old Law; and
- (c) an application for an order, or an order made, under section 202 of the old Law.

1431 Financial reports and audit—application of Chapter 2M to periods that end after commencement, and continued application of repealed provisions to past periods

- (1) Chapter 2M of the new Law, and the amendments made by Part 4 of Schedule 2 to the *Company Law Review Act 1998*, apply to financial years and half-years ending after commencement.
- (2) In relation to financial years and half-years that end on or before commencement, the provisions of Parts 3.6, 3.7, 4.4 and 4.5 of the old Law, and the provisions amended by Part 4 of Schedule 2 to the *Company Law Review Act 1998*, continue to apply as if they had not been repealed, relocated or amended.

1432 Financial reports and audit—lodgment of accounts by public companies that are not disclosing entities

- (1) This section applies to a public company that is not a disclosing entity at the end of the last financial year to which the old Law applies.
- (2) The company must lodge a copy of the following documents with ASIC for the last financial year to which the old Law applies:
 - (a) the company's financial statements (within the meaning of the old Law); and
 - (b) the statement or statements that Division 5 of Part 3.6 of the old Law required; and
 - (c) the report that Division 6 of Part 3.6 of the old Law required; and
 - (d) the report about the financial statements that section 331A of the old Law required from the company's auditor.

Note: For the transitional provisions for annual returns see sections 1435 and 1436.

- (3) The company must lodge the documents within 1 month after:
 - (a) the day on which the company's next AGM after commencement is held if it is held when it should be under sections 250N and 250P; or
 - (b) the last day on which the company should have held its next AGM after commencement under sections 250N and 250P.

Section 1433

1433 Financial reports and audit—continued operation of accounting standards

- (1) An accounting standard that was in force immediately before commencement (including under section 288 of the old Law):
 - (a) continues to have effect after commencement for the purposes of Parts 3.6 and 3.7 as they continue to apply under subsection 1431(2); and
 - (b) also has effect after commencement, with any necessary modifications, as if it were an accounting standard made for the purposes of Chapter 2M.
- (2) This section does not apply an accounting standard to a period to which it would not otherwise apply.

1434 Financial reports and audit—continued operation of exemption orders

- (1) An order in force immediately before commencement under section 290, 291, 313 or 314 continues to have effect after commencement, with any necessary modifications, in relation to financial years and half-years ending after commencement as if it were an order under:
 - (a) section 340 of the new Law; or
 - (b) if it relates to a class of companies—section 341 of the new Law.
- (2) An application made, but not decided, before the commencement under section 290 or 313, so far as it relates to financial years and half-years ending after commencement, has effect after commencement, with any necessary modifications, as if it were an application for an order under section 340 of the new Law.

1435 Annual returns—solvency resolution

The directors of a company are not required to make a resolution under subsection 346(1) of the new Law in relation to the company's first annual return lodged under subsection 345(1) of the new Law if the company has lodged accounts with ASIC under Chapter 3 of the old Law within 12 months before the annual return is lodged.

1436 Annual returns—application of annual return provisions

- (1) A public company does not have to lodge an annual return under section 335 of the old Law if the date for lodgment occurs after commencement.
- (2) A public company that lodges an annual return under section 335 of the old Law:
 - (a) before commencement; and
 - (b) within the 6 months before the first 31 January after commencement;does not have to lodge the annual return that it would otherwise have had to lodge by that 31 January.

1437 Deregistration—previous Law continues to apply to deregistrations initiated before commencement

If, before commencement, a person has started a procedure under Division 8 of Part 5.6 (including section 574A) to have a company deregistered, the old Law continues to apply in relation to the procedure.

1438 Deregistration—property vested in ASIC under previous laws

- (1) If property vested in ASIC before commencement under Division 8 of Part 5.6, ASIC may deal with the property under Chapter 5A as if the property were vested in it under section 601AD.
- (2) If:
 - (a) property was vested in ASIC under section 254 of ASIC Law; and
 - (b) the property was previously vested in the NCSC:
 - (i) because of the previous law of this jurisdiction corresponding to section 576 of the old Law; and
 - (ii) not under section 43 of the *National Companies and Securities Commission Act 1979*;ASIC may deal with the property under Chapter 5A as if it were vested in it under section 601AD.

Section 1439

- (3) If property vested, or vests, in ASIC under section 601, ASIC may deal with the property under Chapter 5A as if the property were vested in it under section 601AD.
- (4) This section has effect despite section 601.

1439 Deregistration—reinstatement of registration where application under section 571 or subsection 574(3) made before commencement

An application made under section 571 or subsection 574(3) of the old Law that has not been determined by commencement has effect after commencement as if it were an application for an order for reinstatement of the registration of the company under section 601AH of the new Law.

1440 Deregistration—deregistration of companies dissolved under the *State Bank (Corporatisation) Act 1994* of South Australia

ASIC to deregister company on notice from South Australian Minister

- (1) ASIC must deregister a company if the Minister of the Crown of South Australia responsible for the administration of the *State Bank (Corporatisation) Act 1994* of South Australia notifies ASIC in writing that a company has been dissolved under section 23 of that Act.

ASIC to give notice of deregistration

- (2) ASIC must give notice of the deregistration on ASIC database and in the *Gazette*.

Law applies as if deregistration were under section 601AB

- (3) Subject to subsection (4), this Law (other than section 601AB) applies to the deregistration of the company as if the deregistration were under section 601AB.
- (4) Subsection 601AD(2) only applies to property of the company to the extent (if any) that the property is not vested in the State Bank

of South Australia under subsection 23(2) of the *State Bank (Corporatisation) Act 1994* of South Australia.

1441 Accounting standards made under section 32 of the Corporations Act 1989

An accounting standard that is in force under section 32 of the Corporations Act 1989 immediately before the commencement of item 7 of Schedule 4 to the *Company Law Review Act 1998* continues in force after that commencement as if it were made under section 334 of this Law.

1442 References in State laws and other documents

- (1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.
- (2) Without limiting subsection (1), the following table sets out provisions of the old Law that correspond to particular provisions of the new Law:

| | Old Law provision | New Law provision |
|----|--------------------------|--------------------------|
| 1 | subsection 195(13) | section 258B |
| 2 | Division 3 Part 2.4 | Part 2F.2 |
| 3 | section 208 | section 1096A |
| 4 | section 213 | section 1091C |
| 5 | Part 2.5 | Chapter 2C |
| 6 | Part 3.2 | Chapter 2D |
| 7 | Part 3.2A | Chapter 2E |
| 8 | Part 3.4 | Part 2F.1 |
| 9 | section 260 | section 246AA |
| 10 | Part 3.5 | Chapter 2K |
| 11 | Part 3.6 | Chapter 2M |
| 12 | Part 3.7 | Chapter 2M |
| 13 | Part 4.1 | Part 5B.2 |

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 10 Changes resulting from the Company Law Review Act 1998

Section 1442

| | Old Law provision | New Law provision |
|----|--------------------------|--------------------------|
| 14 | Part 9.11 | Part 11.2 |

Division 10A—Changes resulting from Schedule 5 to the Company Law Review Act 1998

1443 Meaning of *commencement*, *new Law* and *old Law*

In this Division:

commencement means the commencement of Schedule 5 to the
Company Law Review Act 1998.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before
commencement.

1444 Share capital—application of new no par value rule to shares issued before commencement

Section 254C of the new Law applies to shares issued before
commencement as well as shares issued after commencement.

1445 Share capital—references to amount paid on shares issued before commencement

For the purposes of the operation of this Law after commencement
in relation to a share issued before commencement:

- (a) the amount paid on the share is the sum of all amounts paid
to the company 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)).

Section 1446

1446 Share capital—transfer of money in share premium account and capital redemption reserve into the share capital account

Immediately after commencement, any amount standing to the credit of the company's share premium account and capital redemption reserve becomes part of the company's share capital.

1447 Share capital—use of amount standing to credit of share premium account

A company may use the amount standing to the credit of its share premium account immediately before commencement to:

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before commencement; or
- (b) write off:
 - (i) the preliminary expenses of the company incurred before commencement; or
 - (ii) expenses incurred, payments made, or discounts allowed, on or before commencement, in respect of any issue of shares in, or debentures of, the company.

Note: After commencement, a company will be able to issue bonus shares without transferring an amount to the share capital account (see section 254A).

1448 Share capital—calls on partly-paid shares

The liability of a shareholder for calls in respect of money unpaid on shares issued before commencement (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.

1449 Share capital—references in pre-commencement contracts and other documents to par value

- (1) This section applies for the purpose of interpreting and applying after commencement:
 - (a) a contract entered into before commencement (including a company's constitution); or

- (b) a trust deed or other document executed before commencement.
- (2) A reference to the par value of a share is taken to be a reference to:
- (a) if the share is issued before commencement—the par value of the share immediately before commencement; or
 - (b) if the share is issued after commencement but shares of the same class were on issue immediately before commencement—the par value that the share would have had if it had been issued then; or
 - (c) if the share is issued after commencement and shares of the same class were not on issue immediately before commencement—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 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 company's issued share capital is taken to be a reference to that aggregate as it existed immediately before commencement and:
- (a) increased to take account of the par value of any shares issued after commencement; and
 - (b) reduced to take account of the par value of any shares cancelled after commencement.

1450 Share capital—previous Law continues to apply to capital reductions initiated before commencement

If a company has called a meeting before commencement for the purpose of section 256A of the old Law to consider a special resolution for a reduction of its share capital, the old Law continues to apply to the reduction of capital.

Section 1451

Division 11—Changes resulting from the Managed Investments Act 1998

1451 Definitions

In this Division:

commencement means the commencement of Chapter 5C of this Law.

new Law means this Law as in force after the commencement.

old Law means this Law as in force immediately before the commencement.

registered scheme means a managed investment scheme that is registered under section 601EB of the new Law.

registration application means an application for registration of a managed investment scheme under section 601EB of the new Law.

undertaking includes scheme, enterprise, contract or arrangement.

1452 Division applies to prescribed interests in existence immediately before commencement

This Division applies to interests that, immediately before the commencement, were prescribed interests to which:

- (a) Division 5 of Part 7.12 of the old Law applied; or
- (b) that Division would have applied but for the operation of subparagraph 7.12.04(c)(ii) of the Corporations Regulations;

and that are interests in a managed investment scheme as defined in section 9 of the new Law. It also applies to the undertaking to which the interests relate and to the trustee or representative and the management company in relation to the interests.

1453 Application of new Law to interests covered by approved deed immediately before commencement

The new Law applies to prescribed interests covered by an approved deed immediately before commencement as if paragraph 601ED(1)(a) (requirement for 20 members) were omitted. This section ceases to apply to the prescribed interests covered by the deed if all the people who hold the interests agree that this section should cease to apply to the interests.

1454 Old Law continues to apply for 2 years or until scheme registered

- (1) The old Law continues to apply to the interests, the undertaking, the trustee or representative and the management company, for the period of 2 years starting on the commencement, unless, before then, the undertaking becomes a registered scheme.
- (2) ASIC may extend that period of 2 years if the undertaking is to be wound up at a fixed time after the 2 years and ASIC thinks it would be unreasonable to require the undertaking to become a registered scheme before being wound up.
- (3) Except for the purposes of applying to register the undertaking as a managed investment scheme under the new Law and dealing with the application, the new Law does not apply to the interests, the undertaking, the trustee or representative and the management company while the old Law continues to apply to them.
- (4) If the undertaking becomes a registered scheme within the period of 2 years referred to in subsection (1), section 601FC(4) of the new Law applies to the registered scheme for the remainder of that period as if prescribed interests that are still covered by an approved deed because of subsection (1) of this section were interests in a registered scheme.

1455 Retirement from office of trustee or representative or management company

- (1) This section provides for the bodies that hold the offices of trustee or representative and management company to retire from those

Section 1456

offices. A retirement under this section takes effect if, and only if, the undertaking becomes a registered scheme.

- (2) One of the bodies may retire from the office it holds by giving written notice of its retirement to the other body. The body giving the notice must lodge a copy of it with ASIC.
- (3) Once one of the bodies has given a retirement notice to the other body, that other body cannot give a retirement notice. If both bodies give notices at the same time, the notice by the body that holds the office of management company is ineffective.
- (4) A retirement notice may only be given:
 - (a) while Division 5 of Part 7.12 of the old Law continues to apply to the prescribed interests; and
 - (b) during the first year after the commencement.
- (5) A retirement notice cannot be revoked.
- (6) Section 1456 sets out what happens when one of the bodies gives the other a retirement notice.
- (7) Section 1457 sets out what happens if neither of the bodies gives the other a retirement notice.
- (8) Sections 1458 to 1461 only confer rights and impose obligations on a body for so long as:
 - (a) if the body is the trustee or representative or the management company—the body continues to hold that office; and
 - (b) in any case—the undertaking is not a registered scheme.

1456 What happens when one of the bodies receives a retirement notice

- (1) If one of the bodies receives a retirement notice it must, within 2 months, decide either to:
 - (a) retire from the office it holds; or
 - (b) lodge a registration application in relation to the undertaking naming itself as the proposed responsible entity.

The body must lodge a notice of its decision with ASIC.

Note: For the powers of the body if it decides to become the responsible entity, see section 1460.

- (2) If the body decides to retire:
- (a) its retirement takes effect if, and only if, the undertaking becomes a registered scheme; and
 - (b) the body must, as soon as practicable after making its decision, convene a meeting of the holders of the prescribed interests to:
 - (i) choose a proposed responsible entity for the purpose of making a registration application; or
 - (ii) decide that the undertaking is to be wound up; and
 - (c) the body must lodge a notice with ASIC setting out the outcome of the meeting.

Note 1: For the powers of the proposed responsible entity, see section 1460.

Note 2: For the procedure at the meeting, see section 1460.

- (3) If, at the meeting held under paragraph (2)(b), the holders of the prescribed interests do not either choose a proposed responsible entity or decide that the undertaking is to be wound up, the management company may apply to the Court for an order directing it to wind up the scheme.

1457 What happens if neither of the bodies gives a retirement notice

- (1) If neither of the bodies gives a retirement notice during the first year after the commencement, the management company must:
- (a) as soon as practicable after the end of that year, convene a meeting of the holders of the prescribed interests to:
 - (i) choose a proposed responsible entity for the purpose of making a registration application; or
 - (ii) decide that the undertaking is to be wound up; and
 - (b) lodge a notice with ASIC setting out the outcome of the meeting.

Note 1: For the powers of the proposed responsible entity, see section 1460.

Note 2: For the procedure at the meeting, see section 1460.

- (1A) A resolution passed under subparagraph (1)(a)(i) may direct the proposed responsible entity to lodge with the registration application a compliance plan that provides for scheme property to

Section 1458

be held by a person other than the responsible entity, or a person that is not related to the responsible entity, as the responsible entity's agent.

- (2) If, at the meeting, the holders of the prescribed interests do not either choose a proposed responsible entity or decide that the undertaking is to be wound up, the management company may apply to the Court for an order directing it to wind up the scheme.

1458 Winding up of the undertaking

The trustee or representative for the purposes of the deed must ensure that the undertaking is wound up in accordance with the deed in relation to the prescribed interests and with any orders under subsection 1459(2) if:

- (a) the holders of the prescribed interests decide, at a meeting convened for the purpose of paragraph 1456(2)(b) or 1457(1)(a), that the undertaking is to be wound up; or
- (b) the Court makes an order directing the management company to wind up the undertaking pursuant to an application under subsection 1457(2).

1459 Other orders about winding up

- (1) The Court may, by order, appoint a person to take responsibility for ensuring the undertaking is wound up in accordance with the deed and any orders under subsection (2) if the Court thinks it necessary to do so (including for the reason that the management company has ceased to exist or is not properly discharging its obligations in relation to the winding up).
- (2) The Court may, by order, give directions about how the undertaking is to be wound up if the court thinks it necessary to do so (including for the reason that the provisions in the deed are inadequate or impracticable).
- (3) An order under subsection (1) or (2) may be made on the application of:
 - (a) the management company or the trustee or representative; or
 - (b) a director of the management company or of the trustee or representative; or

- (c) a holder of any of the prescribed interests; or
- (d) ASIC.

1460 Powers of proposed responsible entity

- (1) This section sets out the powers of:
 - (a) a body that decides under subsection 1456(1) to lodge a registration application in relation to the undertaking naming itself as the proposed responsible entity; or
 - (b) a body chosen by the holders of the prescribed interests as the proposed responsible entity at a meeting convened under paragraph 1456(2)(b) or 1457(1)(a).
- (2) The body has power to lodge a registration application in relation to the undertaking on behalf of the holders of the prescribed interests, and has power to do all things necessary for the purpose of the application.
- (3) The body has power to modify the deed in relation to the prescribed interests:
 - (a) if the purpose of the modification is to make the deed meet the requirements of section 601GA of the new Law for the constitution of a registered scheme; or
 - (b) the modification removes from the deed covenants that were included to satisfy the requirements of Division 5 of Part 7.12 of the old Law.

This is so despite any provision in the deed to the contrary.
- (4) Section 1069A of the old Law does not apply to the body's power to modify the deed (except as provided in section 1461).
- (5) The body must lodge a notice with ASIC setting out the modifications.
- (6) The body's power to modify the deed is subject to the following qualifications:
 - (a) the modifications have effect if, and only if, the undertaking becomes a registered scheme; and
 - (b) within 28 days of lodgment of the notice setting out the modifications, ASIC may require the management company

Section 1461

to convene a meeting of the holders of the prescribed interests to ratify all or any of the modifications; and

- (c) if ASIC requires a modification to be ratified, it does not have effect under paragraph (a) unless it has been ratified and written notice of the ratification has been lodged with ASIC.

1461 Meeting procedures

Sections 1069A to 1069C of the old Law apply, with necessary modifications, for the purposes of convening, holding, and voting at meetings for the purpose of paragraph 1456(2)(b), 1457(1)(a) or 1460(6)(b).

1462 Transfer of rights, obligations and liabilities

If the undertaking becomes a registered scheme, Division 3 of Part 5C.2 of the new Law applies as if:

- (a) references to the new responsible entity were references to the responsible entity of the scheme on registration; and
- (b) references to the former responsible entity were references to either or both of the bodies that, immediately before the scheme's registration, held the offices of trustee or representative and management company (in their capacities as the holders of those offices).

1463 Indemnification of trustee or representative for transfer of scheme property

If the undertaking becomes a registered scheme but the trustee or representative does not become the responsible entity of the scheme, the trustee or representative is entitled to be indemnified out of the scheme property for reasonable expenses incurred in transferring the scheme property to the responsible entity.

1464 Application of paragraphs 601JA(2)(c) and 601JB(2)(b) of new Law to officers or employees of body that does not become scheme's responsible entity

If:

- (a) the undertaking becomes a registered scheme; and
 - (b) on registration of the scheme, the scheme's responsible entity is one of the bodies referred to in subsection 1455(1);
- then, in applying paragraph 601JA(2)(c) or 601JB(2)(b) of the new Law to the scheme, a person who was an officer or employee of the other of those bodies is not, merely because of things they did before the scheme's registration in the performance of their functions or duties as an officer or employee of that body, taken to have been substantially involved in business dealings, or in a professional capacity, with the responsible entity.

1465 References to prescribed interests etc. in existing laws and documents

A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a term set out in the old term column of the table (within the meaning of this Law) is to be read after commencement as including a reference to the corresponding term set out in the new term column of the table (within the meaning of this Law) except so far as the contrary intention appears in the law or document.

| Conversion of references | | |
|---------------------------------|---------------------|---|
| Item | Old term | New term |
| 1. | prescribed interest | interest in a managed investment scheme |
| 2. | management company | responsible entity |
| 3. | trustee | responsible entity |
| 4. | approved deed | constitution of registered scheme |

Section 1466

Division 12—Changes resulting from the Corporate Law Economic Reform Program Act 1999

1466 Meaning of *commencement*, *new Law* and *old Law*

In this Division:

commencement means the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before commencement.

1467 General—references to provisions of old Law in laws and other documents

- (1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.
- (2) Without limiting subsection (1), the following table sets out provisions of the old Law that correspond to particular provisions of the new Law:

| Corresponding provisions | | |
|--------------------------|--|-------------------|
| | Old Law provision | New Law provision |
| 1 | Part 3A.2 | Chapter 2E |
| 2 | Part 6.3 (document lodged for the purposes of) | Chapter 6 |
| 3 | Part 6.6 | Chapter 6B |
| 4 | Part 6.7 | Part 6C.1 |
| 5 | Part 6.8 | Part 6C.2 |
| 6 | Part 7.12 | Chapter 6D |

| Corresponding provisions | | |
|---------------------------------|--|--------------------------|
| | Old Law provision | New Law provision |
| 7 | Division 5 of Part 1.2 of the Corporations Law | Corporations Law |
| 8 | section 33 | paragraph 608(3)(a) |
| 9 | section 91A | subsection 206A(1) |
| 10 | section 241 | section 199A |
| 11 | section 241A | section 199B |
| 12 | section 242 | section 205B |
| 13 | section 260 | sections 232 to 235 |
| 14 | section 709 | section 671B |
| 15 | section 710 | section 671B |
| 16 | section 711 | section 671B |
| 17 | paragraph 1317EA(3)(b) | section 1317G |

1468 General—references to old Law expressions used in existing laws and documents

A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a term set out in the old term column of the table (within the meaning of this Law) is to be read after commencement as including a reference to the corresponding term set out in the new term column of the table (within the meaning of this Law) except so far as the contrary intention appears in the law or document.

| Conversion of references | | |
|---------------------------------|-----------------------|---------------------|
| Item | Old term | New term |
| 1 | takeover scheme | off-market bid |
| 2 | takeover announcement | market bid |
| 3 | Part A statement | bidder's statement |
| 4 | Part B statement | target's statement |
| 5 | Part C statement | bidder's statement |
| 6 | Part D statement | target's statement |
| 7 | prospectus | disclosure document |

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1469

1469 Directors' duties—application and transitional arrangements

Column 2 of the table sets out things that have been done, or situations that have arisen, on or before the commencement of certain provisions of the new Law. Column 3 sets out how the things and situations will be dealt with after commencement—either under the old Law or the new Law.

| Transitional arrangements | | |
|----------------------------------|--|--|
| | If... | then, after commencement... |
| 1 | before the commencement of section 191 of the new Law, a director of a proprietary company who had an interest in a contract or proposed contract with the company declared the nature of the interest in accordance with subsection 231(1) of the old Law | the director is taken to have disclosed the interest as a material personal interest in accordance with section 191 of the new Law and to have made the disclosure on the day on which section 191 of the new Law commences. |
| 2 | before the commencement of section 192 of the new Law, a director of a proprietary company gave a general notice to the directors of the company in accordance with subsection 231(5) of the old Law | the director is taken to have given standing notice in accordance with section 192 of the new Law and to have given that notice on the day on which section 192 of the new Law commences. |
| 3 | before the commencement of section 195 of the new Law, the board passed a resolution under subsection 232A(3) of the old Law | the resolution is taken to be a resolution passed in accordance with subsection 195(2) of the new Law. |
| 4 | before the commencement of section 196 of the new Law, ASIC made a declaration under section 232B of the old Law which is still in force immediately before commencement | ASIC is taken to have made a valid declaration with identical conditions under section 196 of the new Law. |
| 5 | before the commencement of section 199A or 199B of the new Law, an officer or auditor incurred a liability | sections 199A and 199B of the new Law apply if an indemnity was given, or a premium paid, in respect of the liability after commencement. In all other cases, sections 241 and 241A of the old Law continue to apply. |

Transitional arrangements

| If... | then, after commencement... |
|---|--|
| 6 before the commencement of section 202B of the new Law, the company was served a notice in accordance with section 239 of the old Law | the company must deal with the notice as provided for in section 239 of the old Law and that section continues to apply in relation to the matter. |
| 7 before the commencement of section 203D of the new Law, notice of a resolution was given to a company in accordance with subsection 227(3) of the old Law | the company must act in accordance with section 227 of the old Law (which continues to apply in relation to the matter). |
| 8 on a date less than 1 month before the commencement of section 205B of the new Law, a director or secretary was appointed and no notice was lodged by the company in accordance with section 242 of the old Law | the company must lodge the notice within 1 month after the appointment in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter). |
| 9 on a date less than 1 month before the commencement of section 205B of the new Law, a change occurred in the personal details of a director or secretary and no notice was lodged in accordance with section 242 of the old Law | the company must lodge the notice in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter). |
| 10 on a date less than 1 month before the commencement of section 205B of the new Law, a director or secretary stopped being a director or secretary and no notice was lodged in accordance with section 242 of the old Law | the company must lodge the notice in accordance with sections 242 and 242AA of the old Law (which continue to apply in relation to the matter). |
| 11 on a date less than 14 days before the commencement of section 205C of the new Law, a director or secretary was required to give the company written notice under section 236 of the old Law and no such notice was given | the director or secretary is required to give the company the information in accordance with section 236 of the old Law (which continues to apply in relation to the matter). |

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1469

Transitional arrangements

| | If... | then, after commencement... |
|----|--|---|
| 12 | on a date less than 14 days before the commencement of section 205G of the new Law, a director was required to give notice under section 235 of the old Law and the notice was not given | the director is required to give the notice in accordance with section 235 of the old Law (which continues to apply in relation to the matter). |
| 13 | before the commencement of section 206B of the new Law, a person is convicted of serious fraud or an offence mentioned in subsection 229(3) of the old Law | subsections 229(3), (3A) and (4) of the old Law continue to apply in relation to the person. The new Law applies in relation to all other people. |
| 14 | on the commencement of section 206B of the new Law, a person is an insolvent under administration | <ul style="list-style-type: none">• if the person has been an insolvent under administration for 3 years—the person is no longer disqualified from managing corporations.• if the person has been an insolvent under administration for less than 3 years—unless the person obtained the leave of the Court under subsection 229(5) of the old Law or obtains the leave of the Court under section 206G of the new Law, the person is disqualified from managing corporations for the shorter of the period that they will be an insolvent under administration or the period of 3 years starting from when they first became an insolvent under administration. |
| 15 | before the commencement of section 206C of the new Law, an application for a civil penalty order was made and not dealt with | section 1317EA of the old Law continues to apply in relation to such applications. |
| 16 | before the commencement of section 206D of the new Law, an application was made under subsection 599(2) and was not finally determined | section 599 of the old Law continues to apply in relation to the application and any proceedings or orders flowing from that application. |

Transitional arrangements

| If... | then, after commencement... |
|---|--|
| 17 before the commencement of section 206E of the new Law, an application was made under section 230 of the old Law and was not finally determined | section 230 of the old Law continues to apply in relation to the application section 206E of the new Law applies as if the application had been made under Part 2D.6 of the new Law. |
| 18 before the commencement of section 206F of the new Law, a person is served with a notice to show cause why ASIC should not serve on the person a notice under subsection 600(3) of the old Law | section 600 of the old Law continues to apply in relation to the matter. |
| 19 before the commencement of section 206A of the new Law, the person was disqualified from managing corporations under the Corporations Law or a previous corresponding law | Part 2D.6 applies as if the person were disqualified under that Part. |
| 20 before the commencement of section 206A of the new Law, a person had permission under a previous corresponding law to section 206F or 206G to manage a corporation | Part 2D.6 applies as if the person had permission to manage the corporation under section 206F or 206G. |
| 21 before the commencement of section 203D of the new Law, a company gives notice of intention under a corresponding previous provision to subsection 203D(2) | section 203D applies as if the notice had been given under subsection 203D(2). |

1470 Related party transactions—continued application of old Law

Chapter 2E of the old Law continues to apply to the giving of a financial benefit (within the meaning of the old law) if:

- (a) the benefit was given before commencement; or
- (b) some or all materials required to be lodged with ASIC in relation to the benefit by section 243U of the old Law were lodged with ASIC before commencement; or

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1471

- (c) the benefit is given under a contract made before commencement.

1471 Oppressive conduct of affairs—applications made before commencement

If an application was made under section 246AA of the old Law and not finally determined before the commencement of section 232 of the new Law, then section 246AA of the old Law continues to apply in respect of the application.

1472 Proceedings on behalf of a company—intervention in proceedings started before commencement

Under Part 2F.1A (sections 236 to 242) of the new Law, a person may apply for leave to intervene, and intervene, in proceedings started before commencement.

1473 Civil penalty provisions—application of new Law

- (1) Part 9.4B of the old Law continues to apply in relation to:
 - (a) a contravention of a civil penalty provision listed in section 1317DA of the old Law; or
 - (b) an offence committed against one of those civil penalty provisions;despite its repeal.
- (2) Part 9.4B of the new Law applies in relation to a contravention of a civil penalty provision listed in section 1317E of the new law.

1474 Civil penalty orders made under old Law

- (1) An order in force under paragraph 1317EA(3)(a) of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 206C of the new Law.
- (2) An order in force under paragraph 1317EA(3)(b) of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 1317G of the new Law.

- (3) An order in force under section 1317HA or 1317HB of the old Law immediately before commencement continues to have effect after commencement as if it were made under section 1317H of the new Law.

1475 Fundraising—general application

General rule (new law applies to offers made after commencement)

- (1) Except as provided for in subsection (2), this Chapter applies to offers of securities made after the commencement of this Chapter.

Prospectus, or section 1043C or 1043D notice, lodged before commencement covered by old law

- (2) If a prospectus, or a notice under section 1043C or 1043D, is lodged with ASIC before commencement, the old Law continues to apply to:
- (a) the prospectus or notice; and
 - (b) offers made under the prospectus or notice; and
 - (c) the issue or transfer of securities as a result of the offer.

1476 Fundraising—application of new section 712

Section 712 of the new Law (incorporation by reference of documents lodged with ASIC) applies to documents lodged with ASIC before commencement.

1477 Fundraising—registration of managed investment schemes

Subsection 601ED(2) of the new Law applies as if issues of interests that:

- (a) were made before commencement; and
- (b) were excluded issues under the old Law (disregarding paragraph 66(2)(da) of that Law);

were issued that did not need disclosure to investors under section 706 of the new Law.

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1478

1478 Fundraising—saving orders, notices etc. given under old law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

| Documents saved | |
|--|---|
| Document | Corresponding provision of the new Law |
| 1 determination under subsection 1022AA(8) | subsection 713(8) |
| 2 order under section 1033 | section 739 |
| 3 declaration under paragraph 65(1)(a) | section 65 |

1479 Continued operation of some provisions of the old Law

- (1) Subsection 1023(2) of the old Law continues to apply after commencement to the acceptance of money under a prospectus lodged with ASIC before commencement.
- (2) Section 1029 of the old Law continues to apply after commencement to a consent to the issue of a prospectus lodged with ASIC before commencement.
- (3) Sections 1037 and 1041 of the old Law continue to apply after commencement to an allotment of shares made before commencement in contravention of Division 3 of Part 7.12 of the old Law.
- (4) Section 1047 of the old Law continues to apply after commencement to:
 - (a) a request made before commencement under subsection 1047(5) or (6); or
 - (b) a notice given under subsection 1047(8).

1480 Fundraising—application of section 111AF of the new Law

Section 111AF of the new Law applies after commencement as if:

- (a) a prospectus lodged before commencement under Part 7.12 of the old Law or a corresponding previous law; or
 - (b) a document relating to securities that was taken to be a prospectus because of section 1030 of the old Law or a corresponding previous provision;
- were a disclosure document lodged with ASIC under Chapter 6D of the new Law.

1481 Debentures—application and transitional provisions

- (1) Paragraph 124(1)(b) of the new Law applies to all debentures or trust deeds regardless of whether they were issued or made before or after commencement.
- (2) Section 563AAA applies in relation to the issue of debentures regardless of whether that event occurs before or after commencement.
- (3) A provision in force immediately before the date of commencement of section 1062 of the old Law is not void under section 260JB of the new Law if a trustee who was entitled to the benefit of the provision before that date remains a trustee of the trust deed concerned.
- (4) Subsection 260JB(1) does not deprive a trustee of an exemption or right to be indemnified for anything done or omitted to be done by the trustee while a term or provision was in force even if that provision later becomes void under subsection 260JB(1).
- (5) On commencement, each of the provisions required by section 260FB is taken to be included in a trust deed that:
 - (a) is required by section 260FA; and
 - (b) is in effect immediately before commencement; and
 - (c) would not otherwise include that provision.

1482 Debentures—saving orders, notices etc. given under old Law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1483

| Documents saved | | |
|------------------------|---|---|
| | Document | Corresponding provision of the new law |
| 1 | approval under paragraph 1052(1)(h) | section 260MB |
| 2 | application under subsection 1056(2) or 1057(1) | section 260NA |
| 3 | order under subsection 1056(6) or 1057(2) | section 260NB |

1483 Takeovers—general rule (takeovers started before new provisions commence covered by old law)

If:

- (a) a Part A statement for a takeover scheme is lodged with ASIC; or
- (b) a takeover announcement is made;

before commencement, Chapter 6 of the old Law continues to apply to the scheme or announcement.

1484 Takeovers—old Law continues to apply to certain Panel proceedings

Part 6.9 of the old Law continues to apply to:

- (a) an application made to the Panel before commencement; or
- (b) an application to the Panel in respect of a takeover scheme or takeover announcement to which Chapter 6 of the old Law applies under section 1483.

1485 Takeovers—application of new provisions to interests acquired before commencement

Chapter 6 of the new Law applies to relevant interests and other interests acquired before commencement.

1486 Takeovers—section 1043B notices

The prohibitions in subsections 606(1) and (2) of the new Law do not apply to an acquisition pursuant to an invitation or offer if

section 615 of the old Law would not have applied to the acquisition because of section 622A of the old Law (acquisitions under section 1043B notices) if the old Law had remained in force after commencement.

1487 Takeovers—saving orders, notices etc. given under old law

A document made or given under the old Law and specified in the following table continues to have effect after commencement as if it were made or given under the corresponding provision of the new Law:

| Documents saved | |
|---|---|
| Document | Corresponding provision of the new Law |
| 1 declaration of unacceptable circumstances under section 733 | section 657A |
| 2 order under section 734 | section 657D |
| 3 interim order under section 733A or 733B | section 657E |
| 4 order under section 736 | section 657G |
| 5 order under section 737, paragraph 738(1)(e) or section 739, 741 or 742 | section 1325A |
| 6 order under paragraph 738(1)(f) | section 1325B |
| 7 order under section 740 | section 1325C |
| 8 declaration under section 743 | section 1325D |

1488 Takeovers—notification obligations under Parts 6.7 and 6.8 of the old law

An obligation under Part 6.7 or 6.8 of the old Law continues after commencement as if that Part had not been repealed if the period for complying with the obligation has commenced but not ended before commencement.

Chapter 11 Application and transitional provisions

Part 11.2 Commencement and application of certain changes to this Law

Division 12 Changes resulting from the Corporate Law Economic Reform Program Act 1999

Section 1489

1489 Takeovers—ASIC power to pass on information obtained under the old Law

Section 672C of the new Law applies to information obtained under Part 6.8 of the old Law as if it had been obtained in response to a direction under section 672A of the new Law.

1490 Takeovers—application of section 111AG of the new Law

Section 111AG of the new Law applies after commencement as if a takeover scheme as defined in section 603 of the old Law or a corresponding previous law were an off-market takeover bid.

1491 Compulsory acquisitions—application of Part 6A.5 of the new Law

Part 6A.5 of the new Law (sections 668A and 668B) applies to consideration paid before commencement.

1492 Compulsory acquisitions—unclaimed moneys

If, immediately before commencement, a company holds property in trust for a person under subsection 701(11) of the old Law, the company must continue to hold the property in trust for the person in accordance with subsection 666B(2) of the new Law.

1493 Accounting standards—standards in force before commencement

For the avoidance of doubt, an accounting standard that was in force under section 334 immediately before commencement continues in force after that commencement as if it had been made by the AASB under that section immediately after that commencement.

**Division 11A—Transfer of financial institutions and
friendly societies by the Financial Sector Reform
(Amendments and Transitional Provisions) Act
(No. 1) 1999**

1465A Transfer of financial institutions and friendly societies

Schedule 4 deals with the transfer of the registration of financial institutions and friendly societies to this Law.

Schedule 2—Forms of Transfer of Marketable Securities and Marketable Rights

Section 1101

FORM 1

Section 1101

| | |
|------------------------|---------------|
| SECURITY TRANSFER FORM | MARKING STAMP |
|------------------------|---------------|

PART 1

Full name of company or other eligible body:

| | | | |
|----------------------------|--------|-----------------------------|-----------|
| Description of securities: | Class: | If not fully paid, paid to: | Register: |
|----------------------------|--------|-----------------------------|-----------|

Quantity: [Words] [Figures]

Transfer identification number:

Full name(s) of transferor(s):

The transferor(s) hereby transfer(s) the above securities to the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Transfer Form(s), Split Transfer Form(s) or Consolidated Transfer Form(s) relating to the above securities.

This transfer is executed on the transferor's behalf by the transferor's broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at

on

(place and date of affixing stamp)

PART 2

| | |
|--|--|
| Full name(s) and address(es) of transferee(s): | Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to this transfer; [Transferee's broker's stamp] |
| Date of affixing stamp: | |

PART 3

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

| | |
|------------------------|---------------|
| FORM 2 | Section 1101 |
| BROKER'S TRANSFER FORM | MARKING STAMP |

PART 1

| | | | |
|--|---------------------------------------|-----------------------------|-----------|
| Full name of company or other eligible body: | | | |
| Description of securities: | Class: | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | [Figures] | |
| Transfer identification number: | Transferor's broker hereby certifies: | | |

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

| | |
|--------------------------------|--|
| Full name(s) of transferor(s): | (a) that the Security Transfer Form relating to the securities set out above has been or will be lodged at the company's or eligible body's office; and (b) that stamp duty, if payable, has been or will be paid. [Transferor's broker's stamp] |
| | Affixed at on (place and date of affixing stamp) |

PART 2

| | |
|--|--|
| Full name(s) and address(es) of transferee(s): | Transferee's broker hereby certifies: (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. [Transferee's broker's stamp] |
| | Date of affixing stamp: |

PART 3

Transferee's broker hereby certifies:

(a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and

(b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

| | | | |
|---|--|-----------------------------|-----------|
| FORM 3 | | Section 1101 | |
| SPLIT TRANSFER FORM | | MARKING STAMP | |
| PART 1 | | | |
| Full name of company or other eligible body: | | | |
| Description of securities: | Class: | If not fully paid, paid to: | Register: |
| Quantity: | [Words] | | [Figures] |
| Transfer identification number: | The [name of securities exchange] hereby certifies that the Security Transfer Form or the Broker's Transfer Form relating to the securities set out above has been or will be lodged at the company's or eligible body's office. | | |
| Full name(s) of transferor(s): | [Securities Exchange stamp] | | |
| | Affixed at | | |
| | on | | |
| | (place and date of affixing stamp) | | |
| PART 2 | | | |
| Full name(s) and address(es) of transferee(s) | Transferee's broker hereby certifies: | | |
| | (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and | | |
| | (b) that stamp duty, if payable, has been or will be paid; | | |
| | and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. | | |
| | [Transferee's broker's stamp] | | |
| | Date of affixing stamp: | | |

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

PART 3

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in the Consolidated Transfer Form relating to the securities; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to this transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

FORM 4

Section 1101

CONSOLIDATED TRANSFER FORM

MARKING STAMP

PART 1

Full name of company or other eligible body:

Description of securities:

Class:

If not fully paid, paid to:

Quantity:

[Words]

[Figures]

Transfer identification number:

Transfer Consolidation Number(s):

PART 2

Full name(s) and address(es) of transferee(s):

Transferee's broker hereby certifies:

- (a) that the securities set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (or are) set out in Part 1 above, having been purchased in the ordinary course of business, are to be registered in the name(s) of the transferee(s) named in this Part; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that such entries be made in the register as are necessary to give effect to the transfer(s).

[Transferee's broker's stamp]

| | |
|--|-------------------------|
| | Date of affixing stamp: |
|--|-------------------------|

FORM 5

Section 1101

| | |
|---|---------------|
| SECURITY RENUNCIATION AND TRANSFER FORM | MARKING STAMP |
|---|---------------|

PART 1

| | | |
|--|---------|-----------|
| Full name of company or other eligible body: | | |
| Description of rights: | | Register: |
| Quantity: | [Words] | [Figures] |
| Transfer identification number: | | |
| Full name(s) of transferor(s): | | |

The transferor(s) hereby renounce(s) and transfer(s) the above rights in favour of the transferee(s) named in Part 2 hereof or to the several transferees named in Part 2 of the Broker's Renunciation and Transfer Form(s), Renunciation and Split Transfer Form(s) or Renunciation and Consolidated Transfer Form(s) relating to the above rights.

This transfer and renunciation is executed on the transferor's behalf by the transferor's broker, who certifies:

- (a) as to the validity of documents; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at

on

(place and date of affixing stamp)

PART 2

| | |
|--|--|
| Full name(s) and address(es) of transferee(s): | Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such |
|--|--|

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

| | |
|--|--|
| | entries be made in the register as are necessary to give effect to this renunciation and transfer. |
| | [Transferee's broker's stamp] |
| | Date of affixing stamp: |

PART 3

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

FORM 6

Section 1101

| | |
|---|---------------|
| BROKER'S RENUNCIATION AND TRANSFER FORM | MARKING STAMP |
|---|---------------|

PART 1

Full name of company or other eligible body:

| | |
|------------------------|-----------|
| Description of rights: | Register: |
|------------------------|-----------|

Quantity: [Words]

[Figures]

Transfer identification number:

Transferor's broker hereby certifies:

Full name(s) of transferor(s):

- (a) that the Security Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or eligible body's office; and
- (b) that stamp duty, if payable, has been or will be paid.

[Transferor's broker's stamp]

Affixed at

on

(place and date of affixing stamp)

PART 2

Full name(s) and address(es) of transferee(s):

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

PART 3

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

[Transferee's broker's stamp]

Date of affixing stamp:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

| | | |
|--|---|--------------|
| FORM 7 | | Section 1101 |
| RENUNCIATION AND SPLIT TRANSFER FORM | MARKING STAMP | |
| PART 1 | | |
| Full name of company or other eligible body: | | |
| Description of rights: | Register: | |
| Quantity: | [Words] | [Figures] |
| Transfer identification number: | The [name of securities exchange] hereby certifies that the Security Renunciation and Transfer Form or the Broker's Renunciation and Transfer Form relating to the rights set out above has been or will be lodged at the company's or eligible body's office. | |
| Full name(s) of transferor(s): | [Securities exchange stamp] | |
| | Affixed at | |
| | on | |
| | (place and date of affixing stamp) | |
| PART 2 | | |
| Full name(s) and address(es) of transferee(s): | Transferee's broker hereby certifies: | |
| | (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; | |
| | and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer. | |
| | [Transferee's broker's stamp] | |
| | Date of affixing stamp: | |

PART 3

Transferee's broker hereby certifies:

- (a) that, the rights set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in the Renunciation and Consolidated Transfer Form relating to the rights; and
- (b) that stamp duty, if payable, has been or will be paid;

and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to this renunciation and transfer.

(Transferee's broker's stamp)

Date of affixing stamp:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

| | | |
|--|--|--------------|
| FORM 8 | | Section 1101 |
| RENUNCIATION AND CONSOLIDATED TRANSFER FORM | MARKING STAMP | |
| PART 1 | | |
| Full name of company or other eligible body: | | |
| Description of rights: | | |
| Quantity: | [Words] | [Figures] |
| Transfer identification number: | | |
| Transfer Consolidation Number(s): | | |
| PART 2 | | |
| Full name(s) and address(es) of transferee(s): | Transferee's broker hereby certifies: <ul style="list-style-type: none"> (a) that, the rights set out in Part 1 of the Form(s) whose Transfer Consolidation Number(s) is (<i>or</i> are) set out in Part 1 above having been purchased in the ordinary course of business, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part; and (b) that stamp duty, if payable, has been or will be paid; and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and such entries be made in the register as are necessary to give effect to the renunciation(s) and transfer(s). [Transferee's broker's stamp] | |
| | Date of affixing stamp: | |

| | |
|-----------------------|---------------|
| FORM 9 | Section 1101 |
| TRUSTEE TRANSFER FORM | MARKING STAMP |

PART 1

Full name of company or other eligible body:

| | | | |
|----------------------------|---------|----------------------------|-----------|
| Description of securities: | Class: | If not fully paid, paid to | Register: |
| Quantity: | [Words] | | [Figures] |

Transfer identification number, where appropriate:

Full name(s) of transferor(s):

PART 2

| | |
|--|--|
| Full name(s) and address(es) of transferee(s): | Transferor hereby certifies that the securities set out in Part 1 above are to be registered in the name(s) of the transferee(s) named in this Part, being the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the execution of this transfer, and hereby requests that such entries be made in the register as are necessary to give effect to this transfer. |
|--|--|

I (*or* We) hereby transfer the above securities to the transferee(s) named in Part 2 hereof.

Execution by the transferor(s):

Date of execution:

Schedule 2 Forms of Transfer of Marketable Securities and Marketable Rights

FORM 10 Section 1102

TRUSTEE RENUNCIATION AND TRANSFER FORM

PART 1

Full name of company or other eligible body:

| | |
|--|--|
| Description of rights: | Register: |
| Quantity: [Words] | [Figures] |

Transfer identification number, where appropriate:

Full name(s) of transferor(s):

PART 2

| | |
|--|---|
| Full name(s) and address(es) of transferee(s): | Transferor hereby certifies that, the rights set out in Part 1 above having been transferred to the person(s) for or on whose behalf the transferor held them, either alone or together with another person or other persons, in the ordinary course of business immediately before the transfer, the marketable securities to which the rights relate are to be allotted to the transferee(s) named in this Part, and hereby requests that the marketable securities be allotted by the company or eligible body to the transferee(s) and that such entries be made in the register as are necessary to give effect to this renunciation and transfer. |
|--|---|

I (*or* We) hereby renounce and transfer the above rights in favour of the transferee(s) named in Part 2 hereof.

Execution by the transferor(s):

Date of execution:

Schedule 3—Penalties

Section 1311

Section 111AU:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 113(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both

Subsection 113(3)

Penalty: 5 penalty units.

Section 115

Penalty: 5 penalty units.

Subsection 117(5)

Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Subsection 123(3)

Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Subsection 136(5)

Penalty: 5 penalty units.

Section 139

Penalty: 5 penalty units.

Subsections 142(1) and (2)

Penalty: 5 penalty units.

Subsection 143(1)

Penalty: 5 penalty units.

Section 144

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 145(1) and (3)

Penalty: 5 penalty units.

Section 146

Penalty: 5 penalty units.

Subsections 148(2), (3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 150(2)

Penalty: 5 penalty units.

Subsection 151(2)

Penalty: 5 penalty units.

Subsections 153(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 156

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 157(2)

Penalty: 5 penalty units.

Subsection 158(2)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 162(3)

Penalty: 5 penalty units.

Subsection 163(5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 165(2)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 168

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 170(3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 172

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 173

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 174

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 177

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 184

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsections 188(1) and (2)

Penalty: 5 penalty units.

Subsection 191(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 195(1)

Penalty: 5 penalty units.

Section 199B

Penalty: 5 penalty units.

Subsection 200B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 200C

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 200D

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 201D(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 201D(2)

Penalty: 5 penalty units.

Subsection 202B(1)

Penalty: 5 penalty units.

Subsections 203D(3) and (5)

Penalty: 5 penalty units.

Section 204A

Penalty: 5 penalty units.

Subsections 204C(1) and (2)

Penalty: 5 penalty units.

Subsections 205B(1), (2), (4) and (5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 205C(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 205E(2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 205F

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 205G(1), (3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 206A(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 209(3)

Penalty: 2000 penalty units, or imprisonment for 5 years, or both.

Section 224:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 224

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 225

Penalty: 5 penalty units.

Section 235

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 237:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 242:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 242AA(3)

Penalty: 5 penalty units.

Subsection 246B(3)

Penalty: 5 penalty units.

Subsection 246D(6)

Penalty: 5 penalty units.

Subsections 246F(1) and (3)

Penalty: 5 penalty units.

Subsection 246G(1)

Penalty: 5 penalty units.

Section 247C

Penalty: 5 penalty units.

Subsections 249E(3) and (4)

Penalty: 5 penalty units.

Section 249K

Penalty: 5 penalty units.

Section 249Z

Penalty: 5 penalty units.

Subsection 250A(5)

Penalty: 5 penalty units.

Subsections 250N(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 250P(3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 250S

Penalty: 5 penalty units.

Section 250T

Penalty: 5 penalty units.

Subsections 251A(1) to (5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 251B(1), (3) and (4)

Penalty: 5 penalty units.

Subsections 252C(3) and (4)

Penalty: 5 penalty units.

Section 252H

Penalty: 5 penalty units.

Section 252X

Penalty: 5 penalty units.

Subsection 252Y(5)

Penalty: 5 penalty units.

Subsections 253M(1), (2) and (3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 253N(1), (3) and (4)

Penalty: 5 penalty units.

Subsection 254H(4)

Penalty: 5 penalty units.

Subsection 254L(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 254N(2)

Penalty: 5 penalty units.

Subsection 254Q(13)

Penalty: 5 penalty units.

Section 254T

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsections 254X(1) and (2)

Penalty: 5 penalty units.

Section 254Y

Penalty: 5 penalty units.

Subsection 256D(4)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 259B(6)

Penalty: 5 penalty units.

Subsection 259D(4)

Penalty: 5 penalty units.

Subsection 259F(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 260D(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 260FA(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FA(3)

25 penalty units or imprisonment for 6 months, or both.

Section 260FB

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FC(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260FC(2)

25 penalty units or imprisonment for 6 months, or both.

Subsection 260GH(1)

200 penalty units or imprisonment for 5 years, or both.

Section 260GI

25 penalty units or imprisonment for 6 months, or both.

Section 260HE

25 penalty units or imprisonment for 6 months, or both.

Section 286

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 287

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 288

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 289(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 294

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 308(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 311

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 312

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 313

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 314(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 316

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 317

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 318(1), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 319(1) and (5)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 320

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 321

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 322

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 323

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 323B

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 323D(3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 344(1)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsections 345(1), (2) and (3)

Penalty: 5 penalty units.

Subsection 346(1)

Penalty: 5 penalty units.

Section 428:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 437C(1):

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 437D(5):

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 438B(4):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 438C(5):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 448B:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 448C:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 448D:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 450E:

Penalty: 10 penalty units.

Section 471A:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 475:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 486A(8):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 494:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 497:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 530A(6):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsections 530B(3) and (6):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 532:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 541:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 588G(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 590(1):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 590(5):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 592(1):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 592(6):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 595:

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 596:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 596AB(1)

Penalty: 1,000 penalty units or imprisonment for 10 years, or both.

Subsection 596F(3):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsections 597(6), (7), (10A) and (13):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 597A(3):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 601AD(5)

Penalty: 5 penalty units.

Subsection 601BC(5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 601BH(1) and (2)

Penalty: 5 penalty units.

Subsection 601BJ(3)

Penalty: 5 penalty units.

Subsection 601BK(1)

Penalty: 5 penalty units.

Subsection 601BP(1)

Penalty: 5 penalty units.

Section 601BR

Penalty: 5 penalty units.

Section 601CW

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 601CZB(1)

10 penalty units or imprisonment for 3 months, or both.

Section 601CZC

10 penalty units or imprisonment for 3 months, or both.

Section 601DD

Penalty: 5 penalty units.

Section 601DE

Penalty: 10 penalty units or imprisonment for 3 months, or both

Subsection 601DH(1)

Penalty: 5 penalty units.

Subsection 601ED(5)

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 601FF(2)

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 601FL(4)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 601FM(3)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 601FQ(6)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 601HD

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 601HG(6)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 601JA(1)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 601JA

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 601JB(5)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 601KA(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 606(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 606(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 606(4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Paragraphs 614(1)(a), (b), (c) and (d)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 622(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 623(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 624(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 630(2), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 631(1)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 631(2)

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 633(1) (items 4, 5, 7, 8, 9, 11, 12, 13, 14)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 635 (items 5, 7, 8, 10, 11, 12, 13, 14)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 636(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 636(4)

Penalty: 10 penalty units.

Subsection 637(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(5)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 638(6)

Penalty: 10 penalty units.

Subsection 639(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 640(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 641(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 643

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 644

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 647(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 648A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 648E(1) and (2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 648G

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 649C(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 650B(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 650E(5) and (6)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 650F(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 651A(4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 651C

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 652C(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654C(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 654C(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 657F

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 661D

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 662A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 663A

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 664D(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 664E(2), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 665A(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 665D(3) or (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 665E

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 666A(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 666B(2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 667A(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 668A(1), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 668B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 670A(3)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsections 670C(1), (2) and (3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 671B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 672B(1)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 721(1)

200 penalty units or imprisonment for 5 years, or both.

Subsection 721(4)

200 penalty units or imprisonment for 5 years, or both.

Subsection 722(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 724(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 725(1)

25 penalty units or imprisonment for 6 months, or both.

Section 726

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(1)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(2)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(3)

200 penalty units or imprisonment for 5 years, or both.

Subsection 727(4)

200 penalty units or imprisonment for 5 years, or both.

Subsection 728(3)

200 penalty units or imprisonment for 5 years, or both.

Section 730

50 penalty units or imprisonment for 1 year, or both.

Subsection 734(1)

25 penalty units or imprisonment for 6 months, or both.

Subsection 734(2)

25 penalty units or imprisonment for 6 months, or both.

Section 735

10 penalty units or imprisonment for 3 months, or both.

Subsection 736(1)

25 penalty units or imprisonment for 6 months, or both.

Section 767:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 775(6):

Penalty: 10 penalty units for each day during all or part of which the contravention continues.

Section 776:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 766F

Penalty: 400 penalty units.

Section 766G

Penalty: 500 penalty units.

Section 780:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 781:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 787:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 788:

Penalty: 10 penalty units.

Section 806:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 807:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 809:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 813:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 814:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 815:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 835:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 839:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 843:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 844:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 845:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 846:

Penalty:

- (a) for a first offence—25 penalty units or imprisonment for 6 months, or both;
- (b) for a later offence—100 penalty units or imprisonment for 2 years, or both.

Subsection 847(5):

Penalty: 10 penalty units for each day during all or part of which the contravention continues.

Section 849:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 866(3):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 866(4):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 867(3):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 867(4):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 868(2):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 868(3):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 869(3):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 869(4):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 870(3):

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 872:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 873(6):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 881:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 889(3):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 891:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 997:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 998:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 999:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1000:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1001:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 1001A(2):

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 1001B(1):

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1002G:

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

Subsections 1096A(1), (3), (4), (5) and (6)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 1112:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1112A:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1112B:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 1114(8):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1117:

Penalty: 50 penalty units or imprisonment for 12 months, or both.

Section 1118:

Penalty: 50 penalty units or imprisonment for 12 months, or both.

Section 1123:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1123A:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1125:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1128:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1129:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1130:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Subsection 1138(10) or (11):

Penalty: 10 penalty units for each day on which a contravention occurs.

Subsection 1139(5):

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1142:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1143:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1153:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 1154:

Penalty: 10 penalty units.

Section 1192:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1205:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1208:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1209:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 1210:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1213:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1214:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1219:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1256:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1258:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1259:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1260:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1261:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1262:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1263:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1264:

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 1266:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1267:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1268:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Section 1269:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 1271:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 1272:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 1274:

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 1300(2A)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 1307:

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 1308(2):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 1309(1):

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 1309(2):

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 1317FA(1):

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

Section 1323:

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 1423(1) and (2)

Penalty: 5 penalty units.

Subsection 1431(6)

Penalty: 5 penalty units.

Section 1432

Penalty: 5 penalty units.

Subsection 1436(2)

Penalty: 5 penalty units.

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 this jurisdiction 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 this jurisdiction.

Financial Institutions Code of this jurisdiction 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 this jurisdiction.

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 this jurisdiction means:

- (a) the Friendly Societies Code as applied as a law of this jurisdiction; or
- (b) if this Law is being applied as a law of Western Australia—the Friendly Societies (Western Australia) Code set out in the *Friendly Societies (Western Australia) Act 1999*.

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 has the meaning given in subclause 12(3).

Clause 1

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.

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*.

transferring financial institution of this jurisdiction means:

- (a) a building society of this jurisdiction (that is, a society that is registered under the Financial Institutions Code of this jurisdiction, and authorised to operate as a building society, immediately before the transfer date); or
- (b) a credit union of this jurisdiction (that is, a society that is registered under the Financial Institutions Code of this jurisdiction, and authorised to operate as a credit union, immediately before the transfer date); or
- (c) a friendly society of this jurisdiction (that is, a body that is registered as a friendly society under the Friendly Societies Code of this jurisdiction immediately before the transfer date); or
- (d) a body registered as an association under Part 12 of the Financial Institutions Code of this jurisdiction immediately before the transfer date; or
- (e) a body registered as a Special Services Provider under the AFIC Code of this jurisdiction immediately before the transfer date; or
- (f) a body registered as an association under Part 12 of the Friendly Societies Code of this jurisdiction 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) this definition is being applied as a law of 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.

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 means a withdrawable share within the meaning of the Financial Institutions Code of this jurisdiction as in force immediately before the transfer date.

2 Objective

The objective of this Schedule is to facilitate the registration of:

- (a) building societies and credit unions currently covered by the Financial Institutions Code of this jurisdiction; and
- (b) friendly societies currently covered by the Friendly Societies Code of this jurisdiction; and
- (c) related bodies and associations;

as Corporations Law companies with as little disturbance to the operations of, and as little conversion costs for, the bodies concerned as possible.

Part 2—Transfer to Corporations Law registration

Division 1—The transfer process

3 Registration of transferring financial institution as company

Registration as company on transfer date

- (1) On the transfer date, each transferring financial institution of this jurisdiction is taken to become registered as a company under the Law of this jurisdiction under the name under which the institution was registered under the previous governing Code immediately before the transfer date.
- (2) Subclause (1) applies even if the institution is an externally-administered body corporate immediately before the transfer date.

Type of company

- (3) The following table sets out the types of company the institution may be registered as under subclause (1):

| Type of company that institution may be registered as | | |
|---|--|--|
| | Type of institution | Type of company |
| 1 | building society with shares on issue | * public company limited by shares and by guarantee public company limited by shares |
| 2 | building society with no shares on issue | * public company limited by guarantee public company limited by shares and by guarantee public company limited by shares |
| 3 | credit union with shares on issue | * public company limited by shares public company limited by shares and by guarantee |

| Type of company that institution may be registered as | |
|--|---|
| Type of institution | Type of company |
| 4 | credit union with no shares on issue |
| | * public company limited by guarantee |
| | public company limited by share and by guarantee |
| | public company limited by shares |
| 5 | friendly society with no shares on issue |
| | * public company limited by guarantee |
| | public company limited by shares and by guarantee |
| 6 | friendly society with shares on issue |
| | * public company limited by shares and by guarantee |
| | public company limited by shares |
| 7 | association registered under the Financial Institutions Code of this jurisdiction |
| | * public company limited by shares |
| | public company limited by guarantee |
| | public company limited by shares and by guarantee |
| | proprietary company limited by shares [see note] |
| 8 | Special Services Provider incorporated under the AFIC Code of this jurisdiction |
| | * public company limited by shares |
| 9 | friendly society association |
| | * public company limited by guarantee |
| | public company limited by shares |
| | public company limited by shares and by guarantee |
| | proprietary company limited by shares [see note] |
| 10 | other |
| | * public company limited by guarantee |
| | public company limited by shares |
| | public company limited by shares and by guarantee |
| | proprietary company limited by shares [see note] |

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 1 The transfer process

Clause 4

Note: To be registered as a proprietary company, the institution would need to comply with subsection 113(1) (no more than 50 non-employee shareholders). A proprietary company cannot engage in fundraising activities (see subsection 113(3)).

(4) The institution may elect which particular type of company it is to be registered as under subclause (1). The election:

- (a) must be agreed to by a resolution of the board of the institution; and
- (b) is to be made by written notice lodged with ASIC at least 7 days before the transfer date.

The election must be in the prescribed form.

(5) The institution is taken to be registered under subclause (1) as the following type of company:

- (a) if the institution's board makes an election under subclause (4)—the type specified in the election; or
- (b) if the institution's board does not make an election under subclause (4):
 - (i) if regulations under this subparagraph are in force for that type of institution on the transfer date—the type of company prescribed by the regulations; or
 - (ii) if no regulations under subparagraph (i) are in force for that type of institution on the transfer date—the type of company that is specified in the table in subclause (3) for that type of institution and is marked with an asterisk.

4 Documents to be lodged with ASIC by SSA

(1) The SSA for a transferring financial institution of this jurisdiction must lodge with ASIC:

- (a) a notice that sets out:
 - (i) the institution's name; and
 - (ii) the address of the institution's registered office; under the previous governing Code immediately before the transfer date; and
- (b) a copy of the institution's rules as in force immediately before the transfer date; and

- (c) a copy of any entry in its register of charges kept under section 265 of this Law (as applied by the previous governing Code) that relates to the institution; and
 - (d) any document lodged under section 263 or 264 of this Law (as applied by the previous governing Code) that relates to:
 - (i) the institution; and
 - (ii) a charge that is in force immediately before the transfer date.
- (2) If the transferring financial institution is under external administration immediately before the transfer date, the notice referred to in paragraph (1)(a) must also set out:
- (a) the type of external administration; and
 - (b) any other prescribed details.

5 Documents to be lodged with ASIC by transferring financial institution

- (1) Within 1 month after a transferring financial institution of this jurisdiction is registered as a company under clause 3, it must lodge with ASIC a notice that sets out the personal details of each director and secretary of the company as at the transfer date. The notice must be in the prescribed form.

Penalty: 5 penalty units.

- (2) The personal details of a director or secretary are the details that would need to be set out in the notice if it were being given under section 242.

6 Company to set up registers and minute books

Setting up registers and minute books

- (1) A company registered under clause 3 must, within 14 days after the transfer date:
- (a) set up the registers required by sections 168 (registers of members, debenture holders and options holders) and 271 (charges); and

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 1 The transfer process

Clause 7

(b) include in those registers all the information that is required to be in those registers and that is available to the company on registration; and

(c) set up the minute books required by section 251A.

Incorporation of prior minute books

(2) The minute books set up under paragraph (1)(c) must incorporate any minute books or similar records kept by the company prior to its registration under clause 3.

Access to registers and minute books

(3) During the 14 days, the company need not comply with a person's request to inspect or obtain a copy of:

(a) information in a register; or

(b) a minute of a general meeting.

However, the period within which the company must comply with the request begins at the end of the 14 days.

7 ASIC to complete formalities of registration

(1) As soon as practicable after a transferring financial institution of this jurisdiction is registered as a company under clause 3, ASIC must:

(a) give the company an ACN; and

(b) keep a record of the company's registration; and

(c) issue a certificate to the company that states:

(i) the company's name; and

(ii) the company's ACN; and

(iii) the company's type; and

(iv) that the company is registered as a company under the Corporations Law of this jurisdiction; and

(v) the transfer date as the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

(2) If:

- (a) the company is registered with a name that does not include “Limited” or “Proprietary Limited” (as the type of company requires), or an acceptable abbreviation; and
- (b) the company is not exempt from the requirement to use that word or those words in its name by or under section 150 or 151;

ASIC may change the company’s name so that it includes the required words by altering the details of the company’s registration to reflect that change.

Note: For acceptable abbreviations see section 149.

- (3) Subsections 1274(2) and (5) apply to the record of the company’s registration referred to in paragraph (1)(b) as if they were a document lodged with ASIC.

8 Registration of registered bodies

- (1) If a registered body becomes registered as a company under clause 3, it ceases to be a registered body. ASIC must remove the body’s name from the appropriate register kept for the purposes of Division 1 or 2 of Part 5B.2.
- (2) ASIC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

Division 2—The consequences of the transfer

Subdivision A—General

9 Effect of registration under clause 3

General effect of registration

- (1) Registration of a transferring financial institution of this jurisdiction as a company under clause 3 does not:
 - (a) create a new legal entity; or
 - (b) affect the institution's existing property, rights or obligations (except as against the members in their capacity as members); or
 - (c) render defective any legal proceedings by or against the institution or its members.

Members, officers, constitution and registered office

- (2) On registration of a transferring financial institution of this jurisdiction as a company under clause 3:
 - (a) each person who is a member of the institution immediately before the transfer date becomes a member of the company; and
 - (b) each person who was a director of the institution immediately before the transfer date becomes a director of the company; and
 - (c) each person who was a secretary of the institution immediately before the transfer date becomes a secretary of the company; and
 - (d) the institution's rules, as in force immediately before the transfer date, become the company's constitution; and
 - (e) the institution's registered office under the previous governing Code immediately before the transfer date becomes the company's registered office for the purposes of this Law.

Health benefits funds rules

- (3) The institution's rules referred to in paragraph (2)(d) do not include rules within the meaning of the *National Health Act 1953*.

Note: These latter rules relate to the operation of health benefits funds.

Replaceable rules

- (4) The replaceable rules (as described in section 135) do not apply to a company registered under clause 3, despite section 135, unless the company repeals its constitution.

10 Provisions applying to company limited by shares and by guarantee

Section 1416 applies to a company that is taken under clause 3 to be registered as a company limited by shares and by guarantee.

11 Transferring financial institution under external administration

- (1) If, immediately before the transfer date, provisions of Chapter 5 applied to:
- (a) a compromise or arrangement between a transferring financial institution of this jurisdiction and its creditors; or
 - (b) a reconstruction of a transferring financial institution of this jurisdiction; or
 - (c) a receiver or other controller of property of a transferring financial institution of this jurisdiction; or
 - (d) the winding-up or dissolution of a transferring financial institution of this jurisdiction;

because of Part 9 of the Financial Institutions Code, or Part 9 of the Friendly Societies Code, of this jurisdiction, those provisions of Chapter 5 continue to apply to that matter after the transfer date (but without any of the modifications made by the Code or the regulations made under the Code).

- (2) Without limiting the generality of subclause (1), a matter referred to in paragraph (1)(a), (b) or (d) includes an application or other step preliminary to the matter.

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 2 The consequences of the transfer

Clause 12

- (3) Subclause (1) does not limit the regulations that may be made under clause 28 or 39.
- (4) Any act done before the transfer date under or for the purposes of the provisions of Chapter 5 as applied by the Code has effect as if it had been done under or for the purposes of Chapter 5 as it applies after the transfer date.
- (5) If, before the transfer date, a liquidator of a transferring financial institution had been appointed under:
 - (a) section 341 of the Financial Institutions Code of this jurisdiction; or
 - (b) section 402 of the Friendly Societies Code of this jurisdiction;the institution may be wound up in accordance with the provisions of Chapter 5.
- (6) For the avoidance of doubt, if, before the transfer date, the SSA for a transferring financial institution of this jurisdiction had given a certificate under:
 - (a) section 341 of the Financial Institutions Code of this jurisdiction; or
 - (b) section 402 of the Friendly Societies Code of this jurisdiction;but had not yet appointed a liquidator of the institution, neither the SSA nor ASIC may appoint a liquidator of the institution on the basis of the certificate.

Subdivision B—Membership

12 Institution becoming a company limited by shares

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by shares under clause 3, the following apply:
 - (a) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) become shares of the company

- (b) any withdrawable shares of the institution on issue immediately before the transfer date become redeemable preference shares of the company
 - (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, is taken to have been issued with a membership share on the transfer date
 - (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; is taken to have been issued with a membership share on the transfer date.
- (2) If a person who is taken to have been issued with a membership share is a joint member, they hold the membership share jointly with the other member or members of the joint membership. This 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.
- (3) In this Schedule:

building society means a transferring financial institution authorised under the Financial Institutions Code of its jurisdiction to operate as a building society immediately before the transfer date.

membership share means a share in a company that was a transferring financial institution:

- (a) that is taken to have been issued under this clause; 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

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 2 The consequences of the transfer

Clause 13

- (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 (4).
- (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 becoming a company limited by guarantee

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by guarantee under clause 3, the following apply:
- (a) each person who is a member of the institution immediately before the transfer date is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company)
 - (b) each person who becomes a member of the company after the transfer date 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).
- (2) If a person who is taken to have given a guarantee by subclause (1) 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

- (1) If a transferring financial institution of this jurisdiction is taken to be registered as a company limited by shares and guarantee under clause 3, the following apply:
 - (a) each person who is a member of the institution immediately before the transfer date is taken to have given a guarantee (but only for the purpose of determining whether the person is a member of the company)
 - (b) each person who becomes a member of the company after the transfer date 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)
 - (c) any shares in the institution on issue immediately before the transfer date (other than withdrawable shares) become shares of the company
 - (d) any withdrawable shares of the institution on issue immediately before the transfer date become redeemable preference shares of the company.
- (2) If a person who is taken to have given a guarantee by subclause (1) 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.

15 Redeemable preference shares that were withdrawable shares

- (1) This Law applies to a redeemable preference share that was a withdrawable share of a transferring financial institution of this jurisdiction 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 this jurisdiction 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.

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 2 The consequences of the transfer

Clause 16

- (2) The provisions of this Law that apply to redeemable preference shares apply:
- (a) subject to subclause (1), to redeemable preference shares of a company registered under clause 3; 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.
- (3) For the purposes of this clause, *this Law* includes regulations made for the purposes of this Law.

16 Liability of members on winding up

- (1) If a transferring financial institution of this jurisdiction that is registered under clause 3 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.
- 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 is wound up, a person who is taken to have given a guarantee by subclause 13(1) or 14(1) 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.

Note: Section 1416 and clause 10 preserve the application of section 518 to transferring financial institutions that are taken to be registered as companies limited by shares and guarantee.

Subdivision C—Share capital

17 Share capital

Transfer of certain amounts to share capital

- (1) On registration of a transferring financial institution of this jurisdiction as a company under clause 3:
 - (a) any amount of withdrawable share capital (within the meaning of the Financial Institutions Code of this jurisdiction); 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 becomes part of the company's share capital.

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.

18 Application of no par value rule

- (1) Section 254C applies to shares issued by a transferring financial institution of this jurisdiction before the transfer date as well as shares issued on and after that.

Schedule 4 Transfer of financial institutions and friendly societies

Part 2 Transfer to Corporations Law registration

Division 2 The consequences of the transfer

Clause 19

- (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 this jurisdiction (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 transfer date:
- (a) a contract entered into by a transferring financial institution of this jurisdiction 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.
- (2) A reference to the par value of a share issued by a transferring financial institution of this jurisdiction is taken to be a reference to:
- (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.

Subdivision D—Charges

21 Registration of prior charges

- (1) If, immediately before the transfer date, a charge on property of a transferring financial institution of this jurisdiction was registered under section 265 of this Law (as applied by the previous governing Code), ASIC is taken to have entered in the Australian Register of Company Charges the time, date and particulars entered in the register under the previous governing Code.
- (2) ASIC is taken to have done so at the beginning of the transfer date, and in accordance with subsection 265(2).
- (3) An act or thing done by or in relation to the institution under, or for the purposes of, a provision of sections 262 to 277 of this Law (as applied by the previous governing Code) is taken to have been done under, or for the purposes of, that provision of this Law.

Schedule 4 Transfer of financial institutions and friendly societies

Part 3 Terminating the application of the Codes to financial institutions and friendly societies

Clause 22

Part 3—Terminating the application of the Codes to financial institutions and friendly societies

22 Cancellation of Code registrations

On the transfer date, the registration of each transferring financial institution of this jurisdiction under the previous governing Code is cancelled.

23 No new registrations under the Codes

On and from the transfer date, there are to be no new registrations under:

- (a) the Financial Institutions Code of this jurisdiction; or
- (b) the AFIC Code of this jurisdiction; or
- (c) the Friendly Societies Code of this jurisdiction.

Part 4—The transition period

24 Modifications of constitution

- (1) A company registered under clause 3 must modify its constitution before the end of the transition period so that the constitution:
 - (a) gives effect to this Schedule; and
 - (b) is consistent with this Law; and
 - (c) sets out the rights and obligations attaching to each class of shares on issue, including shares that are taken to have been issued by a provision of this Schedule.
- (2) A company registered under clause 3 is not prevented from:
 - (a) modifying its constitution to change the rights and obligations attaching to any membership shares on issue; or
 - (b) redeeming any membership shares on issue and not providing for them in the constitution;merely because 1 or more members of the company are deemed to have been issued with membership shares by clause 12.

25 ASIC may direct directors of a company to modify its constitution

- (1) If a company registered under clause 3 has not modified its constitution so that it complies with subclause 24(1) 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.

Clause 26

- (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: 100 penalty units or imprisonment for 2 years, or both.

26 ASIC's power to make exemption and modification orders for the transition period

- (1) ASIC may:
 - (a) exempt a company registered under clause 3 from a provision of this Law; or
 - (b) declare that this Law applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

The exemption or declaration ceases to have effect at the end of the transition period (the 18 months starting on the transfer date), unless ASIC specifies a shorter period in which it ceases to have effect.

- (2) Without limiting subclause (1), the exemption or declaration may relate to:
 - (a) a change of company type; or
 - (b) a change to a company's constitution; or
 - (c) the issue and redemption of shares;that is connected with a requirement of or under this Law, the *Life Insurance Act 1995* or the *Banking Act 1959*.
- (3) The exemption or declaration may:
 - (a) apply to specified provisions of this Law; or

- (b) apply to a specified company registered under clause 3, a specified class of those companies, or all of those companies; and
 - (c) relate to any other matter generally or as specified.
- (4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.
- (5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

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 is modified under an exemption or declaration made under clause 26, 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 Law, 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.

Clause 28

- (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.
- (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.

28 Modification by regulations for the transition period

- (1) For the purpose of facilitating the transfer of the registration of transferring financial institutions to this Law, the regulations may modify the operation of this Law (including the provisions applied by clause 36) in relation to:
 - (a) a company registered under clause 3; or
 - (b) a specified class of companies registered under clause 3.
- (2) 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.

- (3) Regulations made for the purposes of this clause cease to have effect at the end of the transition period (the 18 months starting on the transfer day).

Part 5—Demutualisations

29 Disclosure for proposed demutualisation

- (1) If a modification of the constitution of an unlisted company registered under clause 3 is proposed and the modification would have the effect of:
 - (a) varying or cancelling the rights of members, or a class of members, to the reserves of the company; or
 - (b) varying or cancelling the rights of members, or a class of members, to the assets of the company on a winding up; or
 - (c) varying or cancelling the voting rights of members or a class of members; or
 - (d) otherwise varying or cancelling rights so that Part 2F.2 (Class rights) applies; or
 - (e) allowing 1 of those variations or cancellations of rights;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.
- (2) If:
 - (a) an issue of shares by an unlisted company registered under clause 3 would have the effect of varying or cancelling rights so that Part 2F.2 (Class rights) applies; and
 - (b) at least 1 of the following is required to approve the share issue, or variation or cancellation of rights:
 - (i) a meeting of the company's members;
 - (ii) a resolution passed at a meeting of the class of members concerned;

(iii) written consent of a specified proportion of members in the class concerned;

the following rules apply (in addition to those that apply under Part 2F.2):

- (c) notice of the meeting or consent process must be accompanied by the documents listed in subclause (4);
- (d) the company must lodge with ASIC the notice of the meeting or consent process and the documents referred to in paragraphs (4)(a) and (c) within 7 days after the notice is given;
- (e) notice of the meeting may not be shortened under subsection 249H(2).

Paragraph (c) need not be complied with to the extent that a person has already been given the documents.

- (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) in the case of a proposed modification of the constitution of a company—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 or share issue 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
 - (iii) complies with subclauses 33(2) and (3).
- (5) If the company contravenes subclause (1) or (2) it is not guilty of an offence.
- (6) A person contravenes this subclause if they are involved in a contravention of subclause (1) or (2).

Note 1: This subclause is a civil penalty provision.

Note 2: Section 79 defines *involved*.

Clause 30

- (7) A person commits an offence if they are involved in a contravention of subclause (1) or (2) and the involvement is dishonest.

Penalty: 2,000 penalty units or imprisonment for 5 years, or both.

- (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 stock market of a securities exchange.

30 ASIC's exemption power

- (1) If ASIC is satisfied that a company does not have a mutual structure, it may exempt the company from this Part.
- (2) If ASIC is satisfied that:
- (a) a proposed modification of the constitution of a company will not result in or allow a modification of the mutual structure of the company; or
 - (b) an issue of shares would not result in or allow a modification of the mutual structure of the company;
- it may exempt the company from this Part in relation to the proposed modification or share issue.
- (3) In determining whether the company has a mutual structure, ASIC may take into account:
- (a) the particular structure, circumstances and history of the company; and
 - (b) whether:
 - (i) each customer of the company (for example an account holder, mortgagor or policy holder) is required to be a member of the company; or
 - (ii) each member (or joint membership) has only 1 vote; and
 - (c) any other relevant matter in relation to the company or its members.

- (4) In determining whether the proposed modification or share issue will result in or allow a modification of the mutual structure of the company, ASIC must take into account whether the proposed modification or share issue would have the effect of converting the company into a company run for the purpose of yielding a return to shareholders.
- (5) An exemption under subclause (2) 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.
- (6) The exemption must be in writing and ASIC must publish notice of it in the *Gazette*.
- (7) For the purposes of this clause, the *provisions of this Part* include regulations made for the purposes of this Part.

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 or share issue.

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
 - (c) in relation to a share issue:
 - (i) who will and will not receive shares under the issue; and
 - (ii) the rights and obligations attached to the shares; and
 - (iii) the implications of the share issue for the management and structure of the company

Clause 32

- (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 or share issue
 - (h) any other proposed changes to the company that are related to the proposed modification or share issue (for example, whether the company proposes to list its securities for quotation on a securities market of a stock exchange 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 share issue, or that it is not proposed to change the company's name
 - (j) the procedural steps required to vary or cancel the members' rights
 - (k) the procedural steps required to issue the shares
 - (l) how voting on the proposed modification or share issue 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:
- (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 or share issue 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: 25 penalty units or imprisonment for 6 months, or both.

- (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
 - (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;

Clause 35

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; or
 - (e) a share issue to which this Part applies.
- (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:
- (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 or share issue 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 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:

Clause 35

- (c) an order directing the person or a person who was involved in the contravention to refund money or return property to the member
 - (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
 - (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.

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 this jurisdiction 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 1996*; and
 - (b) references to a benefit fund were references to an approved benefit fund within the meaning of the *Life Insurance Act 1996*; and
 - (c) references in the provisions to an SSA (whether of this jurisdiction or another jurisdiction) were references to ASIC; and
 - (d) references in the provisions to lodging a document were references to lodging the document with ASIC; and
 - (e) references in the provisions to the Code were references to this Law; and

Clause 36

- (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 25 penalty units; and
 - (j) references to a penalty of \$1,000 were references to a penalty of 10 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 Law;
- the provisions of the Code prevail for the purposes of interpreting the provisions applied by subclause (1).

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 this jurisdiction; or
 - (b) section 399 of the Friendly Societies Code of this jurisdiction.
- (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 this jurisdiction; or
 - (b) section 403 of the Friendly Societies Code of this jurisdiction.
- (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 this jurisdiction; and
 - (b) references to the Commission or ASIC were references to the Minister administering the unclaimed money law of this jurisdiction.
- (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
 - (f) the *Unclaimed Moneys Act 1918* of Tasmania; or

Clause 38

- (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 Law (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 Law 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
 - (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 Law by this Schedule; 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)
 - (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 Law.
- (3) Without limiting subclause (1) or (2), the regulations may provide for the continued effect, for the purposes of this Law, of a thing done or instrument made, or a class of things done or instruments

Clause 40

made, before the transfer date under or for the purposes of a provision of a previous governing Code of a transferring financial institution of this jurisdiction. 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 Law or a similar law about external administration (in whole or in part and with or without modification) to a transferring financial institution of this jurisdiction 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 this jurisdiction.
- (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.

40 Court may resolve transitional difficulties

- (1) If a difficulty arises in applying a provision of this Law to a transferring financial institution of this jurisdiction that is registered as a company under clause 3, the Court may, on the application of an interested person, make such orders as it thinks proper to remove the difficulty.
- (2) An order under this clause has effect despite anything in a provision of this Law.

- (3) This clause has effect subject to the Constitution.