

1998

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Corporate Law Economic Reform Program Bill 1998

No. , 1998

(Treasury)

**A Bill for an Act to amend the Corporations Law
and the *Australian Securities and Investments
Commission Act 1989*, and for related purposes**

ISBN: 0642 378614

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and Investments Commission Act 1989**

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1 Part 12

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Part 12—Accounting standards

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1 **A Bill for an Act to amend the Corporations Law**
2 **and the *Australian Securities and Investments***
3 ***Commission Act 1989*, and for related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Corporate Law Economic Reform*
7 *Program Act 1998*.

Section 2

1 **2 Commencement**

- 2 (1) Sections 1 and 2 commence on the day on which this Act receives
3 the Royal Assent.
- 4 (2) Section 3 and Schedules 1 to 7 (other than item 12 of Schedule 7)
5 commence on a day to be fixed by Proclamation.
- 6 (3) If that section and those Schedules do not commence under
7 subsection (2) within the period of 6 months beginning on the day
8 on which this Act receives the Royal Assent, they commence on
9 the first day after that the end of that period.
- 10 (4) Item 12 of Schedule 7 is taken to have commenced on the day on
11 which the *Financial Sector Reform (Consequential Amendments)*
12 *Act 1998* received the Royal Assent.
- 13 (5) Schedule 8 is taken to have commenced immediately after the
14 *Managed Investments Act 1998*.
- 15 (6) Item 1 of Schedule 9 is taken to have commenced on the day on
16 which the *Company Law Review Act 1998* received the Royal
17 Assent.
- 18 (7) Item 2 of Schedule 9 is taken to have commenced on the day on
19 which the *Managed Investments Act 1998* received the Royal
20 Assent.

21 **3 Schedule(s)**

- 22 (1) Subject to section 2, the Corporations Law set out in section 82 of
23 the *Corporations Act 1989* is amended as set out in Schedules 1, 3,
24 6 and 8 to this Act, and any other item in those Schedules has
25 effect according to its terms.
- 26 (2) Subject to section 2, each Act that is specified in another Schedule
27 to this Act is amended or repealed as set out in the applicable items
28 in the Schedule concerned, and any other item in the Schedule has
29 effect according to its terms.

1
2 **Schedule 1—Main amendments of the**
3 **Corporations Law**

4 **1 Chapters 2D and 2E**

5 Repeal the Chapters, substitute:

6 **Chapter 2D—Officers and employees**

7 **Part 2D.1—Duties and powers**
8

9 **179 Background to duties of directors, other officers and employees**

10 (1) This Part sets out some of the most significant duties of directors,
11 secretaries, other officers and employees of corporations. Other
12 duties are imposed by other provisions of this Law and other laws
13 (including the general law).

14 (2) Section 9 defines both *director* and *officer*. *Officer* includes, as
15 well as directors and secretaries, some other people who manage
16 the corporation or its property (such as receivers and liquidators).

17 **Division 1—General duties**

18 **180 Care and diligence—civil obligation only**

19 *Care and diligence—directors and other officers*

- 20 (1) A director or other officer of a corporation must exercise their
21 powers and discharge their duties with the degree of care and
22 diligence that a reasonable person would exercise if they:
23 (a) were a director or officer of a corporation in the corporation's
24 circumstances; and
25 (b) occupied the office held by, and had the same responsibilities
26 within the corporation as, the director or officer.
-

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Section 181

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

2 *Business judgment rule*

3 (2) A director or other officer of a corporation who makes a business
4 judgment is taken to meet the requirements of subsection (1), and
5 their equivalent duties at common law and in equity, in respect of
6 the judgment if they:

7 (a) make the judgment in good faith for a proper purpose; and

8 (b) do not have a material personal interest in the subject matter
9 of the judgment; and

10 (c) inform themselves about the subject matter of the judgment
11 to the extent they reasonably believe to be appropriate; and

12 (d) rationally believe that the judgment is in the best interests of
13 the corporation.

14 The director's or officer's belief that the judgment is in the best
15 interests of the corporation is a rational one unless the belief is one
16 that no reasonable person in their position would hold.

17 Note: This subsection only operates in relation to duties under this section
18 and their equivalent duties at common law or in equity (including the
19 duty of care that arises under the common law principles governing
20 liability for negligence)—it does not operate in relation to duties under
21 any other provision of this Law or under any other laws.

22 (3) In this section:

23 *business judgment* means any decision to take or not take action in
24 respect of a matter relevant to the business operations of the
25 corporation.

26 **181 Good faith—civil obligations**

27 *Good faith—directors and other officers*

28 (1) A director or other officer of a corporation must exercise their
29 powers and discharge their duties:

30 (a) in good faith in what they believe to be in the best interests of
31 the corporation; and

Section 182

1 (b) for a proper purpose.

2 Note 1: This subsection is a civil penalty provision (see section 1317E).

3 Note 2: Section 187 deals with the situation of directors of wholly-owned
4 subsidiaries.

5 (2) A person who is involved in a contravention of subsection (1)
6 contravenes this subsection.

7 Note 1: Section 79 defines *involved*.

8 Note 2: This subsection is a civil penalty provision (see section 1317E).

9 **182 Use of position—civil obligations**

10 *Use of position—directors, other officers and employees*

11 (1) A director, secretary, other officer or employee of a corporation
12 must not improperly use their position to:

13 (a) gain an advantage for themselves or someone else; or

14 (b) cause detriment to the corporation.

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

16 (2) A person who is involved in a contravention of subsection (1)
17 contravenes this subsection.

18 Note 1: Section 79 defines *involved*.

19 Note 2: This subsection is a civil penalty provision (see section 1317E).

20 **183 Use of information—civil obligations**

21 *Use of information—directors, other officers and employees*

22 (1) A person who obtains information because they are, or have been,
23 a director or other officer or employee of a corporation must not
24 improperly use the information to:

25 (a) gain an advantage for themselves or someone else; or

26 (b) cause detriment to the corporation.

27 Note 1: This duty continues after the person stops being an officer or
28 employee of the corporation.

Section 184

1 Note 2: This subsection is a civil penalty provision (see section 1317E).

2 (2) A person who is involved in a contravention of subsection (1)
3 contravenes this subsection.

4 Note 1: Section 79 defines *involved*.

5 Note 2: This subsection is a civil penalty provision (see section 1317E).

6 **184 Good faith, use of position and use of information—criminal**
7 **offences**

8 *Good faith—directors and other officers*

9 (1) A director or other officer of a corporation commits an offence if
10 they intentionally or recklessly fail to exercise their powers and
11 discharge their duties:

12 (a) in good faith in the best interests of the corporation; or

13 (b) for a proper purpose;

14 and they do so dishonestly.

15 Note: Section 187 deals with the situation of directors of wholly-owned
16 subsidiaries.

17 *Use of position—directors, other officers and employees*

18 (2) A director, other officer or employee of a corporation commits an
19 offence if they use their position dishonestly:

20 (a) with the intention of directly or indirectly gaining an
21 advantage for themselves, or someone else, or causing
22 detriment to the corporation; or

23 (b) recklessly as to whether the use may result in themselves or
24 someone else directly or indirectly gaining an advantage, or
25 in causing detriment to the corporation.

26 *Use of information—directors, other officers and employees*

27 (3) A person who obtains information because they are, or have been,
28 a director or other officer or employee of a corporation commits an
29 offence if they use the information dishonestly:

- 1 (a) with the intention of directly or indirectly gaining an
2 advantage for themselves, or someone else, or causing
3 detriment to the corporation; or
4 (b) recklessly as to whether the use may result in themselves or
5 someone else directly or indirectly gaining an advantage, or
6 in causing detriment to the corporation.

7 **185 Interaction of sections 180 to 184 with other laws etc.**

8 Sections 180 to 184:

- 9 (a) have effect in addition to, and not in derogation of, any rule
10 of law relating to the duty or liability of a person because of
11 their office or employment in relation to a corporation; and
12 (b) do not prevent the commencement of civil proceedings for a
13 breach of a duty or in respect of a liability referred to in
14 paragraph (a).

15 This section does not apply to subsections 180(2) and (3) to the
16 extent to which they operate on the duties at common law and in
17 equity that are equivalent to the requirements of subsection 180(1).

18 **186 Territorial application of sections 180 to 184**

19 Sections 180 to 184 do not apply to an act or omission by a director
20 or other officer or employee of a foreign company unless the act or
21 omission occurred in connection with:

- 22 (a) the foreign company carrying on business in Australia; or
23 (b) an act that the foreign company does, or proposes to do, in
24 Australia; or
25 (c) a decision by the foreign company whether or not to do, or
26 refrain from doing, an act in Australia.

27 **187 Directors of wholly-owned subsidiaries**

28 A director of a corporation that is a wholly-owned subsidiary of a
29 body corporate is to be taken to act in good faith in the best
30 interests of the subsidiary if:

Section 188

- 1 (a) the constitution of the subsidiary expressly authorises the
2 director to act in the best interests of the holding company;
3 and
4 (b) the director acts in good faith in the best interests of the
5 holding company; and
6 (c) the subsidiary is not insolvent at the time the director acts
7 and does not become insolvent because of the director's act.

8 **188 Responsibility of secretaries and directors for certain**
9 **contraventions**

10 *Secretary's functions*

- 11 (1) A secretary of a company contravenes this subsection if the
12 company contravenes:
13 (a) section 142 (requirement for companies to have registered
14 office); or
15 (b) section 145 (requirement for registered office of public
16 company to be open to public); or
17 (c) section 345 (annual returns); or
18 (d) section 205B (lodgment of notices with ASIC).

19 Note: See section 203C for the circumstances in which a company must
20 have a secretary.

21 *Consequence if director of proprietary company without secretary*
22 *does not fulfil secretary's function*

- 23 (2) Each director of a proprietary company contravenes this subsection
24 if:
25 (a) the proprietary company contravenes section 142, 145, 205B
26 or 345; and
27 (b) the proprietary company does not have a secretary when it
28 contravenes that section.

1 *Defence*

- 2 (3) A person does not contravene subsection (1) or (2) if they show
3 that they took all reasonable steps to ensure that the company
4 complied with the section.

5 **189 Reliance on information or advice provided by others**

6 If:

- 7 (a) a director relies on information, or professional or expert
8 advice, given or prepared by:
9 (i) an employee of the corporation whom the director
10 believes on reasonable grounds to be reliable and
11 competent in relation to the matters concerned; or
12 (ii) a professional adviser or expert in relation to matters
13 that the director believes on reasonable grounds to be
14 within the person's professional or expert competence;
15 or
16 (iii) another director or officer in relation to matters within
17 the director's or officer's authority; or
18 (iv) a committee of directors on which the director did not
19 serve in relation to matters within the committee's
20 authority; and
21 (b) the reliance was made:
22 (i) in good faith; and
23 (ii) after making proper inquiry if the circumstances
24 indicated the need for inquiry; and
25 (c) the reasonableness of the director's reliance on the
26 information or advice arises in proceedings brought to
27 determine whether a director has performed a duty under this
28 Part or an equivalent general law duty;
29 the director's reliance on the information or advice is taken to be
30 reasonable unless the contrary is proved.

Section 190

1 **190 Responsibility for actions of delegate**

- 2 (1) If the directors delegate a power under section 198D, a director is
3 responsible for the exercise of the power by the delegate as if the
4 power had been exercised by the directors themselves.
- 5 (2) A director is not responsible under subsection (1) if:
- 6 (a) the director believed on reasonable grounds at all times that
7 the delegate would exercise the power in conformity with the
8 duties imposed on directors of the company by this Law and
9 the company's constitution (if any); and
- 10 (b) the director believed:
- 11 (i) on reasonable grounds; and
12 (ii) in good faith; and
13 (iii) after making proper inquiry if the circumstances
14 indicated the need for inquiry;
15 that the delegate was reliable and competent in relation to the
16 power delegated.

17 **Division 2—Disclosure of, and voting on matters involving,**
18 **material personal interests**

19 **191 Material personal interest—director's duty to disclose**

20 *Director's duty to notify other directors of material personal*
21 *interest when conflict arises*

- 22 (1) A director of a company who has a material personal interest in a
23 matter that relates to the affairs of the company must give the other
24 directors notice of the interest unless subsection (2) says otherwise.
- 25 (2) The director does not need to give notice of an interest under
26 subsection (1) if:
- 27 (a) the interest:
- 28 (i) arises because the director is a member of the company
29 and is held in common with the other members of the
30 company; or
-

- 1 (ii) arises in relation to the director's remuneration as a
2 director of the company; or
3 (iii) relates to a contract the company is proposing to enter
4 into that is subject to approval by the members and will
5 not impose any obligation on the company if it is not
6 approved by the members; or
7 (iv) arises merely because the director is a guarantor or has
8 given an indemnity or security for all or part of a loan
9 (or proposed loan) to the company; or
10 (v) arises merely because the director has a right of
11 subrogation in relation to a guarantee or indemnity
12 referred to in subparagraph (iv); or
13 (vi) relates to a contract that insures, or would insure, the
14 director against liabilities the director incurs as an
15 officer of the company (but only if the contract does not
16 make the company or a related body corporate the
17 insurer); or
18 (vii) relates to any payment by the company or a related body
19 corporate in respect of an indemnity permitted under
20 section 199A or any contract relating to such an
21 indemnity; or
22 (viii) is in a contract, or proposed contract, with, or for the
23 benefit of, or on behalf of, a related body corporate and
24 arises merely because the director is a director of the
25 related body corporate; or
26 (b) the company is a proprietary company and the other directors
27 are aware of the nature and extent of the interest and its
28 relation to the affairs of the company; or
29 (c) all the following conditions are satisfied:
30 (i) the director has already given notice of the nature and
31 extent of the interest and its relation to the affairs of the
32 company under subsection (1)
33 (ii) if a person who was not a director of the company at the
34 time when the notice under subsection (1) was given is
35 appointed as a director of the company—the notice is
36 given to that person
-

Section 192

- 1 (iii) the nature or extent of the interest has not materially
2 increased above that disclosed in the notice; or
3 (d) the director has given a standing notice of the nature and
4 extent of the interest under section 192 and the notice is still
5 effective in relation to the interest.

6 Note: Subparagraph (c)(ii)—the notice may be given to the person referred
7 to in this subparagraph by someone other than the director to whose
8 interests it relates (for example, by the secretary).

- 9 (3) The notice required by subsection (1) must:
10 (a) give details of:
11 (i) the nature and extent of the interest; and
12 (ii) the relation of the interest to the affairs of the company;
13 and
14 (b) be given at a directors' meeting as soon as practicable after
15 the director becomes aware of their interest in the matter.
16 The details must be recorded in the minutes of the meeting.

17 *Effect of contravention by director*

- 18 (4) A contravention of this section by a director does not affect the
19 validity of any act, transaction, agreement, instrument, resolution
20 or other thing.

21 *Section does not apply to single director proprietary company*

- 22 (5) This section does not apply to a proprietary company that has only
23 1 director.

24 **192 Director may give other directors standing notice about an**
25 **interest**

26 *Power to give notice*

- 27 (1) A director of a company who has an interest in a matter may give
28 the other directors standing notice of the nature and extent of the
29 interest in the matter in accordance with subsection (2). The notice

Section 192

1 may be given at any time and whether or not the matter relates to
2 the affairs of the company at the time the notice is given.

3 Note: The standing notice may be given to the other directors before the
4 interest becomes a material personal interest.

5 (2) The notice under subsection (1) must:

6 (a) give details of the nature and extent of the interest; and

7 (b) be given:

8 (i) at a directors' meeting (either orally or in writing); or

9 (ii) to the other directors individually in writing.

10 The standing notice is given under subparagraph (b)(ii) when it has
11 been given to every director.

12 *Standing notice must be tabled at meeting if given to directors*
13 *individually*

14 (3) If the standing notice is given to the other directors individually in
15 writing, it must be tabled at the next directors' meeting after it is
16 given.

17 *Nature and extent of interest must be recorded in minutes*

18 (4) The director must ensure that the nature and extent of the interest
19 disclosed in the standing notice is recorded in the minutes of the
20 meeting at which the standing notice is given or tabled.

21 *Dates of effect and expiry of standing notice*

22 (5) The standing notice:

23 (a) takes effect as soon as it is given; and

24 (b) ceases to have effect if a person who was not a director of the
25 company at the time when the notice was given is appointed
26 as a director of the company.

27 A standing notice that ceases to have effect under paragraph (b)
28 commences to have effect again if it is given to the person referred
29 to in that paragraph.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Section 193

1 Note: The notice may be given to the person referred to in paragraph (b) by
2 someone other than the director to whose interests it relates (for
3 example, by the secretary).

4 *Effect of material increase in nature or extent of interest*

5 (6) The standing notice ceases to have effect in relation to a particular
6 interest if the nature or extent of the interest materially increases
7 above that disclosed in the notice.

8 *Effect of contravention by director*

9 (7) A contravention of this section by a director does not affect the
10 validity of any act, transaction, agreement, instrument, resolution
11 or other thing.

12 **193 Interaction of sections 191 and 192 with other laws etc.**

13 Sections 191 and 192 have effect in addition to, and not in
14 derogation of:

- 15 (a) any general law rule about conflicts of interest; and
16 (b) any provision in a company's constitution (if any) that
17 restricts a director from:
18 (i) having a material personal interest in a matter; or
19 (ii) holding an office or possessing property;
20 involving duties or interests that conflict with their duties or
21 interests as a director.

22 **194 Voting and completion of transactions—directors of proprietary**
23 **companies** (*replaceable rule—see section 135*)

24 If a director of a proprietary company has a material personal
25 interest in a matter that relates to the affairs of the company and:

- 26 (a) under section 191 the director discloses the nature and extent
27 of the interest and its relation to the affairs of the company at
28 a meeting of the directors; or
29 (b) the interest is one that does not need to be disclosed under
30 section 191;
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then:

- (c) the director may vote on matters that relate to the interest;
and
- (d) any transactions that relate to the interest may proceed; and
- (e) the director may retain benefits under the transaction even though the director has the interest; and
- (f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).

195 Restrictions on voting—directors of public companies only

Restrictions on voting and being present

- (1) A director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not:
 - (a) be present while the matter is being considered at the meeting; or
 - (b) vote on the matter;unless:
 - (c) subsection (2) or (3) allows the director to be present; or
 - (d) the interest does not need to be disclosed under section 191.

Participation with approval of other directors

- (2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

Section 196

- 1 (a) identifies the director, the nature and extent of the director's
2 interest in the matter and its relation to the affairs of the
3 company; and
4 (b) states that those directors are satisfied that the interest should
5 not disqualify the director from voting or being present.

6 *Participation with ASIC approval*

- 7 (3) The director may be present and vote if they are so entitled under a
8 declaration or order made by ASIC under section 196.

9 *Director may consider or vote on resolution to deal with matter at*
10 *general meeting*

- 11 (4) If there are not enough directors to form a quorum for a directors'
12 meeting because of subsection (1), 1 or more of the directors
13 (including those who have a material personal interest in that
14 matter) may call a general meeting and the general meeting may
15 pass a resolution to deal with the matter.

16 *Effect of contravention by director*

- 17 (5) A contravention by a director of:
18 (a) this section; or
19 (b) a condition attached to a declaration or order made by ASIC
20 under section 196;
21 does not affect the validity of any resolution.

22 **196 ASIC power to make declarations and class orders**

23 *ASIC's power to make specific declarations*

- 24 (1) ASIC may declare in writing that a director of a public company
25 who has a material personal interest in a matter that is being, or is
26 to be, considered at a directors' meeting may, despite the director's
27 interest, be present while the matter is being considered at the
28 meeting, vote on the matter, or both be present and vote. However,
29 ASIC may only make the declaration if:
-

Section 197

- 1 (a) the number of directors entitled to be present and vote on the
2 matter would be less than the quorum for a directors' meeting
3 if the director were not allowed to vote on the matter at the
4 meeting; and
5 (b) the matter needs to be dealt with urgently, or there is some
6 other compelling reason for the matter being dealt with at the
7 directors' meeting, rather than by a general meeting called
8 under subsection 195(4).

- 9 (2) The declaration may:
10 (a) apply to all or only some of the directors; or
11 (b) specify conditions that the company or director must comply
12 with.

13 *ASIC's power to make class orders*

- 14 (3) ASIC may make an order in writing that enables directors who
15 have a material personal interest in a matter to be present while the
16 matter is being considered at a directors' meeting, vote on that
17 matter, or both be present and vote. The order may be made in
18 respect of a specified class of public companies, directors,
19 resolutions or interests.
20 (4) The order may be expressed to be subject to conditions.
21 (5) Notice of the making, revocation or suspension of the order must
22 be published in the *Gazette*.

23 **Division 3—Duty to discharge certain trust liabilities**

24 **197 Directors liable for debts and other obligations incurred by**
25 **corporation as trustee**

- 26 (1) A person who is a director of a corporation when it incurs a
27 liability while acting, or purporting to act, as trustee, is liable to
28 discharge the whole or a part of the liability if the corporation:
29 (a) has not, and cannot, discharge the liability or that part of it;
30 and
-

Section 198A

1 (b) is not entitled to be fully indemnified against the liability out
2 of trust assets.

3 This is so even if the trust does not have enough assets to
4 indemnify the trustee. The person is liable both individually and
5 jointly with the corporation and anyone else who is liable under
6 this subsection.

7 (2) The person is not liable under subsection (1) if the person would be
8 entitled to have been fully indemnified by 1 of the other directors
9 against the liability had all the directors of the corporation been
10 trustees when the liability was incurred.

11 (3) This section does not apply to a liability incurred outside Australia
12 by a foreign company.

13 **Division 4—Powers**

14 **198A Powers of directors** (*replaceable rule—see section 135*)

15 (1) The business of a company is to be managed by or under the
16 direction of the directors.

17 Note: See section 198E for special rules about the powers of directors who
18 are the single director/shareholder of proprietary companies.

19 (2) The directors may exercise all the powers of the company except
20 any powers that this Law or the company's constitution (if any)
21 requires the company to exercise in general meeting.

22 Note: For example, the directors may issue shares, borrow money and issue
23 debentures.

24 **198B Negotiable instruments** (*replaceable rule—see section 135*)

25 (1) Any 2 directors of a company that has 2 or more directors, or the
26 director of a proprietary company that has only 1 director, may
27 sign, draw, accept, endorse or otherwise execute a negotiable
28 instrument.

Section 198C

- 1 (2) The directors may determine that a negotiable instrument may be
2 signed, drawn, accepted, endorsed or otherwise executed in a
3 different way.

4 **198C Managing director** (*replaceable rule—see section 135*)

- 5 (1) The directors of a company may confer on a managing director any
6 of the powers that the directors can exercise.
- 7 (2) The directors may revoke or vary a conferral of powers on the
8 managing director.

9 **198D Delegation**

- 10 (1) Unless the company's constitution provides otherwise, the
11 directors of a company may delegate any of their powers to:
12 (a) a committee of directors; or
13 (b) a director; or
14 (c) an employee of the company; or
15 (d) any other person.

16 Note: The delegation must be recorded in the company's minute book (see
17 section 251A).

- 18 (2) The delegate must exercise the powers delegated in accordance
19 with any directions of the directors.
- 20 (3) The exercise of the power by the delegate is as effective as if the
21 directors had exercised it.

22 **198E Single director/shareholder proprietary companies**

23 *Powers of director*

- 24 (1) The director of a proprietary company who is its only director and
25 only shareholder may exercise all the powers of the company
26 except any powers that this Law or the company's constitution (if
27 any) requires the company to exercise in general meeting. The

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Section 198F

1 business of the company is to be managed by or under the direction
2 of the director.

3 Note: For example, the director may issue shares, borrow money and issue
4 debentures.

5 *Negotiable instruments*

6 (2) The director of a proprietary company who is its only director and
7 only shareholder may sign, draw, accept, endorse or otherwise
8 execute a negotiable instrument. The director may determine that a
9 negotiable instrument may be signed, drawn, accepted, endorsed or
10 otherwise executed in a different way.

11 **198F Right of access to company books**

12 *Right while director*

13 (1) A director of a company may inspect the books of the company
14 (other than its financial records) at all reasonable times for the
15 purposes of a legal proceeding:
16 (a) to which the person is a party; or
17 (b) that the person proposes in good faith to bring; or
18 (c) that the person has reason to believe will be brought against
19 them.

20 Note: Section 290 gives the director a right of access to financial records.

21 *Right during 7 years after ceasing to be director*

22 (2) A person who has ceased to be a director of a company may
23 inspect the books of the company (including its financial records)
24 at all reasonable times for the purposes of a legal proceeding:
25 (a) to which the person is a party; or
26 (b) that the person proposes in good faith to bring; or
27 (c) that the person has reason to believe will be brought against
28 them.

29 This right continues for 7 years after the person ceased to be a
30 director of the company.

Section 198F

1

Right to take copies

2

- (3) A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

3

4

5

Company not to refuse access

6

- (4) A company must allow a person to exercise their rights to inspect or take copies of the books under this section.

7

8

Interaction with other rules

9

- (5) This section does not limit any right of access to company books that a person has apart from this section.

10

Section 199A

1

2 **Part 2D.2—Restrictions on indemnities, insurance**
3 **and termination payments**

4 **Division 1—Indemnities and insurance for officers and**
5 **auditors**

6 **199A Indemnification and exemption of officer or auditor**

7 *Exemptions not allowed*

- 8 (1) A company or a related body corporate must not exempt a person
9 (whether directly or through an interposed entity) from a liability to
10 the company incurred as an officer or auditor of the company.

11 *When indemnity for liability (other than for legal costs) not*
12 *allowed*

- 13 (2) A company or a related body corporate must not indemnify a
14 person (whether by agreement or by making a payment and
15 whether directly or through an interposed entity) against any of the
16 following liabilities incurred as an officer or auditor of the
17 company:

- 18 (a) a liability owed to the company or a related body corporate
19 (b) a liability for a pecuniary penalty order under section 1317G
20 or a compensation order under section 1317H
21 (c) a liability that is owed to someone other than the company or
22 a related body corporate and did not arise out of conduct in
23 good faith.

24 This subsection does not apply to a liability for legal costs.

25 *When indemnity for legal costs not allowed*

- 26 (3) A company or related body corporate must not indemnify a person
27 (whether by agreement or by making a payment and whether
28 directly or through an interposed entity) against legal costs

Section 199B

1 incurred in defending an action for a liability incurred as an officer
2 or auditor of the company if the costs are incurred:

- 3 (a) in defending or resisting proceedings in which the person is
4 found to have a liability for which they could not be
5 indemnified under subsection (2); or
6 (b) in defending or resisting criminal proceedings in which the
7 person is found guilty; or
8 (c) in defending or resisting proceedings brought by ASIC or a
9 liquidator for a court order if the grounds for making the
10 order are found by the court to have been established; or
11 (d) in connection with proceedings for relief to the person under
12 this Law in which the Court denies the relief.

13 Paragraph (c) does not apply to costs incurred in responding to
14 actions taken by ASIC or a liquidator as part of an investigation
15 before commencing proceedings for the court order.

16 Note 1: Paragraph (c)—This includes proceedings by ASIC for an order under
17 section 206C, 206D or 206E (disqualification), section 232
18 (oppression), section 1317E, 1317G or 1317H (civil penalties) or
19 section 1324 (injunction).

20 Note 2: The company may be able to give the person a loan or advance in
21 respect of the legal costs (see section 212).

- 22 (4) For the purposes of subsection (3), the outcome of proceedings is
23 the outcome of the proceedings and any appeal in relation to the
24 proceedings.

25 **199B Insurance premiums for certain liabilities of director,**
26 **secretary, other officer or auditor**

27 A company or a related body corporate must not pay, or agree to
28 pay, a premium for a contract insuring a person who is or has been
29 an officer or auditor of the company against a liability (other than
30 one for legal costs) arising out of:

- 31 (a) conduct involving a wilful breach of duty in relation to the
32 company; or
33 (b) a contravention of section 182 or 183.

Section 199C

1 This section applies to a premium whether it is paid directly or
2 through an interposed entity.

3 **199C Certain indemnities, exemptions, payments and agreements**
4 **not authorised and certain documents void**

5 (1) Sections 199A and 199B do not authorise anything that would
6 otherwise be unlawful.

7 (2) Anything that purports to indemnify or insure a person against a
8 liability, or exempt them from a liability, is void to the extent that
9 it contravenes section 199A or 199B.

10 **Division 2—Termination payments**

11 **200A When benefit given in connection with retirement from office**

12 (1) For the purposes of this Division:

13 (a) a benefit is given in connection with a person's retirement
14 from an office if the benefit is given:

15 (i) by way of compensation for, or otherwise in connection
16 with, the loss by the person of the office; or

17 (ii) in connection with the person's retirement from the
18 office; and

19 (b) giving a benefit includes:

20 (i) if the benefit is a payment—making the payment; and

21 (ii) if the benefit is an interest in property—transferring the
22 interest; and

23 (c) a person gives a benefit even if the person is obliged to give
24 the benefit under a contract; and

25 (d) a pension or lump sum is paid or payable in connection with
26 the person's retirement from an office if the pension or lump
27 sum is paid or payable:

28 (i) by way of compensation for, or otherwise in connection
29 with, the loss by the person of the office; or

Section 200B

- 1 (ii) in connection with the person's retirement from the
2 office; and
- 3 (e) retirement from an office includes:
- 4 (i) loss of the office; and
- 5 (ii) resignation from the office; and
- 6 (iii) death of a person at a time when they hold the office.
- 7 (2) For the purposes of this Division, if:
- 8 (a) a person (*person A*) gives another person a benefit (*benefit*
9 *A*); and
- 10 (b) person A gives benefit A for the purpose, or for purposes
11 including the purpose, of enabling or assisting someone to
12 give a person a benefit in connection with the retirement of a
13 person (*person B*) from an office;
- 14 person A is taken to give benefit A in connection with the person
15 B's retirement from that office.

16 **200B Retirement benefits generally need membership approval**

17 *Benefits in connection with retirement from board or managerial*
18 *office*

- 19 (1) The following must not give a person a benefit in connection with
20 that person's, or someone else's, retirement from a board or
21 managerial office in a company, or a related body corporate,
22 without member approval under section 200E:
- 23 (a) the company
- 24 (b) an associate of the company (other than a body corporate that
25 is related to the company and is itself a company)
- 26 (c) a prescribed superannuation fund in relation to the company.

27 Note 1: Sections 200F, 200G and 200H provide for exceptions to this rule.

28 Note 2: Section 9 defines *board or managerial office*.

29 *Prescribed superannuation funds*

- 30 (2) For the purposes of this section:
-

Section 200C

- 1 (a) a superannuation fund is taken to be a prescribed
2 superannuation fund in relation to a company if the company,
3 or an associate of the company, gives a benefit to the
4 superannuation fund in prescribed circumstances; and
5 (b) if a prescribed superannuation fund in relation to a company
6 gives a benefit to another superannuation fund in prescribed
7 circumstances, the other superannuation fund is taken to be a
8 prescribed superannuation fund in relation to the company.

9 *Prescribed circumstances*

- 10 (3) For the purposes of this section, if:
11 (a) a company, or an associate of a company, gives a benefit to a
12 superannuation fund solely for the purpose of enabling or
13 assisting the superannuation fund to give to a person a benefit
14 in connection with a person's retirement from an office in the
15 company or a related body corporate; or
16 (b) a superannuation fund gives a benefit to another
17 superannuation fund solely for the purpose of enabling or
18 assisting the other superannuation fund to give to a person a
19 benefit in connection with a person's retirement from an
20 office in a company or a related body corporate;
21 the benefit first referred to in paragraph (a) or (b) is taken to be
22 given in prescribed circumstances.

- 23 (4) In this section:

24 *superannuation fund* means a provident, benefit, superannuation
25 or retirement fund.

26 **200C Benefits on transfer of undertaking or property need**
27 **membership approval**

28 A person must not give a benefit to a person who:

- 29 (a) holds, or has at any previous time held, a board or managerial
30 office in a company or a related body corporate; or
31 (b) is the spouse of a person referred to in paragraph (a); or
-

Section 200D

- 1 (c) is a relative of a person referred to in paragraph (a) or of the
2 spouse of such a person; or
3 (d) is an associate of a person referred to in paragraph (a) or the
4 spouse of an associate of such a person;
5 in connection with the transfer of the whole or any part of the
6 undertaking or property of the company without member approval
7 under section 200E.

8 Note: Section 9 defines *board or managerial office*.

9 **200D Contravention to receive benefit without member approval**

10 A person who:

- 11 (a) holds, or has at any previous time held, a board or managerial
12 office in a company or related body corporate; or
13 (b) is the spouse of a person referred to in paragraph (a); or
14 (c) is a relative of a person referred to in paragraph (a) or of the
15 spouse of such a person; or
16 (d) is an associate of a person referred to in paragraph (a) or the
17 spouse of an associate of such a person;

18 must not receive a benefit if the giving of the benefit contravenes
19 section 200B or 200C.

20 Note: Section 9 defines *board or managerial office*.

21 **200E Approval by members**

- 22 (1) If section 200B or 200C requires member approval for giving a
23 person a benefit, it must be approved by a resolution passed at a
24 general meeting of:
25 (a) the company; and
26 (b) if the company is a subsidiary of a listed domestic
27 corporation—the listed corporation; and
28 (c) if the company has a holding company that:
29 (i) is a domestic corporation that is not listed; and
30 (ii) is not itself a subsidiary of a domestic corporation—the
31 holding company.
-

Section 200F

- 1 (2) Details of the benefit must be set out in, or accompany, the notice
2 of the meeting at which the resolution is to be considered. The
3 details must include:
- 4 (a) if the proposed benefit is a payment:
5 (i) the amount of the payment; or
6 (ii) if that amount cannot be ascertained at the time of the
7 disclosure—the manner in which that amount is to be
8 calculated and any matter, event or circumstance that
9 will, or is likely to, affect the calculation of that amount;
10 and
- 11 (b) otherwise:
12 (i) the money value of the proposed prescribed benefit; or
13 (ii) if that value cannot be ascertained at the time of the
14 disclosure—the manner in which that value is to be
15 calculated and any matter, event or circumstance that
16 will, or is likely to, affect the calculation of that value.
- 17 These requirements are in addition to, and not in derogation of, any
18 other law that requires disclosure to be made with respect to giving
19 or receiving a benefit.
- 20 (3) The approval extends to the giving of another benefit to the person
21 if:
22 (a) the other benefit is given to the person instead of the
23 proposed benefit; and
24 (b) the amount or money value of the benefit is less than the
25 amount or money value of the proposed benefit.
- 26 (4) The approval does not relieve a director of a body corporate from
27 any duty to the body corporate (whether under section
28 180,181,182,183 or 184 or otherwise and whether of a fiduciary
29 nature or not) in connection with the giving of the benefit.

30 **200F Exempt benefits and benefits given in certain circumstances**

31 Subsection 200B(1) does not apply to:

Section 200G

- 1 (a) a benefit given in connection with a person's retirement from
2 an office in relation to a company if the benefit is:
- 3 (i) given under an agreement entered into before 1 January
4 1991 if giving the benefit in accordance with the
5 agreement would have been lawful if the benefit were
6 given when the agreement was entered into; or
- 7 (ii) a genuine payment by way of damages for breach of
8 contract; or
- 9 (iii) given to the person under an agreement made between
10 the company and the person before the person became
11 the holder of the office as the consideration, or part of
12 the consideration, for the person agreeing to hold the
13 office; or
- 14 (iv) a payment made in respect of leave of absence to which
15 the person is entitled under an industrial instrument; or
- 16 (b) a benefit given in prescribed circumstances.

17 **200G Genuine payments of pension and lump sum**

- 18 (1) Subsection 200B(1) does not apply to a benefit if:
- 19 (a) the benefit is a payment in connection with a person's
20 retirement from a board or managerial office (the *relevant*
21 *office*) in a company or a related body corporate; and
- 22 (b) the payment is for past services the person rendered to:
- 23 (i) the company; or
- 24 (ii) a related body corporate; or
- 25 (iii) a body that was a related body corporate of the company
26 when the past services were rendered; and
- 27 (c) the value of the benefit, when added to the value of all other
28 payments (if any) already made or payable in connection
29 with the person's retirement from board or managerial offices
30 in the company and related bodies corporate does not exceed
31 the payment limit set by subsection (1A).

32 In applying paragraph (c), disregard any pensions or lump sums
33 that section 200F applies to.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.2 Restrictions on indemnities, insurance and termination payments

Section 200G

- 1 (2) The payment limit is:
- 2 (a) the amount worked out under subsection (3) if the person:
- 3 (i) was an eligible employee in relation to the company at
- 4 the time when the person retired from the relevant
- 5 office; and
- 6 (ii) has been an eligible employee in relation to the
- 7 company throughout a period (the *relevant period*), or
- 8 throughout periods totalling a period (also the *relevant*
- 9 *period*), of more than 3 years; or
- 10 (b) otherwise—the total remuneration of the person from the
- 11 company and related bodies corporate during the period of 3
- 12 years ending when the person retired from the relevant office.

13 Note: Section 9 defines *remuneration*.

- 14 (3) The amount worked out under this subsection is the amount
- 15 worked out using the formula:

16
$$\frac{\text{Total remuneration} \times \text{Relevant period}}{3}$$

17 where:

18 ***total remuneration*** is the amount of the total remuneration of the

19 person from the company and related bodies corporate during the

20 last 3 years of the relevant period.

21 ***relevant period*** is the number of years in the relevant period or 7,

22 whichever is the lesser number.

- 23 (4) In determining for the purposes of paragraph (1)(c) the value of a
- 24 pension or lump sum payment, disregard any part of the pension or
- 25 lump sum payment that is attributable to:

- 26 (a) a contribution made by the person; or
- 27 (b) a contribution made by a person other than:
- 28 (i) the company; or
- 29 (ii) a body corporate (a *relevant body corporate*) that is a
- 30 related body corporate of the company, or that was,

Section 200H

- 1 when the contribution was made, such a related body
2 corporate; or
3 (iii) an associate of the company, or of a relevant body
4 corporate, in respect of:
5 (A) the payment of the pension, or the making of
6 the lump sum payment, as the case may be; or
7 (B) the making of the contribution.
- 8 (5) For the purposes of subparagraph (2)(a), a person is taken to have
9 been an eligible employee in relation to a company at a particular
10 time if:
11 (a) the person was a genuine full-time employee of the company
12 at that time; or
13 (b) the person was a genuine full-time employee of a body
14 corporate at that time and the body corporate was related to
15 the company at that time.
- 16 (6) In this section:
- 17 *payment* means a payment by way of pension or lump sum and
18 includes a superannuation, retiring allowance, superannuation
19 gratuity or similar payment.

20 **200H Benefits required by law**

21 Subsection 200B(1) does not apply to a benefit given by a person if
22 failure to give the benefit would constitute a contravention of a law
23 in force in Australia or elsewhere (otherwise than because of
24 breach of contract or breach of trust).

25 **200J Benefits to be held in trust for company**

- 26 (1) If giving a benefit to a person contravenes section 200B, then:
27 (a) if the benefit is a payment—the amount of the payment; or
28 (b) otherwise—the money value of the prescribed benefit;
29 is taken to be received by the person in trust for the company
30 concerned.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.2 Restrictions on indemnities, insurance and termination payments

Section 200J

- 1 (2) Subsection (1) applies to the whole of the amount of a payment or
2 of the money value of the benefit even though giving the benefit
3 would not have contravened section 200B if that amount or value
4 of the benefit had been less.

1

2 **Part 2D.3—Appointment, remuneration and**
3 **cessation of appointment of directors**

4 **Division 1—Appointment of directors**

5 **201A Minimum number of directors**

6 *Proprietary companies*

- 7 (1) A proprietary company must have at least 1 director. That director
8 must ordinarily reside in Australia.

9 *Public companies*

- 10 (2) A public company must have at least 3 directors (not counting
11 alternate directors). At least 2 directors must ordinarily reside in
12 Australia.

13 **201B Who can be a director**

- 14 (1) Only an individual who is at least 18 may be appointed as a
15 director of a company.
- 16 (2) A person who is disqualified from managing corporations under
17 Part 2D.6 may only be appointed as director of a company if the
18 appointment is made with permission granted by ASIC under
19 section 206F or leave granted by the Court under section 206G.

20 **201C Directors of public companies, or subsidiaries, over 72**

- 21 (1) A person who has turned 72 may only be appointed or act as a
22 director of:
23 (a) a public company; or
24 (b) a company that is a subsidiary of a public company;
25 if authorised to do so under this section.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.3 Appointment, remuneration and cessation of appointment of directors

Section 201C

- 1 (2) A person may act as a director of a company during the period that:
2 (a) starts on the day on which they turn 72; and
3 (b) ends at the conclusion of the AGM beginning next after that
4 day.
- 5 (3) The office of a director of a public company, or of a subsidiary of a
6 public company, becomes vacant at the conclusion of the AGM of
7 the public company, or the subsidiary, beginning next after the
8 director turns 72.
- 9 (4) If a proprietary company is a subsidiary of a public company:
10 (a) subsection (3) does not apply to it; and
11 (b) a person may continue to act as a director of the proprietary
12 company until the next AGM of the public company after the
13 person turns 72; and
14 (c) the person's office of director becomes vacant at the end of
15 that meeting.
- 16 Note: Proprietary companies do not need to hold annual general meetings
17 (see section 250N).
- 18 (5) An act done by a person as a director is valid even if it is
19 afterwards discovered that they had turned 72 at the time when
20 they were appointed or that their appointment had terminated under
21 subsection (3) or (4).
- 22 (6) If the office of a director has become vacant under subsection (3)
23 or (4), no provision for the automatic re-appointment of retiring
24 directors in default of another appointment applies in relation to
25 that director.
- 26 (7) If a vacancy created under subsection (3) or (4) is not filled at the
27 meeting at which the office became vacant, the office may be filled
28 as a casual vacancy.
- 29 (8) Subject to subsections (9) and (10), a person who has turned 72
30 may by special resolution be appointed or re-appointed as a
31 director of that company to hold office until the conclusion of the
32 company's next AGM company if:
-

- 1 (a) the resolution states the person's age; and
2 (b) the notice of meeting states that the person is a candidate for
3 election who has turned 72 and states the person's age.
- 4 (9) If the company is a subsidiary of a public company, the
5 appointment or re-appointment referred to in subsection (8) does
6 not have effect unless:
- 7 (a) the person appointed or re-appointed is a director of the
8 public company; or
9 (b) the appointment or re-appointment of the person as a director
10 of the company has been approved by a special resolution of
11 the public company and the notice of meeting states that the
12 person is a candidate for election as a director of the
13 company who has turned 72 and states the person's age.
- 14 (10) If the subsidiary is a proprietary company:
- 15 (a) the person may be appointed or re-appointed as a director of
16 the subsidiary until the end of the next AGM of the holding
17 company; and
18 (b) the appointment does not need a resolution under subsection
19 (8); and
20 (c) the appointment must satisfy either paragraph (9)(a) or (b).
- 21 (11) If:
- 22 (a) the constitution of a company limited by guarantee provides
23 for the holding of postal ballots for the election of a director
24 or directors; and
25 (b) a postal ballot for the election of a director or directors is
26 held and in the ballot:
- 27 (i) the members entitled to vote have been given notice in
28 writing by the company stating that a candidate for
29 election has turned 72 and stating the age of the
30 candidate; and
31 (ii) that candidate is elected by a majority of not less than
32 75% of the members who, being entitled to vote, vote in
33 the ballot;
-

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.3 Appointment, remuneration and cessation of appointment of directors

Section 201D

1 that candidate may be appointed or re-appointed as a director to
2 hold office until the conclusion of the next AGM of the company.

3 (12) If:

4 (a) the constitution of a company limited by guarantee provides
5 for the election or appointment of a director or directors
6 otherwise than by members at a general meeting or by postal
7 ballot of members; and

8 (b) ASIC declares in writing that this section does not apply to
9 the company or its directors;

10 then, subject to the conditions (if any) that ASIC specifies in the
11 declaration, this section does not so apply.

12 (13) A vacancy in the office of a director occurring under subsection (3)
13 or (4) is not to be taken into account in determining when other
14 directors are to retire.

15 (14) Nothing in this section limits, or affects the operation of, any
16 provision of a company's constitution that prevents any person
17 from being appointed as a director or requiring any director to
18 vacate their office at any age less than 72 years.

19 **201D Consent to act as director**

20 (1) A company contravenes this subsection if a person does not give
21 the company a signed consent to act as a director of the company
22 before being appointed.

23 (2) The company must keep the consent.

24 **201E Special rules for the appointment of public company directors**

25 (1) A resolution passed at a general meeting of a public company
26 appointing or confirming the appointment of 2 or more directors is
27 void unless:

28 (a) the meeting has resolved that the appointments or
29 confirmations may be voted on together; and

30 (b) no votes were cast against the resolution.

- 1 (2) This section does not affect:
2 (a) a resolution to appoint directors by an amendment to the
3 company's constitution (if any); or
4 (b) a ballot or poll to elect 2 or more directors if the ballot or poll
5 does not require members voting for 1 candidate to vote for
6 another candidate.
- 7 (3) For the purposes of paragraph (2)(b), a ballot or poll does not
8 require a member to vote for a candidate merely because the
9 member is required to express a preference among individual
10 candidates in order to cast a valid vote.

11 **201F Special rules for the appointment of directors for single**
12 **director/single shareholder proprietary companies**

- 13 (1) The director of a proprietary company who is its only director and
14 only shareholder may appoint another director by recording the
15 appointment and signing the record.
- 16 *Appointment of new director on death, mental incapacity or*
17 *bankruptcy*
- 18 (2) If a person who is the only director and the only shareholder of a
19 proprietary company:
20 (a) dies; or
21 (b) cannot manage the company because of the person's mental
22 incapacity;
23 and a personal representative or trustee is appointed to administer
24 the person's estate or property, the personal representative or
25 trustee may appoint a person as the director of the company.
- 26 (3) If:
27 (a) the office of the director of a proprietary company is vacated
28 under subsection 206B(3) or (4) because of the bankruptcy of
29 the director; and
30 (b) the person is the only director and the only shareholder of the
31 company; and

Section 201G

1 (c) a trustee in bankruptcy is appointed to the person's property;
2 the trustee may appoint a person as the director of the company.

3 (4) A person who has a power of appointment under subsection (2) or
4 (3) may appoint themselves as director.

5 (5) A person appointed as a director of a company under subsection
6 (2), (3) or (4) holds office as if they had been appointed in the
7 usual way.

8 **201G Company may appoint a director** (*replaceable rule—see section*
9 *135*)

10 A company may appoint a person as a director by resolution passed
11 in general meeting.

12 **201H Directors may appoint other directors** (*replaceable rule—see*
13 *section 135*)

14 *Appointment by other directors*

15 (1) The directors of a company may appoint a person as a director. A
16 person can be appointed as a director in order to make up a quorum
17 for a directors' meeting even if the total number of directors of the
18 company is not enough to make up that quorum.

19 *Proprietary company—confirmation by meeting within 2 months*

20 (2) If a person is appointed under this section as a director of a
21 proprietary company, the company must confirm the appointment
22 by resolution within 2 months after the appointment is made. If the
23 appointment is not confirmed, the person ceases to be a director of
24 the company at the end of those 2 months.

25 *Public company—confirmation by next AGM*

26 (3) If a person is appointed by the other directors as a director of a
27 public company, the company must confirm the appointment by
28 resolution at the company's next AGM. If the appointment is not

1 confirmed, the person ceases to be a director of the company at the
2 end of the AGM.

3 **201J Appointment of managing directors** (*replaceable rule—see*
4 *section 135*)

5 The directors of a company may appoint 1 or more of themselves
6 to the office of managing director of the company for the period,
7 and on the terms (including as to remuneration), as the directors
8 see fit.

9 **201K Alternate directors** (*replaceable rule—see section 135*)

- 10 (1) With the other directors' approval, a director may appoint an
11 alternate to exercise some or all of the director's powers for a
12 specified period.
- 13 (2) If the appointing director requests the company to give the
14 alternate notice of directors' meetings, the company must do so.
- 15 (3) When an alternate exercises the director's powers, the exercise of
16 the powers is just as effective as if the powers were exercised by
17 the director.
- 18 (4) The appointing director may terminate the alternate's appointment
19 at any time.
- 20 (5) An appointment or its termination must be in writing. A copy must
21 be given to the company.

22 Note: ASIC must be given notice of the appointment and termination of
23 appointment of an alternate (see subsections 205B(2) and (5)).

24 **201L Signpost—ASIC to be notified of appointment**

25 Under section 205B, a company must notify ASIC within 14 days
26 if a person is appointed as a director or as an alternate director.

Section 201M

1 **201M Effectiveness of acts by directors**

2 (1) An act done by a director is effective even if their appointment, or
3 the continuance of their appointment, is invalid because the
4 company or director did not comply with the company's
5 constitution (if any) or any provision of this Law.

6 (2) Subsection (1) does not deal with the question whether an effective
7 act by a director:

8 (a) binds the company in its dealings with other people; or

9 (b) makes the company liable to another person.

10 Note: The kinds of acts that this section validates are those that are only
11 legally effective if the person doing them is a director (for example,
12 calling a meeting of the company's members or signing a document to
13 be lodged with ASIC or minutes of a meeting). Sections 128-130
14 contain rules about the assumptions people are entitled to make when
15 dealing with a company and its officers.

16 **Division 2—Remuneration of directors**

17 **202A Remuneration of directors** (*replaceable rule—see section 135*)

18 (1) The directors of a company are to be paid the remuneration that the
19 company determines by resolution.

20 Note: Chapter 2E makes special provision for the payment of remuneration
21 to the directors of public companies.

22 (2) The company may also pay the directors' travelling and other
23 expenses that they properly incur:

24 (a) in attending directors' meetings or any meetings of
25 committees of directors; and

26 (b) in attending any general meetings of the company; and

27 (c) in connection with the company's business.

1 **202B Members may obtain information about directors’**
2 **remuneration**

3 (1) A company must disclose the remuneration paid to each director of
4 the company or a subsidiary (if any) by the company or by an
5 entity controlled by the company if the company is directed to
6 disclose the information by:

7 (a) members with at least 5% of the votes that may be cast at a
8 general meeting of the company; or

9 (b) at least 100 members who are entitled to vote at a general
10 meeting of the company.

11 The company must disclose all remuneration paid to the director,
12 regardless of whether it is paid to the director in relation to their
13 capacity as director or another capacity.

14 (2) The company must comply with the direction as soon as
15 practicable by:

16 (a) preparing a statement of the remuneration of each director of
17 the company or subsidiary for the last financial year before
18 the direction was given; and

19 (b) having the statement audited; and

20 (c) sending a copy of the audited statement to each person
21 entitled to receive notice of general meetings of the company.

22 **202C Special rule for single director/single shareholder proprietary**
23 **companies**

24 A person who is the only director and the only shareholder of a
25 proprietary company is to be paid any remuneration for being a
26 director that the company determines by resolution. The company
27 may also pay the director’s travelling and other expenses properly
28 incurred by the director in connection with the company’s
29 business.

Section 203A

1 **Division 3—Resignation, retirement or removal of**
2 **directors**

3 **203A Director may resign by giving written notice to company**
4 *(replaceable rule—see section 135)*

5 A director of a company may resign as a director of the company
6 by giving a written notice of resignation to the company at its
7 registered office.

8 **203B Signpost to consequences of disqualification from managing**
9 **corporations**

10 A person ceases to be a director of a company if the person
11 becomes disqualified from managing corporations under Part 2D.6
12 (see subsection 206A(2)) unless ASIC or the Court allows them to
13 manage the company (see sections 206F and 206G).

14 **203C Removal by members—proprietary companies** *(replaceable*
15 *rule—see section 135)*

16 A proprietary company:

- 17 (a) may by resolution remove a director from office; and
18 (b) may by resolution appoint another person as a director
19 instead.

20 **203D Removal by members—public companies**

21 *Resolution for removal of director*

- 22 (1) A public company may by resolution remove a director from office
23 despite anything in:
24 (a) the company's constitution (if any); or
25 (b) an agreement between the company and the director; or
26 (c) an agreement between any or all members of the company
27 and the director.

1 If the director was appointed to represent the interests of particular
2 shareholders or debenture holders, the resolution to remove the
3 director does not take effect until a replacement to represent their
4 interests has been appointed.

5 Note: See sections 249C to 249G for the rules on who may call meetings,
6 sections 249H to 249M on how to call meetings and sections 249N to
7 249Q for rules on members' resolutions.

8 *Notice of intention to move resolution for removal of director*

9 (2) Notice of intention to move the resolution must be given to the
10 company at least 2 months before the meeting is to be held.
11 However, if the company calls a meeting after the notice of
12 intention is given under this subsection, the meeting may pass the
13 resolution even though the meeting is held less than 2 months after
14 the notice of intention is given.

15 Note: Short notice of the meeting cannot be given for this resolution (see
16 subsection 249H(3)).

17 *Director to be informed*

18 (3) The company must give the director a copy of the notice as soon as
19 practicable after it is received.

20 *Director's right to put case to members*

21 (4) The director is entitled to put their case to members by:
22 (a) giving the company a written statement for circulation to
23 members (see subsections (5) and (6)); and
24 (b) speaking to the motion at the meeting (whether or not the
25 director is a member of the company).

26 (5) The written statement is to be circulated by the company to
27 members by:
28 (a) sending a copy to everyone to whom notice of the meeting is
29 sent if there is time to do so; or

Section 203E

1 (b) if there is not time to comply with paragraph (a)—having the
2 statement distributed to members attending the meeting and
3 read out at the meeting before the resolution is voted on.

4 (6) The director's statement does not have to be circulated to members
5 if it is more than 1,000 words long or defamatory.

6 *Time of retirement*

7 (7) If a person is appointed to replace a director removed under this
8 section, the time at which:

9 (a) the replacement director; or

10 (b) any other director;

11 is to retire is to be worked out as if the replacement director had
12 become director on the day on which the replaced director was last
13 appointed a director.

14 **203E Director cannot be removed by other directors—public**
15 **companies**

16 A resolution, request or notice of any or all of the directors of a
17 public company is void to the extent that it purports to:

18 (a) remove a director from their office; or

19 (b) require a director to vacate their office.

20 **203F Termination of appointment of managing director** (*replaceable*
21 *rule—see section 135*)

22 (1) A person ceases to be managing director if they cease to be a
23 director.

24 (2) The directors may revoke or vary an appointment of a managing
25 director.

1

2 **Part 2D.4—Appointment of secretaries**
3

4 **204A Minimum number of secretaries**

5 *Proprietary companies*

- 6 (1) A proprietary company is not required to have a secretary but, if it
7 does have 1 or more secretaries, at least 1 of them must ordinarily
8 reside in Australia.

9 *Public companies*

- 10 (2) A public company must have at least 1 secretary. At least 1 of them
11 must ordinarily reside in Australia.

12 **204B Who can be a secretary**

- 13 (1) Only an individual who is at least 18 may be appointed as a
14 secretary of a company.
- 15 (2) A person who is disqualified from managing corporations under
16 Part 2D.6 may only be appointed as a secretary of a company if the
17 appointment is made with permission granted by ASIC under
18 section 206F or leave granted by the Court under section 206G.

19 **204C Consent to act as secretary**

- 20 (1) A company contravenes this subsection if a person does not give
21 the company a signed consent to act as secretary of the company
22 before being appointed.
- 23 (2) The company must keep the consent.

24 **204D How a secretary is appointed**

25 A secretary is to be appointed by the directors.

Schedule 1 Main amendments of the Corporations Law

Chapter 2D Officers and employees

Part 2D.4 Appointment of secretaries

Section 204E

1 Note 1: The company must notify ASIC of the appointment within 14 days
2 (see subsection 205B(1)).

3 Note 2: Section 188 deals with the responsibilities of secretaries for
4 contraventions by the company.

5 **204E Effectiveness of acts by secretaries**

6 (1) An act done by a secretary is effective even if their appointment, or
7 the continuance of their appointment, is invalid because the
8 company or secretary did not comply with the company's
9 constitution (if any) or any provision of this Law.

10 (2) Subsection (1) does not deal with the question whether an effective
11 act by a secretary:

12 (a) binds the company in its dealings with other people; or

13 (b) makes the company liable to another person.

14 Note: The kinds of acts that this section validates are those that are only
15 legally effective if the person doing them is a secretary (for example,
16 signing and sending out a notice of a meeting of directors if the
17 company's constitution authorises the secretary to do so or signing a
18 document to be lodged with ASIC). Sections 128-130 contain rules
19 about the assumptions people are entitled to make when dealing with a
20 company and its officers.

21 **204F Terms and conditions of office for secretaries** (*replaceable*
22 *rule—see section 135*)

23 A secretary holds office on the terms and conditions (including as
24 to remuneration) that the directors determine.

25 **204G Signpost to consequences of disqualification from managing**
26 **corporations**

27 A person ceases to be a secretary of a company if the person
28 becomes disqualified from managing corporations under Part 2D.6
29 (see subsection 206A(2)) unless ASIC or the Court allows them to
30 manage the company (see sections 206F and 206G).

1

2 **Part 2D.5—Public information about directors and**
3 **secretaries**
4

5 **205A Director, secretary or alternate director may notify ASIC of**
6 **resignation or retirement**

- 7 (1) If a director, secretary or alternate director retires or resigns, they
8 may give ASIC written notice of the retirement or resignation. The
9 notice must be in the prescribed form.
- 10 (2) To be effective, a notice of resignation must be accompanied by a
11 copy of the letter of resignation given to the company.
- 12 (3) Nothing in this section affects the company's obligations to notify
13 ASIC of the resignation or retirement.

14 **205B Notice of name and address of directors and secretaries to**
15 **ASIC**

16 *New directors or secretaries*

- 17 (1) A company must lodge with ASIC a notice of the personal details
18 of a director or secretary within 14 days after they are appointed.
19 The notice must be in the prescribed form.

20 Note 1: If a person becomes a director under subsection 120(1) there is no
21 appointment and no notice is required under this subsection.

22 Note 2: If a person who was appointed as an alternate director becomes a
23 director under the terms of their appointment as an alternate director,
24 there is no appointment as a director and no notice is required under
25 this subsection.

26 *New alternate directors*

- 27 (2) A company must lodge with ASIC a notice of:
28 (a) the personal details of a person who is appointed as an
29 alternate director; and
-

Section 205C

- 1 (b) the terms of their appointment (including terms about when
2 the alternate director is to act as a director);
3 within 14 days after their appointment as an alternate director. The
4 notice must be in the prescribed form.

5 *Personal details*

- 6 (3) The personal details of a director, alternate director, or secretary
7 are:
8 (a) their given and family names; and
9 (b) all of their former given and family names; and
10 (c) their date and place of birth; and
11 (d) their address.

12 Note: For *address* see section 205D.

13 *Changes in details*

- 14 (4) The company must lodge with ASIC notice of any change in the
15 personal details of a director, alternate director or secretary within
16 14 days after the change. The notice must be in the prescribed
17 form.

18 *Notice required if person stops being a director or secretary*

- 19 (5) If a person stops being a director, alternate director or secretary of
20 the company, the company must lodge with ASIC notice of the fact
21 within 14 days. The notice must be in the prescribed form.
22 However, the company does not need to lodge a notice if the
23 person was an alternate director who stopped being a director in
24 accordance with the terms of their appointment as an alternate
25 director.

26 **205C Director and secretary must give information to company**

- 27 (1) A director, alternate director or secretary must give the company
28 any information the company needs to comply with subsection

1 205B(1) or (2) within 7 days after their initial appointment unless
2 they have previously given the information to the company.

3 (2) A director, alternate director or secretary must give the company
4 any information the company needs to comply with subsection
5 205B(4) within 7 days after any change in their personal details.

6 **205D Address for officers**

7 *Address is normally residential address*

8 (1) A person's address for the purposes of a notice or application
9 under subsection 205B(1), (2), (3) or (5) or 117(2) or 601BC(2)
10 must be their usual residential address unless they are entitled to
11 have an alternative address substituted for their usual residential
12 address under subsection (2).

13 *Entitlement to have alternative address*

14 (2) The person is entitled to have an alternative address substituted for
15 their usual residential address if:
16 (a) their name, but not their residential address, is on an electoral
17 roll under the *Commonwealth Electoral Act 1918* because of
18 section 104 of that Act; or
19 (b) their name is not on an electoral roll under that Act and ASIC
20 determines, in writing, that including their residential address
21 in the notice or application would put at risk their personal
22 safety or the personal safety of members of their family.

23 This alternative address must be in Australia and be one at which
24 documents can be served on the person. At any particular time, a
25 person is entitled to have only 1 alternative address under this
26 section.

27 Note: See subsection 109X(2) on the status of the alternative address as an
28 address for service.

29 (3) A person who takes advantage of subsection (2) must:

Section 205E

- 1 (a) before or at the same time as the alternative address is first
2 included in a notice or application, lodge with ASIC notice of
3 the person's usual residential address; and
4 (b) lodge with ASIC notice of any change in the person's usual
5 residential address within 14 days after the change.
6 A notice under this subsection must be in the prescribed form.
- 7 (4) If a court gives a judgment for payment of a sum of money against
8 a person who is taking advantage of subsection (2), ASIC may give
9 details of the person's usual residential address to an officer of the
10 court for the purposes of enforcing the judgment debt.

11 **205E ASIC's power to ask for information about person's position**
12 **as director or secretary**

- 13 (1) ASIC may ask a person, in writing, to inform ASIC:
14 (a) whether the person is a director or secretary of a particular
15 company; and
16 (b) if the person is no longer a director or secretary of the
17 company—the date on which the person stopped being a
18 director or secretary.
- 19 (2) The person must give the information to ASIC in writing by the
20 date specified in the request.

21 **205F Director must give information to company**

22 A director must give the company any information affecting or
23 relating to the director that the company needs, or will need, to
24 comply with Chapter 6. The director must give the information to
25 the company as soon as practicable after becoming aware that the
26 company needs, or will need, the information. The company must
27 give the information to each of the other directors of the company
28 within 7 days of receiving it.

1 **205G Listed company—director to notify securities exchange of**
2 **shareholdings etc.**

3 *Notifiable interests*

- 4 (1) A director of a listed public company must notify the relevant
5 securities exchange under subsections (3) and (4) of the following
6 interests of the director:
- 7 (a) relevant interests in securities of the company or a related
8 body corporate
 - 9 (b) contracts:
 - 10 (i) to which the director is a party or under which the
11 director is entitled to a benefit; and
 - 12 (ii) that confer a right to call for or deliver shares in,
13 debentures of, or interests in a collective investment
14 scheme made available by, the company or a related
15 body corporate.
- 16 (2) A notice of a relevant interest in securities under paragraph (1)(a)
17 must give details of:
- 18 (a) the number of securities; and
 - 19 (b) the circumstances giving rise to the relevant interest.

20 *Occasions for initial notification*

- 21 (3) The director must notify the exchange within 14 days after each of
22 the following occasions:
- 23 (a) appointment as a director of the company
 - 24 (b) the listing of the company.
- 25 Paragraph (a) does not apply to a director who retires and is then
26 reappointed at the same meeting.

27 *Updating notices*

- 28 (4) The director must notify the exchange within 14 days after any
29 change in the director's interests.

Section 205G

1 (5) The director need not give the information to the exchange under
2 this section if the director has already given the information to the
3 exchange.

4 *ASIC's power to make class orders*

5 (6) ASIC may make an order in writing relieving a director of the
6 obligation to notify the relevant securities exchange of an interest
7 in a security or contract. The order may be made in respect of a
8 specified class of companies, directors, securities or contracts.

9 (7) The order may be expressed to be subject to conditions.

10 (8) Notice of the making, revocation or suspension of the order must
11 be published in the *Gazette*.

1

2 **Part 2D.6—Disqualification from managing**
3 **corporations**
4

5 **206A Disqualified person not to manage corporations**

- 6 (1) A person who is disqualified from managing corporations under
7 this Part commits an offence if:
8 (a) they make, or participate in making, decisions that affect the
9 whole, or a substantial part, of the business of the
10 corporation; or
11 (b) they exercise the capacity to affect significantly the
12 corporation's financial standing; or
13 (c) they communicate instructions or wishes (other than advice
14 given by the person in the proper performance of functions
15 attaching to the person's professional capacity or their
16 business relationship with the directors or the corporation) to
17 the directors of the corporation:
18 (i) knowing that the directors are accustomed to act in
19 accordance with the person's instructions or wishes; or
20 (ii) intending that the directors will act in accordance with
21 those instructions or wishes.

22 It is a defence to the contravention if the person had permission to
23 manage the corporation under either section 206F or 206G and
24 their conduct was within the terms of that permission.

25 Note: Under section 1274AA, ASIC is required to keep a record of persons
26 disqualified from managing corporations.

- 27 (2) A person ceases to be a director, alternate director or a secretary of
28 a company if:
29 (a) the person becomes disqualified from managing corporations
30 under this Part; and
31 (b) they are not given permission to manage the corporation
32 under section 206F or 206G.

Section 206B

1 Note: If a person ceases to be a director, alternate director or a secretary
2 under subsection (2) the company must notify ASIC (see subsection
3 205B(1)).

4 **206B Automatic disqualification**

5 *Convictions*

6 (1) A person becomes disqualified from managing corporations if the
7 person:

8 (a) is convicted on indictment of an offence that:

9 (i) concerns the making, or participation in making, of
10 decisions that affect the whole or a substantial part of
11 the business of the corporation; or

12 (ii) concerns an act that has the capacity to affect
13 significantly the corporation's financial standing; or

14 (b) is convicted of an offence that:

15 (i) is a contravention of the Corporations Law and is
16 punishable by imprisonment for a period greater than 12
17 months; or

18 (ii) involves dishonesty and is punishable by imprisonment
19 for at least 3 months; or

20 (c) is convicted of an offence against the law of a foreign
21 country that is punishable by imprisonment for a period
22 greater than 12 months.

23 The offences covered by paragraph (a) and subparagraph (b)(ii)
24 include offences against the law of a foreign country.

25 (2) The period of disqualification under subsection (1) starts on the
26 day the person is convicted and lasts for:

27 (a) if the person does not serve a term of imprisonment—5 years
28 after the day on which they are convicted; or

29 (b) if the person serves a term of imprisonment—5 years after
30 the day on which they are released from prison.

Section 206C

1 *Bankruptcy, deed of arrangement or composition with creditors*

- 2 (3) A person is disqualified from managing corporations if the person
3 is an undischarged bankrupt under the law of Australia, its external
4 territories or another country.
- 5 (4) A person is disqualified from managing corporations if:
6 (a) the person has executed a deed of arrangement under Part X
7 of the *Bankruptcy Act 1966* (or a similar law of an external
8 territory or another country) and the terms of the deed have
9 not been fully complied with; or
10 (b) the person's creditors have accepted a composition under
11 Part X of the *Bankruptcy Act 1966* (or a similar law of an
12 external territory or another country) and final payment has
13 not been made under the composition.

14 **206C Court power of disqualification—contravention of civil**
15 **penalty provision**

- 16 (1) On application by ASIC, the Court may disqualify a person from
17 managing corporations for a period that the Court considers
18 appropriate if:
19 (a) a declaration is made under section 1317E (civil penalty
20 provision) that the person has contravened a civil penalty
21 provision; and
22 (b) the Court is satisfied that the disqualification is justified.
- 23 Note: The civil penalty provisions are subsection 180(1) and (2), 181(1) and
24 (2), 182(1) and (2), 183(1) and (2), 209(2), 254L(2), 256D(3),
25 259F(2), 260D(2) or 344(1) or section 588G.
- 26 (2) In determining whether the disqualification is justified, the Court
27 may have regard to:
28 (a) the person's conduct in relation to the management, business
29 or property of any corporation; and
30 (b) any other matters that the Court considers appropriate.

Section 206D

1 **206D Court power of disqualification—insolvency and non-payment**
2 **of debts**

- 3 (1) On application by ASIC, the Court may disqualify a person from
4 managing corporations for up to 10 years if:
- 5 (a) within the last 7 years, the person has been an officer of 2 or
6 more corporations when they have failed; and
7 (b) the Court is satisfied that:
- 8 (i) the manner in which the corporation was managed was
9 wholly or partly responsible for the corporation failing;
10 and
11 (ii) the disqualification is justified.
- 12 (2) For the purposes of subsection (1), a corporation fails if:
- 13 (a) a Court orders the corporation to be wound up under section
14 459B because the Court is satisfied that the corporation is
15 insolvent; or
16 (b) the corporation enters into voluntary liquidation and creditors
17 are not fully paid or are unlikely to be fully paid; or
18 (c) the corporation executes a deed of company arrangement and
19 creditors are not fully paid or are unlikely to be fully paid; or
20 (d) the corporation ceases to carry on business and creditors are
21 not fully paid or are unlikely to be fully paid; or
22 (e) a levy of execution against the corporation is not satisfied; or
23 (f) a receiver, receiver and manager, or provisional liquidator is
24 appointed in relation to the corporation; or
25 (g) the corporation enters into a compromise or arrangement
26 with its creditors under Part 5.1; or
27 (h) the corporation is wound up and a liquidator lodges a report
28 under subsection 533(1) about the corporation's inability to
29 pay its debts.

30 Note: To satisfy paragraph (h), a corporation must begin to be wound up
31 while the person is an officer or within 12 months after the person
32 ceases to be an officer. However, the report under subsection 533(1)
33 may be lodged by the liquidator at a time that is more than 12 months
34 after the person ceases to be an officer. Sections 513A to 513D
35 contain rules about when a company begins to be wound up.

- 1 (3) In determining whether the disqualification is justified, the Court
2 may have regard to:
3 (a) the person's conduct in relation to the management, business
4 or property of any corporation; and
5 (b) any other matters that the Court considers appropriate.

6 **206E Court power of disqualification—repeated contraventions of**
7 **Law**

- 8 (1) On application by ASIC, the Court may disqualify a person from
9 managing corporations for the period that the Court considers
10 appropriate if:
11 (a) the person:
12 (i) has at least twice been an officer of a body corporate
13 that has contravened this Law while they were an
14 officer of the body corporate and each time the person
15 has failed to take reasonable steps to prevent the
16 contravention; or
17 (ii) has at least twice contravened this Law while they were
18 an officer of a body corporate; or
19 (iii) has been an officer of a body corporate and has done
20 something that would have contravened subsection
21 180(1) or section 181 if the body corporate had been a
22 corporation; and
23 (b) the Court is satisfied that the disqualification is justified.
- 24 (2) In determining whether the disqualification is justified, the Court
25 may have regard to:
26 (a) the person's conduct in relation to the management, business
27 or property of any corporation; and
28 (b) any other matters that the Court considers appropriate.

Section 206F

1 **206F ASIC's power of disqualification**

2 *Power to disqualify*

- 3 (1) ASIC may disqualify a person from managing corporations for up
4 to 5 years if:
- 5 (a) within 7 years immediately before ASIC gives a notice under
6 paragraph (b)(i):
 - 7 (i) the person has been an officer of 2 or more
8 corporations; and
 - 9 (ii) while the person was an officer, or within 12 months
10 after the person ceased to be an officer of those
11 corporations, each of the corporations was wound up
12 and a liquidator lodged a report under subsection 533(1)
13 about the corporation's inability to pay its debts; and
 - 14 (b) ASIC has given the person:
 - 15 (i) a notice in the prescribed form requiring them to
16 demonstrate why they should not be disqualified; and
 - 17 (ii) an opportunity to be heard on the question; and
 - 18 (c) ASIC is satisfied that the disqualification is justified.

19 *Grounds for disqualification*

- 20 (2) In determining whether disqualification is justified, ASIC:
21 (a) must have regard to whether any of the corporations
22 mentioned in subsection (1) were related to one another; and
23 (b) may have regard to:
 - 24 (i) the person's conduct in relation to the management,
25 business or property of any corporation; and
 - 26 (ii) any other matters that ASIC considers appropriate.

27 *Notice of disqualification*

- 28 (3) If ASIC disqualifies a person from managing corporations under
29 this section, ASIC must serve a notice on the person advising them
30 of the disqualification. The notice must be in the prescribed form.

1 *Start of disqualification*

- 2 (4) The disqualification takes effect from the time when a notice
3 referred to in subsection (3) is served on the person.

4 *ASIC power to grant leave*

- 5 (5) ASIC may give a person who it has disqualified from managing
6 corporations under this Part written permission to manage a
7 particular corporation or corporations. The permission may be
8 expressed to be subject to conditions and exceptions determined by
9 ASIC.

10 **206G Court power to grant leave**

- 11 (1) A person who is disqualified from managing corporations may
12 apply to the Court for leave to manage:
13 (a) corporations; or
14 (b) a particular class of corporations; or
15 (c) a particular corporation;
16 if the person was not disqualified by ASIC.
- 17 (2) The person must lodge a notice with ASIC at least 21 days before
18 commencing the proceedings. The notice must be in the prescribed
19 form.
- 20 (3) The order granting leave may be expressed to be subject to
21 exceptions and conditions determined by the Court.

22 Note: If the Court grants the person leave to manage the corporation, the
23 person may be appointed as a director (see section 201B) or secretary
24 (see section 204B) of a company.

- 25 (4) The person must lodge with ASIC a copy of any order granting
26 leave within 14 days after the order is made.
- 27 (5) On application by ASIC, the Court may revoke the leave. The
28 order revoking leave does not take effect until it is served on the
29 person.

Section 206H

1 **206H Territorial application of this Part**

2 Part 2D.6 does not apply in respect of an act or omission by a
3 person while they are managing a corporation that is a foreign
4 company unless the act or omission occurred in connection with:

5 (a) the foreign company carrying on business in Australia; or

6 (b) an act that the foreign company does, or proposes to do, in
7 Australia; or

8 (c) a decision by the foreign company whether or not to do, or
9 refrain from doing, an act in Australia.

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Chapter 2E—Related party transactions

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207 Purpose

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The rules in this Chapter are designed to protect the interests of a public company's members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.

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Part 2E.1—Member approval needed for related party benefit

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Division 1—Need for member approval

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208 Need for member approval for financial benefit

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- (1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:
- (a) the public company or entity must:
 - (i) obtain the approval of the public company's members in the way set out in sections 217 to 227; and
 - (ii) give the benefit within 15 months after the approval; or
 - (b) the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note: Section 228 defines *related party*, section 9 defines *entity*, section 55AA defines *control* and section 229 affects the meaning of *giving a financial benefit*.

26
27

- (2) If:
- (a) the giving of the benefit is required by a contract; and

Section 209

- 1 (b) the making of the contract was approved in accordance with
2 subparagraph (1)(a)(i) as a financial benefit given to the
3 related party; and
4 (c) the contract was made:
5 (i) within 15 months after that approval; or
6 (ii) before that approval, if the contract was conditional on
7 the approval being obtained;
8 member approval for the giving of the benefit is taken to have been
9 given and the benefit need not be given within the 15 months.

10 **209 Consequences of breach**

- 11 (1) If the public company or entity contravenes section 208:
12 (a) the contravention does not affect the validity of any contract
13 or transaction connected with the giving of the benefit; and
14 (b) the public company or entity is not guilty of an offence.

15 Note: A Court may order an injunction to stop the company or entity giving
16 the benefit to the related party (see section 1324).

- 17 (2) A person contravenes this subsection if they are involved in a
18 contravention of section 208 by a public company or entity.

19 Note 1: This subsection is a civil penalty provision.

20 Note 2: Section 79 defines *involved*.

- 21 (3) A person commits an offence if they are involved in a
22 contravention of section 208 by a public company or entity and the
23 involvement is dishonest.

24 **Division 2—Exceptions to the requirement for member**
25 **approval**

26 **210 Arm's length terms**

27 Member approval is not needed to give a financial benefit on terms
28 that:

- 1 (a) would be reasonable in the circumstances if the public
2 company or entity and the related party were dealing at arm's
3 length; or
4 (b) are less favourable to the related party than the terms referred
5 to in paragraph (a).

6 **211 Remuneration and reimbursement for officer or employee**

7 *Benefits that are reasonable remuneration*

- 8 (1) Member approval is not needed to give a financial benefit if:
9 (a) the benefit is remuneration to a related party as an officer or
10 employee of the following:
11 (i) the public company
12 (ii) an entity that the public company controls
13 (iii) an entity that controls the public company
14 (iv) an entity that is controlled by an entity that controls the
15 public company; and
16 (b) to give the remuneration would be reasonable given:
17 (i) the circumstances of the public company or entity
18 giving the remuneration; and
19 (ii) the related party's circumstances (including the
20 responsibilities involved in the office or employment).

21 *Benefits that are payments of expenses incurred*

- 22 (2) Member approval is not needed to give a financial benefit if:
23 (a) the benefit is payment of expenses incurred or to be incurred,
24 or reimbursement for expenses incurred, by a related party in
25 performing duties as an officer or employee of the following:
26 (i) the public company
27 (ii) an entity that the public company controls
28 (iii) an entity that controls the public company
29 (iv) an entity that is controlled by an entity that controls the
30 public company; and

Section 212

- 1 (b) to give the benefit would be reasonable in the circumstances
2 of the public company or entity giving the remuneration.
- 3 (3) For the purposes of this section:
- 4 (a) a contribution made by a body corporate to a fund for the
5 purpose of making provision for, or obtaining,
6 superannuation benefits for an officer of the body, or for
7 dependants of an officer of the body, is remuneration
8 provided by the body to the officer of the body; and
- 9 (b) a financial benefit given to a person because of the person
10 ceasing to hold an office or employment as an officer or
11 employee of a body corporate is remuneration paid or
12 provided to the person in a capacity as an officer of the body.

13 **212 Indemnities, exemptions, insurance premiums and payment for**
14 **legal costs for officers**

15 *Indemnities, exemptions and insurance premiums*

- 16 (1) Member approval is not needed to give a financial benefit if:
- 17 (a) the benefit is for a related party who is an officer of the
18 public company or entity; and
- 19 (b) the benefit is:
- 20 (i) an indemnity, exemption or insurance premium in
21 respect of a liability incurred as an officer of the public
22 company or entity; or
- 23 (ii) an agreement to give an indemnity or exemption, or to
24 pay an insurance premium, of that kind; and
- 25 (c) to give the benefit would be reasonable in the circumstances
26 of the public company or entity giving the benefit.

27 Note: Sections 199A to 199C may prohibit giving an indemnity or
28 exemption or paying an insurance premium for an officer.

29 *Payments in respect of legal costs*

- 30 (2) Member approval is not needed to give a financial benefit if:
-

- 1 (a) the benefit is for a related party who is an officer of the
2 public company or entity; and
- 3 (b) the benefit is a payment (whether by way of advance, loan or
4 otherwise) in respect of legal costs incurred by the officer in
5 defending an action for a liability incurred as an officer of the
6 public company or entity; and
- 7 (c) either:
- 8 (i) section 199A does not apply to the costs; or
- 9 (ii) if section 199A applies to the costs—the officer must
10 repay the amount paid if the costs become costs for
11 which the company must not give the officer an
12 indemnity under that section; and
- 13 (d) to give the benefit would be reasonable in the circumstances
14 of the public company or entity giving the benefit.
- 15 (3) In working out for the purposes of subsection (1) or (2) whether
16 giving the benefit is reasonable in the circumstances:
- 17 (a) assess whether it would be reasonable on the basis of the
18 circumstances existing:
- 19 (i) if the benefit is given under an agreement—at the time
20 when the agreement is or was made; or
- 21 (ii) if the benefit is not given under an agreement—at the
22 time when the benefit is or was given; and
- 23 (b) disregard any other financial benefit given or payable to the
24 officer by the public company or entity.

25 **213 Small amounts given to director or spouse**

- 26 (1) Member approval is not needed to give a financial benefit that is an
27 amount of money for a director of the public company or their
28 spouse or de facto spouse if the amount does not exceed \$2,000 or
29 a greater amount as prescribed by the regulations.
- 30 (2) In working out the amount given:
- 31 (a) add in all amounts previously given by the public company
32 and any entities controlled by the public company to:
-

Section 214

- 1 (i) the director; or
2 (ii) their spouse; or
3 (iii) their de facto spouse; and
4 (b) disregard:
5 (i) amounts that have been repaid; and
6 (ii) amounts that fall under any other exception in this Part
7 or a corresponding previous law.

8 For the purposes of this subsection, the time at which the entity
9 must be controlled by the public company is the time at which the
10 amount is given.

11 **214 Benefit to or by closely-held subsidiary**

- 12 (1) Member approval is not needed to give a financial benefit if the
13 benefit is given:
14 (a) by a body corporate to a closely-held subsidiary of the body;
15 or
16 (b) by a closely-held subsidiary of a body corporate to the body
17 or an entity it controls.
- 18 (2) For the purposes of this section, a body corporate is a closely-held
19 subsidiary of another body corporate if, and only if, no member of
20 the first-mentioned body is a person other than:
21 (a) the other body; or
22 (b) a nominee of the other body; or
23 (c) a body corporate that is a closely-held subsidiary of the other
24 body because of any other application or applications of this
25 subsection; or
26 (d) a nominee of a body referred to in paragraph (c).
- 27 (3) For the purposes of subsection (2), disregard shares that are not
28 voting shares.

29 **215 Benefits to members that do not discriminate unfairly**

30 Member approval is not needed to give a financial benefit if:

- 1 (a) the benefit is given to the related party in their capacity as a
2 member of the public company; and
3 (b) giving the benefit does not discriminate unfairly against the
4 other members of the public company.

5 **216 Court order**

6 Member approval is not needed to give a financial benefit under an
7 order of a court.

8 **Division 3—Procedure for obtaining member approval**

9 **217 Resolution may specify matters by class or kind**

10 A resolution under this Division may specify anything either in
11 particular or by reference to class or kind.

12 **218 Company must lodge material that will be put to members with**
13 **ASIC**

- 14 (1) At least 14 days before the notice convening the relevant meeting
15 is given, the public company must lodge:
16 (a) a proposed notice of meeting setting out the text of the
17 proposed resolution; and
18 (b) a proposed explanatory statement satisfying section 219; and
19 (c) any other document that is proposed to accompany the notice
20 convening the meeting and that relates to the proposed
21 resolution; and
22 (d) any other document that any of the following proposes to
23 give to members of the public company before or at the
24 meeting:
25 (i) the company;
26 (ii) a related party of the company to whom the proposed
27 resolution would permit a financial benefit to be given;
28 (iii) an associate of the company or of such a related party;

- 1 (ii) is known to the company or to any of its directors.
- 2 (2) An example of the kind of information referred to in paragraph
3 (1)(d) is information about what, from an economic and
4 commercial point of view, are the true potential costs and
5 detriments of, or resulting from, giving financial benefits as
6 permitted by the proposed resolution, including (without
7 limitation):
- 8 (a) opportunity costs; and
 - 9 (b) taxation consequences (such as liability to fringe benefits
10 tax); and
 - 11 (c) benefits forgone by whoever would give the benefits.

12 Note: Sections 180 and 181 require an officer of a corporation to act
13 honestly and to exercise care and diligence. These duties extend to
14 preparing an explanatory statement under this section. Section 1309
15 creates offences where false and misleading material relating to a
16 corporation's affairs is made available or furnished to members.

17 **220 ASIC may comment on proposed resolution**

- 18 (1) Within 14 days after a public company lodges documents under
19 section 218, ASIC may give to the company written comments on
20 those documents (other than comments about whether the proposed
21 resolution is in the company's best interests).
- 22 (2) ASIC may consult with the Exchange for the purposes of giving
23 comments to a company that is included in the official list of the
24 Exchange.
- 25 (3) Subsection (2) does not limit the persons with whom ASIC may
26 consult.
- 27 (4) ASIC must keep a copy of the written comments it gives to a
28 company under subsection (1), and subsections 1274(2) and (5)
29 apply to the copy as if it were a document lodged with ASIC.
- 30 (5) The fact that ASIC has given particular comments, or has declined
31 to give comments, under subsection (1) does not in any way affect

Section 221

1 the performance or exercise of any of ASIC's functions and
2 powers.

3 **221 Requirements for notice of meeting**

4 The notice convening the meeting:

- 5 (a) must be the same, in all material respects, as the proposed
6 notice lodged under section 218; and
7 (b) must be accompanied by an explanatory statement that is the
8 same, in all material respects, as the proposed explanatory
9 statement lodged under that section; and
10 (c) must be accompanied by a document that is, or documents
11 that are, the same, in all material respects, as the document or
12 documents (if any) lodged under paragraph 218(1)(c); and
13 (d) if ASIC has given to the public company, under section 220,
14 comments on the documents lodged under section 218—must
15 be accompanied by a copy of those comments; and
16 (e) must not be accompanied by any other documents.

17 **222 Other material put to members**

18 Each document (if any) that:

- 19 (a) did not accompany the notice convening the meeting; and
20 (b) was given to members of the public company before or at the
21 meeting by:
22 (i) the public company; or
23 (ii) a related party of the public company to whom the
24 proposed resolution would permit a financial benefit to
25 be given; or
26 (iii) an associate of the public company or of such a related
27 party; and
28 (c) can reasonably be expected to have been material to a
29 member in deciding how to vote on the proposed resolution;
30 must be the same, in all material respects, as a document lodged
31 under paragraph 218(1)(d).

1 **223 Proposed resolution cannot be varied**

2 The resolution must be the same as the proposed resolution set out
3 in the proposed notice lodged under section 218.

4 **224 Voting by or on behalf of related party interested in proposed**
5 **resolution**

- 6 (1) At a general meeting, a vote on a proposed resolution under this
7 Division must not be cast (in any capacity) by or on behalf of:
8 (a) a related party of the public company to whom the resolution
9 would permit a financial benefit to be given; or
10 (b) an associate of such a related party.
- 11 (2) Subsection (1) does not prevent the casting of a vote if:
12 (a) it is cast by a person as a proxy appointed by writing that
13 specifies how the proxy is to vote on the proposed resolution;
14 and
15 (b) it is not cast on behalf of a related party or associate of a kind
16 referred to in subsection (1).
- 17 (3) The regulations may prescribe cases where subsection (1) does not
18 apply.
- 19 (4) ASIC may by writing declare that:
20 (a) subsection (1) does not apply to a specified proposed
21 resolution; or
22 (b) subsection (1) does not prevent the casting of a vote, on a
23 specified proposed resolution, by a specified entity, or on
24 behalf of a specified entity;
25 but may only do so if satisfied that the declaration will not cause
26 unfair prejudice to the interests of any member of the public
27 company.
- 28 (5) A declaration in force under subsection (4) has effect accordingly.

Section 225

- 1 (6) If a vote is cast in contravention of subsection (1), the related party
2 or associate, as the case may be, contravenes this subsection,
3 whether or not the proposed resolution is passed.
- 4 (7) For the purposes of this section, a vote is cast on behalf of an entity
5 if, and only if, it is cast:
6 (a) as proxy for the entity; or
7 (b) otherwise on behalf of the entity; or
8 (c) in respect of a share in respect of which the entity has:
9 (i) power to vote; or
10 (ii) power to exercise, or control the exercise of, a right to
11 vote.
- 12 (8) Subject to subsection 225(1), a contravention of this section does
13 not affect the validity of a resolution.
- 14 (9) This section has effect despite:
15 (a) anything else in this Law or in any other law of this
16 jurisdiction (including the general law); or
17 (b) anything in a body corporate's constitution.

225 Voting on the resolution

- 18
- 19 (1) If any votes on the resolution are cast in contravention of
20 subsection 224(1), it must be the case that the resolution would still
21 be passed even if those votes were disregarded.
- 22 (2) If a poll was duly demanded on the question that the resolution be
23 passed, subsections (3) and (4) apply in relation to voting on the
24 poll.
- 25 (3) In relation to each member of the public company who voted on
26 the resolution in person, the public company must record in
27 writing:
28 (a) the member's name; and
29 (b) how many votes the member cast for the resolution and how
30 many against.

- 1 (4) In relation to each member of the public company who voted on
2 the resolution by proxy, or by a representative authorised under
3 section 250D, the public company must record in writing:
4 (a) the member's name; and
5 (b) in relation to each person who voted as proxy, or as such a
6 representative, for the member:
7 (i) the person's name; and
8 (ii) how many votes the person cast on the resolution as
9 proxy, or as such a representative, for the member; and
10 (iii) how many of those votes the person cast for the
11 resolution and how many against.
- 12 (5) For 7 years after the day when a resolution under this Division is
13 passed, the public company must retain the records it made under
14 this section in relation to the resolution.

15 **226 Notice of resolution to be lodged**

16 The public company must lodge a notice setting out the text of the
17 resolution within 14 days after the resolution is passed.

18 **227 Declaration by court of substantial compliance**

- 19 (1) The Court may declare that the conditions prescribed by this
20 Division have been satisfied if it finds that they have been
21 substantially satisfied.
- 22 (2) A declaration may be made only on the application of an interested
23 person.

Section 228

1

2

3

Part 2E.2—Related parties and financial benefits

4

228 Related parties

5

Controlling entities

6

- (1) An entity that controls a public company is a related party of the public company.

7

8

Directors and their spouses

9

- (2) The following persons are related parties of a public company:

10

(a) directors of the public company

11

(b) directors (if any) of an entity that controls the public company

12

13

(c) if the public company is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity

14

15

16

(d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

17

18

Relatives of directors and spouses

19

- (3) The following relatives of persons referred to in subsection (2) are related parties of the public company:

20

21

(a) parents

22

(b) children.

23

Entities controlled by other related parties

24

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.

25

26

1 *Related party in previous 6 months*

- 2 (5) An entity is a related party of a public company at a particular time
3 if the entity was a related party of the public company of a kind
4 referred to in subsection (1), (2), (3) or (4) at any time within the
5 previous 6 months.

6 *Entity has reasonable grounds to believe it will become related*
7 *party in future*

- 8 (6) An entity is a related party of a public company at a particular time
9 if the entity believes or has reasonable grounds to believe that it is
10 likely to become a related party of the public company of a kind
11 referred to in subsection (1), (2), (3) or (4) at any time in the future.

12 *Acting in concert with related party*

- 13 (7) An entity is a related party of a public company if the entity acts in
14 concert with a related party of the public company on the
15 understanding that the related party will receive a financial benefit
16 if the public company gives the entity a financial benefit.

17 **229 Giving a financial benefit**

- 18 (1) In determining whether a financial benefit is given for the purposes
19 of this Chapter:
20 (a) give a broad interpretation to financial benefits being given,
21 even if criminal or civil penalties may be involved; and
22 (b) the economic and commercial substance of conduct is to
23 prevail over its legal form; and
24 (c) disregard any consideration that is or may be given for the
25 benefit, even if the consideration is adequate.
- 26 (2) ***Giving a financial benefit*** includes the following:
27 (a) giving a financial benefit indirectly, for example, through 1
28 or more interposed entities
29 (b) giving a financial benefit by making an informal agreement,
30 oral agreement or an agreement that has no binding force
-

Schedule 1 Main amendments of the Corporations Law

Chapter 2E Related party transactions

Part 2E.2 Related parties and financial benefits

Section 229

- 1 (c) giving a financial benefit that does not involve paying money
2 (for example by conferring a financial advantage).
- 3 (3) The following are examples of *giving a financial benefit* to a
4 related party:
- 5 (a) giving or providing the related party finance or property
6 (b) buying an asset from or selling an asset to the related party
7 (c) leasing an asset from or to the related party
8 (d) supplying services to or receiving services from the related
9 party
10 (e) issuing securities or granting an option to the related party
11 (f) taking up or releasing an obligation of the related party.

1

2
3

Part 2E.3—Interaction with other rules

4

230 General duties still apply

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6
7
8
9

A director is not relieved from any of their duties under this Law (including sections 180 and 184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter.

10

2 Section 246A

11

Renumber as section 231.

12

3 Part 2F.1

13
14

Repeal the Part, substitute:

15
16

Part 2F.1—Oppressive conduct of affairs

17

232 Grounds for Court order

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28

The Court may make an order under section 233 if:

- (a) the conduct of a company's affairs; or
- (b) an actual or proposed act or omission by or on behalf of a company; or
- (c) a resolution, or a proposed resolution, of members or a class of members of a company;

is either:

- (d) contrary to the interests of the members as a whole; or
- (e) oppressive to, unfairly prejudicial to, or unfairly discriminatory against, a member or members whether in that capacity or in any other capacity.

Section 233

1 For the purposes of this Part, a person to whom a share in the
2 company has been transmitted by will or by operation of law is
3 taken to be a member of the company.

4 Note: For *affairs*, see section 53.

5 **233 Orders the Court can make**

- 6 (1) The Court can make any order under this section that it considers
7 appropriate in relation to the company, including an order:
8 (a) that the company be wound up
9 (b) that the company's existing constitution be modified or
10 repealed
11 (c) regulating the conduct of the company's affairs in the future
12 (d) for the purchase of any shares by any member or person to
13 whom a share in the company has been transmitted by will or
14 by operation of law
15 (e) for the purchase of shares with an appropriate reduction of
16 the company's share capital
17 (f) for the company to institute, prosecute, defend or discontinue
18 specified proceedings
19 (g) authorising a member, or a person to whom a share in the
20 company has been transmitted by will or by operation of law,
21 to institute, prosecute, defend or discontinue specified
22 proceedings in the name and on behalf of the company
23 (h) appointing a receiver or a receiver and manager of any or all
24 of the company's property
25 (i) restraining a person from engaging in specified conduct or
26 from doing a specified act
27 (j) requiring a person to do a specified act.

28 *Order that the company be wound up*

- 29 (2) If an order that a company be wound up is made under this section,
30 the provisions of this Law relating to the winding up of companies
31 apply:
32 (a) as if the order were made under section 461; and
-

1 (b) with such changes as are necessary.

2 *Order altering constitution*

3 (3) If an order made under this section repeals or modifies a
4 company's constitution, or requires the company to adopt a
5 constitution, the company does not have the power under section
6 136 to change or repeal the constitution if that change or repeal
7 would be inconsistent with the provisions of the order, unless:

8 (a) the order states that the company does have the power to
9 make such a change or repeal; or

10 (b) the company first obtains the leave of the Court.

11 **234 Who can apply for order**

12 An application for an order under section 233 in relation to a
13 company may be made by:

14 (a) a member of the company, even if the application relates to
15 an act or omission that is against:

16 (i) the member in a capacity other than as a member; or

17 (ii) another member in their capacity as a member; or

18 (b) a person who has been removed from the register of members
19 because of a selective reduction; or

20 (c) a person who has ceased to be a member of the company if
21 the application relates to the circumstances in which they
22 ceased to be a member; or

23 (d) a person to whom a share in the company has been
24 transmitted by will or by operation of law; or

25 (e) a person whom ASIC thinks appropriate having regard to
26 investigations it is conducting or has conducted into:

27 (i) the company's affairs; or

28 (ii) matters connected with the company's affairs.

29 Note 1: If an application is made under this section, in certain cases the court
30 may order that the company be wound up in insolvency (see section
31 459B).

32 Note 2: For *selective reduction*, see subsection 256B(2).

Schedule 1 Main amendments of the Corporations Law

Part 2F.1 Oppressive conduct of affairs

Section 235

1 **235 Requirement for person to lodge order**

2 If an order is made under section 233, the applicant must lodge a
3 copy of the order with ASIC within 14 days after it is made.

1

2

Part 2F.1A—Proceedings on behalf of a company by members and others

3

4

5

236 Bringing, or intervening in, proceedings on behalf of a company

6

- (1) A person may bring proceedings on behalf of a company, or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for those proceedings, or for a particular step in those proceedings (for example, compromising or settling them), if:

7

8

9

10

11

- (a) the person is:

12

- (i) a member, former member, or person entitled to be registered as a member, of the company or of a related body corporate; or

13

14

15

- (ii) an officer or former officer of the company; and

16

- (b) the person is acting with leave granted under section 237.

17

- (2) Proceedings brought on behalf of a company must be brought in the company's name.

18

19

- (3) The right of a person at general law to bring, or intervene in, proceedings on behalf of a company is abolished.

20

21

Note 1: For the right to inspect company books, see subsections 247A(3) to (6).

22

23

Note 2: For the requirements to disclose proceedings and leave applications in the annual directors' report, see subsections 300(14) and (15).

24

25

Note 3: This section does not prevent a person bringing, or intervening in, proceedings on their own behalf in respect of a personal right.

26

27

237 Applying for and granting leave

28

- (1) A person referred to in paragraph 236(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.

29

30

- (2) The Court must grant the application if it is satisfied that:
-

Schedule 1 Main amendments of the Corporations Law

Part 2F.1A Proceedings on behalf of a company by members and others

Section 237

- 1 (a) it is probable that the company will not itself bring the
2 proceedings, or properly take responsibility for them, or for
3 the steps in them; and
4 (b) the applicant is acting in good faith; and
5 (c) it is in the best interests of the company that the applicant be
6 granted leave; and
7 (d) if the applicant is applying for leave to bring proceedings—
8 there is a serious question to be tried; and
9 (e) either:
10 (i) at least 14 days before making the application, the
11 applicant gave written notice to the company of the
12 intention to apply for leave and of the reasons for
13 applying; or
14 (ii) it is appropriate to grant leave even though
15 subparagraph (i) is not satisfied.
- 16 (3) A rebuttable presumption that granting leave is not in the best
17 interests of the company arises if it is established that:
18 (a) the proceedings are:
19 (i) by the company against a third party; or
20 (ii) by a third party against the company; and
21 (b) the company has decided:
22 (i) not to bring the proceedings; or
23 (ii) not to defend the proceedings; or
24 (iii) to discontinue, settle or compromise the proceedings;
25 and
26 (c) all of the directors who participated in that decision:
27 (i) acted in good faith for a proper purpose; and
28 (ii) did not have a material personal interest in the decision;
29 and
30 (iii) informed themselves about the subject matter of the
31 decision to the extent they reasonably believed to be
32 appropriate; and
33 (iv) rationally believed that the decision was in the best
34 interests of the company.
-

1 The director's belief that the decision was in the best interests of
2 the company is a rational one unless the belief is one that no
3 reasonable person in their position would hold.

4 (4) For the purposes of subsection (3):

5 (a) a person is a third party if:

6 (i) the company is a public company and the person is not a
7 related party of the company; or

8 (ii) the company is not a public company and the person
9 would not be a related party of the company if the
10 company were a public company; and

11 (b) proceedings by or against the company include any appeal
12 from a decision made in proceedings by or against the
13 company.

14 Note: *Related party* is defined in section 228.

15 **238 Substitution of another person for the person granted leave**

16 (1) Any of the following persons may apply to the Court for an order
17 that they be substituted for a person to whom leave has been
18 granted under section 237:

19 (a) a member, former member, or a person entitled to be
20 registered as a member, of the company or of a related body
21 corporate

22 (b) an officer, or former officer, of the company.

23 (2) The Court may make the order if it is satisfied that:

24 (a) the applicant is acting in good faith; and

25 (b) it is appropriate to make the order in all the circumstances.

26 (3) An order substituting one person for another has the effect that:

27 (a) the grant of leave is taken to have been made in favour of the
28 substituted person; and

29 (b) if the other person has already brought the proceedings or
30 intervened—the substituted person is taken to have brought
31 those proceedings or to have made that intervention.

1 **239 Effect of ratification by members**

- 2 (1) If the members of a company ratify or approve conduct, the
3 ratification or approval:
4 (a) does not prevent a person from bringing or intervening in
5 proceedings with leave under section 237 or from applying
6 for leave under that section; and
7 (b) does not have the effect that proceedings brought or
8 intervened in with leave under section 237 must be
9 determined in favour of the defendant, or that an application
10 for leave under that section must be refused.
- 11 (2) If members of a company ratify or approve conduct, the Court may
12 take the ratification or approval into account in deciding what order
13 or judgment (including as to damages) to make in proceedings
14 brought or intervened in with leave under section 237 or in relation
15 to an application for leave under that section. In doing this, it must
16 have regard to:
17 (a) how well-informed about the conduct the members were
18 when deciding whether to ratify or approve the conduct; and
19 (b) whether the members who ratified or approved the conduct
20 were acting for proper purposes.

21 **240 Leave to discontinue, compromise or settle proceedings brought,**
22 **or intervened in, with leave**

23 Proceedings brought or intervened in with leave must not be
24 discontinued, compromised or settled without the leave of the
25 Court.

26 **241 General powers of the Court**

- 27 (1) The Court may make any orders, and give any directions, that it
28 considers appropriate in relation to proceedings brought or
29 intervened in with leave, or an application for leave, including:
30 (a) interim orders; and

- 1 (b) directions about the conduct of the proceedings, including
2 requiring mediation; and
3 (c) an order directing the company, or an officer of the company,
4 to do, or not to do, any act; and
5 (d) an order appointing an independent person to investigate, and
6 report to the Court on:
7 (i) the financial affairs of the company; or
8 (ii) the facts or circumstances which gave rise to the cause
9 of action the subject of the proceedings; or
10 (iii) the costs incurred in the proceedings by the parties to
11 the proceedings and the person granted leave.
- 12 (2) A person appointed by the Court under paragraph (1)(d) is entitled,
13 on giving reasonable notice to the company, to inspect any books
14 of the company for any purpose connected with their appointment.
- 15 (3) If the Court appoints a person under paragraph (1)(d):
16 (a) the Court must also make an order stating who is liable for
17 the remuneration and expenses of the person appointed; and
18 (b) the Court may vary the order at any time; and
19 (c) the persons who may be made liable under the order, or the
20 order as varied, are:
21 (i) all or any of the parties to the proceedings or
22 application; and
23 (ii) the company; and
24 (d) if the order, or the order as varied, makes 2 or more persons
25 liable, the order may also determine the nature and extent of
26 the liability of each of those persons.
- 27 (4) Subsection (3) does not affect the powers of the Court as to costs.

28 **242 Power of the Court to make costs orders**

29 The Court may at any time make any orders it considers
30 appropriate about the costs of the following persons in relation to
31 proceedings brought or intervened in with leave under section 237
32 or an application for leave under that section:

Schedule 1 Main amendments of the Corporations Law

Chapter 2L Debentures

Part 2L.1 Requirement for trust deed and trustee

Section 260FA

- 1 (a) the person who applied for or was granted leave
2 (b) the company
3 (c) any other party to the proceedings or application.
4 An order under this section may require indemnification for costs.

5 **4 After Chapter 2K**

6 Insert:

7 **Chapter 2L—Debentures**

8 **Part 2L.1—Requirement for trust deed and trustee**
9

10 **260FA Requirement for trust deed and trustee**

- 11 (1) Before a body:
- 12 (a) makes an offer of debentures in this jurisdiction that needs
13 disclosure to investors under Chapter 6D, or does not need
14 disclosure to investors under Chapter 6D because of
15 subsection 708(13) (disclosure document exclusion for
16 debenture roll overs); or
- 17 (b) makes an offer of debentures in this jurisdiction or elsewhere
18 as consideration for the acquisition of securities under an
19 off-market takeover bid; or
- 20 (c) issues debentures in this jurisdiction or elsewhere under a
21 compromise or arrangement under Part 5.1 approved at a
22 meeting held as a result of an order under subsection 411(1)
23 or (1A);
- 24 regardless of where any resulting issue, sale or transfer occurs, the
25 body must enter into a trust deed that complies with section 260FB
26 and appoint a trustee that complies with section 260FC.
- 27 Note: For rules about when an offer of debentures will need disclosure to
28 investors under Chapter 6D, see sections 706, 707 and 708.

Section 260FB

1 (2) The body may revoke the trust deed after it has repaid all amounts
2 payable under the debentures in accordance with the debentures'
3 terms and the trust deed.

4 (3) The body must comply with this Chapter.

5 Note: Sections 168 and 601CZB require a register of debenture holders to be
6 set up and kept.

7 **260FB Trust deed**

8 The trust deed must provide that the following are held in trust by
9 the trustee for the benefit of the debenture holders:

- 10 (a) the right to enforce the borrower's duty to repay
11 (b) any charge or security for repayment
12 (c) the right to enforce any other duties that the borrower and
13 any guarantor have under:
14 (i) the terms of the debentures; or
15 (ii) the provisions of the trust deed or this Chapter.

16 Note: For information about the duties that the borrower and any guarantor
17 body have under this Chapter, see sections 260GB to 260HE.

18 **260FC Who can be a trustee**

19 *Who can be trustee*

- 20 (1) The trustee must be:
21 (a) the Public Trustee of any State or Territory; or
22 (b) a body corporate authorised by a law of any State or
23 Territory to take in its own name a grant of probate of the
24 will, or letters of administration of the estate, of a deceased
25 person; or
26 (c) a body corporate registered under the *Life Insurance Act*
27 *1995*; or
28 (d) an Australian ADI; or

Section 260FD

- 1 (e) a body corporate, all of whose shares are held beneficially by
2 a body corporate or bodies corporate of the kind referred to
3 in paragraph (b), (c) or (d) if that body or those bodies:
4 (i) are liable for all of the liabilities incurred, or to be
5 incurred, by the trustee as trustee; or
6 (ii) have subscribed for and beneficially hold shares in the
7 trustee and there is an uncalled liability of at least
8 \$500,000 in respect of those shares that can only be
9 called up if the trustee becomes an
10 externally-administered body corporate (see section
11 254N); or
12 (f) a body corporate approved by ASIC (see section 260MB).

13 Note: Section 260GD provides that if the borrower becomes aware that the
14 trustee cannot be a trustee, the trustee must be replaced.

15 *Circumstances in which a person cannot be trustee*

- 16 (2) A person may only be appointed or act as trustee (except to the
17 extent provided for by section 260FD) if the appointment or acting
18 will not result in a conflict of interest or duty. This subsection is
19 not intended to affect any rule of law or equity.

20 **260FD Existing trustee continues to act until new trustee takes office**

21 An existing trustee continues to act as the trustee until a new
22 trustee is appointed and has taken office as trustee, despite any rule
23 of law or equity to the contrary.

24 Note: This section applies even if the existing trustee resigns.

25 **260FE Replacement of trustee**

26 *Related party of existing trustee may be appointed as a new trustee*

- 27 (1) In addition to any other powers of appointment under the terms of
28 the debentures or provisions of the trust deed, the borrower may
29 appoint a body corporate that is related to the existing trustee as
30 trustee in place of the existing trustee if:

Section 260FE

- 1 (a) the body corporate can be a trustee under section 260FC; and
2 (b) the existing trustee consents in writing to the appointment.
3 The appointment has effect despite any terms of the debentures or
4 provisions of the trust deed.

5 *Appointment by Court*

- 6 (2) The Court may:
7 (a) appoint a person who may be a trustee under section 260FC
8 as trustee on the application of the borrower, a debenture
9 holder or ASIC if:
10 (i) a trustee has not been validly appointed; or
11 (ii) the trustee has ceased to exist; or
12 (b) terminate the existing trustee's appointment and appoint a
13 person who may be a trustee under section 260FC as trustee
14 in the existing trustee's place on the application of the
15 borrower, the existing trustee, a debenture holder or ASIC if:
16 (i) the existing trustee cannot be trustee under section
17 260FC; or
18 (ii) the existing trustee fails, or refuses, to act.

Section 260GA

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2

Part 2L.2—Duties of borrower

3

4

260GA Duties of borrower

5

A borrower that is required to enter into a trust deed under section
260FA has the duties imposed by this Part.

6

7

260GB General duties

8

The borrower must:

9

(a) carry on and conduct its business in a proper and efficient
manner; and

10

11

(b) provide a copy of the trust deed to:

12

(i) a debenture holder; or

13

(ii) the trustee;

14

if they request a copy; and

15

(c) make all of its financial and other records available for
inspection by:

16

(i) the trustee; or

17

(ii) an officer or employee of the trustee authorised by the
trustee to carry out the inspection; or

18

19

(iii) a registered company auditor appointed by the trustee to
carry out the inspection;

20

21

and give them any information, explanations or other
assistance that they require about matters relating to those
records.

22

23

24

25

Note: The borrower also has a duty to call a meeting of debenture holders in
certain circumstances (see section 260KA).

26

27

260GC Duty to notify ASIC of name of trustee

28

The borrower must lodge with ASIC a notice of the name of a
trustee within 14 days after they are appointed. The notice must be
in the prescribed form.

29

30

1 **260GD Duty to replace trustee**

2 The borrower must take all reasonable steps to replace the trustee
3 under section 260FE as soon as practicable after the borrower
4 becomes aware that the trustee:

- 5 (a) has ceased to exist; or
6 (b) has not been validly appointed; or
7 (c) cannot be a trustee under section 260FC; or
8 (d) has failed or refused to act as trustee.

9 **260GE Duty to inform trustee about charges**

10 If the borrower creates a charge, it must:

- 11 (a) give the trustee written details of the charge within 21 days
12 after it is created; and
13 (b) if the total amount to be advanced on the security of the
14 charge is indeterminate and the advances are not merged in a
15 current account with bankers, trade creditors or anyone
16 else—give the trustee written details of the amount of each
17 advance within 7 days after it is made.

18 Note: If the advances are merged in a current account the borrower must
19 give the trustee the details in the quarterly report (see subsection
20 260GF(4)).

21 **260GF Duty to give trustee and ASIC quarterly reports**

22 *Quarterly reports*

- 23 (1) Within 1 month after the end of each quarter, the borrower must:
24 (a) give the trustee a quarterly report that sets out the
25 information required by subsections (4), (5) and (6); and
26 (b) lodge a copy of the report with ASIC (see section 351).

27 *First quarter*

- 28 (2) The first quarter is the period of 3 months ending on a day fixed by
29 the borrower, by written notice to the trustee. The day must be less

Section 260GF

1 than 6 months after the first issue of a debenture under the trust
2 deed.

3 *Subsequent quarters*

4 (3) Each of the subsequent quarters are periods of 3 months. The
5 trustee may allow a particular quarter to be a period of less than 3
6 months if the trustee is satisfied that special circumstances justify
7 doing so.

8 *Content of quarterly report*

- 9 (4) The report for a quarter must include details of:
- 10 (a) any failure by the borrower and each guarantor to comply
11 with the terms of the debentures or the provisions of the trust
12 deed or this Chapter during the quarter; and
 - 13 (b) any event that has happened during the quarter that has
14 caused, or could cause, 1 or more of the following:
 - 15 (i) any amount deposited or lent under the debentures to
16 become immediately payable
 - 17 (ii) the debentures to become immediately enforceable
 - 18 (iii) any other right or remedy under the terms of the
19 debenture or provisions of the trust deed to become
20 immediately enforceable; and
 - 21 (c) any circumstances that have occurred during the quarter that
22 materially prejudice:
 - 23 (i) the borrower, any of its subsidiaries, or any of the
24 guarantors; or
 - 25 (ii) any security or charge included in or created by the
26 debentures or the trust deed; and
 - 27 (d) any substantial change in the nature of the business of the
28 borrower, any of its subsidiaries, or any of the guarantors that
29 has occurred during the quarter; and
 - 30 (e) any of the following events that happened in the quarter:
 - 31 (i) the appointment of a guarantor

Section 260GF

- 1 (ii) the cessation of liability of a guarantor body for the
2 payment of the whole or part of the money for which it
3 was liable under the guarantee
4 (iii) a change of name of a guarantor (if this happens, the
5 report must also disclose the guarantor's new name);
6 and
7 (f) the net amount outstanding on any advances at the end of the
8 quarter if the borrower has created a charge where:
9 (i) the total amount to be advanced on the security of the
10 charge is indeterminate; and
11 (ii) the advances are merged in a current account with
12 bankers, trade creditors or anyone else; and
13 (g) any other matters that may materially prejudice any security
14 or the interests of the debenture holders.

15 Note: Paragraph (f)—the borrower has a duty to inform the trustee about
16 charges as they are created (see section 260GE).

- 17 (5) If the borrower has deposited money with, or lent money to, a
18 related body corporate during the quarter, the report must also
19 include details of:
20 (a) the total of the money deposited with, or lent to, the related
21 body corporate during the quarter (see subsection (7)); and
22 (b) the total amount of money owing to the borrower at the end
23 of the quarter in respect of the deposits or loans to the related
24 body corporate.
25 Disregard any amount that the borrower deposits with an ADI in
26 the normal course of the borrower's business.
- 27 (6) If the borrower has assumed a liability of a related body corporate
28 during the quarter, the report must also include details of the extent
29 of the liability assumed during the quarter and the extent of the
30 liability as at the end of the quarter.
- 31 (7) For the purposes of subsections (5) and (6), the report:
32 (a) must distinguish between deposits, loans and assumptions of
33 liability that are secured and those that are unsecured; and

Section 260GG

- 1 (b) may exclude any deposit, loan or assumption of liability on
2 behalf of the related body corporate if it has:
3 (i) guaranteed the repayment of the debentures of the
4 borrower; and
5 (ii) secured the guarantee by a charge over all of its
6 property in favour of the trustee.

7 *Formalities*

- 8 (8) The report must:
9 (a) be made in accordance with a resolution of the directors; and
10 (b) specify the date on which the report is made.

11 **260GG Exceptions**

12 Sections 260GE and 260GF do not apply in respect of the borrower
13 while:

- 14 (a) it is under external administration; or
15 (b) a receiver, or a receiver and manager, of property of the
16 borrower has been appointed and has not ceased to act under
17 that appointment.

18 **260GH How debentures may be described**

- 19 (1) The borrower may describe or refer to the debentures in:
20 (a) any disclosure in relation to the offer of the debentures; or
21 (b) any other document constituting or relating to the offer of the
22 debentures; or
23 (c) the debentures themselves;
24 only in accordance with the following table:

25

How debentures may be described		
Item	Description	When description may be used
1	mortgage debenture	only if the circumstances set out in subsection (2) are satisfied

Section 260GH

How debentures may be described		
Item	Description	When description may be used
2	debenture	only if the circumstances set out in subsection (2) or (3) are satisfied
3	unsecured note or unsecured deposit note	in any other case

When debentures can be called mortgage debentures or debentures

1
2 (2) The borrower may describe or refer to the debentures as:

3 (a) mortgage debentures; or

4 (b) debentures;

5 if:

6 (c) the repayment of all money that has been, or may be,
7 deposited or lent under the debentures is secured by a first
8 mortgage given to the trustee over land vested in the
9 borrower or in any of the guarantors; and

10 (d) the mortgage has been registered, or is a registrable mortgage
11 that has been lodged for registration, in accordance with the
12 law relating to the registration of mortgages of land in the
13 place where the land is situated; and

14 (e) the total amount of that money and of all other liabilities (if
15 any) secured by the mortgage of that land ranking equally
16 with the liability to repay that money does not exceed 60% of
17 the value of the borrower's or guarantor's interest in that land
18 as shown in the valuation included in the disclosure
19 document for the debentures.

20 *When debentures can be called debentures*

21 (3) The borrower may describe or refer to the debentures as debentures
22 if:

23 (a) the repayment of all money that has been, or may be,
24 deposited or lent under the debentures has been secured by a
25 charge in favour of the trustee over the whole or any part of

Schedule 1 Main amendments of the Corporations Law

Chapter 2L Debentures

Part 2L.2 Duties of borrower

Section 260GI

- 1 the tangible property of the borrower or of any of the
2 guarantors; and
3 (b) the tangible property that constitutes the security for the
4 charge is sufficient and is reasonably likely to be sufficient to
5 meet the liability for the repayment of all such money and all
6 other liabilities that:
7 (i) have been or may be incurred; and
8 (ii) rank in priority to, or equally with, that liability.

9 **260GI Offences for failure to comply with statutory duties**

10 The borrower commits an offence if it intentionally or recklessly
11 contravenes section 260GB, 260GC, 260GD, 260GE, 260GF or
12 260KA.

1

2

3

Part 2L.3—Duties of guarantor

4

260HA Duties of guarantor

5

6

7

If a borrower is required to enter into a trust deed under section 260FA in relation to debentures, a guarantor in respect of the debentures has the duties imposed by this Part.

8

260HB General duties

9

The guarantor must:

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- (a) carry on and conduct its business in a proper and efficient manner; and
 - (b) make all of its financial and other records available for inspection by:
 - (i) the trustee; or
 - (ii) an officer or employee of the trustee authorised by the trustee to carry out the inspection; or
 - (iii) a registered company auditor appointed by the trustee to carry out the inspection;
- and give them any information, explanations or other assistance that they require about matters relating to those records.

22

260HC Duty to inform trustee about charges

23

If the guarantor creates a charge, it must:

24

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26

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28

29

- (a) give the trustee written details of the charge within 21 days after it is created; and
- (b) if the total amount to be advanced on the security of the charge is indeterminate, give the trustee written details of:
 - (i) the amount of each advance made within 7 days after it is made; or

Schedule 1 Main amendments of the Corporations Law

Chapter 2L Debentures

Part 2L.3 Duties of guarantor

Section 260HD

- 1 (ii) where the advances are merged in a current account
2 with bankers, trade creditors or anyone else—the net
3 amount outstanding on the advances at the end of every
4 3 months.

5 **260HD Exceptions**

- 6 Section 260HC does not apply in respect of the guarantor while:
7 (a) it is under external administration; or
8 (b) a receiver, or a receiver and manager, of property of the
9 guarantor has been appointed and has not ceased to act under
10 that appointment.

11 **260HE Offences for failure to comply with statutory duties**

- 12 The guarantor commits an offence if it intentionally or recklessly
13 contravenes paragraph 260HB(b) or section 260HC.

1

2 **Part 2L.4—Trustee**

3

4 **260JA Trustee’s duties**

5 The trustee of a trust deed entered into under section 260FA must:

- 6 (a) exercise reasonable diligence to ascertain whether the
7 property of the borrower and of each guarantor that is or
8 should be available (whether by way of security or
9 otherwise) will be sufficient to repay the amount deposited or
10 lent when it becomes due; and
- 11 (b) exercise reasonable diligence to ascertain whether the
12 borrower or any guarantor has committed any breach of:
13 (i) the terms of the debentures; or
14 (ii) the provisions of the trust deed or this Chapter; and
- 15 (c) do everything in its power to ensure that the borrower or a
16 guarantor remedies any breach known to the trustee of:
17 (i) any term of the debentures; or
18 (ii) any provision of the trust deed or this Chapter;
19 unless the trustee is satisfied that the breach will not
20 materially prejudice the debenture holders’ interests or any
21 security for the debentures; and
- 22 (d) ensure that the borrower and each guarantor complies with
23 Part 2K to the extent that it applies to the debentures; and
- 24 (e) notify ASIC as soon as practicable if:
25 (i) the borrower has not complied with section 260GE,
26 260GF or subsection 318(1) or (4); or
27 (ii) a guarantor has not complied with section 260HC; and
- 28 (f) notify ASIC and the borrower as soon as practicable if the
29 trustee discovers that it cannot be a trustee under section
30 260FC; and
- 31 (g) give the debenture holders a statement explaining the effect
32 of any proposal that the borrower submits to the debenture
33 holders before any meeting that:
-

Section 260JB

- 1 (i) the Court calls in relation to a scheme under subsection
2 411(1) or (1A); or
3 (ii) the trustee calls under subsection 260KB(1); and
4 (h) comply with any directions given to it at a debenture holders'
5 meeting referred to in section 260KA, 260KB or 260KC
6 unless:
7 (i) the trustee is of the opinion that the direction is
8 inconsistent with the terms of the debentures or the
9 provisions of the trust deed or this Law or is otherwise
10 objectionable; and
11 (ii) has either obtained, or is in the process of obtaining, an
12 order from the Court under section 260NA setting aside
13 or varying the direction; and
14 (i) apply to the Court for an order under section 260NB if the
15 borrower requests it to do so.

16 Note 1: Paragraph (g)—Section 411 relates to compromises and arrangements.

17 Note 2: Section 260JC deals with indemnification in respect of a trustee's
18 liability to the debenture holders.

19 **260JB Exemptions and indemnifications of trustee from liability**

- 20 (1) A term of a debenture, provision of a trust deed or a term of a
21 contract with holders of debentures secured by a trust deed, is void
22 in so far as the term or provision would have the effect of:
23 (a) exempting a trustee from liability for breach of section
24 260JA for failure to show the degree of care and diligence
25 required of it as trustee; or
26 (b) indemnifying the trustee against that liability;
27 unless the term or provision:
28 (c) releases the trustee from liability for something done or
29 omitted to be done before the release is given; or
30 (d) enables a meeting of debenture holders to approve the release
31 of the trustee from liability for something done or omitted to
32 be done before the release is given.
33 (2) For the purposes of paragraph (1)(d):
-

Section 260JC

- 1 (a) a release is approved if the debenture holders who vote for
2 the resolution hold 75% of the nominal value of the
3 debentures held by all the debenture holders who attend the
4 meeting and vote on the resolution; and
5 (b) a debenture holder attends the meeting and votes on the
6 resolution if:
7 (i) they attend the meeting in person and vote on the
8 resolution; or
9 (ii) if proxies are permitted—they are represented at the
10 meeting by a proxy and the proxy votes on the
11 resolution.

12 **260JC Indemnity**

13 The trustee is not liable for anything done or omitted to be done in
14 accordance with a direction given to it by the debenture holders at
15 any meeting called under section 260KA, 260KB or 260KC.

1

2

3

Part 2L.5—Meetings of debenture holders

4

260KA Borrower's duty to call meeting

5

Duty to call meeting

6

(1) The borrower must call a meeting of debenture holders if:

7

(a) debenture holders who together hold 10% or more of the nominal value of the issued debentures to which the trust relates direct the borrower to do so; and

8

9

10

(b) the direction is given to the borrower in writing at its registered office; and

11

12

(c) the purpose of the meeting is to:

13

(i) consider the financial statements that were laid before the last AGM of the borrower; or

14

15

(ii) give the trustee directions in relation to the exercise of any of its powers.

16

17

Note: The trustee usually must comply with any directions given to it by the debenture holders at the meeting (see paragraph 260JA(h)).

18

19

Duty to give notification of meeting

20

(2) If the borrower is required to call a meeting, it must give notice of the time and place of the meeting to:

21

22

(a) the trustee; and

23

(b) the borrower's auditor; and

24

(c) each of the debenture holders whose names are entered on the register of debenture holders.

25

26

Notice to joint holders of a debenture must be given to the joint holder named first in the register of debenture holders.

27

28

(3) The borrower may give the notice to a debenture holder:

29

(a) personally; or

Section 260KB

- 1 (b) by sending it by post to the address for the debenture holder
2 in the register of debenture holders; or
3 (c) by sending it to the fax number or electronic address (if any)
4 nominated by the debenture holder; or
5 (d) by any other means that the trust deed or the terms of the
6 debentures permit.

7 Note: A defect in the notice may not invalidate a meeting (see section 1322).

8 *When notice by post or fax is given*

- 9 (4) A notice of meeting sent to a debenture holder is taken to be given:
10 (a) 3 days after it is posted, if it is posted; or
11 (b) on the business day after it is sent, if it is sent by fax or other
12 electronic means;
13 unless the trust deed or the terms of the debentures provide
14 otherwise.

15 **260KB Trustee's power to call meeting**

16 *Trustee may call meeting in event of breach*

- 17 (1) If the borrower or a guarantor fails to remedy any breach of the
18 terms of the debentures or provisions of the trust deed or this
19 Chapter when required by the trustee, the trustee may:
20 (a) call a meeting of debenture holders; and
21 (b) inform the debenture holders of the failure at the meeting;
22 and
23 (c) submit proposals for protection of the debenture holders'
24 interests to the meeting; and
25 (d) ask for directions from the debenture holders in relation to
26 the matter.

27 *Trustee may appoint person to chair meeting*

- 28 (2) The trustee may appoint a person to chair a meeting of debenture
29 holders called under subsection (1). If the trustee does not exercise

Section 260KC

1 this power, the debenture holders present at the meeting may
2 appoint a person to chair the meeting.

3 **260KC Court may order meeting**

4 (1) Without limiting section 260NA or 260NB, the Court may make an
5 order under either of those sections for a meeting of all or any of
6 the debenture holders to be held to give directions to the trustee.

7 The order may direct the trustee to:

8 (a) place before the debenture holders any information
9 concerning their interests; and

10 (b) place before the debenture holders any proposals to protect
11 their interests that the Court directs or the trustee considers
12 appropriate; and

13 (c) obtain the debenture holders' directions concerning the
14 protection of their interests.

15 (2) The meeting is to be held and conducted in the manner the Court
16 directs. The trustee may appoint a person to chair the meeting. If
17 the trustee does not exercise this power, the debenture holders
18 present at the meeting may appoint a person to chair the meeting.

1

2 **Part 2L.6—Civil liability**
3

4 **260L Civil liability for contravening this Chapter**

5 (1) A person who suffers loss or damage because a person contravenes
6 a provision of this Chapter may recover the amount of the loss or
7 damage from:

- 8 (a) the person who contravened the provision; or
9 (b) a person involved in the contravention.

10 This is so even if the person did not commit, and was not involved
11 in, the contravention.

12 (2) An action under subsection (1) may begin at any time within 6
13 years after the day on which the cause of action arose.

14 (3) This Part does not affect any liability that a person has under any
15 other law.

Section 260MA

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Part 2L.7—ASIC powers

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4

260MA ASIC's power to exempt and modify

5

(1) ASIC may:

6

(a) exempt a person from a provision of this Chapter; or

7

(b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

8

9

10

(2) The exemption or declaration may do all or any of the following:

11

(a) apply to all or specified provisions of this Chapter

12

(b) apply to all persons, specified persons, or a specified class of persons

13

14

(c) relate to all debentures, specified debentures or a specified class of debentures

15

16

(d) relate to any other matter generally or as specified.

17

(3) An exemption may apply unconditionally or subject to specified

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conditions. A person to whom a condition specified in an

19

exemption applies must comply with the condition. The Court may

20

order the person to comply with the condition in a specified way.

21

Only ASIC may apply to the Court for the order.

22

(4) The exemption or declaration must be in writing and ASIC must

23

publish notice of it in the *Gazette*.

24

(5) For the purposes of this section, the *provisions of this Chapter* include:

25

26

(a) regulations made for the purposes of this Chapter; and

27

(b) definitions in this Law or the regulations as they apply to references in:

28

29

(i) this Chapter; or

30

(ii) regulations made for the purposes of this Chapter; and

31

(c) Division 12 of Part 11.2.

1 **260MB ASIC may approve body corporate to be trustee**

- 2 (1) ASIC may approve a body corporate in writing to be a trustee for
3 the purposes of paragraph 260FC(1)(f). The approval may allow
4 the body corporate to act as trustee:
5 (a) in any circumstances; or
6 (b) in relation to a particular borrower or particular class of
7 borrower; or
8 (c) in relation to a particular trust deed;
9 and may be given subject to conditions.
10 (2) ASIC must publish notice of the approval in the *Gazette*.

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Part 2L.8—Court

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4

260NA General Court power to give directions and determine questions

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6

If the trustee applies to the Court for any direction in relation to the performance of the trustee's functions or to determine any question in relation to the interests of the debenture holders, the Court may give any direction and make any declaration or determination in relation to the matter that the Court considers appropriate. The Court may also make ancillary or consequential orders.

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Note: Under this section, the Court may order a meeting of debenture holders to be held, see section 260KC.

14

260NB Specific Court powers

15

(1) If the trustee or ASIC applies to the Court, the Court may make any or all of the following orders:

16

17

(a) an order staying an action or other civil proceedings before a court by or against the borrower or a guarantor body

18

19

(b) an order restraining the borrower from paying any money to the debenture holders or any holders of any other class of debentures

20

21

22

(c) an order that any security for the debentures be enforceable immediately or at the time the Court directs (even if the debentures are irredeemable or redeemable only on the happening of a contingency)

23

24

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26

(d) an order appointing a receiver of any property constituting security for the debentures

27

28

(e) an order restricting advertising by the borrower for deposits or loans

29

30

(f) an order restricting borrowing by the borrower

Section 260NB

1 (g) any other order that the Court considers appropriate to
2 protect the interests of existing or prospective debenture
3 holders.

4 (2) In deciding whether to make an order under subsection (1), the
5 Court must have regard to:

6 (a) the ability of the borrower and each guarantor to repay the
7 amount deposited or lent as and when it becomes due; and

8 (b) any contravention of section 260MA by the borrower; and

9 (c) the interests of the borrower's members and creditors; and

10 (d) the interests of the members of each of the guarantors.

11 Note: The Court may order a meeting of debenture holders to be held (see
12 section 260KC).

Section 260P

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Part 2L.9—Location of other debenture provisions

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4

260P Signpost to other debenture provisions

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There are other rules relating to debentures in paragraph 124(1)(b) and section 563AAA.

6

7

5 Chapter 6

8

Repeal the Chapter, substitute:

9

Chapter 6—Takeovers

10

11

12

602 Purposes of Chapter

13

The purposes of this Chapter are to ensure that:

14

(a) the acquisition of control over:

15

(i) the voting shares in a listed company, or an unlisted company with more than 50 members; or

16

17

(ii) the voting shares in a listed body; or

18

(iii) the voting interests in a listed managed investment scheme;

19

takes place in an efficient, competitive and informed market; and

20

21

(b) the holders of the shares or interests, and the directors of the company or body or the responsible entity for the scheme:

22

23

(i) know the identity of any person who proposes to acquire a substantial interest in the company, body or scheme; and

24

25

26

(ii) have a reasonable time to consider the proposal; and

27

28

(iii) are given enough information to enable them to assess the merits of the proposal; and

29

Section 603

- 1 (c) as far as practicable, the holders of the relevant class of
2 voting shares or interests all have a reasonable and equal
3 opportunity to participate in any benefits accruing to the
4 holders through any proposal under which a person would
5 acquire a substantial interest in the company, body or
6 scheme; and
7 (d) an appropriate procedure is followed as a preliminary to
8 compulsory acquisition of voting shares or interests or any
9 other kind of securities under Part 6A.1.

10 Note 1: To achieve the objectives referred to in paragraphs (a), (b) and (c), the
11 prohibition in section 606 and the exceptions to it refer to interests in
12 "voting shares". To achieve the objective in paragraph (d), the
13 provisions that deal with the takeover procedure refer more broadly to
14 interests in "securities".

15 Note 2: Subsection 92(3) defines *securities* for the purposes of this Chapter.

16 **603 Chapter extends to some listed bodies that are not companies**

17 This Chapter applies to the acquisition of relevant interests in the
18 securities of listed bodies that are not companies but are
19 incorporated or formed in this jurisdiction in the same way as it
20 applies to the acquisition of relevant interests in the securities of
21 companies.

22 Note: Section 9 defines *company*, *jurisdiction* and *listed*.

23 **604 Chapter extends to listed managed investment schemes**

- 24 (1) This Chapter applies to the acquisition of relevant interests in the
25 interests in a listed managed investment scheme registered in this
26 jurisdiction as if:
27 (a) the scheme were a listed company; and
28 (b) interests in the scheme were shares in the company; and
29 (c) voting interests in the scheme were voting shares in the
30 company; and
31 (d) a meeting of the members of the scheme were a general
32 meeting of the company; and

Section 605

- 1 (e) the obligations and powers that are imposed or conferred on
2 the company were imposed or conferred on the responsible
3 entity; and
4 (f) the directors of the responsible entity were the directors of
5 the company; and
6 (g) the appointment of a responsible entity for the scheme were
7 the election of a director of the company; and
8 (h) the scheme's constitution were the company's constitution.

9 Note 1: Paragraph (g): See subsection 610(2).

10 Note 2: Section 9 defines *voting interest* in a managed investment scheme.

- 11 (2) The regulations may modify the operation of this Chapter as it
12 applies in relation to the acquisition of interests in listed managed
13 investment schemes.

14 **605 Classes of securities**

- 15 (1) Takeover bids are made for securities within a particular class.
16 Similarly, compulsory acquisition and buy-out rights operate on
17 securities within a particular class.
- 18 (2) For the purposes of this Chapter and Chapters 6A and 6C,
19 securities are not to be taken to be different classes merely
20 because:
- 21 (a) some of the securities are fully-paid and others are
22 partly-paid; or
23 (b) different amounts are paid up or remain unpaid on the
24 securities.

1
2 **Part 6.1—Prohibited acquisitions of relevant**
3 **interests in voting shares**
4

5 **606 Prohibition on certain acquisitions of relevant interests in voting**
6 **shares**

7 *Acquisition of relevant interests in voting shares through*
8 *transaction entered into by or on behalf of person acquiring*
9 *relevant interest*

- 10 (1) A person must not acquire a relevant interest in issued voting
11 shares in a company if:
12 (a) the company is:
13 (i) a listed company; or
14 (ii) an unlisted company with more than 50 members; and
15 (b) the person acquiring the interest does so through a
16 transaction in relation to securities entered into by or on
17 behalf of the person; and
18 (c) because of the transaction, that person's or someone else's
19 voting power in the company increases:
20 (i) from 20% or below to more than 20%; or
21 (ii) from a starting point that is above 20% and below 90%.

22 However, the person may acquire the relevant interest under one of
23 the exceptions set out in section 611 without contravening this
24 subsection.

25 Note 1: Section 9 defines *company* as meaning a company incorporated, or
26 taken to have been incorporated, in this jurisdiction.

27 Note 2: Section 607 deals with the effect of a contravention of this section on
28 transactions. Sections 608 and 609 deal with the meaning of *relevant*
29 *interest*. Section 610 deals with the calculation of a person's voting
30 power in a company.

31 Note 3: If the acquisition of relevant interests in an unlisted company with 50
32 or fewer members leads to the acquisition of a relevant interest in
33 another company that is an unlisted company with more than 50

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.1 Prohibited acquisitions of relevant interests in voting shares

Section 606

1 members, or a listed company, the acquisition is caught by this section
2 because of its effect on that other company.

3 *Acquisition of legal or equitable interest giving rise to relevant*
4 *interest for someone else*

5 (2) A person must not acquire a legal or equitable interest in securities
6 of a body corporate if, because of the acquisition:

7 (a) another person acquires a relevant interest in issued voting
8 shares in a company that is:

9 (i) a listed company; or

10 (ii) an unlisted company with more than 50 members; and

11 (b) someone's voting power in the company increases:

12 (i) from 20% or below to more than 20%; or

13 (ii) from a starting point that is above 20% and below 90%.

14 However, if the acquisition of the relevant interest is covered by
15 one of the exceptions set out in section 611, the person may
16 acquire the legal or equitable interest without contravening this
17 subsection.

18 *50 member threshold*

19 (3) In determining whether the company has more than 50 members
20 for the purposes of subsection (1) or (2), count joint holders of a
21 particular parcel of shares as 1 person.

22 *Offers and invitations*

23 (4) A person must not:

24 (a) make an offer, or cause an offer to be made on their behalf, if
25 the person would contravene subsection (1) or (2) if the offer
26 were accepted; or

27 (b) issue an invitation, or cause an invitation to be issued on their
28 behalf, if the person would contravene subsection (1) or (2)
29 if:

30 (i) an offer were made in response to the invitation; and

31 (ii) the offer were accepted.

1

Defences

2

(5) It is a defence to the prosecution of a person for contravening subsection (1), (2) or (4) if the person proves that they contravened the subsection:

3

4

5

(a) because of inadvertence or mistake; or

6

7

(b) because the person was not aware of a relevant fact or occurrence.

8

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In determining whether the defence is available, disregard the person's ignorance of, or a mistake on the person's part concerning, a matter of law.

11

12

Extended meaning of acquiring relevant interests—conversions and increases in voting rights

13

14

(6) A person is taken for the purposes of subsection (1) or (2) to acquire a relevant interest in voting shares in a company if:

15

16

(a) securities in which the person already had a relevant interest become voting shares in the company; or

17

18

19

(b) there is an increase in the number of votes that may be cast on a poll attached to voting shares that the person already had a relevant interest in.

20

21

The acquisition occurs when the securities become voting shares or the number of votes increases.

22

Note: Some examples of cases to which this subsection applies are:

23

24

- A person exercises a right to convert a non-voting preference share into an ordinary share that carries votes.

25

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27

- A person pays up partly-paid shares with limited votes and this leads to an increase in the number of votes attached to the shares.

28

607 Effect on transactions

29

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A transaction is not invalid merely because it involves a contravention of section 606.

Section 608

1 **608 Relevant interests in securities**

2 *Basic rule—relevant interest is holding, or controlling voting or*
3 *disposal of, securities*

- 4 (1) A person has a relevant interest in securities if they:
5 (a) are the holder of the securities; or
6 (b) have power to exercise, or control the exercise of, a right to
7 vote attached to the securities; or
8 (c) have power to dispose of, or control the exercise of a power
9 to dispose of, the securities.

10 It does not matter how remote the relevant interest is or how it
11 arises. If 2 or more people can jointly exercise one of these powers,
12 each of them is taken to have that power.

13 *Extension to control exercisable through a trust, agreement or*
14 *practice*

- 15 (2) In this section, power or control includes:
16 (a) power or control that is indirect; and
17 (b) power or control that is, or can be, exercised as a result of, by
18 means of or by the revocation or breach of:
19 (i) a trust; or
20 (ii) an agreement; or
21 (iii) a practice; or
22 (iv) any combination of them;
23 whether or not they are enforceable; and
24 (c) power or control that is, or can be made, subject to restraint
25 or restriction.

26 It does not matter whether the power or control is express or
27 implied, formal or informal, exercisable alone or jointly with
28 someone else. It does not matter that the power or control cannot
29 be related to a particular security.

Extension to relevant interests held through bodies corporate

- 1
- 2 (3) A person has the relevant interests in any securities that any of the
- 3 following has:
- 4 (a) a body corporate, or managed investment scheme, in which
- 5 the person's voting power is above 20%
- 6 (b) a body corporate, or managed investment scheme, that the
- 7 person controls.
- 8 Paragraph (a) does not apply to a relevant interest that the body
- 9 corporate or scheme itself has in the securities merely because of
- 10 the operation of that paragraph in relation to another body
- 11 corporate or managed investment scheme.
- 12 (4) For the purposes of paragraph (3)(b), a person controls a body
- 13 corporate if the person has the capacity to determine the outcome
- 14 of decisions about the body corporate's financial and operating
- 15 policies.
- 16 (5) In determining whether a person has this capacity:
- 17 (a) the practical influence the person can exert (rather than the
- 18 rights they can enforce) is the issue to be addressed; and
- 19 (b) any practice or pattern of behaviour affecting the body
- 20 corporate's financial or operating policies is to be taken into
- 21 account (even if it involves a breach of an agreement or a
- 22 breach of trust).
- 23 (6) The person does not control the body corporate merely because the
- 24 person and an entity that is not an associate jointly have the
- 25 capacity to determine the outcome of decisions about the body
- 26 corporate's financial and operating policies.
- 27 (7) A person is not to be taken to control a body corporate merely
- 28 because of a capacity they have if they are under a legal obligation
- 29 to exercise that capacity for the benefit of:
- 30 (a) if the person is an individual—someone else; or
- 31 (b) if the person is a body corporate—someone other than its
- 32 members.
-

Section 609

1 *Extension to control in anticipation of performance of agreements*
2 *etc.*

- 3 (8) If at a particular time all the following conditions are satisfied:
4 (a) a person has a relevant interest in issued securities
5 (b) the person (whether before or after acquiring the relevant
6 interest):
7 (i) has entered or enters into an agreement with another
8 person with respect to the securities; or
9 (ii) has given or gives another person an enforceable right,
10 or has been or is given an enforceable right by another
11 person, in relation to the securities (whether the right is
12 enforceable presently or in the future and whether or not
13 on the fulfilment of a condition); or
14 (iii) has granted or grants an option to, or has been or is
15 granted an option by, another person with respect to the
16 securities
17 (c) the other person would have a relevant interest in the
18 securities if the agreement were performed, the right
19 enforced or the option exercised;
20 the other person is taken to already have a relevant interest in the
21 securities.

22 Note: Subsections 609(6) and (7) deal with specific situations in which the
23 agreement will not give rise to a relevant interest.

24 *Body corporate may have relevant interest in its own securities*

- 25 (9) This section may result in a body corporate having a relevant
26 interest in its own securities.

27 **609 Situations not giving rise to relevant interests**

28 *Money lending and financial accommodation*

- 29 (1) A person does not have a relevant interest in securities merely
30 because of a mortgage, charge or other security taken for the
31 purpose of a transaction entered into by the person if:
-

- 1 (a) the mortgage, charge or security is taken or acquired in the
2 ordinary course of the person's business of providing
3 financial services and on ordinary commercial terms; and
4 (b) the person whose property is subject to the mortgage, charge
5 or security is not an associate of the person.

6 Note: Sections 11 to 17 define *associate*.

7 *Nominees and other trustees*

- 8 (2) A person who would otherwise have a relevant interest in securities
9 as a bare trustee does not have a relevant interest in the securities if
10 a beneficiary under the trust has a relevant interest in the securities
11 because of a presently enforceable and unconditional right of the
12 kind referred to in subsection 608(8).

13 Note: This subsection will often apply to a person who holds securities as a
14 nominee.

15 *Holding of securities by securities dealer*

- 16 (3) A securities dealer does not have a relevant interest in securities
17 merely because they hold securities on behalf of someone else in
18 the ordinary course of their securities business.

19 *Shares covered by buy-backs*

- 20 (4) A person does not have a relevant interest in a company's shares if
21 the relevant interest would arise merely because the company has
22 entered into an agreement to buy back the shares.

23 *Proxies*

- 24 (5) A person does not have a relevant interest in securities merely
25 because the person has been appointed to vote as a proxy or
26 representative at a meeting of members, or of a class of members,
27 of the company, body or managed investment scheme if:
28 (a) the appointment is for one meeting only; and
29 (b) neither the person nor any associate gives valuable
30 consideration for the appointment.
-

Section 609

1 *Exchange traded options and futures contracts*

- 2 (6) A person does not have a relevant interest in securities merely
3 because of:
4 (a) an exchange traded option over the securities; or
5 (b) a right to acquire the securities given by a futures contract.

6 This subsection stops applying to the relevant interest when the
7 obligation to make or take delivery of the securities arises.

8 Note: Without this subsection, subsection 608(8) would create a relevant
9 interest from the option or contract.

10 *Conditional agreements*

- 11 (7) A person does not have a relevant interest in securities merely
12 because of an agreement if the agreement:
13 (a) is conditional on:
14 (i) a resolution under item 7 in the table in section 611
15 being passed; or
16 (ii) ASIC exempting the acquisition under the agreement
17 from the provisions of this Chapter under section 655A;
18 and
19 (b) does not confer any control over, or power to substantially
20 influence, the exercise of a voting right attached to the
21 securities; and
22 (c) does not restrict disposal of the securities for more than 3
23 months from the date when the agreement is entered into.

24 The person acquires a relevant interest in the securities when the
25 condition referred to in paragraph (a) is satisfied.

26 *Pre-emptive rights*

- 27 (8) A member of a company, body or managed investment scheme
28 does not have a relevant interest in securities of the company, body
29 or scheme merely because the company's, body's or scheme's
30 constitution gives members pre-emptive rights on the transfer of
31 the securities if all members have pre-emptive rights on the same
32 terms.

1 *Director of body corporate holding securities*

- 2 (9) A person does not have a relevant interest in securities merely
3 because:
4 (a) the person is a director of a body corporate; and
5 (b) the body corporate has a relevant interest in those securities.

6 *Prescribed exclusions*

- 7 (10) A person does not have a relevant interest in securities in the
8 circumstances specified in the regulations. The regulations may
9 provide that interests in securities are not relevant interests subject
10 to specified conditions.

11 **610 Voting power in a body corporate**

12 *Person's voting power in a body corporate*

- 13 (1) A person's **voting power** in a body corporate is:

14
$$\frac{\text{Person's and associates' votes}}{\text{Total votes in body corporate}} \times 100$$

15 where:

16 ***person's and associates' votes*** is the total number of votes attached
17 to all the voting shares in the body corporate (if any) that the
18 person or an associate has a relevant interest in.

19 ***total votes in body corporate*** is the total number of votes attached
20 to all voting shares in the body corporate.

21 Note: Even if a person's relevant interest in voting shares is based on control
22 over disposal of the shares (rather than control over voting rights
23 attached to the shares), their voting power in the body corporate is
24 calculated on the basis of the number of votes attached to those shares.

Section 610

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Counting votes

- (2) For the purposes of this section, the number of votes attached to a voting share in a body corporate is the maximum number of votes that can be cast in respect of the share on a poll:
- (a) if the election of directors is determined by the casting of votes attached to voting shares—on the election of a director of the body corporate; or
 - (b) if the election of directors is not determined by the casting of votes attached to voting shares—on the adoption of a constitution for the body corporate or the amendment of the body corporate’s constitution.

Note: The Corporations and Securities Panel may decide that the setting or varying of voting rights in a way that affects control of a body corporate is unacceptable circumstances under section 657A.

- (3) If:
- (a) a transaction in relation to, or an acquisition of an interest in, securities occurs; and
 - (b) before the transaction or acquisition, a person did not have a relevant interest in particular voting shares but an associate of the person did have a relevant interest in those shares; and
 - (c) because of the transaction or acquisition, the person acquires a relevant interest in those shares;
- then, for the purposes of applying section 606 to the transaction or acquisition, the person’s voting power is taken to have increased because of the transaction or acquisition from what it would have been before the transaction or acquisition if the votes attached to those shares were disregarded to what it was after the transaction or acquisition (taking the votes attached to those shares into account).
- (4) Disregard the operation of section 613 and paragraph 614(1)(b) in working out a person’s voting power in a body corporate.

1
2 **Part 6.2—Exceptions to the prohibition**
3

4 **611 Exceptions to the prohibition**

5 The following table sets out:

- 6 (a) acquisitions of relevant interests in a company's voting
7 shares that are exempt from the prohibition in subsection
8 606(1); and
9 (b) acquisitions of relevant interests in a company's voting
10 shares resulting from acquisitions of legal or equitable
11 interests in securities of a body corporate that are exempt
12 from the prohibition in subsection 606(2).

13 Note: Some of the items in the table cover only activities in relation to the
14 company itself (items 7, 8, 12 and 13) while the other items cover
15 acquisitions in that company that may occur through activities in
16 relation to other companies.
17

Acquisitions that are exempt	[operative]
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Takeover bids

Acceptance of takeover offer

- 1 An acquisition that results from the acceptance of an offer under a takeover bid.

See also section 612.

On-market purchase during bid period

- 2 An acquisition in relation to bid class securities that results from an on-market transaction if:

(a) the acquisition is by or on behalf of the bidder under a takeover bid; and

(b) the acquisition occurs during the bid period; and

(c) the bid is for all the voting shares in the bid class; and

(d) the bid is:

(i) unconditional; or

(ii) conditional only on the happening of an event referred to in subsection 652C(1) or (2).

See also sections 612 and 613.

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.2 Exceptions to the prohibition

Section 611

Acquisitions that are exempt

[operative]

On-market purchase of convertible securities during bid period

- 3 An acquisition of bid class securities that results directly from the exercise of rights attached to convertible securities if:
- (a) the acquisition is by or on behalf of the bidder under a takeover bid; and
 - (b) the bidder acquired a relevant interest in the convertible securities through an on-market transaction during the bid period; and
 - (c) the bid is for all the voting shares in the bid class; and
 - (d) the bid is:
 - (i) unconditional; or
 - (ii) conditional only on the happening of an event referred to in subsection 652C(1) or (2).

See sections 612 and 613.

Acceptance of scrip offered as takeover consideration

- 4 An acquisition that results from the acceptance of:
- (a) an offer under a takeover bid if the voting shares are included in the consideration for offers under the bid; or
 - (b) an offer that results in an acquisition to which item 5 applies.

See also section 612.

Acquisition immediately followed by announcement of mandatory bid

- 5 An acquisition that occurs in, or results from, the following set of circumstances:
- (a) a person (the **acquirer**) acquires a relevant interest in securities of a body corporate; and
 - (b) those securities were held, immediately before the acquisition, by a particular person or by particular persons jointly (the **prior holder or holders**); and
 - (c) the acquirer does not, at the same time as the acquisition referred to in paragraph (a), acquire a relevant interest in securities of the body held by someone other than the prior holder or holders; and
 - (d) immediately before the acquisition, the voting power of the acquirer in the body corporate is below 20%; and
 - (e) the acquisition is immediately followed by a public proposal by the acquirer, or an associate, to make an unconditional takeover bid for all the securities in the class to which the securities belong; and
 - (f) before the acquisition occurred, the prior holder or holders were informed that the acquisition would lead to that takeover bid.
-

Section 611

Acquisitions that are exempt

[operative]

The proposal under paragraph (e) must set out the terms on which the acquisition was made.

Note 1: Section 631 requires a person who publicly proposes to make a takeover bid to commence the bid within 2 months after the proposal.

Note 2: Paragraph (e)—If securities are acquired under an agreement, the acquisition occurs when the agreement is entered into (not when the transfer takes place) (see subsection 608(8)).

See also section 614.

Nature of acquirer

- 6 An acquisition that results from the exercise by a person of a power, or appointment as a receiver, or receiver and manager, under a mortgage, charge or other security if:
- (a) the person's ordinary business includes providing financial services; and
 - (b) the person took or acquired the security in the ordinary course of their business of providing financial services and on ordinary commercial terms.

Approval by resolution of target

- 7 An acquisition approved previously by a resolution passed at a general meeting of the company in which the acquisition is made, if:
- (a) no votes are cast in favour of the resolution by:
 - (i) the person proposing to make the acquisition and their associates; or
 - (ii) the persons (if any) from whom the acquisition is to be made and their associates; and
 - (b) the members of the company were given all information known to the person proposing to make the acquisition or their associates, or known to the company, that was material to the decision on how to vote on the resolution, including:
 - (i) the identity of the person proposing to make the acquisition and their associates; and
 - (ii) the maximum extent of the increase in that person's voting power in the company that would result from the acquisition; and

Section 611

Acquisitions that are exempt [operative]

- (iii) the voting power that person would have as a result of the acquisition; and
 - (iv) the maximum extent of the increase in the voting power of each of that person's associates that would result from the acquisition; and
 - (v) the voting power that each of that person's associates would have as a result of the acquisition.
-

Target newly formed

- 8 An acquisition that results from an issue of securities of the company in which the acquisition is made if the company has not started to carry on any business and has not borrowed any money.

Manner of acquisition

3% creep in 6 months

- 9 An acquisition by a person if:
- (a) throughout the 6 months before the acquisition that person, or any other person, has had voting power in the company of at least 19%; and
 - (b) as a result of the acquisition, none of the persons referred to in paragraph (a) would have voting power in the company more than 3 percentage points higher than they had 6 months before the acquisition.
-

Rights issues

- 10 An acquisition that results from an issue of securities that satisfies all of the following conditions:
- (a) a company offers to issue securities in a particular class
 - (b) offers are made to every person who holds securities in that class to issue them with the percentage of the securities to be issued that is the same as the percentage of the securities in that class that they hold before the issue
 - (c) all of those persons have a reasonable opportunity to accept the offers made to them
 - (d) agreements to issue are not entered into until a specified time for acceptances of offers has closed
 - (e) the terms of all the offers are the same.

This extends to an acquisition by a person as underwriter to the issue or sub-underwriter.

See section 615.

Acquisitions that are exempt

[operative]

Dividend reinvestment etc.

- 11 An acquisition that results from an issue of:
- (a) shares in a company to existing holders of shares in the company under a dividend reinvestment plan or bonus share plan; or
 - (b) interests in a managed investment scheme to existing holders of interests in the scheme under a distribution reinvestment plan or switching facility;

if the plan or facility is available to all members.

Disregard any unavailability to foreign holders in determining whether the plan or facility is available to all members.

Initial public offering (IPO) fundraising

- 12 An acquisition that results from an issue under a disclosure document of securities in the company in which the acquisition is made if:
- (a) the issue is to a promoter; and
 - (b) the disclosure document is the first issued by the company; and
 - (c) the disclosure document disclosed the effect that the acquisition would have on the promoter's voting power in the company.

Underwriting of fundraising

- 13 An acquisition that results from an issue under a disclosure document of securities in the company in which the acquisition is made if:
- (a) the issue is to a person as underwriter to the issue or sub-underwriter; and
 - (b) the disclosure document disclosed the effect that the acquisition would have on the person's voting power in the company.

Acquisition through listed company

- 14 An acquisition that results from another acquisition of relevant interests in voting shares in a body corporate included in the official list of:
- (a) a stock exchange; or
 - (b) a foreign body conducting a stock market that is a body approved in writing by ASIC for the purposes of this item.

Wills etc.

- 15 An acquisition through a will or through operation of law.

Forfeiture of shares

- 16 An acquisition that results from an auction of forfeited shares conducted on-market.
-

Section 612

Acquisitions that are exempt

[operative]

Compromise, arrangement, liquidation or buy-back

Part 5.1 compromise or arrangement

- 17 An acquisition that results from a compromise or arrangement approved by the Court under Part 5.1.

Section 507 arrangement

- 18 An acquisition that results from an arrangement entered into by a liquidator under section 507.

Buy-back

- 19 An acquisition that results from a buy-back authorised by section 257A.

Regulations

- 20 An acquisition made in a manner or in circumstances prescribed by the regulations. The circumstances may include acquisitions of relevant interests in voting shares in a specified body or class of bodies.
-

612 Effect of non-compliance with takeover rules for exceptions 1 to

4

The exceptions in items 1 to 4 of the table in section 611 do not apply to a takeover bid if the bid is carried out in contravention of:

- (a) section 618 (full or proportionate bid); or
- (b) section 619 (offers to be the same); or
- (c) subsection 621(4) (minimum price); or
- (d) subsection 624(1) (minimum offer period); or
- (e) sections 625 to 630 (conditional offers); or
- (f) items 2, 3 and 6 in the table in subsection 633(1) (procedural steps for off-market bid); or
- (g) items 3, 4 and 6 in the table in section 635 (procedural steps for market bid).

1 **613 Bidder not to exercise voting rights if failure to send bids for**
2 **off-market acquisition—exception 2 or 3**

3 If the exception in item 2 or 3 of the table in section 611 applies to
4 an acquisition on-market during a takeover bid, the bidder is not
5 entitled to exercise the voting rights attached to the shares if:

- 6 (a) the bid is an off-market bid; and
7 (b) the bidder fails to send offers under the bid within 28 days
8 after giving the bidder's statement to the target.

9 **614 Mandatory bid—exception 5**

- 10 (1) If the exception in item 5 of the table in section 611 applies to an
11 acquisition of a relevant interest in securities:
- 12 (a) the person who publicly proposes to make a takeover bid for
13 the securities must give notice of the proposed bid to:
- 14 (i) if the securities in the proposed bid class are quoted—
15 the relevant securities exchange; or
16 (ii) otherwise—ASIC; and
- 17 (b) the votes attached to the securities may not be exercised by
18 any person from the time of the acquisition until:
- 19 (i) the offer period starts; or
20 (ii) the person and their associates have no relevant interests
21 in the securities; and
- 22 (c) if the target is a company or body—from the time of the
23 acquisition until the end of the bid period for the proposed
24 bid, the target may:
- 25 (i) issue or agree to issue securities (including options or
26 convertible securities); or
27 (ii) declare a dividend; or
28 (iii) pay a dividend that is not declared;
29 only if authorised to do so by a resolution of the company or
30 body passed in general meeting; and

Section 615

- 1 (d) if the target is a managed investment scheme—from the time
2 of the acquisition until the end of the bid period for the
3 proposed bid, the responsible entity for the target may:
4 (i) issue or agree to issue interests in the scheme (including
5 options or convertible securities); or
6 (ii) make a distribution to members out of scheme property
7 that is not required by an arrangement entered into
8 before the acquisition occurred;
9 only if authorised to do so by a resolution of the members of
10 the scheme.
- 11 (2) Despite paragraphs (1)(c) and (d), the target may issue securities if:
12 (a) the issue of the securities:
13 (i) if the securities are not quoted—was publicly
14 announced; or
15 (ii) if the securities are quoted—was notified to the relevant
16 securities exchange;
17 before the acquisition occurred; or
18 (b) item 10, 11 or 17 in the table in section 611 applies to the
19 acquisitions that result from the issue of the securities; or
20 (c) the securities are issued on the exercise of:
21 (i) an option granted; or
22 (ii) rights attached to convertible securities issued;
23 before the acquisition occurred.

24 **615 Treatment of foreign holders under equal access issue—**
25 **exception 10**

26 The exception in item 10 of the table in section 611 applies even
27 though the conditions set out in the item are not satisfied in respect
28 of foreign holders of the company's securities if, under the terms of
29 the offers:

- 30 (a) the company must appoint a nominee for foreign holders of
31 the company's securities who is approved by:

Section 615

- 1 (i) if the securities are quoted—the relevant securities
2 exchange; or
3 (ii) otherwise—ASIC; and
4 (b) the company must transfer to the nominee:
5 (i) the securities that would otherwise be issued to the
6 foreign holders who accept the offer; or
7 (ii) the right to acquire those securities; and
8 (c) the nominee must sell the securities, or those rights, and
9 distribute to each of those foreign holders their proportion of
10 the proceeds of the sale net of expenses.

Section 616

1

2

3

Part 6.3—The different types of takeover bid

4

616 Off-market bids and market bids

5

(1) There are 2 kinds of takeover bid:

6

(a) an off-market bid (for quoted or unquoted securities); or

7

(b) a market bid (only available for quoted securities).

8

Note: Although the prohibition in section 606 is against acquiring relevant interests in voting shares, a takeover bid may be made for any securities (for example, as a preliminary to compulsorily acquiring securities in that class under Part 6A.1).

9

10

11

12

(2) The following table shows where to find the provisions dealing with the main features of the offers that may be made under

13

14

off-market bids and market bids and the procedures to be followed:

15

Takeover bids		[signpost table]	
	Feature	Off-market bid	Market bid
1	people to whom offers made	617(1)-(2)	617(3)
2	securities covered	618(1)-(2)	618(3)
3	consideration offered for the securities	621(1)-(2), (4)-(6) and 651A	621(3), (4)-(6)
4	escalation agreements and collateral benefits not allowed	622 and 623	622 and 623
5	offer period	624(1)-(2) and 650C	624(1)-(2) and 649C
6	conditional offers	625(2)-(3) and 626-630	625(1)
7	procedure to be followed in making bid	632 and 633	634 and 635
8	acceptances	650E and 653A-653B	-

1

2 **Part 6.4—Formulating the takeover offer**

3 **Division 1—General**

4 **617 Securities covered by the bid**

5 *Off-market bid*

- 6 (1) An off-market bid must relate to securities:
7 (a) in a class of securities (the *bid class*); and
8 (b) that exist or will exist as at the date set by the bidder under
9 subsection 633(2).

10 Note: Subsection 92(3) defines *securities* for the purposes of this Chapter.

- 11 (2) If other securities exist or will exist at that date that:
12 (a) will convert, or may be converted, to securities in the bid
13 class; or
14 (b) confer rights to be issued securities in the bid class;
15 the bid may extend to securities that come to be in the bid class
16 during the offer period due to a conversion or exercise of the
17 rights.

18 Note: The bidder's statement must say if the bid is extended in this way (see
19 paragraph 636(1)(k)).

20 *Market bid*

- 21 (3) A market bid must relate to securities:
22 (a) in a class of quoted securities (the *bid class*); and
23 (b) that exist or will exist at any time during the offer period.

Section 618

1 **618 Offers must be for all or a proportion of securities in the bid**
2 **class**

3 *Off-market bid*

4 (1) An offer for securities under an off-market bid must be an offer to
5 buy:

- 6 (a) all the securities in the bid class; or
7 (b) a specified proportion of the securities in the bid class.

8 The proportion specified under paragraph (b) must be the same for
9 all holders of securities in the bid class.

10 *Off-market bid—non-marketable parcels*

11 (2) If accepting an offer under an off-market bid for quoted securities
12 would leave a person with a parcel of the securities that is less than
13 a marketable parcel (within the meaning of the rules of the relevant
14 securities exchange), the offer extends to that parcel.

15 *Market bid*

16 (3) An offer for securities under a market bid must be an offer to buy
17 all the securities in the bid class.

18 **619 General terms of the offer**

19 *Off-market bid*

20 (1) All the offers made under an off-market bid must be the same.

21 Note: The offers may include alternative forms of consideration (see section
22 621).

23 (2) In applying subsection (1), disregard the following:

- 24 (a) any differences in the offers attributable to the fact that the
25 number of securities that may be acquired under each offer is
26 limited by the number of securities held by the holder

Section 620

- 1 (b) any differences in the offers attributable to the fact that the
2 offers relate to securities having different accrued dividend or
3 distribution entitlements
4 (c) any differences in the offers attributable to the fact that the
5 offers relate to securities on which different amounts are paid
6 up or remain unpaid
7 (d) any differences in the offers attributable to the fact that the
8 bidder may issue or transfer only whole numbers of securities
9 as consideration for the acquisition
10 (e) any additional cash amount offered to holders instead of the
11 fraction of a security that they would otherwise be offered.

12 *Foreign holders*

- 13 (3) If the consideration for the bid includes an offer of securities, the
14 securities do not need to be offered to foreign holders of the
15 target's securities if under the terms of the bid:
16 (a) the bidder must appoint a nominee for foreign holders of the
17 target's securities who is approved by:
18 (i) if the securities are quoted—the relevant securities
19 exchange; or
20 (ii) otherwise—ASIC; and
21 (b) the bidder must transfer to the nominee:
22 (i) the securities that would otherwise be transferred to the
23 foreign holders who accept the bid for that
24 consideration; or
25 (ii) the right to acquire those securities; and
26 (c) the nominee must sell the securities, or those rights, and
27 distribute to each of those foreign holders their proportion of
28 the proceeds of the sale net of expenses.

29 **620 Off-market bid (offer formalities)**

- 30 (1) Each offer under an off-market bid must:
31 (a) be in writing; and
32 (b) have the same date; and
-

Section 621

- 1 (c) provide that, unless withdrawn, it will remain open until the
2 end of the offer period (see section 624); and
3 (d) state how, and when, the bidder is to satisfy their obligations.

- 4 (2) Each offer must provide that the bidder is to pay or provide the
5 consideration for the offer:
6 (a) if the bidder is given the necessary transfer documents with
7 the acceptance—by the end of whichever of the following
8 periods ends earlier:
9 (i) 1 month after the offer is accepted or, if the offer is
10 subject to a defeating condition, within 1 month after
11 the takeover contract becomes unconditional
12 (ii) 21 days after the end of the offer period; or
13 (b) if the bidder is given the necessary transfer documents after
14 the acceptance and before the end of the bid period—within 1
15 month after the bidder is given the necessary transfer
16 documents; or
17 (c) if the bidder is given the necessary transfer documents after
18 the acceptance and after the end of the bid period—within 21
19 days after the bidder is given the necessary transfer
20 documents.

21 Note: Subsection 630(1) requires an offer that is subject to a defeating
22 condition to specify a date for declaring whether the condition has
23 been fulfilled or not.

- 24 (3) The offer may provide that the bidder may avoid the takeover
25 contract if the bidder is not given the necessary transfer documents
26 within 1 month after the end of the offer period.

27 **Division 2—Consideration for the offer**

28 **621 Consideration offered**

29 *Off-market bid—general*

- 30 (1) A bidder making an off-market bid for securities may offer any
31 form of consideration for the securities, including:
-

Section 621

- 1 (a) a cash sum; or
2 (b) securities (including shares, debentures, interests in a
3 managed investment scheme or options); or
4 (c) a combination of a cash sum and securities.

5 Note: Sections 650B and 651A deal with variations of the consideration
6 offered under the bid.

7 *Off-market bid—mandatory bid*

- 8 (2) An off-market bid that is a mandatory bid:
9 (a) must include an offer of a cash sum for the securities; and
10 (b) may include other forms of consideration for the securities,
11 including:
12 (i) securities (including shares, debentures, interests in a
13 managed investment scheme or options); or
14 (ii) a combination of a cash sum and securities.

15 *Market bid—cash only*

- 16 (3) As the offers under a market bid for securities are made through
17 the stock market of a securities exchange, the bidder must offer to
18 acquire the securities for a cash sum only for each security.

19 Note: Section 649B deals with variations of the consideration offered under
20 the bid.

21 *All bids—minimum cash price if bidder purchased securities in the*
22 *4 months before the bid*

- 23 (4) If:
24 (a) a person makes a takeover bid; and
25 (b) the consideration, or one of the forms of consideration,
26 offered under the bid for the securities in the bid class
27 consists solely of a cash sum for each security;
28 the amount of that cash sum must equal or exceed the maximum
29 consideration that the bidder or an associate provided, or agreed to
30 provide, for a security in the bid class under any purchase or
31 agreement during the 4 months before the date of the bid.
-

Section 622

1 (5) For the purposes of subsection (4), the consideration provided for a
2 security is:

3 (a) if the consideration provided is a cash sum only—the amount
4 of that cash sum; or

5 (b) if the consideration provided does not include a cash sum—
6 the value of that consideration; or

7 (c) if the consideration provided is a cash sum and other
8 consideration—the sum of the amount of the cash sum and
9 the value of the other consideration.

10 The value of consideration that is not a cash sum is to be
11 ascertained as at the time the relevant purchase or agreement is
12 made.

13 (6) If:

14 (a) a person agrees to buy a security in a company; and

15 (b) the agreement provides that the price payable for the security
16 is a price specified in the agreement but may be varied in
17 accordance with the terms of the agreement;

18 any variation in price under the agreement is to be disregarded in
19 working out, for the purposes of subsection (4), the price agreed to
20 be paid for the security under the agreement.

21 **622 Escalation agreements**

22 *Benefits linked to bids and proposed bids not allowed*

23 (1) A person who makes or proposes to make a takeover bid for
24 securities, or their associate, contravenes this section if:

25 (a) a person acquires a relevant interest in securities in the bid
26 class within the 6 months before the bid is made or proposed;
27 and

28 (b) at any time whatever, the bidder, proposed bidder or
29 associate gives or agrees to give a benefit to, or receives or
30 agrees to receive a benefit from:

Section 622

- 1 (i) a person who had a relevant interest in any of the
2 paragraph (a) securities immediately before the
3 acquisition; or
4 (ii) an associate of a person who had a relevant interest in
5 any of those securities at that time; and
6 (c) the benefit is attributable to the acquisition or matters that
7 include the acquisition; and
8 (d) the amount or value of the benefit is, or is to be, determined
9 by reference to or to matters that include either of the
10 following:
11 (i) the amount or value of the consideration for the
12 securities under the bid or proposed bid
13 (ii) the amount or value of the consideration for which the
14 bidder or proposed bidder acquires, offers or proposes
15 to offer to acquire, securities in the bid class during the
16 offer period (whether or not under the bid) or under
17 Chapter 6A.

18 *Agreement to escalate to full-bid price for mandatory bid allowed*

- 19 (2) The bidder, proposed bidder or associate does not contravene
20 subsection (1) by giving a person a benefit under an agreement that
21 merely adjusts the price paid under an acquisition that leads to a
22 mandatory bid up to the amount payable under the bid or proposed
23 bid.

24 *Contravening agreements void*

- 25 (3) An agreement is void to the extent that it purports to provide for:
26 (a) a person to give a benefit to a person; or
27 (b) a person to receive a benefit from a person;
28 in contravention of subsection (1).

Section 623

1 **623 Collateral benefits not allowed**

- 2 (1) A bidder, or an associate, must not, during the offer period for a
3 takeover bid, give, offer to give or agree to give a benefit to a
4 person if:
5 (a) the benefit is likely to induce the person or an associate to:
6 (i) accept an offer under the bid; or
7 (ii) dispose of securities in the bid class; and
8 (b) the benefit is not offered to all holders of securities in the bid
9 class under the bid.
- 10 (2) A person who proposes to make a takeover bid for securities within
11 the next 4 months, or an associate, must not give, offer to give or
12 agree to give a benefit to another person if:
13 (a) the benefit is likely to induce the other person, or an
14 associate, to:
15 (i) accept an offer under the bid; or
16 (ii) dispose of securities in the bid class; and
17 (b) the benefit is not proposed to be offered, or is not in fact
18 offered, to all holders of securities in the bid class under the
19 bid.
- 20 (3) A person (*person A*), or an associate, must not give, offer to give
21 or agree to give a benefit to another person if:
22 (a) the benefit is likely to induce the other person, or an
23 associate, to dispose of securities in a way that results in an
24 acquisition that leads to a mandatory bid by person A or an
25 associate; and
26 (b) the benefit is not offered to all holders of securities in the bid
27 class under the mandatory bid that is made as a result of the
28 acquisition.
- 29 (4) For the purpose of this section, a person does not receive a benefit
30 that is not offered under a takeover bid merely because the person
31 sells bid class securities on-market and the takeover bid is an
32 off-market bid or a conditional bid.

- 1 (5) This section does not prohibit:
2 (a) the variation of a takeover offer as provided by sections
3 649A to 650D; or
4 (b) an acquisition of securities through an on-market transaction;
5 or
6 (c) simultaneous takeover bids for different classes of securities
7 in the target.

8 **Division 3—The offer period**

9 **624 Offer period**

10 *Offer period set in offer*

- 11 (1) The offers under a takeover bid must remain open for the period
12 stated in the offer. The period must:
13 (a) start on the date the first offer under the bid is made; and
14 (b) last for at least 1 month, and not more than 12 months.
15 However, the offer may be withdrawn during that period under
16 section 652B.

17 Note: Sections 649C (market bids) and 650C (off-market bids) deal with
18 variation of the offer period.

19 *Automatic extension of offer period if bidder reaches 50% or*
20 *consideration increased in last week*

- 21 (2) If, within the last 7 days of the offer period:
22 (a) for an off-market bid—the offers under the bid are varied to
23 improve the consideration offered; or
24 (b) in any case—the bidder's voting power in the target increases
25 to more than 50%;
26 the offer period is extended so that it ends 14 days after the event
27 referred to in paragraph (a) or (b). The bidder must give the target
28 and everyone who has not accepted an offer under the bid written
29 notice that the extension has occurred within 3 days after that
30 event.

Section 625

1 Note: The consideration for a market bid cannot be increased in the last 5
2 trading days of the offer period (see section 649B).

3 **Division 4—Conditional offers**

4 **625 Conditional offers—general**

5 *Market bids*

6 (1) Offers under a market bid must be unconditional.

7 *Off-market bids may generally be conditional*

8 (2) Offers under an off-market bid may be subject to conditions that
9 are not prohibited by sections 626 to 629.

10 Note: A bid must be unconditional to qualify as a mandatory bid to which
11 item 5 in the table in section 611 applies.

12 (3) If:

13 (a) the consideration offered is or includes securities; and

14 (b) the offer or the bidder's statement states or implies that the
15 securities are to be quoted on a stock market of a securities
16 exchange (whether in Australia or elsewhere);

17 the following rules apply:

18 (c) the offer is subject to a condition that:

19 (i) an application for admission to quotation will be made
20 within 7 days after the start of the bid period; and

21 (ii) permission for admission to quotation will be granted no
22 later than 7 days after the end of the bid period

23 (d) the offer may not be freed from this condition.

24 Note: Section 1325A provides that a Court may make a remedial order if the
25 condition is not satisfied.

1 **626 Maximum acceptance conditions in off-market bids**

2 *Maximum acceptance conditions not allowed*

- 3 (1) Offers under an off-market bid must not be subject to a maximum
4 acceptance condition. A maximum acceptance condition is one that
5 provides that the offers will terminate, or the maximum
6 consideration offered under the bid will be reduced, if one or more
7 of the following occur:
- 8 (a) the number of securities for which the bidder receives
9 acceptances reaches or exceeds a particular number; or
 - 10 (b) the bidder's voting power in the company reaches or exceeds
11 a particular percentage; or
 - 12 (c) the percentage of securities the bidder has relevant interests
13 in reaches or exceeds a particular percentage of securities in
14 that class.
- 15 (2) For the purposes of subsection (1), it does not matter:
- 16 (a) how the condition is expressed; or
 - 17 (b) how a particular number or percentage was, or is to be,
18 determined; or
 - 19 (c) whether or not a particular number or percentage is specified
20 in the condition and, if it is so specified, how it is expressed.
- 21 (3) For the purposes of subsection (1), an offer under an off-market bid
22 terminates if:
- 23 (a) the offer lapses, is withdrawn or otherwise ceases to have
24 effect; or
 - 25 (b) a binding takeover contract will not result from an
26 acceptance of the offer; or
 - 27 (c) an obligation of the bidder will not arise under the takeover
28 contract; or
 - 29 (d) the takeover contract is rescinded; or
 - 30 (e) the bidder is entitled to rescind the takeover contract; or
 - 31 (f) the bidder is relieved of an obligation arising under the
32 takeover contract.

Section 627

1 **627 Discriminatory conditions not allowed for off-market bids**

2 Offers under an off-market bid must not be subject to a condition
3 that allows the bidder to acquire, or may result in the bidder
4 acquiring, securities from some but not all of the people who
5 accept the offers. It does not matter how the condition is expressed.

6 **628 Conditions requiring payments to officers of target not allowed**
7 **in off-market bids**

8 An offer to a person under an off-market bid must not be made
9 subject to a condition that requires the person to approve or
10 consent to a payment or other benefit to an officer of the target or a
11 related body corporate:

- 12 (a) as compensation for loss of; or
13 (b) as consideration in connection with retirement from;
14 any office or employment in connection with the management of
15 the target or of a related body corporate. A purported requirement
16 of this kind is void.

17 **629 Conditions turning on bidder's or associate's opinion not**
18 **allowed in off-market bids**

- 19 (1) Offers under an off-market bid must not be subject to a defeating
20 condition if the fulfilment of the condition depends on:
21 (a) the bidder's, or an associate's, opinion, belief or other state
22 of mind; or
23 (b) the happening of an event that is within the sole control of, or
24 is a direct result of action by, any of the following:
25 (i) the bidder (acting alone or together with an associate or
26 associates)
27 (ii) an associate (acting alone or together with the bidder or
28 another associate or associates of the bidder).

29 A purported condition of this kind is void.

30 Note: Section 9 defines *defeating condition*. Sections 630, 650F and 650G
31 deal with defeating conditions.

- 1 (2) For the purposes of paragraph (1)(b):
2 (a) the target; and
3 (b) a subsidiary of the target;
4 are taken not to be associates of the bidder if they would otherwise
5 be an associate merely because they are a related body corporate.
6 Note: Paragraph 11(b) makes related bodies corporate associates of each
7 other.

8 **630 Defeating conditions**

9 *Off-market bid may include defeating conditions*

- 10 (1) Offers under an off-market bid may be made subject to a defeating
11 condition only if the offers specify a date (not more than 14 days
12 and not less than 7 days before the end of the offer period) for
13 giving a notice on the status of the condition.
14 (2) If the offer period is extended by a period:
15 (a) the date for giving the notice is taken to be postponed for the
16 same period; and
17 (b) as soon as practicable after the extension, the bidder must
18 give a notice that states:
19 (i) the new date for giving the notice of the status of the
20 condition; and
21 (ii) whether the offers have been freed from the condition
22 and whether, so far as the bidder knows, the condition
23 has been fulfilled on the date the notice under this
24 subsection is given.

25 *Bidder to give notice of status of defeating condition near end of*
26 *offer period*

- 27 (3) On the date determined under subsection (1) or (2), the bidder must
28 give a notice that states:
29 (a) whether the offers are free of the condition; and
30 (b) whether, so far as the bidder knows, the condition was
31 fulfilled on the date the notice is given; and
-

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1 (c) the bidder's voting power in the target.
2 The bidder must comply with this subsection whether or not the
3 bidder has given a notice under subsection (4) or 650F(1).

4 Note: The offers may be freed of the condition by a declaration by the
5 bidder under subsection 650F(1).

6 *Bidder to give notice if defeating condition fulfilled*

7 (4) If the condition is fulfilled (so that the offers become free of the
8 condition) during the bid period but before the date for publishing
9 the notice on the status of the condition, the bidder must publish as
10 soon as practicable a notice that states that the condition has been
11 fulfilled.

12 (5) A notice under this section is given by:
13 (a) giving the notice to the target; and
14 (b) for quoted bid class securities—giving the notice to the
15 relevant securities exchange; and
16 (c) for unquoted bid class securities—lodging the notice with
17 ASIC.

1

2 **Part 6.5—The takeover procedure**

3 **Division 1—The overall procedure**

4 **631 Proposing or announcing a bid**

5 *Bid must proceed within 2 months after proposal*

- 6 (1) If a person publicly proposes to make a takeover bid for securities
7 in a company, either alone or with other persons, the person
8 contravenes this subsection unless they make offers for the
9 securities under a takeover bid within 2 months after the proposal.
10 The terms and conditions of the bid must be the same as or not
11 substantially less favourable than those in the public proposal.

12 Note: The Court has power under section 1325B to order a person to
13 proceed with a bid.

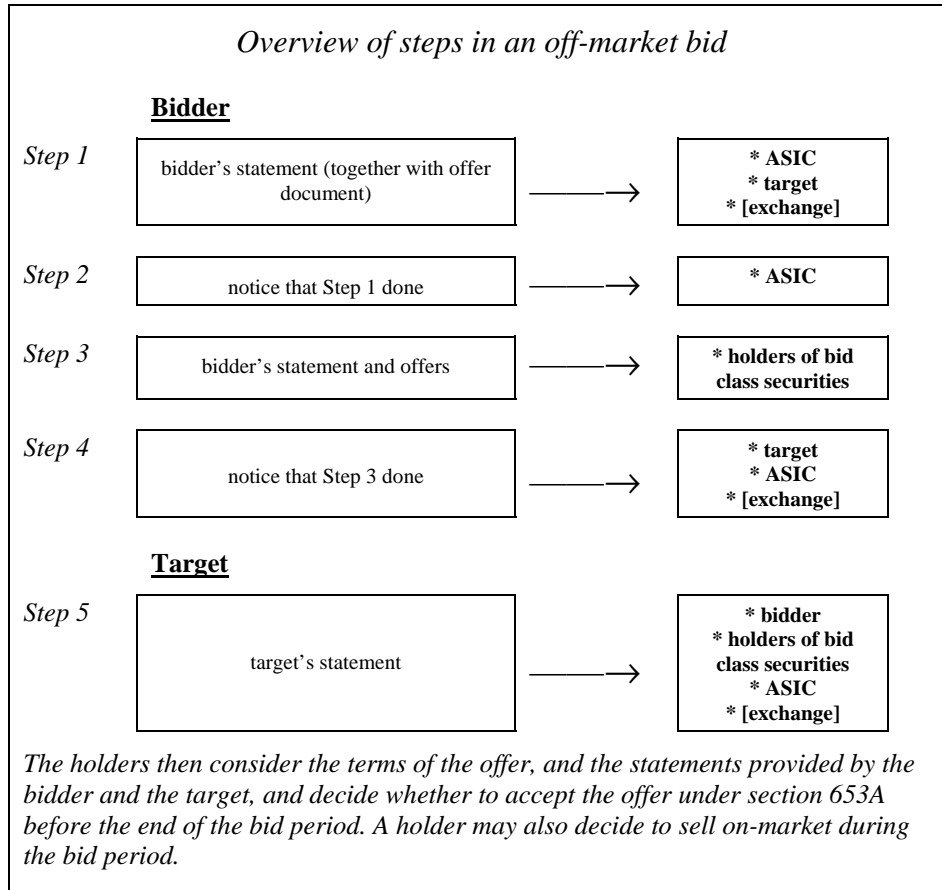
14 *Proposals if takeover bid not intended*

- 15 (2) A person must not publicly propose, either alone or with other
16 persons, to make a takeover bid if:
17 (a) the person knows the proposed bid will not be made, or is
18 reckless as to whether the proposed bid is made; or
19 (b) the person is reckless as to whether they will be able to
20 perform their obligations relating to the takeover bid if a
21 substantial proportion of the offers under the bid are
22 accepted.
- 23 (3) Section 1314 (continuing offences) and subsection 1324(2)
24 (injunctions) do not apply in relation to a failure to make a
25 takeover bid in accordance with a public proposal under subsection
26 (1).

27 Note: For liability and defences for contraventions of this section, see
28 sections 670E and 670F.

1 **632 Overview of steps in an off-market bid**

2 The following diagram gives an overview of the steps involved in
3 an off-market bid.
4



1

2 **633 Detailed steps in an off-market bid**

3

- (1) The following table provides for the steps that a bidder must take to make an effective off-market bid and the steps that a target must take when an off-market bid is made.

4

5

6

Steps in off-market bid		[operative table]
	Steps	Timing and relevant provisions
1	The bidder must prepare: <ul style="list-style-type: none"> • a bidder's statement; and • if the bidder's statement does not set out all the terms of the offer—an offer document that sets out the other terms of the offer. 	<i>See section 636 for content of statement.</i>
2	The bidder must lodge a copy of the bidder's statement and offer document with ASIC.	
3	The bidder must send a copy of the bidder's statement and offer document to the target.	To be done on the day the bidder's statement is lodged or within 21 days afterwards
4	The bidder must lodge with ASIC a notice stating that the bidder's statement and offer document have been sent to the target.	To be done on the day the bidder's statement is sent to the target
5	The bidder must send a copy of the bidder's statement and offer document to each securities exchange that has a stock market on which the target's securities are quoted.	To be done on the day the bidder's statement is sent to the target <i>See also subsection (5).</i>

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.5 The takeover procedure

Section 633

Steps in off-market bid		[operative table]
Steps	Timing and relevant provisions	
6	<p>The bidder must send the bidder's statement and offers to each person (other than the bidder) who holds:</p> <ul style="list-style-type: none">• securities in the bid class; or• if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities; <p>as at the date set by the bidder under subsection (2).</p> <p>The offers must be made on the terms set out in the bidder's statement and the offer document lodged with ASIC under item 2.</p>	<p>To be done:</p> <ul style="list-style-type: none">• within a 3 day period; and• within 14-28 days after the bidder's statement is sent to the target <p>The directors of the target may agree that the offers and accompanying documents be sent earlier.</p> <p><i>See also subsections (5) and (6). Item 2 of the table in section 611 covers offers made by the bidder on-market during the period between the lodgment of the bidder's statement and the making of the offers under the bid. Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i></p>
7	<p>The bidder must send a notice to the target that the bidder's statement and offers have been sent as required by item 6.</p> <p>The notice must state the date of the offers.</p>	<p>To be done on the day all offers have been sent as required by item 6</p> <p><i>See subsection 620(1) on date of offer.</i></p>
8	<p>The bidder must send a notice that offers have been sent as required by item 6 to each securities exchange that has a stock market on which the target's securities are quoted.</p>	<p>To be done on the day all offers have been sent as required by item 6</p>
9	<p>The bidder must lodge with ASIC a notice that offers have been sent as required by item 6.</p>	<p>To be done on the day all offers have been sent as required by item 6</p>
10	<p>The target must prepare a target's statement.</p>	<p><i>See section 638 for content of statement.</i></p>

Section 633

Steps in off-market bid		[operative table]
Steps	Timing and relevant provisions	
11	The target must send the target's statement (and any accompanying report) to the bidder.	To be done no later than 15 days after the target receives a notice that all offers have been sent as required by item 6
12	The target must send a copy of the target's statement (and any accompanying report) to each person who holds: <ul style="list-style-type: none"> • securities in the bid class; or • if the bid extends to securities that come to be in the bid class due to the conversion of or exercise of rights attached to other securities (see subsection 617(2))—the other securities; as at the date set by the bidder under subsection (2).	To be done: <ul style="list-style-type: none"> • no earlier than the day on which the target sends the target's statement to the bidder; and • no later than 15 days after the target receives a notice that all offers have been sent as required by item 6 <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>
13	The target must lodge a copy of the target's statement (and any accompanying report) with ASIC.	To be done on the day the target's statement is sent to the bidder <i>See also subsection (7).</i>
14	The target must send a copy of the target's statement (and any accompanying report) to each securities exchange that has a stock market on which the target's securities are quoted.	To be done on the day the target's statement is sent to the bidder <i>See also subsection (7).</i>

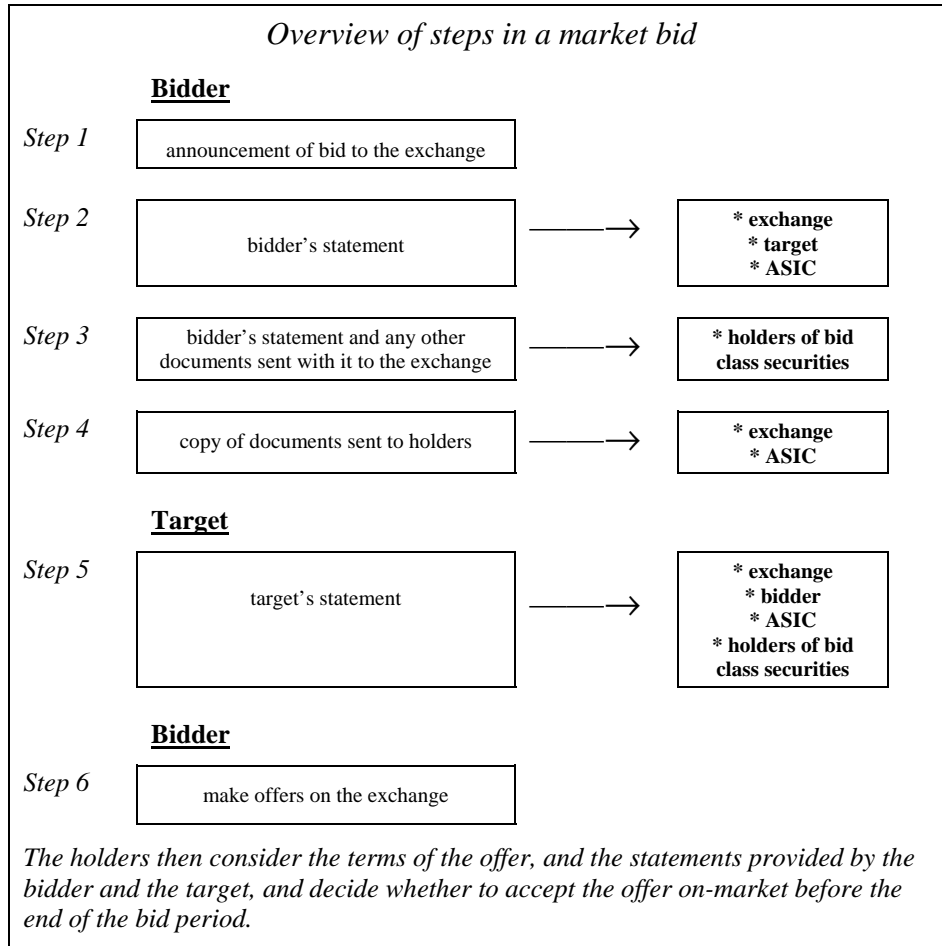
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Date for determining holders of securities

- (2) The people to whom information is to be sent under items 6 and 12 of the table in subsection (1) are the holders of the securities referred to in those items as at the date set by the bidder in:
- (a) the bidder's statement; or
 - (b) a separate written notice given to the target on or before the date set by the bidder.

1 **634 Overview of steps in a market bid**

2 The following diagram gives an overview of the steps involved in a
 3 market bid.
 4



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1 **635 Detailed steps in a market bid**

2 The following table provides for the steps that a bidder must take
3 to make an effective market bid and the steps that a target must
4 take when a market bid is made.

5

Steps in market bid		[operative]
Steps	Timing and relevant provisions	
1	The bidder must prepare a bidder's statement.	<i>See section 636 for content of statement</i>
2	The bidder must have the bid announced to the relevant securities exchange.	
3	The bidder must send a copy of the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made
4	The bidder must send to the target: <ul style="list-style-type: none">• a copy of the bidder's statement; and• a copy of any other document that was sent with the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made
5	The bidder must lodge with ASIC: <ul style="list-style-type: none">• a copy of the bidder's statement; and• a copy of any other document that was sent with the bidder's statement to the relevant securities exchange.	To be done on the day the announcement is made

Section 635

Steps in market bid		[operative]
Steps	Timing and relevant provisions	
6	The bidder must send to each holder of bid class securities (other than the bidder): <ul style="list-style-type: none"> • a copy of the bidder's statement; and • a copy of any other document that was sent with the bidder's statement to the relevant securities exchange. 	Within 14 days after the announcement is made <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>
7	The bidder must lodge with ASIC a copy of every other document sent to holders of bid class securities with the bidder's statement.	To be done no later than the day copies of the bidder's statement have been sent to all holders of bid class securities
8	The bidder must give the relevant securities exchange a copy of every other document sent to holders of bid class securities with the bidder's statement.	To be done no later than the day copies of the bidder's statement have been sent to all holders of bid class securities
9	The target must prepare a target's statement.	<i>See section 638 for content of statement</i>
10	The target must send a copy of the target's statement to the relevant securities exchange.	Within 14 days after the announcement is made
11	The target must send to the bidder: <ul style="list-style-type: none"> • a copy of the target's statement; and • a copy of any other document that was sent with the target's statement to the relevant securities exchange. 	To be done on the day the target sends a copy of the target's statement to the securities exchange

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Steps in market bid		[operative]
Steps	Timing and relevant provisions	
12	The target must lodge with ASIC: <ul style="list-style-type: none">• a copy of the target's statement; and• a copy of any other document that was sent with the target's statement to the relevant securities exchange.	To be done on the day the target sends a copy of the target's statement to the securities exchange
13	The target must send each holder of bid class securities: <ul style="list-style-type: none">• a copy of the target's statement; and• a copy of any other document that was sent with the target's statement to the relevant securities exchange.	Within 14 days after the announcement is made <i>Sections 648B and 648C provide for the manner in which documents may be sent to holders.</i>
14	The bidder must make offers for the securities under the bid through the relevant securities exchange.	To be done on the next day after the end of the 14 day period referred to in item 13. If the bidder does not make the offers at that time, the bidder contravenes this section. <i>Item 2 of the table in section 611 covers offers made by the bidder on market during the 14 day period between the announcement and the making of the offers under the bid</i>

1 **Division 2—The bidder's statement**

2 **636 Bidder's statement content**

3 (1) A bidder's statement must include the following:

4 (a) the identity of the bidder

5 (b) the date of the statement

- 1 (c) if the target is a company or body—details of the bidder’s
2 intentions regarding:
- 3 (i) the continuation of the business of the target; and
4 (ii) any major changes to be made to the business of the
5 target, including any redeployment of the fixed assets of
6 the target; and
7 (iii) the future employment of the present employees of the
8 target
- 9 (d) if the target is a managed investment scheme—details of the
10 bidder’s intentions regarding:
- 11 (i) the continued operation of the scheme; and
12 (ii) any major changes to be made to the operation of the
13 scheme, including any redeployment of scheme
14 property; and
15 (iii) any plans to remove the current responsible entity and
16 appoint a new responsible entity
- 17 (e) for an off-market bid—a statement that the bidder’s
18 statement has been lodged with ASIC but that ASIC takes no
19 responsibility for the content of the statement
- 20 (f) in relation to the cash consideration (if any) offered under the
21 bid—details of:
- 22 (i) the cash amounts (if any) held by the bidder for
23 payment of the consideration; and
24 (ii) the identity of any other person who is to provide,
25 directly or indirectly, cash consideration from that
26 person’s own funds; and
27 (iii) any arrangements under which cash will be provided by
28 a person referred to in subparagraph (ii)
- 29 (g) in relation to the cash consideration (if any) that might be
30 payable under a compulsory buy-out under Part 6A.2
31 following the bid—details of the kind referred to in
32 paragraph (f) in relation to the cash consideration
- 33 (h) if any securities are offered as consideration under the bid
34 and the bidder is:
- 35 (i) the body that has issued or will issue the securities; or
-

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- 1 (ii) a person who controls that body;
2 all material that would be required for a prospectus for an
3 offer of those securities by the bidder under section 710 to
4 713
- 5 (i) if the bid is a mandatory bid—the terms of the acquisition
6 that led to the bid being made including the number of
7 securities affected and the consideration provided
- 8 (j) if the bidder or an associate provided, or agreed to provide,
9 consideration for a security in the bid class under a purchase
10 or agreement during the 4 months before the date of the
11 bid—the following information about the consideration:
- 12 (i) to the extent to which the consideration is a cash sum—
13 the amount per security of the cash sum
- 14 (ii) to the extent to which the consideration is quoted
15 securities—the market price per security of those
16 securities
- 17 (iii) to the extent to which the consideration is neither a cash
18 sum nor a quoted security—the value per security of
19 that consideration
- 20 (k) if the bid is to extend to securities that come to be in the bid
21 class during the offer period due to the conversion of or
22 exercise of rights attached to other securities (see subsection
23 617(2))—a statement to that effect
- 24 (l) for an off-market bid—the following details in relation to
25 each class of securities in the target:
- 26 (i) the total number of securities in the class
- 27 (ii) the number of securities in the class that the bidder had
28 a relevant interest in immediately before the first offer is
29 sent (expressed as a number of securities or as a
30 percentage of the total number of securities in the class)
- 31 (m) for an off-market bid—the bidder's voting power in the
32 company
- 33 (n) any other information that:

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- 1 (i) is material to the making of the decision by a holder of
2 bid class securities whether to accept an offer under the
3 bid; and
4 (ii) is known to the bidder; and
5 (iii) does not relate to the value of securities offered as
6 consideration under the bid.

7 The information that the bidder must disclose under subparagraph
8 (1)(i) and paragraph (m) must be only as up-to-date as it is
9 reasonable to expect in the circumstances. The bidder does not
10 have to disclose information under paragraph (n) if it would be
11 unreasonable to require the bidder to do so because the information
12 had previously been disclosed to the holders of bid class securities.

13 Note: Paragraph (b)—See subsection 637(2) for the date of the statement.

14 *Expert's report on non-cash consideration provided for bid class*
15 *securities in last 4 months*

- 16 (2) If the bidder's statement includes details of the value per share of
17 consideration under subparagraph (1)(j)(iii), the statement must
18 include, or be accompanied by, a report by an expert that states
19 whether, in the expert's opinion, the value stated is fair and
20 reasonable and gives the reasons for forming that opinion.

21 Note: Subsections 648A(2) and (3) provide for the independence of the
22 expert and disclosure of any association between the bidder and the
23 expert or the target and the expert. A contravention of one of those
24 subsections results in the bidder's statement not complying with this
25 subsection.

26 *Consent of person to whom statement attributed*

- 27 (3) The bidder's statement may only include, or be accompanied by, a
28 statement by a person, or a statement said in the bidder's statement
29 to be based on a statement by a person, if:
30 (a) the person has consented to the statement being included in
31 the bidder's statement, or accompanying it, in the form and
32 context in which it is included; and
33 (b) the bidder's statement states that the person has given this
34 consent; and
-

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1 (c) the person has not withdrawn this consent before the bidder's
2 statement is lodged with ASIC.

3 (4) The bidder must keep the consent.

4 **637 Bidder's statement formalities**

5 *Approval*

6 (1) The copy of the bidder's statement that is lodged with ASIC must
7 be approved by:

8 (a) for a bidder that is a body corporate:

9 (i) if the consideration offered under the bid is a cash sum
10 only—a resolution passed by the directors of the bidder;
11 or

12 (ii) otherwise—a unanimous resolution passed by all the
13 directors of the bidder; or

14 (b) for a bidder who is an individual—the bidder.

15 (2) The bidder's statement must be dated. The date is the date on
16 which it is lodged with ASIC.

17 **Division 3—The target's response**

18 **638 Target's statement content**

19 *General requirement*

20 (1) A target's statement must include all the information that holders
21 of bid class securities and their professional advisers would
22 reasonably require to make an informed assessment whether to
23 accept the offer under the bid. The statement must contain this
24 information:

25 (a) only to the extent to which it is reasonable for investors and
26 their professional advisers to expect to find the information
27 in the statement; and

1 (b) only if the information is known to any of the directors of the
2 target.

3 (2) In deciding what information should be included under subsection
4 (1), have regard to:

5 (a) the nature of the bid class securities; and

6 (b) if the bid class securities are interests in a managed
7 investment scheme—the nature of the scheme; and

8 (c) the matters that the holders of bid class securities may
9 reasonably be expected to know; and

10 (d) the fact that certain matters may reasonably be expected to be
11 known to their professional advisers; and

12 (e) the time available to the target to prepare the statement.

13 *Director's recommendations*

14 (3) A target's statement must contain a statement by each director of
15 the target:

16 (a) recommending that offers under the bid be accepted or not
17 accepted, and giving reasons for the recommendation; or

18 (b) giving reasons why a recommendation is not made.

19 (4) The statement under subsection (3) must be made by:

20 (a) if the target is under administration—the liquidator or
21 administrator; or

22 (b) if the target has executed a deed of company arrangement
23 that has not yet terminated—the deed's administrator.

24 *Consent of person to whom statement attributed*

25 (5) The target's statement may only include, or be accompanied by, a
26 statement by a person, or a statement said in the target's statement
27 to be based on a statement by a person, if:

28 (a) the person has consented to the statement being included in
29 the target's statement, or accompanying it, in the form and
30 context in which it is included; and

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- 1 (b) the target's statement states that the person has given this
2 consent; and
3 (c) the person has not withdrawn this consent before the target's
4 statement is lodged with ASIC.
- 5 (6) The target must keep the consent.

6 **639 Target's statement formalities**

7 *Approval*

- 8 (1) The copy of the target's statement that is lodged with ASIC must
9 be approved by:
10 (a) if paragraphs (b) and (c) do not apply—a resolution passed
11 by the directors of the target; or
12 (b) for a target that is under administration—the liquidator or
13 administrator; or
14 (c) for a target that has executed a deed of company arrangement
15 that has not yet terminated—the deed's administrator.

16 *Date*

- 17 (2) The target's statement must be dated. The date is the date on which
18 it is lodged with ASIC.

19 **640 Expert's report to accompany target's statement if bidder**
20 **connected with target**

- 21 (1) If:
22 (a) the bidder's voting power in the target is 30% or more; or
23 (b) for a bidder who is, or includes, an individual—the bidder is
24 a director of the target; or
25 (c) for a bidder who is, or includes, a body corporate—a director
26 of the bidder is a director of the target; or
27 (d) the bid is a mandatory bid;
28 a target's statement given in accordance with section 638 must
29 include, or be accompanied by, a report by an expert that states
-

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1 whether, in the expert's opinion, the takeover offers are fair and
2 reasonable and gives the reasons for forming that opinion.

3 Note: Subsections 648A(2) and (3) provide for the independence of the
4 expert and disclosure of any association between the target and the
5 expert or the bidder and the expert. A contravention of one of those
6 subsections results in the target's statement not complying with this
7 subsection.

8 (2) In determining whether the bidder's voting power in the target is
9 30% or more, calculate the bidder's voting power at the time the
10 bidder's statement is sent to the target.

11 **641 Target must inform bidder about securities holdings**

12 *Requirement to inform bidder and information that must be given*

- 13 (1) If the bidder has given a bidder's statement to the target and
14 requested the target to give the bidder information in accordance
15 with this section, the target must inform the bidder of:
- 16 (a) the name and address of each person who, at a time specified
17 by the bidder under subsection (2), held securities:
 - 18 (i) in the bid class; or
 - 19 (ii) convertible into securities in the bid class; and
 - 20 (b) the type, and number of each type, of those securities held by
21 the person at the specified time.

22 However, the target does not need to give information to the bidder
23 about a person or their holding of securities unless the target knows
24 the person's name.

25 *Time at which target's information must be correct*

- 26 (2) The bidder's request must specify a day as at which the
27 information must be correct. The day must be one that occurs after
28 the day on which the bidder makes the request unless the target
29 agrees to it being the day on which the bidder makes the request.

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1 *Form in which target must provide information*

- 2 (3) The target must give the information to the bidder:
3 (a) in the form that the bidder requests; or
4 (b) if the target is unable to comply with the request—in writing.
- 5 (4) If the target must give the information to the bidder in electronic
6 form, the information must be readable but the information need
7 not be formatted for the bidder's preferred operating system.

8 *Fee for provision of information*

- 9 (5) The target may require the bidder to pay an amount, not exceeding
10 the prescribed amount, for the provision of the information to the
11 bidder.

12 *Time by which target must provide information*

- 13 (6) The target must give the information to the bidder no later than the
14 latest of the following times:
15 (a) the end of the second day after the day on which the bidder
16 requested the information; or
17 (b) the end of the next day after the day as at which the
18 information must be correct; or
19 (c) the time when the target receives the amount mentioned in
20 subsection (5).

21 **642 Expenses of directors of target companies**

- 22 (1) If the target is a company or body, the directors of the target have a
23 right to recover from the target any expenses they reasonably incur
24 in the interest of members of the target and in relation to the
25 takeover bid. The directors have this right regardless of anything
26 contained in the target's constitution (if any).
- 27 (2) If the target is a managed investment scheme, the responsible
28 entity for the scheme has a right to recover from scheme property
29 any expenses it reasonably incurs in the interest of members of the

1 scheme and in relation to the takeover bid. The responsible entity
2 has this right regardless of anything contained in the scheme's
3 constitution.

4 **Division 4—Updating and correcting the bidder's**
5 **statement and target's statement**

6 **643 Supplementary bidder's statement**

7 If a bidder becomes aware of:

- 8 (a) a misleading or deceptive statement in the bidder's statement;
9 or
10 (b) an omission from the bidder's statement of information
11 required by section 636; or
12 (c) a new circumstance that:
13 (i) has arisen since the bidder's statement was lodged; and
14 (ii) would have been required by section 636 to be included
15 in the bidder's statement if it had arisen before the
16 bidder's statement was lodged;

17 that is material from the point of view of a holder of bid class
18 securities, the bidder must prepare a supplementary bidder's
19 statement that remedies this defect.

20 Note 1: The bidder must then send and lodge the supplementary bidder's
21 statement in accordance with section 647.

22 Note 2: Section 670A makes it an offence to give a bidder's statement after
23 the bidder has become aware of a misleading or deceptive statement,
24 omission or new circumstance that is material from the point of view
25 of a holder of securities to whom the statement is given (unless the
26 deficiency is corrected).

27 Note 3: The power to issue a supplementary bidder's statement is not limited
28 to the situations dealt with in this section.

29 Note 4: This section applies to a bidder's statement that has already been
30 previously supplemented.

31 **644 Supplementary target's statement**

32 If a target becomes aware of:

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- 1 (a) a misleading or deceptive statement in the target's statement;
2 or
3 (b) an omission from the target's statement of information
4 required by section 638; or
5 (c) a new circumstance that:
6 (i) has arisen since the target's statement was lodged; and
7 (ii) would have been required by section 638 to be included
8 in the target's statement if it had arisen before the
9 target's statement was lodged;

10 that is material from the point of view of a holder of bid class
11 securities, the target must prepare a supplementary target's
12 statement that remedies this defect.

13 Note 1: The target must then send and lodge the supplementary target's
14 statement in accordance with section 647.

15 Note 2: Section 670A makes it an offence to give a target's statement after the
16 target has become aware of a misleading or deceptive statement,
17 omission or new circumstance that is material from the point of view
18 of a holder of securities to whom the statement is given (unless the
19 deficiency is corrected).

20 Note 3: The power to issue a supplementary target's statement is not limited to
21 the situations dealt with in this section.

22 Note 4: This section applies to a target's statement that has already been
23 previously supplemented.

24 **645 Form of supplementary statement**

25 *Identity as a supplementary statement*

- 26 (1) At the beginning of a supplementary bidder's or target's statement
27 there must be:
28 (a) a statement that it is a supplementary statement; and
29 (b) an identification of the statement it supplements; and
30 (c) an identification of any previous supplementary statements
31 lodged with ASIC in relation to the bid; and
32 (d) a statement that it is to be read together with the statement it
33 supplements and any previous supplementary statements.

1 *Approval of supplementary bidder's statement*

- 2 (2) The copy of the supplementary bidder's statement that is lodged
3 with ASIC must be approved by:
4 (a) for a bidder that is a body corporate:
5 (i) if the consideration offered under the bid is a cash sum
6 only—a resolution passed by the directors of the bidder;
7 or
8 (ii) otherwise—a unanimous resolution passed by all the
9 directors of the bidder; or
10 (b) for a bidder who is an individual—the bidder.

11 *Approval of supplementary target's statement*

- 12 (3) The copy of a supplementary target's statement that is lodged with
13 ASIC must be approved by:
14 (a) if paragraphs (b) and (c) do not apply—a resolution passed
15 by the directors of the target; or
16 (b) for a target that is under administration—the liquidator or
17 administrator; or
18 (c) for a target that has executed a deed of company arrangement
19 that has not yet terminated—the deed's administrator.

20 *Date*

- 21 (4) A supplementary statement must be dated. The date is the date on
22 which it is lodged with ASIC.

23 **646 Consequences of lodging a supplementary statement**

24 If a supplementary statement is lodged with ASIC, for the purposes
25 of the application of this Chapter and Chapter 6B to events that
26 occur after the lodgment, the bidder's or target's statement is taken
27 to be the original statement together with the supplementary
28 statement.

Section 647

1 **647 To whom supplementary statement must be sent**

- 2 (1) A supplementary bidder's statement must be sent to the target as
3 soon as practicable.
- 4 (2) A supplementary target's statement must be sent to the bidder as
5 soon as practicable.
- 6 (3) Either kind of supplementary statement must as soon as practicable
7 be:
- 8 (a) lodged with ASIC; and
9 (b) if the bid class securities are quoted and the target is listed—
10 sent to each relevant securities exchange that has a stock
11 market on which the target's securities are quoted; and
12 (c) if the bid is an off-market bid and the bid class securities are
13 not quoted—sent to all holders of bid class securities who
14 have not accepted an offer under the bid.

15 Note: Sections 648B and 648C provide for the manner in which documents
16 may be sent to holders.

17 **Division 5—General rules on takeover procedure**

18 **Subdivision A—Experts' reports**

19 **648A Experts' reports**

- 20 (1) If the bidder or target obtains 2 or more reports each of which
21 could be used for the purposes of subparagraph 636(1)(j)(iii) or
22 subsection 640(1), the bidder's or target's statement must be
23 accompanied by a copy of each report.
- 24 (2) The expert must be someone other than an associate of the bidder
25 or target.
- 26 (3) The report must set out details of:
- 27 (a) any relationship between the expert and:
28 (i) the bidder or an associate of the bidder; or
29 (ii) the target or an associate of the target;
-

Section 648B

- 1 including any circumstances in which the expert gives them
2 advice, or acts on their behalf, in the proper performance of
3 the functions attaching to the expert's professional capacity
4 or business relationship with them; and
5 (b) any financial or other interest of the expert that could
6 reasonably be regarded as being capable of affecting the
7 expert's ability to give an unbiased opinion in relation to the
8 matter being reported on; and
9 (c) any fee, payment or other benefit (whether direct or indirect)
10 that the expert has received or will or may receive in
11 connection with making the report.

12 Note: If the statement includes, or is accompanied by, the report, it must
13 state that the expert has consented to this being done (see subsections
14 636(3) and 638(5)).

15 **Subdivision B—Sending documents to holders of securities**

16 **648B Address at which bidder may send documents to holders of**
17 **securities**

18 The bidder may send a document to a holder of securities for the
19 purposes of this Chapter at the address shown for the holder in the
20 information given to the bidder by the target under section 641.
21 This section does not limit the address to which the document may
22 be sent to the holder.

23 Note: Section 109X makes general provision for service of documents.

24 **648C Manner of sending documents to holders of securities**

25 If a document must be sent to the holder of securities under this
26 Chapter, the document must be sent:

- 27 (a) if the document is to be sent to the holder in an external
28 territory or outside Australia—by pre-paid airmail post or by
29 courier; or
30 (b) if the document is to be sent to the holder in Australia—by
31 pre-paid ordinary post or by courier.

Section 648D

1 **Subdivision C—Effect of proportional takeover approval**
2 **provisions**

3 **648D Constitution may contain proportional takeover approval**
4 **provisions**

- 5 (1) Subject to this Subdivision, the constitution of a company may
6 contain provisions to the effect that, if offers are made under a
7 proportional takeover bid for securities of the company:
- 8 (a) the registration of a transfer giving effect to a takeover
9 contract for the bid is prohibited unless and until a resolution
10 (an **approving resolution**) to approve the bid is passed in
11 accordance with the provisions; and
 - 12 (b) a person (other than the bidder or an associate of the bidder)
13 who, as at the end of the day on which the first offer under
14 the bid was made, held bid class securities is entitled to vote
15 on an approving resolution; and
 - 16 (c) an approving resolution is to be voted on in whichever of the
17 following ways is specified in the provisions:
 - 18 (i) at a meeting, convened and conducted by the company,
19 of the persons entitled to vote on the resolution;
 - 20 (ii) by means of a postal ballot conducted by the company
21 in accordance with a procedure set out in the provisions;
 - 22 or, if the provisions so provide, in whichever of those ways is
23 determined by the directors of the company; and
 - 24 (d) an approving resolution that has been voted on is taken to
25 have been passed if the proportion that the number of votes
26 in favour of the resolution bears to the total number of votes
27 on the resolution is greater than the proportion specified in
28 the provisions, and otherwise is taken to have been rejected.

29 The proportion specified under paragraph (d) must not exceed
30 50%.

31 Note: Section 9 defines **proportional takeover bid**. See paragraph 618(1)(b).

- 32 (2) To be effective, an approving resolution in relation to a
33 proportional takeover bid must be passed before the **approving**
-

Section 648E

1 **resolution deadline.** The deadline is the 14th day before the last
2 day of the bid period.

3 Note: In certain circumstances, an approving resolution will be taken to have
4 been passed (see subsection 648E(3)).

5 (3) Except to the extent to which a company's constitution provides
6 otherwise:

7 (a) the provisions that apply to a general meeting of the company
8 apply, with such modifications as the circumstances require,
9 to a meeting convened under the company's proportional
10 takeover approval provisions; and

11 (b) those provisions apply as if the meeting convened under the
12 proportional takeover provisions were a general meeting of
13 the company.

14 The provisions referred to in paragraph (a) may be the provisions
15 of a law, provisions of the company's constitution or any other
16 provisions.

17 **648E Resolution to be put if proportional bid made**

18 (1) If:

19 (a) a company's constitution contains proportional takeover
20 approval provisions; and

21 (b) offers are made under a proportional bid for a class of the
22 company's securities;

23 then:

24 (c) the company's directors must ensure that a resolution to
25 approve the bid is voted on in accordance with those
26 provisions before the approving resolution deadline; and

27 (d) if the directors fail to ensure that a resolution of that kind is
28 voted on before the deadline, each of the directors
29 contravenes this subsection.

30 Note: Subsection 648D(2) sets the approving resolution deadline.

31 (2) If a resolution to approve the bid is voted on in accordance with the
32 proportional takeover approval provisions before the approving

Section 648F

- 1 resolution deadline, the company must, on or before the deadline,
2 give:
3 (a) the bidder; and
4 (b) if the company is listed—each relevant securities exchange;
5 a written notice stating that a resolution to approve the bid has been
6 voted on and whether the resolution was passed or rejected.
- 7 (3) If no resolution to approve the bid has been voted on in accordance
8 with the proportional takeover approval provisions as at the end of
9 the day before the approving resolution deadline, a resolution to
10 approve the bid is taken, for the purposes of those provisions, to
11 have been passed in accordance with those provisions.

12 **648F Effect of rejection of approval resolution**

- 13 If a resolution to approve the bid is voted on, in accordance with
14 the proportional takeover approval provisions, before the
15 approving resolution deadline and is rejected:
16 (a) despite section 652A:
17 (i) all offers under the bid that have not been accepted as at
18 the end of deadline; and
19 (ii) all offers under the bid that have been accepted, and
20 from whose acceptance binding contracts have not
21 resulted, as at the end of the deadline;
22 are taken to be withdrawn at the end of the deadline; and
23 (b) as soon as practicable after the deadline, the bidder must
24 return to each person who has accepted an offer referred to in
25 subparagraph (a)(ii) any documents that the person sent the
26 bidder with the acceptance of the offer; and
27 (c) the bidder:
28 (i) is entitled to rescind; and
29 (ii) must rescind as soon as practicable after the deadline;
30 each binding takeover contract for the bid; and
31 (d) a person who has accepted an offer made under the bid is
32 entitled to rescind their takeover contract.

1 **648G Including proportional takeover provisions in constitution**

- 2 (1) A company's proportional takeover approval provisions, unless
3 sooner omitted from the constitution of the company, cease to
4 apply at the end of:
- 5 (a) unless paragraph (b) or (c) applies—3 years;
 - 6 (b) if the constitution provides that the provisions apply for a
7 specified period of less than 3 years and the provisions have
8 not been renewed—the specified period; or
 - 9 (c) if the provisions have been renewed on at least one occasion
10 and the resolution, or the most recent resolution, renewing
11 the provisions states that the provisions are renewed for a
12 specified period of less than 3 years—the specified period.
- 13 (2) The period referred to in subsection (1) starts:
- 14 (a) if the provisions were contained in the company's
15 constitution when it was incorporated or formed and have not
16 been renewed—at that time; or
 - 17 (b) if the provisions were inserted in the company's constitution
18 and have not been renewed—when the provisions were
19 inserted; or
 - 20 (c) if the provisions have been renewed on at least one
21 occasion—when the provisions were renewed, or last
22 renewed.
- 23 (3) When the provisions cease to apply, the company's constitution is,
24 by force of this subsection, altered by omitting the provisions.
- 25 (4) A company may renew its proportional takeover approval
26 provisions. The provisions are to be renewed in the same manner
27 as that in which the company could alter its constitution to insert
28 proportional takeover approval provisions.
- 29 (5) With every notice that:
- 30 (a) specifies the intention to propose:
 - 31 (i) a resolution to alter a company's constitution by
32 inserting proportional takeover approval provisions; or

Section 648G

- 1 (ii) a resolution to renew a company's proportional takeover
2 approval provisions; and
- 3 (b) is sent to a person who is entitled to vote on the proposed
4 resolution;
- 5 the company must send a statement that:
- 6 (c) explains the effect of the proposed provisions, or of the
7 provisions proposed to be renewed; and
- 8 (d) explains the reasons for proposing the resolution and sets out
9 the factual matters and principles underlying those reasons;
10 and
- 11 (e) states whether, as at the day on which the statement is
12 prepared, any of the directors of the company is aware of a
13 proposal by a person to acquire, or to increase the extent of, a
14 substantial interest in the company and, if so, explains the
15 extent (if any) to which the proposal has influenced the
16 decision to propose the resolution; and
- 17 (f) for a proposed resolution to renew proportional takeover
18 approval provisions—reviews both the advantages, and
19 disadvantages, of the provisions proposed to be renewed for:
20 (i) the directors; and
21 (ii) the company's members;
- 22 during the period during which the provisions have been in
23 effect; and
- 24 (g) discusses both the potential advantages, and the potential
25 disadvantages, of the proposed provisions, or of the
26 provisions proposed to be renewed, for:
27 (i) the directors; and
28 (ii) the company's members.
- 29 (6) If, on a particular day, a company purports to:
- 30 (a) alter its constitution by inserting proportional takeover
31 approval provisions; or
32 (b) renew its proportional takeover approval provisions;
33 then:

Section 648H

- 1 (c) holders who together hold not less than 10% (by number) of
2 the issued securities in a class of securities in the company to
3 which the provisions apply may, within 21 days after that
4 day, apply to the Court to have the purported alteration or
5 renewal set aside to the extent to which it relates to that class;
6 and
- 7 (d) unless and until an application made under paragraph (c) is
8 finally determined by the making of an order setting aside the
9 purported alteration or renewal to that extent, the company is
10 taken for all purposes (other than the purposes of an
11 application of that kind):
- 12 (i) to have validly altered its constitution by inserting the
13 provisions referred to in paragraph (a) applying to that
14 class; or
- 15 (ii) to have validly renewed the provisions referred to in
16 paragraph (b) applying to that class.
- 17 (7) An application under paragraph (6)(c) may be made, on behalf of
18 the holders entitled to make the application, by a holder or holders
19 appointed by them in writing.
- 20 (8) On an application under paragraph (6)(c), the Court may make an
21 order setting aside the purported alteration or renewal to the extent
22 to which it applies to that class if it is satisfied that it is appropriate
23 in all the circumstances to do so. Otherwise the Court must dismiss
24 the application.
- 25 (9) Within 14 days after the day on which the Court makes an order of
26 the kind referred to in subsection (8) in relation to a company, the
27 company must lodge a copy of the order with ASIC.

28 **648H Effect of Subdivision**

- 29 This Subdivision applies notwithstanding anything contained in:
- 30 (a) the business rules or listing rules of a securities exchange; or
31 (b) the constitution of a company; or
32 (c) any agreement.
-

Section 649A

1

2

Part 6.6—Variation of offers

3

Division 1—Market bids

4

649A General

5

A bidder may only vary the offers under a market bid in accordance with section 649B or 649C.

6

7

Note: ASIC may allow other variations under section 655A.

8

649B Market bids—raising bid price

9

The bidder may increase the current market bid price. They may not do so, however, during the last 5 trading days of the relevant securities exchange in the offer period.

10

11

12

649C Market bids—extending the offer period

13

(1) The bidder may extend the offer period. The extension must be announced to the relevant securities exchange at least 5 trading days of the exchange before the end of the offer period. However, the announcement may be made up to the end of the offer period if during those 5 trading days:

14

15

16

17

18

(a) another person lodges with ASIC a bidder's statement for a takeover bid for securities in the bid class; or

19

20

(b) another person announces a takeover bid for securities in the bid class; or

21

22

(c) another person makes offers under a takeover bid for securities in the bid class; or

23

24

(d) the consideration for offers under another takeover bid for securities in the bid class is improved.

25

26

The offer period is extended by having the extension announced to the relevant securities exchange.

27

28

Note: Section 624 provides for an automatic extension of the bid period in certain circumstances.

29

- 1 (2) On the day on which the announcement is made, the bidder must:
2 (a) give the target and the relevant securities exchange a notice
3 setting out the terms of the announcement; and
4 (b) lodge a notice setting out the terms of the announcement with
5 ASIC.

6 **Division 2—Off-market bids (express variation by bidder)**

7 **650A General**

- 8 (1) A bidder may only vary the offers under an off-market bid in
9 accordance with section 650B, 650C or 650D.

10 Note: ASIC may allow other variations under section 655A.

- 11 (2) If the bidder varies the offer under an off-market bid in accordance
12 with section 650B, 650C or 650D, the bidder must vary all
13 unaccepted offers under the bid in the same way.

14 Note: Subsections 650B(2) and (3) deal with the effect of a variation on
15 takeover contracts that have already resulted from acceptances of
16 offers under the bid when the variation is made.

17 **650B Off-market bids—consideration offered**

18 *Improving the consideration offered*

- 19 (1) The bidder may vary the offers made under the bid to improve the
20 consideration offered:
21 (a) by increasing a cash sum offered; or
22 (b) by increasing the number of securities offered; or
23 (c) by increasing the rate of interest payable under debentures
24 offered; or
25 (d) by increasing the amount or value of debentures offered; or
26 (e) by increasing the number of unissued securities that may be
27 acquired under options offered; or
28 (f) by offering a cash sum in addition to securities; or

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Chapter 6 Takeovers

Part 6.6 Variation of offers

Section 650B

- 1 (g) if the securities being acquired include shares to which rights
2 to accrued dividends are attached—by giving the holders the
3 right to:
4 (i) retain the whole or a part of the dividend; or
5 (ii) be paid an amount equal to the amount of the dividend;
6 in addition to the consideration already offered; or
7 (h) offering an additional alternative form of consideration.

8 Note: If the bidder increases the consideration during the last 7 days of the
9 offer period, subsection 624(2) extends the offer period by a further 14
10 days.

11 *Effect of increase in consideration on offers already accepted*

- 12 (2) Improving the consideration has the effects set out in the following
13 table on the rights of a person who has already accepted an offer
14 when the variation is made.
15

Effect of improving consideration		[operative]
Improvement	Effect on person who has already accepted bid offer	
1 improvement of the only form of consideration being offered	entitled to the improved consideration	
2 2 or more forms of consideration offered and all forms improved by the same factor or percentage	entitled to the improvement in the form of consideration accepted	
3 2 or more forms of consideration offered and improvement in the consideration is identical for all forms	entitled to the improvement in the form of consideration accepted	
4 addition of a new form of consideration	entitled to make a fresh election as to the form of consideration to be taken	
5 any other improvement	entitled to make a fresh election as to the form of consideration to be taken	

16
17 The person is entitled to receive the improved consideration
18 immediately, or immediately after the exercise of the election.

Section 650C

Fresh election as to the form of consideration

- 1
- 2 (3) If a person who has already accepted an offer has the right to make
- 3 a fresh election as to the form of consideration to be taken, the
- 4 bidder must send the person as soon as practicable after the
- 5 variation a written notice informing them about their right to make
- 6 the election.

7 Note 1: Section 651B says how the election is to be exercised.

8 Note 2: Sections 648B and 648C provide for the manner in which documents

9 may be sent to holders.

10 **650C Off-market bids—extension of offer period**

- 11 (1) A bidder making an off-market bid may extend the offer period at
- 12 any time before the end of the offer period.
- 13 (2) If the bid is subject to a defeating condition, the bidder may extend
- 14 the offer period after the publication of the notice under subsection
- 15 630(3) only if one of the following happens after the publication:
- 16 (a) another person lodges with ASIC a bidder's statement for a
- 17 takeover bid for securities in the bid class
- 18 (b) another person announces a takeover bid for securities in the
- 19 bid class
- 20 (c) another person makes offers under a takeover bid for
- 21 securities in the bid class
- 22 (d) the consideration for offers under another takeover bid for
- 23 securities in the bid class is improved.

24 Note: Section 624 says how long the total offer period can be.

25 **650D Off-market bids—method of making variation**

26 *Variation to be made by notice to the target and holders*

- 27 (1) To vary offers under an off-market bid, the bidder must:
- 28 (a) prepare a notice that:
- 29 (i) sets out the terms of the proposed variation; and

Section 650D

- 1 (ii) if the bid is subject to a defeating condition and the
2 proposed variation postpones for more than 1 month the
3 time by which the bidder must satisfy their obligations
4 under the bid—informs people about the right to
5 withdraw acceptances under section 650E; and
6 (b) lodge the notice with ASIC; and
7 (c) after the notice is lodged, give the notice to:
8 (i) the target; and
9 (ii) everyone to whom offers were made under the bid.

10 Note: Sections 648B and 648C provide for the manner in which documents
11 may be sent to holders.

- 12 (2) A person must be sent a copy of the notice under subparagraph
13 (1)(c)(ii) even if they have already accepted the offer. However,
14 they need not be sent a copy if:
15 (a) the variation merely extends the offer period; and
16 (b) the bid is not subject to a defeating condition at the time the
17 notice is given to the target.
- 18 (3) A notice under subsection (1) must be signed by:
19 (a) if the bidder is, or includes, an individual—the individual;
20 and
21 (b) if the bidder is, or includes, a body corporate with 2 or more
22 directors—not fewer than 2 of the directors who are
23 authorised to sign the notice by a resolution passed at a
24 directors' meeting; and
25 (c) if the bidder is, or includes, a body corporate that has only
26 one director—that director.
- 27 (4) A copy of a notice given to a person under subparagraph (1)(c)(ii)
28 must include a statement that:
29 (a) a copy of the notice was lodged with ASIC on a specified
30 date; and
31 (b) ASIC takes no responsibility for the contents of the notice.

1 **650E Right to withdraw acceptance**

- 2 (1) A person who accepts an offer made under an off-market bid may
3 withdraw their acceptance of the offer if:
4 (a) the bid is subject to a defeating condition; and
5 (b) the bidder varies the offers under the bid in a way that
6 postpones for more than 1 month the time when the bidder
7 has to meet their obligations under the bid; and
8 (c) the person is entitled to be given a notice of the variation
9 under subsection 650D(1).
- 10 (2) To withdraw their acceptance, the person must:
11 (a) give the bidder notice within 1 month beginning on the day
12 after the day on which the copy of the notice of the variation
13 was received; and
14 (b) return any consideration received by the person for accepting
15 the offer.
- 16 (3) A notice under paragraph (2)(a):
17 (a) if it relates to securities that are entered on an SCH
18 subregister—must be in an electronic form approved by the
19 SCH business rules for the purposes of this Part; or
20 (b) if it relates to shares that are not entered on an SCH
21 subregister—must be in writing.
- 22 (4) To return consideration that includes securities, the person must:
23 (a) if the securities are entered on an SCH subregister—take the
24 action that the SCH business rules require in relation to the
25 return of the securities; or
26 (b) otherwise—give the bidder any transfer documents needed to
27 effect the return of securities.
- 28 (5) If the person withdraws their acceptance, the bidder must:
29 (a) take any action that the SCH business rules require in relation
30 to any of the securities to which the acceptance relates that
31 are entered on an SCH subregister; and

Section 650F

- 1 (b) return any documents that the person sent the bidder with the
2 acceptance of the offer;
3 within 14 days after:
4 (c) if the person does the things referred to in subsection (2) on
5 the same day—that day; or
6 (d) if the person does those things on different days—the last of
7 those days.
- 8 (6) If under this section a person returns to a company any certificates
9 (together with any necessary transfer documents) in respect of the
10 securities issued by the company, the company must cancel those
11 securities as soon as possible. Any reduction in share capital is
12 authorised by this subsection.

13 **650F Freeing off-market bids from defeating conditions**

- 14 (1) If the offers under an off-market bid are subject to a defeating
15 condition, the bidder may free the offers, and the takeover
16 contracts, from the condition only by giving the target a notice
17 declaring the offers to be free from the condition in accordance
18 with this section:
19 (a) if the condition is that the bidder may withdraw unaccepted
20 offers if an event or circumstance referred to in subsection
21 652C(1) or (2) occurs in relation to the target—not later than
22 3 business days after the end of the offer period; or
23 (b) in any other case—not less than 7 days before the end of the
24 offer period.
- 25 (2) The notice must:
26 (a) state that the offers are free from the condition; and
27 (b) specify the bidder's voting power in the company.
- 28 (3) The notice must be:
29 (a) if the securities in the bid class are quoted—given to the
30 relevant securities exchange; and
31 (b) if those securities are not quoted—lodged with ASIC.

1 **650G Contracts and acceptances void if defeating condition not**
2 **fulfilled**

3 All takeover contracts, and all acceptances that have not resulted in
4 binding takeover contracts, for an off-market bid are void if:

- 5 (a) offers made under the bid have at any time been subject to a
6 defeating condition; and
7 (b) the bidder has not declared the offers to be free from the
8 condition within the period before the date applicable under
9 subsection 630(1) or (2); and
10 (c) the condition has not been fulfilled at the end of the offer
11 period.

12 A transfer of securities based on an acceptance or contract that is
13 void under this section must not be registered.

14 **Division 3—Off-market bids (automatic variations)**

15 **651A Off-market bid—effect on bid consideration of purchases**
16 **made outside bid**

17 *Effect of purchases outside bid on offers made under the bid*

- 18 (1) The offers made under an off-market bid, and the takeover
19 contracts, are varied under this section if:
20 (a) the bidder purchases securities in the bid class outside the bid
21 during the bid period; and
22 (b) the consideration for that purchase consists solely of a cash
23 sum; and
24 (c) either:
25 (i) the consideration, or 1 of the forms of consideration,
26 payable under the bid consists of a cash sum only and
27 the consideration referred to in paragraph (b) is higher
28 than the cash sum payable for the securities under the
29 bid; or
30 (ii) a cash sum only is not the consideration, or 1 of the
31 forms of consideration, payable under the bid.
-

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Chapter 6 Takeovers

Part 6.6 Variation of offers

Section 651A

1 Note 1: Section 9 defines *takeover contract*.

2 Note 2: The effect of section 623 is that the purchase outside the bid has to be
3 made through an on-market transaction (see subsection 623(1) and
4 paragraph 623(5)(b)).

5 *Effect on unaccepted cash offers*

6 (2) If:

7 (a) one of the forms of consideration offered to a person under
8 an off-market bid is a cash sum only; and

9 (b) the person has not accepted the offer before the purchase
10 outside the bid occurs;

11 the cash sum is taken to be increased to the highest outside
12 purchase price before the offer is accepted.

13 *Effect on cash offers already accepted*

14 (3) The consideration payable for each security covered by a takeover
15 contract arising from the acceptance of an offer for a cash sum only
16 is increased to the highest outside purchase price. If the person who
17 accepted the offer has already received the whole or any part of the
18 consideration under the contract, they are entitled to receive the
19 increase in consideration immediately.

20 *Effect on non-cash offers accepted at any time during bid period*

21 (4) If:

22 (a) a person accepts an offer under a bid at any time during the
23 bid period; and

24 (b) the consideration paid or provided, or to be paid or provided,
25 under the takeover contract arising from the acceptance of
26 the offer does not consist of a cash sum only;

27 then:

28 (c) the person may elect to take as consideration for each
29 security covered by the takeover contract a cash sum equal to
30 the highest outside purchase price instead of the
31 consideration they originally accepted; and

Section 651B

- 1 (d) the bidder must give the person a written notice of their right
2 to make the election within 14 days after the end of the offer
3 period.

4 Note: Section 651B says how the election is to be exercised.

5 **651B How to make an election for new forms of consideration**

- 6 (1) An election under section 650B or 651A to take a new form of
7 consideration must be made:
8 (a) by written notice to the bidder; and
9 (b) within 1 month after the person receives the notice from the
10 bidder of their right to make the election.
- 11 (2) The person becomes entitled to the new form of consideration if
12 they:
13 (a) make the election; and
14 (b) return to the bidder:
15 (i) any consideration they have already received; and
16 (ii) any necessary transfer documents.

17 **651C Returning securities as part of election**

18 If under section 651B a person returns to a company any
19 certificates (together with any necessary transfer documents) in
20 respect of the securities issued by a company, the company must
21 cancel those securities as soon as possible.

Section 652A

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3

Part 6.7—Withdrawal and suspension of offers

4

652A Withdrawal of unaccepted offers under takeover bid

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6

Unaccepted offers under a takeover bid may only be withdrawn under section 652B or 652C.

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652B Withdrawal of takeover offers with ASIC consent

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Unaccepted offers under a takeover bid may be withdrawn with the written consent of ASIC. ASIC may consent subject to conditions.

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652C Withdrawal of market bids

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Bidder entitled to withdraw if certain events happen during the offer period

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- (1) The bidder may withdraw unaccepted offers made under a market bid if 1 of the following happens during the bid period, but only if the bidder's voting power in the target is at or below 50% when the event happens:

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- (a) the target converts all or any of its shares into a larger or smaller number of shares (see section 254H)
- (b) the target or a subsidiary resolves to reduce its share capital in any way
- (c) the target or a subsidiary:
 - (i) enters into a buy-back agreement; or
 - (ii) resolves to approve the terms of a buy-back agreement under subsection 257C(1) or 257D(1)
- (d) the target or a subsidiary issues shares, or grants an option over its shares, or agrees to make such an issue or grant such an option
- (e) the target or a subsidiary issues, or agrees to issue, convertible notes

Section 652C

- 1 (f) the target or a subsidiary disposes, or agrees to dispose, of
2 the whole, or a substantial part, of its business or property
3 (g) the target or a subsidiary charges, or agrees to charge, the
4 whole, or a substantial part, of its business or property
5 (h) the target or a subsidiary resolves to be wound up.

6 This subsection does not apply to a mandatory bid.

- 7 (2) The bidder may also withdraw unaccepted offers made under a
8 market bid if 1 of the following happens during the bid period:
9 (a) a liquidator or provisional liquidator of the target or of a
10 subsidiary is appointed
11 (b) a court makes an order for the winding up of the target or of a
12 subsidiary
13 (c) an administrator of the target, or of a subsidiary, is appointed
14 under section 436A, 436B or 436C
15 (d) the target or a subsidiary executes a deed of company
16 arrangement
17 (e) a receiver, or a receiver and manager, is appointed in relation
18 to the whole, or a substantial part, of the property of the
19 target or of a subsidiary.

20 This is so regardless of the bidder's voting power at the time.

- 21 (3) Notice of the withdrawal must be given to each relevant securities
22 exchange.

Section 653A

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Part 6.8—Acceptances

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653A Acceptance of offers made under off-market bid

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If:

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(a) an offer is made under an off-market bid for quoted securities; and

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(b) the SCH business rules require that an acceptance of the offer, so far as it relates to those securities, must be made in a particular way;

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an acceptance of the offer for those securities is effective only if it is made in that way.

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653B Acceptances by transferees and nominees of offers made under off-market bid

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(1) If an off-market bid is made for securities:

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(a) a person who:

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(i) is able during the offer period to give good title to a parcel of those securities; and

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(ii) has not already accepted an offer under the bid for those securities;

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may accept as if an offer on terms identical with the other offers made under the bid had been made to that person in relation to those securities; and

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(b) a person who holds 1 or more parcels of those securities as trustee or nominee for, or otherwise on account of, another person may accept as if a separate offer had been made in relation to:

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(i) each of those parcels; and

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(ii) any parcel they hold in their own right.

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If a person accepts an offer under a proportional takeover bid for securities, no-one else may accept an offer under the bid in respect of those securities.

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Section 653B

1 Note: Section 9 defines *proportional takeover bid*. See paragraph 618(1)(b).

2 (2) For the purposes of this section:

3 (a) a person is taken to hold securities if the person is, or is
4 entitled to be registered as, the holder of the securities; and

5 (b) a person is taken to hold the securities on trust for, as
6 nominee for or on account of another person if they:

7 (i) are entitled to be registered as the holder of particular
8 securities; and

9 (ii) hold their interest in the securities on trust for, as
10 nominee for or on account of that other person; and

11 (c) in determining under subsection (1) whether a person has
12 accepted an offer for particular securities under a takeover
13 bid, a person who accepts an offer under a proportional
14 takeover bid is taken to have accepted the offer for all the
15 securities in the bid class that they hold at the time they
16 accept the offer.

17 (3) If under paragraph (1)(b) a person may accept as if a separate offer
18 is taken to be made to a person for a parcel of securities within a
19 holding, an acceptance of that offer is ineffective unless:

20 (a) the person gives the bidder a notice stating that the securities
21 consist of a separate parcel; and

22 (b) the acceptance specifies the number of securities in the
23 parcel.

24 (4) A notice under subsection (3) must be made:

25 (a) if it relates to securities that are entered on an SCH
26 subregister—in an electronic form approved by the SCH
27 business rules for the purposes of this Part; or

28 (b) if it relates to shares that are not entered on an SCH
29 subregister—in writing.

30 (5) A person contravenes this subsection if:

31 (a) they purport to accept an offer under this section; and

32 (b) the acceptance is not made in accordance with this section.

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.8 Acceptances

Section 653B

- 1 The acceptance is, however, as valid as it would have been if it had
2 been made in accordance with this section.
- 3 (6) A person may, at the one time, accept for 2 or more parcels under
4 this section as if there had been a single offer for a separate parcel
5 consisting of those parcels.

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2 **Part 6.9—Other activities during the bid period**

3 **654A Bidder not to dispose of securities during the bid period**

- 4 (1) The bidder must not dispose of any securities in the bid class
5 during the bid period.
- 6 (2) Subsection (1) does not apply to a disposal of securities by the
7 bidder if:
- 8 (a) someone else who is not an associate of the bidder makes an
9 offer, or improves the consideration offered, under a takeover
10 bid for securities in the bid class after the bidder's statement
11 is given to the target; and
- 12 (b) the bidder disposes of the securities after the offer is made or
13 the consideration is improved.

14 **654B Disclosures about substantial shareholdings in listed**
15 **companies**

16 During the bid period, substantial shareholding notices that need to
17 be lodged under section 671B must be lodged by 9.30 am the next
18 business day (rather than the usual 2 days).

19 **654C Disclosures about substantial shareholdings in unlisted**
20 **companies**

- 21 (1) A bidder making a bid for securities of an unlisted company must
22 give the target a notice stating the bidder's voting power in the
23 target if, at a particular time during the bid period, the bidder's
24 voting power in the target rises from below a percentage in the
25 following list to that percentage or higher:
- 26 (a) 25%
- 27 (b) 50%
- 28 (c) 75%
- 29 (d) 90%.

Schedule 1 Main amendments of the Corporations Law

Chapter 6 Takeovers

Part 6.9 Other activities during the bid period

Section 654C

- 1 (2) The notice must be given as soon as practicable, and in any event
2 within 2 business days, after the rise in voting power occurred.
- 3 (3) The target must:
- 4 (a) make the notice available at its registered office for
5 inspection without charge by any holder of bid class
6 securities during the bid period; and
7 (b) lodge the notice with ASIC.

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2 **Part 6.10—Review and intervention**

3 **Division 1—ASIC’s power to exempt and modify**

4 **655A ASIC’s power to exempt and modify**

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(1) ASIC may:

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(a) exempt a person from a provision of this Chapter; or

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(b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

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Note: Under section 656A, the Panel has power to review the exercise by ASIC of its powers under this section.

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(2) In deciding whether to give the exemption or declaration, ASIC must consider the purposes of this Chapter set out in section 602.

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(3) The exemption or declaration may:

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(a) apply to all or specified provisions of this Chapter; and

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(b) apply to all persons, specified persons, or a specified class of persons; and

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(c) relate to all securities, specified securities or a specified class of securities; and

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(d) relate to any other matter generally or as specified.

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(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

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(5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

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(6) For the purposes of this section, the *provisions of this Chapter* include:

29

Section 655B

- 1 (a) regulations made for the purposes of this Chapter; and
2 (b) definitions in this Law or the regulations as they apply to
3 references in:
4 (i) this Chapter; or
5 (ii) regulations made for the purposes of this Chapter; and
6 (c) Division 12 of Part 11.2.

7 **655B Notice of decision and review rights**

- 8 (1) Subject to subsection (3), ASIC must take such steps as are
9 reasonable in the circumstances to give to each person whose
10 interests are affected by a decision under a section 655A notice, in
11 writing or otherwise:
12 (a) of the making of the decision; and
13 (b) of the person's right to have the decision reviewed by the
14 Panel under section 656A.
- 15 (2) Subsection (1) does not require ASIC to give notice to a person
16 affected by the decision or to the persons in a class of persons
17 affected by the decision, if ASIC determines that giving notice to
18 the person or persons is not warranted, having regard to:
19 (a) the cost of giving notice to the person or persons; and
20 (b) the way in which the interests of the person or persons are
21 affected by the decision.
- 22 (3) A failure to comply with this section does not affect the validity of
23 the decision.

24 **Division 2—The Corporations and Securities Panel**

25 **Subdivision A—Review of ASIC's exercise of its exemption or**
26 **modification powers**

27 **656A Review of exercise of exemption or modification powers**

- 28 (1) The Panel may review:
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Section 656A

- 1 (a) a decision of ASIC under section 655A; or
2 (b) a decision of ASIC under section 673 in relation to securities
3 of the target of a takeover bid during the bid period.
4 For these purposes, **decision** has the same meaning as in the
5 *Administrative Appeals Tribunal Act 1975*.
- 6 (2) An application to the Panel for review of the decision may be made
7 by any person whose interests are affected by the decision.
- 8 (3) For the purpose of reviewing the decision, the Panel may exercise
9 all the powers and discretions conferred on ASIC by this Chapter
10 or Chapter 6C. The Panel must make a decision:
11 (a) affirming the decision; or
12 (b) varying the decision; or
13 (c) setting aside the decision and:
14 (i) making a decision in substitution for the decision under
15 review; or
16 (ii) remitting the matter for reconsideration by ASIC in
17 accordance with any directions or recommendations of
18 the Panel.
- 19 (4) The decision must be in writing and published in the *Gazette*.
- 20 (5) If the Panel varies an ASIC decision, or makes a decision in
21 substitution for an ASIC decision:
22 (a) the ASIC decision as varied, or the substituted decision, is
23 taken for all purposes (other than the purposes of applications
24 to the Panel for review in accordance with this section) to be
25 a decision of ASIC under section 655A; and
26 (b) when the Panel's determination on the review comes into
27 operation, the ASIC decision as varied, or the substituted
28 decision, has effect, or is taken to have had effect, on and
29 from the day on which the ASIC decision has or had effect.
30 Paragraph (b) applies unless the Panel otherwise orders.

Section 656B

1 **656B Operation and implementation of a decision that is subject to**
2 **review**

3 (1) Subject to this section, applying to the Panel under section 656A
4 for review of an ASIC decision does not:

- 5 (a) affect the operation of the decision; or
6 (b) prevent the taking of action to implement the decision.

7 (2) On application by a party to the proceedings before the Panel, the
8 Panel may:

9 (a) make an order staying, or otherwise affecting the operation or
10 implementation of, the whole or a part of the decision if the
11 Panel considers that:

- 12 (i) it is desirable to make the order after taking into account
13 the interests of any person who may be affected by the
14 review; and
15 (ii) the order is appropriate for the purpose of securing the
16 effectiveness of the hearing and determination of the
17 application for review; or

18 (b) make an order varying or revoking an order made under
19 paragraph (a) (including an order that has previously been
20 varied on one or more occasions under this paragraph).

21 (3) Subject to subsection (4), the Panel must not:

22 (a) make an order under paragraph (2)(a) unless ASIC has been
23 given a reasonable opportunity to make a submission to the
24 Panel in relation to the matter; or

25 (b) make an order under paragraph (2)(b) unless:

- 26 (i) ASIC; and
27 (ii) the person who requested the making of the order under
28 paragraph (2)(a); and
29 (iii) if the order under paragraph (2)(a) has previously been
30 varied by an order or orders under paragraph (2)(b)—
31 the person or persons who applied for the
32 last-mentioned order or orders;

Section 657A

1 have been given a reasonable opportunity to make
2 submissions to the Panel in relation to the matter.

3 (4) Subsection (3) does not prohibit the Panel from making an order
4 without giving to a person referred to in that subsection a
5 reasonable opportunity to make a submission to the Panel in
6 relation to a matter if the Panel is satisfied that, by reason of the
7 urgency of the case or otherwise, it is not practicable to give that
8 person such an opportunity. If an order is so made without giving
9 such an opportunity to ASIC, the order does not come into
10 operation until a notice setting out the terms of the order is served
11 on ASIC.

12 (5) An order in force under paragraph (2)(a) (including an order that
13 has previously been varied on one or more occasions under
14 paragraph (2)(b)):

15 (a) is subject to the conditions that are specified in the order; and

16 (b) has effect until:

17 (i) if a period for the operation of the order is specified in
18 the order—the end of that period or, if the application
19 for review is decided by the Panel before the end of that
20 period, the decision of the Panel on the application for
21 review comes into operation; or

22 (ii) if a period for the operation of the order is not specified
23 in the order—the decision of the Panel on the
24 application for review comes into operation.

25 **Subdivision B—Unacceptable circumstances**

26 **657A Declaration of unacceptable circumstances**

27 (1) The Panel may declare circumstances in relation to the affairs of a
28 company to be unacceptable circumstances. Without limiting this,
29 the Panel may declare circumstances to be unacceptable
30 circumstances whether or not the circumstances constitute a
31 contravention of a provision of this Law.

1 (b) a written statement of the Panel's reasons for making the
2 declaration.

3 (7) This section does not require the Panel to perform a function, or
4 exercise a power, in a particular way in a particular case.

5 **657B When Panel may make declaration**

6 The Panel can only make a declaration under section 657A within:

- 7 (a) 3 months after the circumstances occur; or
8 (b) 1 month after the application under section 657C for the
9 declaration was made;

10 whichever ends last. The Court may extend the period on
11 application by the Panel.

12 **657C Applying for declarations and orders**

13 (1) The Panel may make a declaration under section 657A, or an order
14 under section 657D or 657E, only on an application made under
15 this section.

16 (2) An application for a declaration under section 657A or an order
17 under section 657D or 657E may be made by:

- 18 (a) the bidder; or
19 (b) the target; or
20 (c) ASIC; or
21 (d) any other person whose interests are affected by the relevant
22 circumstances.

23 Note: The Administrative Appeals Tribunal cannot review ASIC's decision
24 whether to apply to the Panel (see paragraph 1317C(gc)).

25 (3) An application for a declaration under section 657A can be made
26 only within:

- 27 (a) 2 months after the circumstances have occurred; or
28 (b) a longer period determined by the Panel.

Section 657D

1 **657D Orders that Panel may make following declaration**

2 (1) The Panel may make an order under subsection (2) if it has
3 declared circumstances to be unacceptable under section 657A. It
4 must not make an order if it is satisfied that the order would
5 unfairly prejudice any person. Before making the order, the Panel
6 must give:

- 7 (a) each person to whom a proposed order relates; and
8 (b) each party to the proceedings; and
9 (c) ASIC;

10 an opportunity to make submissions to the Panel about the matter

11 (2) The Panel may make any order (including a remedial order but not
12 including an order directing a person to comply with a requirement
13 of Chapter 6, 6A, 6B or 6C) that it thinks appropriate to:

- 14 (a) protect the rights or interests of any person affected by the
15 circumstances; or
16 (b) ensure that a takeover bid or proposed takeover bid in
17 relation to securities proceeds (as far as possible) in a way
18 that it would have proceeded if the circumstances had not
19 occurred; or
20 (c) specify in greater detail the requirements of an order made
21 under this subsection; or
22 (d) determine who is to bear the costs of the parties to the
23 proceedings before the Panel;

24 regardless of whether it has previously made an order under this
25 subsection or section 657E in relation to the declaration. The Panel
26 may also make any ancillary or consequential orders that it thinks
27 appropriate.

28 Note: Section 9 defines *remedial order*.

29 (3) The Panel may vary, revoke or suspend an order made under this
30 section. Before doing so, it must give an opportunity to make
31 submissions in relation to the matter to:

- 32 (a) each person to whom the order is directed; and

Section 657E

- 1 (b) each party to the proceedings in which the order was made;
2 and
3 (c) ASIC.
- 4 (4) If the Panel makes an order under this section, the Panel must give
5 a copy of the order, and a written statement of its reasons for
6 making the order, to:
7 (a) each party to the proceedings before the Panel; and
8 (b) each person to whom the order is directed if they are not a
9 party to the proceedings; and
10 (c) for an order relating to specified securities of a company—
11 the company; and
12 (d) ASIC.
- 13 The Panel must also publish the order in the *Gazette*. The order
14 takes effect as soon as it is made and not when all the requirements
15 of this subsection are met.
- 16 (5) If the Panel makes an order of the kind referred to in paragraph (j)
17 of the definition of **remedial order**, the exercise of rights attached
18 to shares is to be disregarded as provided in the order.
- 19 (6) If the Panel makes an order of the kind referred to in paragraph (k)
20 of the definition of **remedial order**, then, by force of this
21 subsection, the agreement or offer specified in the order is
22 cancelled, or becomes voidable, as from the making of the order or
23 any later time that is specified in the order.

24 **657E Interim orders**

- 25 (1) The Panel, or the President of the Panel, may make an interim
26 order of a kind referred to in subsection 657D(2) in relation to
27 circumstances even if:
28 (a) there is no declaration under section 657A that the
29 circumstances are unacceptable; or
30 (b) no application to the Panel for a declaration of that kind has
31 been made.

Section 657F

1 The order must specify the period (not exceeding 2 months) for
2 which it is to have effect.

3 (2) The order ceases to have effect:

- 4 (a) at the end of the period specified in the order; or
5 (b) if, before the end of that period, proceedings for a declaration
6 under section 657A in relation to the circumstances (and all
7 related proceedings for an order under section 657D) are
8 determined—when those proceedings are determined.

9 **657F Offence to contravene Panel order**

10 A person who contravenes an order made under section 657D or
11 657E commits an offence.

12 **657G Orders by the Court where Panel order contravened**

- 13 (1) If a person contravenes an order made by the Panel under section
14 657D or 657E, the Court may make any order it considers
15 appropriate to secure compliance with the Panel's order, including:
16 (a) 1 or more remedial orders; and
17 (b) an order directing a person to do, or to refrain from doing, a
18 specified act.

19 Note: Section 9 defines *remedial order*.

- 20 (2) An application for an order under this section may only be made by
21 ASIC.

22 **657H ASIC may publish report about application to Panel or Court**

- 23 (1) ASIC may publish a report, statement or notice in relation to an
24 application it has made for:
25 (a) a declaration of unacceptable circumstances under section
26 657A; or
27 (b) an order under subsection 657D(2); or
28 (c) an order under section 657E; or

Section 658A

- 1 (d) an order under section 657G to secure compliance with an
2 order made under subsection 657D(2) or section 79.
- 3 (2) The report, statement or notice must:
4 (a) state that the application has been made; and
5 (b) name the company; and
6 (c) if ASIC considers that the report, statement or notice should
7 name any other person to whom the declaration would relate
8 or the order would be directed—name that other person.
- 9 (3) The report, statement or notice may be published in any way that
10 ASIC thinks appropriate. It need not be in writing.
- 11 (4) This section does not limit a function or power of ASIC, the Panel
12 or any other person or body.

13 **Subdivision C—General provisions**

14 **658A Power of Panel where a proceeding is frivolous or vexatious**

- 15 (1) If an application is made to the Panel under this Division, the Panel
16 may, at any stage of the proceeding, if it is satisfied that the
17 application is frivolous or vexatious:
18 (a) dismiss the application; or
19 (b) if the Panel considers it appropriate, on the application of a
20 party to the proceedings, direct that the person who made the
21 application must not, without leave of the Panel, make a
22 subsequent application to the Panel of a kind or kinds
23 specified in the direction.
- 24 (2) A direction given by the Panel under paragraph (1)(b) has effect
25 despite any other provision of this Act or a provision of any other
26 Act.
- 27 (3) The Panel may revoke or vary the direction.

Section 658B

1 **658B Evidentiary value of findings of fact by Panel**

2 (1) A finding of fact recorded in an order by the Panel, or a written
3 statement of the reasons for an order of the Panel, is proof of the
4 fact in the absence of evidence to the contrary.

5 (2) A certificate signed by the President of the Panel that states a
6 finding of fact made in proceedings before the Panel is proof of the
7 fact in the absence of evidence to the contrary.

8 **Division 3—Court powers**

9 **659A Panel may refer questions of law to the Court**

10 The Panel may, of its own motion, refer a question of law arising
11 in a proceeding before the Panel to the Court for decision.

12 **659B Court proceedings before end of bid period**

13 *Delay in commencing court proceedings until after end of bid*
14 *period*

- 15 (1) Only:
16 (a) ASIC; or
17 (b) another public authority of the Commonwealth or a State;
18 may commence court proceedings in relation to a takeover bid, or
19 proposed takeover bid, before the end of the bid period.

20 Note: This restriction starts to apply as soon as there is a takeover bid, or a
21 proposed takeover bid; it does not start to apply only when the bid
22 period commences.

23 *Court power to stay proceedings that have already commenced*

- 24 (2) A court may stay:
25 (a) court proceedings in relation to a takeover bid or proposed
26 takeover bid; or
27 (b) court proceedings that would have a significant effect on the
28 progress of a takeover bid;
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Section 659C

- 1 until the end of the bid period.
- 2 (3) In deciding whether to exercise its powers under subsection (2), the
3 court is to have regard to:
- 4 (a) the purposes of this Chapter; and
5 (b) the availability of review by the Panel under Division 2.
- 6 (4) For the purposes of this section:
- 7 ***court proceedings in relation to a takeover bid or proposed***
8 ***takeover bid:***
- 9 (a) means any proceedings before a court in relation to:
- 10 (i) an action taken or to be taken as part of, or for the
11 purposes of, the bid or the target's response to the bid;
12 or
13 (ii) a document prepared or to be prepared, or a notice given
14 or to be given, under this Chapter; and
- 15 (b) includes:
- 16 (i) proceedings to enforce an obligation imposed by this
17 Chapter; or
18 (ii) proceedings for the review of a decision, or the exercise
19 of a power or discretion, under this Chapter; or
20 (iii) proceedings for the review of a decision, or the exercise
21 of a power or discretion, under Chapter 6C in relation to
22 securities of the target of a takeover bid during the bid
23 period; and
24 (iv) proceedings under Part 2F.1A for leave to bring, or to
25 intervene in, proceedings referred to in paragraph (a) or
26 subparagraph (b)(i), (ii) or (iii).
- 27 This is not limited to proceedings brought under this Chapter or
28 this Law but includes proceedings under other Commonwealth and
29 State laws (including the general law).

30 **659C Court proceedings after end of bid period**

- 31 (1) If:
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Section 659C

- 1 (a) an application is made to the Panel for a declaration under
2 section 657A that particular conduct amounts to, or leads to,
3 circumstances that are unacceptable; and
4 (b) the Panel refuses to make the declaration; and
5 (c) a Court finds after the end of the bid period that the conduct
6 contravenes this Law;
7 the Court's powers under this Law in relation to the conduct are
8 limited to the following:
9 (d) the Court may:
10 (i) determine whether a person is guilty of an offence
11 against this Law because they engaged in or were
12 involved in the conduct; and
13 (ii) impose a penalty if the person is found guilty
14 (e) the Court may:
15 (i) determine whether a person who engaged in, or was
16 involved in, the conduct contravened a provision of the
17 Law; and
18 (ii) order the person to pay an amount of money to another
19 person (whether by way of damages, account of profits,
20 pecuniary penalty or otherwise)
21 (f) the Court may make an order under section 1318 or 1322 in
22 relation to the conduct.
23 This subsection does not confer power or jurisdiction on a court
24 that it does not have apart from this subsection.
- 25 (2) Without limiting subsection (1), the only kind of remedial order
26 that the Court may make is one that requires the person to pay
27 money to another person.

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Chapter 6A—Compulsory acquisitions and buy-outs

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660A Chapter extends to some listed bodies that are not companies

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This Chapter extends to the acquisition of securities of listed bodies that are not companies but are incorporated or formed in this jurisdiction in the same way as it applies to the acquisition of securities of companies.

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Note: Section 9 defines *company*, *jurisdiction* and *listed*.

12

660B Chapter extends to listed managed investment schemes

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- (1) This Chapter extends to the acquisition of interests in a listed managed investment scheme registered in this jurisdiction as if:
 - (a) the scheme were a company; and
 - (b) interests in the scheme were shares in the company; and
 - (c) voting interests in the scheme were voting shares in the company.
- (2) If Part 6A.1 applies to a scheme at the end of the bid period for a takeover, that Part continues to apply to the scheme in relation to the takeover bid even if the scheme ceases to be listed.
- (3) If Part 6A.2 applies to a scheme when a compulsory acquisition notice under section 664C is lodged, that Part (including Division 2 of that Part) continues to apply to apply to the scheme in relation to the notice even if the scheme ceases to be listed.
- (4) The regulations may modify the operation of this Chapter as it applies in relation to the acquisition of interests in listed managed investment schemes.

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1 **Part 6A.1—Compulsory acquisitions and buy-outs**
2 **following takeover bid**

3 **Division 1—Compulsory acquisition of bid class securities**

4 **661A Compulsory acquisition power following takeover bid**

5 *Threshold for compulsory acquisition power*

- 6 (1) Under this subsection, the bidder under a takeover bid may
7 compulsorily acquire any securities in the bid class if:
8 (a) the bid is:
9 (i) an off-market bid to acquire all the securities in the bid
10 class; or
11 (ii) a market bid; and
12 (b) during, or at the end of, the offer period:
13 (i) the bidder and their associates have relevant interests in
14 at least 90% (by number) of the securities in the bid
15 class; and
16 (ii) the bidder and their associates have acquired at least
17 75% (by number) of the securities that the bidder
18 offered to acquire under the bid (whether the
19 acquisitions happened under the bid or otherwise).

20 This is so even if the bidder subsequently ceases to satisfy
21 subparagraph (b)(i) because of the issue of further securities in the
22 bid class.

23 Note: Subsection 92(3) defines *securities* for the purposes of this Chapter.

- 24 (2) For the purposes of subsection (1), disregard any relevant interests
25 that the bidder has merely because of the operation of subsection
26 608(3) (relevant interest by 20% interest in body corporate).

1 *Court may allow compulsory acquisition even if threshold not*
2 *reached*

3 (3) Under this subsection, the bidder under a takeover bid may
4 compulsorily acquire securities in the bid class with the approval of
5 the Court.

6 *Securities to be acquired*

7 (4) If the bidder compulsorily acquires securities in the bid class under
8 subsection (1) or (3), the bidder:

9 (a) must acquire all the securities in the bid class:

10 (i) which were issued or granted before the end of the offer
11 period; and

12 (ii) in which the bidder does not have a relevant interest;
13 and

14 (b) may elect to acquire all securities in the bid class:

15 (i) that were issued or granted after the end of the offer
16 period and before the notice under section 661B is
17 issued; and

18 (ii) in which the bidder does not have a relevant interest;
19 but only if the bidder and their associates have relevant
20 interests in at least 90% (by number) of the securities in the
21 bid class when the bidder gives notice under section 661B;
22 and

23 (c) if securities exist when the bidder gives the notice under
24 section 661B that:

25 (i) will convert, or may be converted, to securities in the
26 bid class; or

27 (ii) confer rights to be issued securities in the bid class that
28 may be exercised;

29 within the period of 6 weeks after the notice is given—may
30 elect to acquire securities that come to be in the bid class
31 during that period due to a conversion or exercise of the
32 rights but only if the bidder and their associates have relevant
33 interests in at least 90% of the securities (by number) in the

Section 661B

- 1 bid class when the bidder gives notice under section 661B;
2 and
3 (d) may elect to acquire any securities in the bid class in which
4 the bidder has a relevant interest (no matter when they were
5 issued or granted).
- 6 (5) This section has effect despite anything in the constitution of the
7 company whose securities are to be acquired.

8 **661B Compulsory acquisition notice**

9 *Compulsory acquisition notice*

- 10 (1) To compulsorily acquire securities under subsection 661A(1) or
11 (3), the bidder must:
- 12 (a) prepare a notice in the prescribed form that informs the
13 holders of the securities that the bidder is entitled to acquire
14 their securities under that subsection; and
15 (b) lodge the notice with ASIC; and
16 (c) give the notice to each other person who is:
17 (i) a holder of securities in the bid class; or
18 (ii) if the bidder elects under paragraph 661A(4)(c) to
19 acquire securities that come to be in the bid class after
20 the notice is given—a holder of the convertible
21 securities referred to in that paragraph; and
22 (d) give a copy to each relevant securities exchange on the same
23 day as it is lodged with ASIC if the target is listed.
- 24 If alternative forms of consideration were offered under the
25 takeover bid, the notice must specify which of those forms of
26 consideration will apply to the acquisition of the holder's securities
27 if the holder does not elect one of the forms under paragraph
28 661C(2)(a).

29 Note: Everyone who holds bid class securities on the day on which the
30 notice is lodged with ASIC is entitled notice. Under section 661E,
31 anyone who holds the securities after that day may apply to the Court
32 to stop the acquisition.

1 *Time for dispatching notices to holders*

- 2 (2) The bidder must dispatch the notices under paragraph (1)(c):
3 (a) during the offer period, or within 1 month after:
4 (i) the end of offer period if the acquisition is under
5 subsection 661A(1); or
6 (ii) the court approval if the acquisition is under subsection
7 661A(3); and
8 (b) on the day the bidder lodges the notice with ASIC or on the
9 next business day.

10 The notices cannot be withdrawn.

11 *Manner of giving notice to holders*

- 12 (3) The bidder may give the notice to a holder:
13 (a) personally; or
14 (b) by sending it by post to the address for the holder in the
15 register of members, debenture holders or option holders.
16 A notice sent by post is taken to be given 3 days after it is posted.
- 17 (4) The notice may be sent:
18 (a) if the notice is to be sent to the holder in an external territory
19 or outside Australia—by pre-paid airmail post or by courier;
20 or
21 (b) if the notice is to be sent to the holder in Australia—by
22 pre-paid ordinary post or by courier.

23 This section does not limit the manner in which the notice may be
24 sent to the holder.

25 Note: Section 109X makes general provision for service of documents.

Section 661C

1 **661C Terms on which securities to be acquired**

2 *Same terms as takeover bid*

3 (1) The bidder may acquire the securities only on the terms that
4 applied to the acquisition of securities under the takeover bid
5 immediately before:

6 (a) the notice under section 661B is given if it is given before the
7 end of the offer period; or

8 (b) the end of the offer period if it is not.

9 *Alternative forms of consideration under takeover bid*

10 (2) If alternative forms of consideration were offered under the
11 takeover bid, the form of consideration that applies to the
12 acquisition of the holder's securities is:

13 (a) the form that the holder elects; or

14 (b) the form set out in the compulsory acquisition notice under
15 subsection 661B(1).

16 (3) The holder makes an election under subsection (2) by giving the
17 bidder a notice of the election by the later of:

18 (a) 1 month after the compulsory acquisition notice is given
19 under section 661B; or

20 (b) 14 days after the holder is given a statement under section
21 661D if the holder asks for it.

22 (4) The election must be:

23 (a) in an electronic form approved by the SCH business rules for
24 the purposes of this Part if it relates to shares that are entered
25 on an SCH subregister; or

26 (b) in writing if it relates to shares that are not entered on an
27 SCH subregister.

1 **661D Holder may obtain names and addresses of other holders**

2 Within 1 month after a compulsory acquisition notice in relation to
3 securities in the bid class is lodged with ASIC under section 661B,
4 the holder of the securities may ask the bidder in writing for a
5 written statement of the names and addresses of everyone else the
6 bidder has given the notice to. The bidder must give the holder the
7 statement within 7 days after the request.

8 **661E Holder may apply to Court to stop acquisition**

- 9 (1) The holder of securities covered by a compulsory acquisition
10 notice under section 661B may apply to the Court for an order that
11 the securities not be compulsorily acquired under subsection
12 661A(1). The application must be made before the later of:
- 13 (a) the end of 1 month after the holder is given notice under
 - 14 section 661B; or
 - 15 (b) the end of 14 days after the holder is given a statement under
 - 16 section 661D if the holder asks for it.
- 17 (2) The Court may order that the securities not be compulsorily
18 acquired under subsection 661A(1) only if the Court is satisfied
19 that the consideration is not fair value for the securities.
- 20 Note: See section 667C on valuation.
- 21 (3) If the Court makes an order under this section in relation to an
22 acquisition of securities, the order applies to all holders who have
23 applications to the Court pending for an order under this section in
24 relation to the acquisition.

25 **661F Signpost—completing the acquisition of the securities**

26 See section 666A to find out how to complete the acquisition.

Section 662A

1 **Division 2—Compulsory buy-out of bid class securities**

2 **662A Bidder must offer to buy out remaining holders of bid class**
3 **securities**

- 4 (1) If the bidder and their associates have relevant interests in at least
5 90% of the securities (by number) in the bid class at the end of the
6 offer period, the bidder must offer to buy out the remaining holders
7 of bid class securities in accordance with sections 662B and 662C.
- 8 (2) This section does not apply to securities that are issued:
- 9 (a) if the takeover bid was not subject to a defeating condition—
10 after the end of the offer period; or
- 11 (b) if the takeover bid was subject to a defeating condition—
12 after the notice whether the bid is free from a defeating
13 condition or not is given under subsection 630(3).

14 **662B Bidder to tell remaining holders of their right to be bought out**

15 *Notice to remaining holders of bid class securities*

- 16 (1) The bidder must:
- 17 (a) prepare a notice in the prescribed form that:
- 18 (i) states that the bidder and their associates have relevant
19 interests in at least 90% (by number) of the securities in
20 the bid class; and
- 21 (ii) informs the holder of bid class securities about their
22 right to be bought out under this Part; and
- 23 (iii) sets out the terms on which the holder may be bought
24 out; and
- 25 (b) lodge the notice with ASIC; and
- 26 (c) give the notice to each other person who:
- 27 (i) is a holder of securities in the bid class on the day on
28 which the notice is lodged with ASIC; and

1 (ii) has not been given a compulsory acquisition notice
2 under section 661B when the notice under subsection
3 (2) is given; and

4 (d) give the notice to each relevant securities exchange on the
5 same day as it is lodged with ASIC if the target is listed.

6 If alternative forms of consideration were offered under the
7 takeover bid, the notice must specify which of those forms will
8 apply to the acquisition of the holder's securities if the holder does
9 not give the bidder an election notice under subsection 662C(1).

10 Note: The notice is to be given to everyone who holds bid class securities on
11 the day on which the notice is lodged with ASIC. Under section 662C,
12 anyone who acquires the securities after that day may require the
13 bidder to acquire the securities.

14 *Time for dispatching notice to holders*

- 15 (2) The bidder must dispatch the notices under paragraph (1)(c):
16 (a) during, or within 1 month after the end of, the offer period;
17 and
18 (b) on the day the bidder lodges the notice with ASIC or on the
19 next business day.

20 The notices cannot be withdrawn.

21 *Manner of giving notice to holders*

- 22 (3) The bidder may give the notice to a holder:
23 (a) personally; or
24 (b) by sending it by post to the address for the holder in the
25 register of members, debenture holders or option holders.
26 A notice sent by post is taken to be given 3 days after it is posted.
- 27 (4) The notice may be sent:
28 (a) if the notice is to be sent to the holder in an external territory
29 or outside Australia—by pre-paid airmail post or by courier.
30 (b) if the notice is to be sent to the holder in Australia—by
31 pre-paid ordinary post or by courier.

Section 662C

1 This subsection does not limit the manner in which the document
2 may be sent to the holder.

3 Note: Section 109X makes general provision for service of documents.

4 **662C Right of remaining holder of securities in the bid class to be**
5 **bought out**

6 (1) Within 1 month after notice is given in relation to securities under
7 section 662B, the holder of the securities may give the bidder
8 written notice requiring the bidder to acquire the securities. If
9 alternative forms of consideration were offered under the takeover
10 bid, the holder may elect in the notice which of those forms will
11 apply to the acquisition of the holder's securities.

12 (2) The notice by the holder gives rise to a contract between the holder
13 and the bidder for the sale of the securities on:

14 (a) the terms that applied to the acquisition of securities under
15 the bid immediately before the end of the offer period; or

16 (b) if alternative forms of consideration applied at that time—on
17 the terms that the bidder will provide:

18 (i) the alternative specified by the holder in the notice
19 under subsection (1); or

20 (ii) if the holder has not made an election under that
21 subsection—the alternative set out in the bidder's notice
22 under section 662B; or

23 (c) if the holder and the bidder agree on other terms—those
24 terms.

25 **Division 3—Compulsory buy-out of convertible securities**

26 **663A Bidder must offer to buy out holders of convertible securities**

27 If the bidder and their associates have relevant interests in at least
28 90% of the securities (by number) in the bid class at the end of the
29 offer period, the bidder must offer to buy out the holders of
30 securities that are convertible into bid class securities in
31 accordance with sections 663B and 663C. This section does not

1 apply to securities if a takeover bid has been made for the
2 convertible securities and a notice has been given under section
3 661B or 662B in relation to the convertible securities.

4 Note: For when securities are convertible into bid class securities, see the
5 definition of *convertible securities* in section 9.

6 **663B Bidder to tell holders of convertible securities of their right to**
7 **be bought out**

8 *Notice to holders of convertible securities*

9 (1) The bidder must:

10 (a) prepare a notice in the prescribed form that:

- 11 (i) states that the bidder and their associates have relevant
12 interests in at least 90% of the securities (by number) in
13 the bid class; and
14 (ii) informs the holder of convertible securities about their
15 right to be bought out under this Part; and
16 (iii) sets out the terms on which the holder may be bought
17 out; and

18 (b) lodge the notice with ASIC; and

19 (c) give each other person who is a holder of convertible
20 securities:

- 21 (i) the notice; and
22 (ii) a copy of the expert's report, or of all the experts'
23 reports, under section 667A; and

24 (d) give a copy of those documents to each relevant securities
25 exchange on the same day as it is lodged with ASIC if the
26 target is listed.

27 Note 1: Subparagraph (a)(iii)—Section 667A deals with the contents of an
28 expert's report.

29 Note 2: The notice is to be given to everyone who holds convertible securities
30 on the day on which the notice is lodged with ASIC. Under section
31 663C, anyone who acquires the securities after that day may require
32 the bidder to acquire the securities.

Section 663C

1 *Time for dispatching notice to holders*

- 2 (2) The bidder must dispatch the notices and reports under paragraph
3 (1)(c):
4 (a) during, or within 1 month after the end of, the offer period;
5 and
6 (b) on the day the bidder lodges the notice with ASIC or on the
7 next business day.

8 The notices cannot be withdrawn.

9 *Manner of giving notice to holders*

- 10 (3) The bidder may give the notice or report to a holder:
11 (a) personally; or
12 (b) by sending it by post to the address for the holder in the
13 register of members, debenture holders or option holders.

14 A notice or report sent by post is taken to be given 3 days after it is
15 posted.

- 16 (4) The notice may be sent:
17 (a) if the notice is to be sent to the holder in an external Territory
18 or outside Australia—by pre-paid airmail post or by courier;
19 or
20 (b) if the notice is to be sent to the holder in Australia—by
21 pre-paid ordinary post or by courier.

22 This subsection does not limit the manner in which the document
23 may be sent to the holder.

24 Note: Section 109X makes general provision for service of documents.

25 **663C Right of holders of convertible securities to be bought out**

- 26 (1) Within 1 month after notice under section 663B is given in relation
27 to convertible securities, the holder of the convertible securities
28 may give the bidder a notice requiring the bidder to acquire the
29 securities.

- 1 (2) The holder's notice gives rise to a contract between the holder and
2 the bidder for the sale of the securities on:
3 (a) the terms agreed to by the bidder and the holder; or
4 (b) the terms determined by the Court on application by the
5 holder.

Section 664A

1

2 **Part 6A.2—General compulsory acquisitions and**
3 **buy-outs**

4 **Division 1—Compulsory acquisition of securities by 90%**
5 **holder**

6 **664A Threshold for general compulsory acquisition power**

7 *90% holder—holder of 90% of securities in particular class*

- 8 (1) A person is a 90% holder in relation to a class of securities of a
9 company if the person holds, either alone or with a related body
10 corporate, full beneficial interests in at least 90% of the securities
11 (by number) in that class.

12 *90% holder—holder with 90% voting power and 90% of whole*
13 *company or scheme*

- 14 (2) A person is also a 90% holder in relation to a class of securities of
15 a company if:
16 (a) the securities in the class are shares or convertible into
17 shares; and
18 (b) the person's voting power in the company is at least 90%;
19 and
20 (c) the person holds, either alone or with a related body
21 corporate, full beneficial interests in at least 90% by value of
22 all the securities of the company that are either shares or
23 convertible into shares.

24 Note: Subsection 667A(2) provides that the expert's report that accompanies
25 the compulsory acquisition notice must support the paragraph (c)
26 condition.

27 *90% holder may acquire remainder of securities in class*

- 28 (3) Under this section, a 90% holder in relation to a class of securities
29 of a company may compulsorily acquire all the securities in that
-

1 class in which neither the person nor any related bodies corporate
2 has full beneficial interests if either:

3 (a) the holders of securities in that class (if any) who have
4 objected to the acquisition between them hold less than 10%
5 by value of those remaining securities at the end of the
6 objection period set out in the notice under paragraph
7 664C(1)(b); or

8 (b) the Court approves the acquisition under section 664F.

9 If subsection (2) applies to the 90% holder, the holder may
10 compulsorily acquire securities in a class only if the holder gives
11 compulsory acquisition notices in relation to all classes of shares
12 and securities convertible into shares of which they do not already
13 have full beneficial ownership.

14 Note: Subsection 92(3) defines *securities* for the purposes of this Chapter.

- 15 (4) This section has effect despite anything in the constitution of the
16 company whose securities are to be acquired.
- 17 (5) This Part does not apply to shares that give the shareholder, as a
18 shareholder, a right to occupy or use real property that the
19 company owns or holds under lease, whether the right is a lease or
20 licence or a contractual right.
- 21 (6) The 90% holder's power to compulsorily acquire securities under a
22 notice given under section 664C ends if the 90% holder
23 contravenes section 664D by offering benefits outside the terms
24 proposed in the compulsory acquisition notice under section 664C.

25 **664B The terms for compulsory acquisition**

26 The 90% holder may acquire the securities in the class for a cash
27 sum only and must pay the same amount for each security in the
28 class acquired.

Section 664C

1 **664C Compulsory acquisition notice**

2 *Compulsory acquisition notice*

- 3 (1) To compulsorily acquire securities under section 664A, the 90%
4 holder must prepare a notice in the prescribed form that:
- 5 (a) sets out the cash sum for which the 90% holder proposes to
6 acquire the securities; and
 - 7 (b) specifies a period of at least 1 month during which the
8 holders may return the objection forms; and
 - 9 (c) informs the holders about the compulsory acquisition
10 procedure under this Part, including:
 - 11 (i) their right to obtain the names and addresses of the other
12 holders of securities in that class from the company
13 register; and
 - 14 (ii) their right to object to the acquisition by returning the
15 objection form that accompanies the notice within the
16 period specified in the notice; and
 - 17 (d) gives details of the consideration given for any securities in
18 that class that the 90% holder or an associate has purchased
19 within the last 12 months; and
 - 20 (e) discloses any other information that is:
 - 21 (i) known to the 90% holder or any related bodies
22 corporate; and
 - 23 (ii) material to deciding whether to object to the acquisition;
24 and
 - 25 (iii) not disclosed in an expert's report under section 667A.
- 26 (2) The 90% holder must then:
- 27 (a) lodge the notice with ASIC; and
 - 28 (b) give each other person (other than a related body corporate)
29 who is a holder of securities in the class on the day on which
30 the notice is lodged with ASIC:
 - 31 (i) the notice; and
 - 32 (ii) a copy of the expert's report, or of all experts' reports,
33 under section 667A; and
-

- 1 (iii) an objection form; and
2 (c) give the company copies of those documents; and
3 (d) give copies of those documents to the relevant securities
4 exchange if the company is listed.

5 Note: Everyone who holds the securities on the day on which the notice is
6 lodged with ASIC is entitled to notice. Under subsection 664E(1),
7 anyone who acquires the securities during the objection period may
8 object to the acquisition.

9 *Time for dispatching notice to holders*

- 10 (3) The 90% holder must dispatch the notices under paragraph (2)(b)
11 on the day the 90% holder lodges the notice with ASIC or on the
12 next business day.

13 *Manner of giving notice to holders*

- 14 (4) The 90% holder may give the notice to a holder:
15 (a) personally; or
16 (b) by sending it by post to the address for the holder in the
17 register of members, debenture holders or option holders.
18 A notice sent by post is taken to be given 3 days after it is posted.

- 19 (5) The notice may be sent:
20 (a) if the notice is to be sent to the holder in an external territory
21 or outside Australia—by pre-paid airmail post or by courier;
22 or
23 (b) if the notice is to be sent to the holder in Australia—by
24 pre-paid ordinary post or by courier.

25 This subsection does not limit the manner in which the document
26 may be sent to the holder.

27 Note: Section 109X makes general provision for service of documents.

28 *Notice not to be withdrawn*

- 29 (6) The 90% holder may not:
30 (a) withdraw a notice under this section; or
-

Section 664D

- 1 (b) if the 90% holder has given a notice under this section in
2 relation to those securities and the objection period for that
3 notice has not ended—give another notice under this section
4 in relation to securities.

5 **664D Benefits outside compulsory acquisition procedure**

- 6 (1) If the 90% holder gives a notice under section 664C to
7 compulsorily acquire securities, the 90% holder or an associate
8 must not offer, give or agree to give a benefit to a person during
9 the objection period if:
10 (a) the benefit is likely to induce the person, or an associate of
11 the person, to:
12 (i) dispose of securities in that class; or
13 (ii) not object to the acquisition of those securities under the
14 notice; and
15 (b) the benefit is not provided for in the notice.
- 16 (2) If the 90% holder proposes to give a notice under section 664C to
17 acquire securities within the next 4 months, the 90% holder or an
18 associate must not offer, give or agree to give a benefit to a person
19 if:
20 (a) the benefit is likely to induce the person, or an associate of
21 the person, to:
22 (i) dispose of securities in that class; or
23 (ii) not object to the acquisition of those securities under the
24 notice; and
25 (b) the benefit is not proposed to be provided for in the notice.
- 26 (3) If the 90% holder gives a notice under section 664C to
27 compulsorily acquire securities, the 90% holder or an associate
28 must not give a benefit to a person:
29 (a) within 1 month after the end of the objection period (see
30 subsection 664F(2)); or
31 (b) during any proceedings by the Court to determine an
32 application under subsection 664F(1) by the 90% holder;

- 1 if:
2 (c) the benefit is likely to induce the person, or an associate of
3 the person, to:
4 (i) not object, or pursue an objection, to the acquisition of
5 those securities under the notice; or
6 (ii) dispose of securities in that class; and
7 (d) the benefit is not offered to all holders of securities in that
8 class under the notice.
- 9 (4) This section does not prohibit simultaneous notices under section
10 664C to compulsorily acquire different classes of securities in the
11 company.

12 **664E Holder's right to object to the acquisition**

- 13 (1) A person who holds securities covered by the compulsory
14 acquisition notice may object to the acquisition of the securities by
15 signing an objection form and returning it to the 90% holder. The
16 objection:
17 (a) relates to all securities that are covered by the notice and are
18 held by the person at the end of the objection period; and
19 (b) cannot be withdrawn.
- 20 (2) The 90% holder must lodge with ASIC a copy of any objection
21 form returned under subsection (1) as soon as practicable after it is
22 returned.
- 23 (3) As soon as practicable after the end of the objection period, the
24 90% holder must:
25 (a) prepare a list that sets out:
26 (i) the names of people who hold securities covered by the
27 compulsory acquisition notice and have objected to the
28 acquisition; and
29 (ii) details of the securities they hold; and
30 (b) lodge the list with ASIC; and
31 (c) give a copy of the list to the company; and

Section 664F

- 1 (d) if the company is listed—give a copy to the relevant
2 securities exchange.
- 3 (4) If people who hold at least 10% of the securities covered by the
4 compulsory acquisition notice object to the acquisition before the
5 end of the objection period, the 90% holder must give everyone to
6 whom the compulsory acquisition notice was sent under section
7 664C:
- 8 (a) a notice that the proposed acquisition will not occur; or
9 (b) a notice that the 90% holder has applied to the Court for
10 approval of the acquisition under section 664F;
11 within 1 month after the end of the objection period.

12 **664F The Court's power to approve acquisition**

- 13 (1) If people who hold at least 10% of the securities covered by the
14 compulsory acquisition notice object to the acquisition before the
15 end of the objection period, the 90% holder may apply to the Court
16 for approval of the acquisition of the securities covered by the
17 notice.
- 18 (2) The 90% holder must apply within 1 month after the end of the
19 objection period.
- 20 (3) If the 90% holder establishes that the terms set out in the
21 compulsory acquisition notice give a fair value for the securities,
22 the Court must approve the acquisition of the securities on those
23 terms. Otherwise it must confirm that the acquisition will not take
24 place.
- 25 Note: See section 667C on valuation.
- 26 (4) The 90% holder must bear the costs that a person incurs on legal
27 proceedings in relation to the application unless the Court is
28 satisfied that the person acted improperly, vexatiously or otherwise
29 unreasonably. The 90% holder must bear their own costs.

1 **664G Signpost—completing the acquisition of the securities**

2 See section 666A for how to complete the acquisition.

3 **Division 2—Compulsory buy-out of convertible securities**
4 **by 100% holder**

5 **665A 100% holder must offer to buy out holders of convertible**
6 **securities**

- 7 (1) A person is a 100% holder of securities in a class if the person,
8 either alone or with a related body corporate, holds full beneficial
9 interests in all the securities in the class.
- 10 (2) A 100% holder in relation to a class of securities (the *main class*)
11 who becomes a 100% holder through compulsory acquisitions
12 under this Part must offer to buy out the holders of securities in
13 another class that are convertible into main class securities in
14 accordance with sections 665B and 665C. This subsection does not
15 apply to securities if a notice is given in relation to the securities
16 under section 661B, 662B or 664C.

17 Note: For when securities are convertible into main class securities, see the
18 definition of *convertible securities* in section 9.

19 **665B 100% holder to tell holders of convertible securities of their**
20 **right to be bought out**

21 *Notice to holders of convertible securities*

- 22 (1) The 100% holder must:
- 23 (a) prepare a notice in the prescribed form that:
- 24 (i) states that the person giving the notice has acquired all
25 the securities in the main class; and
- 26 (ii) sets out the cash sum for which they are willing to
27 acquire the convertible securities; and
- 28 (iii) informs the holder of convertible securities about their
29 right to be bought out under this Part; and

Section 665B

- 1 (b) lodge the notice with ASIC; and
2 (c) give each other person who is a holder of convertible
3 securities on the day on which the notice is lodged with
4 ASIC:
5 (i) the notice; and
6 (ii) a copy of the expert's report, or all experts' reports,
7 under section 667A; and
8 (d) give a copy of the documents to the company that issued the
9 securities; and
10 (e) give a copy of the documents to each relevant securities
11 exchange on the same day as it is lodged with ASIC if the
12 company is listed.

13 Note 1: Subparagraph (a)(iii)—Section 667A deals with the contents of an
14 expert's report.

15 Note 2: The notice is to be given to everyone who holds convertible securities
16 on the day on which the notice is lodged with ASIC. Under section
17 665C, anyone who holds the securities after that day may require the
18 100% holder to acquire the securities.

19 *Time for dispatching notice to holders*

- 20 (2) The 100% holder must dispatch the notices and reports under
21 paragraph (1)(c):
22 (a) within 1 month after they become the 100% holder; and
23 (b) on the day the 100% holder lodges the notice with ASIC or
24 on the next business day.

25 The notices cannot be withdrawn.

26 *Manner of giving notice to holders*

- 27 (3) The 100% holder may give the notice or report to a holder:
28 (a) personally; or
29 (b) by sending it by post to the address for the holder in the
30 register of members, debenture holders or option holders.
31 A notice or report sent by post is taken to be given 3 days after it is
32 posted.

- 1 (3) The notice may be sent:
2 (a) if the notice is to be sent to the holder in an external Territory
3 or outside Australia—by pre-paid airmail post or by courier;
4 or
5 (b) if the notice is to be sent to the holder in Australia—by
6 pre-paid ordinary post or by courier.
7 This subsection does not limit the manner in which the document
8 may be sent to the holder.
9 Note: Section 109X makes general provision for service of documents.

10 **665C Right of holders of convertible securities to be bought out**

- 11 (1) Within 1 month after notice under section 665B is given in relation
12 to convertible securities, the holder of the convertible securities
13 may give the 100% holder a notice requiring the 100% holder to
14 acquire the securities.
- 15 (2) The notice by the holder of convertible securities gives rise to a
16 contract between the holder and the 100% holder for the sale of the
17 securities on:
18 (a) terms agreed to by the 100% holder and the holder of the
19 convertible securities; or
20 (b) the terms determined by the Court on application by the
21 holder of the convertible securities.

Section 666A

1

2 **Part 6A.3—Completion of compulsory acquisition**
3 **of securities**

4 **666A Completing the acquisition of securities**

5 *Completion to be by private treaty or statutory procedure*

6 (1) A person entitled to acquire securities under section 661A or 664A
7 must either:

8 (a) pay, issue or transfer the consideration to the holder, take a
9 transfer of the securities from the holder and have the
10 company that issued the securities register the transfer; or

11 (b) complete the procedure laid down in section 666B;
12 by the end of the period referred to in subsection (2) or (3).

13 *Time for completing compulsory acquisition following takeover*

14 (2) For an acquisition under section 661A, the period ends 14 days
15 after the later of:

16 (a) the end of 1 month after the compulsory acquisition notice
17 was lodged with ASIC under section 661B; or

18 (b) the end of 14 days after the last statement under section 661D
19 was given if a request is made under that section; or

20 (c) if an application to stop the acquisition is made to the Court
21 under section 661E—the application is finally determined.

22 *Time for completing compulsory acquisition under Part 6A.2*

23 (3) For an acquisition under section 664A or 664F, the period ends 14
24 days after the later of:

25 (a) the end of the objection period; or

26 (b) if an application for approval of the acquisition is made to the
27 Court under section 664F in relation to the securities—the
28 application is finally determined.

1 **666B Statutory procedure for completion**

2 (1) Under this section, the person acquiring the securities must:

3 (a) give the company that issued the securities a copy of the
4 compulsory acquisition notice under section 661B or 664C
5 together with a transfer of the securities:

6 (i) signed as transferor by someone appointed by the
7 person acquiring the securities; and

8 (ii) signed as transferee by the person acquiring the
9 securities; and

10 (b) pay, issue or transfer the consideration for the transfer to the
11 company that issued the securities.

12 The person appointed under subparagraph (a)(i) has authority to
13 sign the transfer on behalf of the holder of the securities.

14 (2) If the person acquiring the securities complies with subsection (1),
15 the company that issued the securities must:

16 (a) register the person as the holder of the securities; and

17 (b) hold the consideration received under subsection (1) in trust
18 for the person who held the securities immediately before
19 registration; and

20 (c) give written notice to the person referred to in paragraph (b)
21 as soon as practicable that the consideration has been
22 received and is being held by the company pending their
23 instructions as to how it is to be dealt with.

24 (3) If the consideration held under subsection (2) consists of, or
25 includes, money, that money must be paid into a bank account
26 opened and maintained for that purpose only.

Section 667A

1

2 **Part 6A.4—Experts' reports and valuations**

3 **667A Expert's report**

- 4 (1) An expert's report under section 663B, 664C or 665B must:
5 (a) state whether, in the expert's opinion, the terms proposed in
6 the notice give a fair value for the securities concerned; and
7 (b) set out the reasons for forming that opinion.

8 Note: See section 667C on valuation.

- 9 (2) If the person giving the compulsory acquisition notice is relying on
10 paragraph 664A(2)(c) to give the notice, the expert's report under
11 section 664C must also:
12 (a) state whether, in the expert's opinion, the person (either
13 alone or together with a related body corporate) has full
14 beneficial ownership in at least 90% by value of all the
15 securities of the company that are shares or convertible into
16 shares; and
17 (b) set out the reasons for forming that opinion.
- 18 (3) If the person giving the compulsory acquisition notice obtains 2 or
19 more reports, each of which were obtained for the purposes of that
20 notice, a copy of each report must be given to the holder of the
21 securities.

22 **667B Expert must not be an associate and must disclose prior**
23 **dealings and relationships**

- 24 (1) The expert who provides the report must not be an associate of:
25 (a) the person giving the notice; or
26 (b) the company that issued the securities.
- 27 (2) The report must set out details of:
28 (a) any relationship between the expert and:

- 1 (i) the person giving the notice or an associate of the
2 person giving the notice; or
3 (ii) the company that issued the securities or an associate of
4 the company;
5 including any circumstances in which the expert gives them
6 advice, or acts on their behalf, in the proper performance of
7 the functions attaching to the expert's professional capacity
8 or business relationship with them; and
9 (b) any financial or other interest of the expert that could
10 reasonably be regarded as being capable of affecting the
11 expert's ability to give an unbiased opinion in relation to the
12 matter being reported on; and
13 (c) any fee, payment or other benefit (whether direct or indirect)
14 that the expert has received or will or may receive in
15 connection with the report.

16 **667C Valuation of securities**

17 To determine what is fair value for securities for the purposes of
18 this Chapter:

- 19 (a) first, assess the value of the company as a whole; and
20 (b) then allocate that value among the classes of issued securities
21 in the company (taking into account the relative financial
22 risk, and voting and distribution rights, of the classes); and
23 (c) then allocate the value of each class pro rata among the
24 securities in that class (without allowing a premium or
25 applying a discount for particular securities in that class).

Section 668A

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Part 6A.5—Records of unclaimed consideration

4

5

668A Company's power to deal with unclaimed consideration for compulsory acquisition

6

Records of unclaimed compulsory acquisition consideration

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8

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- (1) If a company is paid consideration in respect of securities that are compulsorily acquired under Part 6A.1 or 6A.3, the company must maintain records of:

10

11

12

13

14

- (a) the consideration paid (including any benefit accruing from the consideration and any property substituted for the whole or any part of that consideration); and
- (b) the people who are entitled to that consideration; and
- (c) any transfers of the consideration to the people entitled to it.

15

16

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18

- (2) The company must keep the records at:
- (a) its registered office; or
 - (b) its principal place of business in Australia; or
 - (c) another place in Australia approved by ASIC.

19

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- (3) A person may ask the company to let the person inspect all or any of the records kept by the company under this section. The company must let the person inspect the records:
- (a) if the company requires payment of an amount not exceeding the prescribed amount—within 7 days after the day on which the company receives that amount; or
 - (b) in any other case—within 7 days after the day on which the request is made.

27

28

29

- (4) By the end of February each year, the company must publish in the *Gazette* a copy of the records kept under subsection (1) as at the end of the previous December.

1 **668B Unclaimed consideration to be transferred to ASIC**

- 2 (1) If the company has not transferred the unclaimed consideration to
3 the person entitled to it within 12 months after the publication of a
4 copy of the records in the *Gazette*, the company must transfer the
5 consideration to ASIC within 1 month after the end of that 12
6 month period.
- 7 (2) The company is then discharged from liability to any person in
8 respect of the consideration.
- 9 (3) ASIC must deal with the consideration under Part 9.7.
- 10 (4) Except as provided by subsection (2), this Part does not deprive a
11 person of any right or remedy to which the person is entitled
12 against a liquidator or company.

Section 669

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Part 6A.6—ASIC powers

4

669 ASIC's power to exempt and modify

5

(1) ASIC may:

6

(a) exempt a person from a provision of this Chapter; or

7

(b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

8

9

(2) The exemption or declaration may:

10

11

(a) apply to all or specified provisions of this Chapter; and

12

(b) apply to all persons, specified persons, or a specified class of persons; and

13

14

(c) relate to all securities, specified securities or a specified class of securities; and

15

16

(d) relate to any other matter generally or as specified.

17

(3) An exemption may apply unconditionally or subject to specified

18

19

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.

20

21

(4) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

22

23

(5) For the purposes of this section, the *provisions of this Chapter* include:

24

25

(a) regulations made for the purposes of this Chapter; and

26

27

(b) definitions in this Law or the regulations as they apply to references in:

28

29

(i) this Chapter; or

30

(ii) regulations made for the purposes of this Chapter; and

31

(c) Division 12 of Part 11.2.

1
2 **Chapter 6B—Rights and liabilities in relation**
3 **to Chapter 6 and 6A matters**
4
5

6 **670A Misstatements in, or omissions from, takeover and compulsory**
7 **acquisition and buy-out documents**

8 (1) A person must not give:

- 9 (a) a bidder's statement
10 (b) a takeover offer document
11 (c) a notice of variation of a takeover offer
12 (d) a target's statement
13 (e) a compulsory acquisition notice under section 661B or 664C
14 (f) a compulsory buy-out notice under section 662B, 663B or
15 665B
16 (g) a report that is included in, or accompanies, a statement or
17 notice referred to in paragraphs (a) to (f)

18 if there is:

- 19 (h) for all documents—a misleading or deceptive statement in
20 the document; or
21 (i) for a bidder's statement or target's statement—an omission
22 from the document of material required by section 636 or
23 638; or
24 (j) for a bidder's statement or a target's statement—a new
25 circumstance that:
26 (i) has arisen since the document was lodged; and
27 (ii) would have been required by section 636 or 638 to be
28 included in the document if it had arisen before the
29 document was lodged; or
30 (k) for an expert's report under subsection 636(2) or section 640,
31 663B, 664C or 665B—an omission from the report of
32 material required by subsection 648A(3) or 667B(2).
-

Section 670B

1 Note 1: See section 670D for defences.

2 Note 2: Section 995 imposes liabilities in respect of other conduct related to
3 the dealings in securities.

4 *Forecasts and other forward-looking statement*

5 (2) A person is taken to make a misleading statement about a future
6 matter (including the doing of, or refusing to do, an act) if they do
7 not have reasonable grounds for making the statement. This
8 subsection does not limit the meaning of a reference to a
9 misleading statement or a statement that is misleading in a material
10 particular.

11 *Offence if statement, omission or new matter materially adverse*

12 (3) A person commits an offence if they contravene subsection (1)
13 and:
14 (a) the misleading or deceptive statement; or
15 (b) the omission or new circumstance;
16 is materially adverse from the point of view of the holder of
17 securities to whom the document is given.

18 **670B Right to recover for loss or damage resulting from**
19 **contravention**

20 (1) A person who suffers loss or damage that results from a
21 contravention of subsection 670A(1) may recover the amount of
22 the loss or damage from a person referred to in the following table
23 if the loss or damage is one that the table makes the person liable
24 for. This is so even if the person did not commit, and was not
25 involved in, the contravention.
26

People liable on the document	[operative table]
--------------------------------------	--------------------------

For these documents

these people...

**...are liable for loss or damages
caused by**

bidder's statement or takeover offer document

Section 670B

People liable on the document [operative table]

For these documents

these people...

...are liable for loss or damages caused by

1	the bidder	any contravention of subsection 670A(1) in relation to the document
2	each director of a bidder that is a body if the consideration offered under the bid is not a cash sum only	any contravention of subsection 670A(1) in relation to the document
3	a director of a bidder that is a body unless the director proves that they: (a) were not present when the directors resolved to adopt the statement or offer document; or (b) voted against the resolution; if the consideration offered under the bid is a cash sum only	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>notice of variation of a takeover offer</i>		
4	the bidder	any contravention of subsection 670A(1) in relation to the document
5	a director of a bidder that is a body	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>a target's statement</i>		
6	the target	any contravention of subsection 670A(1) in relation to the document
7	a director of the target unless the director proves that they: (a) were not present when the directors resolved to adopt the statement; or (b) voted against the resolution	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.

a compulsory acquisition or compulsory buy-out notice

Section 670B

People liable on the document [operative table]

For these documents

these people...

...are liable for loss or damages caused by

8	the person giving the notice	any contravention of subsection 670A(1) in relation to the document
9	a director of a body corporate giving the notice unless the director proves that they: (a) were not present when the directors resolved to give the notice; or (b) voted against the resolution	any contravention of subsection 670A(1) in relation to the document See also items 10 and 11.
<i>all documents</i>		
10	a person named in the document, with their consent, as having made a statement: (a) that is included in the document; or (b) on which a statement made in the document is based	the inclusion of the statement in the document
11	a person who contravenes, or is involved in a contravention of, subsection 670A(1)	that contravention

- 1 (2) An action under subsection (1) may begin at any time within 6
2 years after the day on which the cause of action arose.
- 3 (3) This Part does not affect any liability that a person has under any
4 other law.
- 5 Note: Conduct that contravenes subsection 670A(1) is expressly excluded
6 from the operation of section 995A.

1 **670C People liable on takeover or compulsory acquisition statement**
2 **to inform maker about deficiencies in the statement**

3 (1) A person referred to in the table in subsection 670B(1) in relation
4 to a document must notify the issuer of the document in writing as
5 soon as practicable if they become aware during the bid period or
6 objection period that:

7 (a) a material statement in the document is misleading or
8 deceptive; or

9 (b) there is a material omission from the document of
10 information required by section 636, 638 or 640; or

11 (c) a material new circumstance that:

12 (i) has arisen since the document was lodged; and

13 (ii) would have been required by section 636, 638 or 640 to
14 be included in the document if it had arisen before the
15 document was lodged.

16 (2) An expert whose report accompanies, or is included in, a target's
17 statement under section 640 must notify the target in writing as
18 soon as practicable if they become aware during the takeover
19 period that:

20 (a) a material statement in the report is misleading or deceptive;
21 or

22 (b) there has been a significant change affecting information
23 included in the report.

24 (3) An expert whose report accompanies, or is included in, a bidder's
25 statement under subsection 636(2) must notify the bidder in writing
26 as soon as practicable if they become aware during the takeover
27 period that:

28 (a) a material statement in the report is misleading or deceptive;
29 or

30 (b) there has been a significant change affecting information
31 included in the report.

Section 670D

1 **670D Defences against prosecutions under subsection 670A(3) and**
2 **actions under section 670B**

3 *Not knowing statement misleading or deceptive*

- 4 (1) A person does not commit an offence against subsection 670A(3),
5 and is not liable under section 670B for a contravention of
6 subsection 670A(1), because of a misleading or deceptive
7 statement in a document if the person proves that they did not
8 know that the statement was misleading or deceptive.

9 *Not knowing there was an omission*

- 10 (2) A person does not commit an offence against subsection 670A(3),
11 and is not liable under section 670B for a contravention of
12 subsection 670A(1), because of an omission from a document in
13 relation to a particular matter if the person proves that they did not
14 know that there was an omission from the document in relation to
15 that matter.

16 *Reasonable reliance on information given by someone else—*
17 *statements and omissions*

- 18 (3) A person does not commit an offence against subsection 670A(3),
19 and is not liable under section 670B for a contravention against
20 subsection 670A(1), because of a misleading or deceptive
21 statement in, or an omission from, a document if the person proves
22 that they placed reasonable reliance on information given to them
23 by:
24 (a) if the person is a body—someone other than a director,
25 employee or agent of the body; or
26 (b) if the person is an individual—someone other than an
27 employee or agent of the individual.
- 28 (4) For the purposes of subsection (3), a person is not the agent of a
29 body or individual merely because they perform a particular
30 professional or advisory function for the body or individual.

Withdrawal of consent—statements and omissions

- 1
2 (5) A person who is named in a document as:
3 (a) making a statement included in the document; or
4 (b) making a statement on the basis of which a statement is
5 included in the document;
6 does not commit an offence against subsection 670A(3), and is not
7 liable under section 670B for a contravention against subsection
8 670A(1), because of a misleading or deceptive statement in, or an
9 omission from, a document if the person proves that they publicly
10 withdrew their consent to being named in the document in that
11 way.

12 *Unawareness of new matter*

- 13 (6) A person does not commit an offence against subsection 670A(3),
14 and is not liable under section 670B for a contravention of
15 subsection 670A(1), because of a new circumstance that has arisen
16 since the document was lodged if the person proves that they were
17 not aware of the matter.

18 **670E Liability for proposing a bid or not carrying through with bid**

- 19 (1) A person who:
20 (a) enters into a transaction relating to securities in reliance on:
21 (i) a public proposal for a takeover bid; or
22 (ii) an announcement of a market bid; and
23 (b) suffers loss or damage that results from a contravention of
24 section 631:
25 may recover the amount of the loss or damage from:
26 (c) the person who contravened the section; or
27 (d) any person involved in the contravention.
28 (2) To determine the amount of compensation payable under
29 subsection (1), deduct the price of the securities at which the
30 transaction was entered into from the price of the securities at

Section 670F

1 which the transaction would have been likely to be entered into if
2 the proposal or announcement had not been made.

3 **670F Defences**

4 A person does not commit an offence under subsection 631(1) or
5 (2), and is not liable under section 670E for a contravention of
6 those subsections if the person proves that they could not
7 reasonably have been expected to comply with those subsections
8 because:

- 9 (a) at the time of the proposal or announcement, circumstances
10 existed that the person did not know of and could not
11 reasonably have been expected to know of; or
12 (b) after the proposal or announcement, a change in
13 circumstances occurred that was not caused, directly or
14 indirectly, by the person.

1
2 **Chapter 6C—Information about ownership**
3 **of listed companies and managed**
4 **investment schemes**
5
6

7 **671A Chapter extends to some listed bodies that are not companies**

8 This Chapter applies to the acquisition of relevant interests in the
9 securities of listed bodies that are not companies but are
10 incorporated or formed in this jurisdiction in the same way as it
11 applies to the acquisition of relevant interests in the securities of
12 companies.

13 Note: Section 9 defines *company*, *jurisdiction* and *listed*.

14 **Part 6C.1—Substantial holding information**
15

16 **671B Information about substantial holdings must be given to**
17 **company, responsible entity and relevant securities**
18 **exchange**

19 *Requirement to give information*

- 20 (1) A person must give the information referred to in subsection (3) to
21 a listed company, or the responsible entity for a listed registered
22 managed investment scheme, if:
23 (a) the person begins to have, or ceases to have, a substantial
24 holding in the company or scheme; or
25 (b) the person has a substantial holding in the company or
26 scheme and there is a movement of at least 1% in their
27 holding; or
28 (c) the person makes a takeover bid for securities of the
29 company or scheme.

Schedule 1 Main amendments of the Corporations Law

Chapter 6C Information about ownership of listed companies and managed investment schemes

Part 6C.1 Substantial holding information

Section 671B

1 The person must also give the information to each relevant
2 securities exchange.

3 Note 1: Section 9 defines *substantial holding* and *associate*.

4 Note 2: The information must be given even if the situation changes by the
5 time the information is to be given.

6 (2) For the purposes of this section, there is a ***movement of at least 1%***
7 in a person's holding if the percentage worked out using the
8 following formula increases or decreases by 1 or more percentage
9 points from the percentage they last disclosed under this Part in
10 relation to the company or scheme:

11
$$\frac{\text{Person's and associates' votes}}{\text{Total votes in company or scheme}} \times 100$$

12 where:

13 ***person's and associates' votes*** is the total number of votes attached
14 to all the voting shares in the company or interests in the scheme
15 (if any) that the person or an associate has a relevant interest in.

16 ***total votes in company or scheme*** is the total number of votes
17 attached to all voting shares in the company or interests in the
18 scheme.

19 Note: Subsection (7) expands the normal concept of relevant interest to take
20 account of exchange traded options and conditional agreements.

21 *Information that must be given*

- 22 (3) The information to be given is:
- 23 (a) the person's name and address; and
 - 24 (b) details of their relevant interest in:
 - 25 (i) voting shares in the company; or
 - 26 (ii) interests in the scheme; and
 - 27 (c) details of any relevant agreement through which they would
28 have a relevant interest in:
 - 29 (i) voting shares in the company; or
 - 30 (ii) interests in the scheme; and
-

Section 671B

- 1 (d) the name of each associate who has a relevant interest in
2 voting shares in the company or interests in the scheme,
3 together with details of:
4 (i) the nature of their association with the associate; and
5 (ii) the relevant interest of the associate; and
6 (iii) any relevant agreement through which the associate has
7 the relevant interest; and
8 (e) if the information is being given because of a movement in
9 their holding—the size and date of that movement; and
10 (f) if the information is being given because a person has ceased
11 to be an associate—the name of the person; and
12 (g) any other particulars that are prescribed.

13 Note: Subsection (7) expands the normal concept of relevant interest to take
14 account of exchange traded options and conditional agreements.

15 *Information to be in prescribed form and accompanied by certain*
16 *documents*

- 17 (4) The information must be given in the prescribed form and must be
18 accompanied by:
19 (a) a copy of any document setting out the terms of any relevant
20 agreement that:
21 (i) contributed to the situation giving rise to the person
22 needing to provide the information; and
23 (ii) is in writing and readily available to the person; and
24 (b) a statement by the person giving full and accurate details of
25 any contract, scheme or arrangement that:
26 (i) contributed to the situation giving rise to the person
27 needing to provide the information; and
28 (ii) is not both in writing and readily available to the
29 person.

30 If the person is required to give a copy of a contract, scheme or
31 arrangement, the copy must be endorsed with a statement that the
32 copy is a true copy.

Schedule 1 Main amendments of the Corporations Law

Chapter 6C Information about ownership of listed companies and managed investment schemes

Part 6C.1 Substantial holding information

Section 671C

- 1 (5) The information does not need to be accompanied by the
2 documents referred to in subsection (4) if the transaction that gives
3 rise to the person needing to provide the information takes place on
4 a stock exchange approved under section 769.

5 *Deadline for giving information*

- 6 (6) The person must give the information:
7 (a) within 2 business days after they become aware of the
8 information; or
9 (b) by 9.30 am on the next trading day of the relevant securities
10 exchange after they become aware of the information if:
11 (i) a takeover bid is made for voting shares in the company
12 or voting interests in the scheme; and
13 (ii) the person becomes aware of the information during the
14 bid period.

15 *Relevant interests—exchange traded options and conditional*
16 *agreements*

- 17 (7) For the purposes of this section, a person has a relevant interest in
18 securities if the person would have a relevant interest in the
19 securities but for subsection 609(6) (exchange traded options) or
20 609(7) (conditional agreements).

21 **671C Civil liability**

- 22 (1) A person who contravenes section 671B is liable to compensate a
23 person for any loss or damage the person suffers because of the
24 contravention.
25 (2) It is a defence in proceedings brought under this section if the
26 person who contravenes section 671B proves that they contravened
27 that section:
28 (a) because of inadvertence or mistake; or
29 (b) because they were not aware of a relevant fact or occurrence.

Section 671C

- 1 In determining whether the defence is available, disregard the
2 person's ignorance of, or a mistake on the person's part
3 concerning, a matter of law.
- 4 (3) If 2 or more persons each contravene section 671B because of the
5 same act or omission, their liability under this section for the
6 contravention is joint and individual.

Section 672A

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Part 6C.2—Tracing beneficial ownership of shares

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672A Disclosure notices

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(1) ASIC, a listed company or the responsible entity for a listed managed investment scheme, may direct:

(a) a member of the company or scheme; or

(b) a person named in a previous disclosure under section 672B as having a relevant interest in, or having given instructions about, voting shares in the company or interests in the scheme;

to make the disclosure required by section 672B.

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(2) ASIC must exercise its powers under this section if requested to do so by a member of the company or scheme unless it considers that it would be unreasonable to do so in all the circumstances.

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672B Disclosure by member of relevant interests and instructions

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(1) A person given a direction under section 672A must disclose to the person giving the direction:

(a) full details of their own relevant interest in the shares or interests in the scheme and of the circumstances that give rise to that interest; and

(b) the name and address of each other person who has a relevant interest in any of the shares or interests together with full details of:

(i) the nature and extent of the interest; and

(ii) the circumstances that give rise to the other person's interest; and

(c) the name and address of each person who has given the person instructions about:

(i) the acquisition or disposal of the shares or interests; or

Section 672C

- 1 (ii) the exercise of any voting or other rights attached to the
2 shares or interests; or
3 (iii) any other matter relating to the shares or interests;
4 together with full details of those instructions (including the
5 date or dates on which they were given).

6 A matter referred to in paragraph (b) or (c) need only be disclosed
7 to the extent to which it is known to the person required to make
8 the disclosure.

- 9 (2) The disclosure must be made within 2 business days after:
10 (a) the person is given the direction; or
11 (b) if the person applies for an exemption under section 673 from
12 the obligation to make the disclosure and ASIC refuses to
13 grant the exemption—ASIC notifies the person of its
14 decision on the application; or
15 (c) if the direction is given by a company or responsible entity—
16 the company or responsible entity pays any fee payable under
17 the regulations made for the purposes of section 672D.
- 18 (3) The person does not have to comply with a direction given by the
19 company or the responsible entity if the person proves that the
20 giving of the direction is vexatious.

21 **672C ASIC may pass information on to person who made request**

22 If ASIC receives information in response to a direction under
23 section 672A about shares in a company or interests in a listed
24 managed investment scheme, ASIC:

- 25 (a) may pass the information on to the company or the
26 responsible entity for the scheme; and
27 (b) if ASIC gave the direction in response to a request under
28 subsection 672A(2)—must pass the information on to the
29 person who made the request unless ASIC considers it would
30 be unreasonable in all the circumstances to do so.

Section 672D

1 **672D Fee for complying with a direction given by a company or**
2 **scheme under this Part**

3 (1) The regulations may prescribe fees that companies and responsible
4 entities are to pay to persons for complying with directions given
5 under this Part.

6 (2) A person is liable to repay a fee paid to the person for complying
7 with a direction under section 672A if the person does not comply
8 with the direction on time even if the person does so later. The fee
9 may be recovered as a debt due to the company or responsible
10 entity that paid it to the person.

11 **672E No notice of rights**

12 A company or responsible entity is not, because of anything done
13 under this Part:

14 (a) to be taken for any purpose to have notice of; or

15 (b) put on inquiry as to;

16 a person's right in relation to a share in the company or an interest
17 in the listed managed investment scheme.

18 **672F Civil liability**

19 (1) A person who contravenes section 672B is liable to compensate a
20 person for any loss or damage the person suffers because of the
21 contravention.

22 (2) It is a defence in proceedings brought under this section if the
23 person who contravenes section 672B proves that they contravened
24 that section:

25 (a) because of inadvertence or mistake; or

26 (b) because they were not aware of a relevant fact or occurrence.

27 In determining whether the defence is available, disregard the
28 person's ignorance of, or a mistake on the person's part
29 concerning, a matter of law.

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Information about ownership of listed companies and managed investment schemes
Chapter 6C
Tracing beneficial ownership of shares **Part 6C.2**

Section 672F

- 1 (3) If 2 or more persons each contravene section 672B because of the
2 same act or omission, their liability under this section for the
3 contravention is joint and individual.

Section 673

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Part 6C.3—ASIC powers

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673 ASIC's power to exempt and modify

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(1) ASIC may:

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(a) exempt a person from a provision of this Chapter; or

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(b) declare that this Chapter applies to a person as if specified provisions were omitted, modified or varied as specified in the declaration.

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(2) In deciding whether to give the exemption or declaration, ASIC must consider the purposes of this Chapter set out in section 602.

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(3) The exemption or declaration may:

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(a) apply to all or specified provisions of this Chapter; and

14

(b) apply to all persons, specified persons, or a specified class of persons; and

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(c) relate to all securities, specified securities or a specified class of securities; and

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(d) relate to any other matter generally or as specified.

19

(4) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may order the person to comply with the condition in a specified way. Only ASIC may apply to the Court for the order.

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(5) The exemption or declaration must be in writing and ASIC must publish notice of it in the *Gazette*.

25

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(6) For the purposes of this section, the *provisions of this Chapter* include:

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28

(a) regulations made for the purposes of this Chapter; and

29

(b) definitions in this Law or the regulations as they apply to references in:

30

Section 673

- 1 (i) this Chapter; or
2 (ii) regulations made for the purposes of this Chapter; and
3 (c) Division 12 of Part 11.2.

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Chapter 6D—Fundraising

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Part 6D.1—Application of the fundraising provisions

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700 Coverage of the fundraising rules

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Securities covered

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- (1) Subsection 92(3) defines *securities* for the purposes of this Chapter.

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Offers and invitations both covered

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- (2) For the purposes of this Chapter:

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- (a) offering securities for issue includes inviting applications for the issue of the securities; and

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- (b) offering securities for sale includes inviting offers to purchase the securities.

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Person offering securities

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- (3) For the purposes of this Chapter, the person who offers securities is the person who has the capacity, or who agrees, to issue or transfer the securities if the offer is accepted.

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Geographical coverage of Chapter

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- (4) This Chapter applies to offers of securities that are received in this jurisdiction, regardless of where any resulting issue, sale or transfer occurs.

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Note: This Chapter in effect applies to all offers received anywhere in Australia because the Corporations Law operates as a national law.

25

1 **701 Treatment of offers of interests in managed investment scheme**

2 This Chapter applies to offers of interests in managed investment
3 schemes as if:

- 4 (a) making the interests available were issuing the interests; and
5 (b) the person making the interests available were the body
6 whose securities were issued; and
7 (c) the assets and liabilities, financial position and performance,
8 profits and losses and prospects of the scheme were those of
9 the body; and
10 (d) a person who has the capacity to determine the outcome of
11 decisions about the financial and operating policies
12 governing the operation of the scheme were able to control
13 the body.

14 **702 Treatment of offers of options over securities**

15 For the purposes of this Chapter:

- 16 (a) an offer of an option over securities is not to be taken to be
17 an offer of the underlying securities; and
18 (b) the grant of an option without an offer of the option is taken
19 to be an offer of the option; and
20 (c) an offer to grant an option is taken to be an offer to issue the
21 security constituted by the option.

22 Note 1: If a disclosure document is needed for the option and there is no
23 further offer involved in exercising the option, the issue or sale of the
24 underlying securities on the exercise of the option does not need a
25 disclosure document.

26 Note 2: Paragraph (b)—the grant of the option will not require a disclosure
27 document if no consideration is payable on the grant or the exercise of
28 the option (see subsections 708(14) and (15)).

29 **703 Chapter may not be contracted out of**

30 A condition of a contract for the sale or issue of securities is void if
31 it provides that a party to the contract is:

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Chapter 6D Fundraising

Part 6D.1 Application of the fundraising provisions

Section 703

- 1 (a) required or bound to waive compliance with any requirement
- 2 of this Chapter; or
- 3 (b) taken to have notice of any contract, document or matter not
- 4 specifically referred to in the disclosure document for the
- 5 offer.

1

2 **Part 6D.2—Disclosure to investors about securities**

3 **Division 1—Overview**

4 **704 When disclosure to investors is needed**

5 Sections 706, 707 and 708 say when an offer of securities needs
6 disclosure to investors under this Part.

7 Note 1: Section 727 prohibits offering securities without disclosure.

8 Note 2: If the offer needs disclosure, section 734 applies advertising
9 restrictions. These continue throughout the whole offer process.
10 Different restrictions apply before and after the disclosure document is
11 lodged.

12 Note 3: The way the offers are made to people must not breach the securities
13 hawking prohibition in section 736.

14 **705 Types of disclosure document**

15 The following table shows what disclosure documents to use if an
16 offer of securities needs disclosure to investors under this Part.

17

Disclosure document	
Type	Sections
1 <i>prospectus</i>	
The standard full-disclosure document.	content [710, 711, 713] procedure [717] liability [728 and 729] defences [731, 733]

Section 706

Disclosure document	
Type	Sections
2 <i>short form prospectus</i> May be used for any offer. Section 712 allows a prospectus to refer to material lodged with ASIC instead of setting it out. Investors are entitled to a copy of this material if they ask for it.	content [712]
3 <i>profile statement</i> Section 721 allows a brief profile statement (rather than the prospectus) to be sent out with offers with ASIC approval. The prospectus must still be prepared and lodged with ASIC. Investors are entitled to a copy of the prospectus if they ask for it.	content [714] procedure [717] liability [728 and 729] defences [732, 733]
4 <i>offer information statement</i> Section 709 allows an offer information statement to be used instead of a prospectus for an offer to issue securities if the amount raised from issues of securities is \$5 million or less.	content [715] procedure [717] liability [728 and 729] defences [732, 733]

1 **Division 2—Offers that need disclosure to investors**

2 **706 Issue offers that need disclosure**

3 An offer of securities for issue needs disclosure to investors under
4 this Part unless section 708 says otherwise.

1 **707 Sale offers that need disclosure**

2 *Only some sales need disclosure*

- 3 (1) An offer of securities for sale needs disclosure to investors under
4 this Part only if disclosure is required by subsection (2), (3) or (5).

5 *Off-market sale by controller*

- 6 (2) An offer of a body's securities for sale needs disclosure to
7 investors under this Part if:
8 (a) the person making the offer controls the body; and
9 (b) either:
10 (i) the securities are not quoted; or
11 (ii) although the securities are quoted, they are not offered
12 for sale in the ordinary course of trading on a stock
13 market of a securities exchange;

14 and section 708 does not say otherwise.

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

16 *Sale amounting to indirect issue*

- 17 (3) An offer of a body's securities for sale within 12 months after their
18 issue needs disclosure to investors under this Part if the body
19 issued the securities:
20 (a) without disclosure to investors under this Part; and
21 (b) with the purpose of the person to whom they were issued:
22 (i) selling or transferring them; or
23 (ii) granting, issuing or transferring interests in, or options
24 or warrants over, them;

25 and section 708 does not say otherwise.

26 Note 1: Section 706 normally requires disclosure for the issue of securities.
27 This subsection is intended to prevent avoidance of section 706.
28 However, to establish a contravention of this subsection, the only
29 purpose that needs to be shown is that referred to in paragraph (b).

30 Note 2: The issuer and the seller must both consent to the disclosure document
31 (see section 720).

Section 707

1 *Evidence of intention—indirect issue*

- 2 (4) Unless the contrary is proved, a body is taken to issue securities
3 with the purpose referred to in paragraph (3)(b) if any of the
4 securities are subsequently sold, or offered for sale, within 12
5 months after their issue.

6 *Sale amounting to indirect off-market sale by controller*

- 7 (5) An offer of a body's securities for sale within 12 months after their
8 sale by a person who controlled the body at the time of the sale
9 needs disclosure to investors under this Part if:
10 (a) at the time of the sale by the controller either:
11 (i) the securities were not quoted; or
12 (ii) although the securities were quoted, they were not
13 offered for sale in the ordinary course of trading on a
14 stock market of a securities exchange; and
15 (b) the controller sold the securities without disclosure to
16 investors under this Part; and
17 (c) the controller sold the securities with the purpose of the
18 person to whom they were sold:
19 (i) selling or transferring them; or
20 (ii) granting, issuing or transferring interests in, or options
21 or warrants over, them;
22 and section 708 does not say otherwise.

23 Note 1: Subsection (2) normally requires disclosure for a sale by a controller.
24 This subsection is intended to prevent avoidance of subsection (2).
25 However, to establish a contravention of this subsection, the only
26 purpose that needs to be shown is that referred to in paragraph (c).

27 Note 2: See section 50AA for when a person controls a body.

28 Note 3: The controller and the seller must both consent to the disclosure
29 document (see section 720).

30 *Evidence of intention—indirect sale by controller*

- 31 (6) Unless the contrary is proved, a person who controls a body is
32 taken to sell securities with the purpose referred to in paragraph
-

1 (5)(c) if any of the securities are subsequently sold, or offered for
2 sale, within 12 months after their sale by the controller.

3 **708 Offers that do not need disclosure**

4 *Small scale offerings (20 issues or sales in 12 months)*

5 (1) Personal offers of a body's securities by a person do not need
6 disclosure to investors under this Part if:

7 (a) none of the offers results in a breach of the 20 investors
8 ceiling (see subsections (3) and (4)); and

9 (b) none of the offers results in a breach of the \$2 million ceiling
10 (see subsections (3) and (4)).

11 This subsection does not apply to an offer for sale to which
12 subsection 707(3) (sale amounting to indirect issue) or (5) (sale
13 amounting to indirect sale by controller) applies.

14 Note 1: Subsection 727(4) makes it an offence to issue or transfer securities
15 without disclosure to investors once 20 issues or transfers have
16 occurred or \$2 million has been raised.

17 Note 2: Under section 740 ASIC may make a determination aggregating the
18 transactions of bodies that ASIC considers to be closely related.

19 (2) For the purposes of subsection (1), a personal offer is one that:

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

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

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

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

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

29 (3) An offer by a body to issue securities:

30 (a) results in a breach of the 20 investors ceiling if it results in
31 the number of people to whom securities of the body have
32 been issued exceeding 20 in any 12 month period; and

Section 708

1 (b) results in a breach of the \$2 million ceiling if it results in the
2 amount raised by the body by issuing securities exceeding \$2
3 million in any 12 month period.

4 (4) An offer by a person to transfer a body's securities:

5 (a) results in a breach of the 20 investors ceiling if it results in
6 the number of people to whom the person sells securities of
7 the body exceeding 20 in any 12 month period; and

8 (b) results in a breach of the \$2 million ceiling if it results in the
9 amount raised by the person from selling the body's
10 securities exceeding \$2 million in any 12 month period.

11 (5) In counting issues and sales of the body's securities, and the
12 amount raised from issues and sales, for the purposes of subsection
13 (1), disregard issues and sales that result from offers that:

14 (a) do not need a disclosure document because of any other
15 subsection of this section; or

16 (b) are not received in Australia; or

17 (c) are made under a disclosure document.

18 Note: Also see provisions on restrictions on advertising (section 734) and
19 securities hawking provisions (Part 6D.3).

20 (6) In counting issues and sales of the body's securities, and the
21 amount raised from issues and sales, for the purposes of subsection
22 (1), disregard any issues and sales made by a body if:

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

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

29 (c) the offer would have been exempted under any other
30 subsection of this section if the managed investment scheme
31 had been a registered managed investment scheme at the time
32 that the offer was made.

- 1 (7) In working out the amount of money raised by the body by issuing
2 securities, include the following:
3 (a) the amount payable for the securities at the time when they
4 are issued
5 (b) if the securities are shares issued partly-paid—any amount
6 payable at a future time if a call is made
7 (c) if the security is an option—any amount payable on the
8 exercise of the option
9 (d) if the securities carry a right to convert the securities into
10 other securities—any amount payable on the exercise of that
11 right.

12 *Sophisticated investors*

- 13 (8) An offer of a body's securities does not need disclosure to
14 investors under this Part if:
15 (a) the minimum amount payable for the securities on
16 acceptance of the offer by the person to whom the offer is
17 made is at least \$500,000; or
18 (b) the amount payable for the securities on acceptance by the
19 person to whom the offer is made and the amounts previously
20 paid by the person for the body's securities of the same class
21 that are held by the person add up to at least \$500,000; or
22 (c) the offer is made through a licensed dealer and the dealer is
23 satisfied on reasonable grounds that the person to whom the
24 offer is made has previous experience in investing in
25 securities that allows them to assess:
26 (i) the merits of the offer; and
27 (ii) the value of the securities; and
28 (iii) the risks involved in accepting the offer; and
29 (iv) their own information needs; and
30 (v) the adequacy of the information given by the person
31 making the offer; or
32 (d) it appears from a certificate given by a qualified accountant
33 no more than 6 months before the offer is made that the
34 person to whom the offer is made:
-

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- 1 (i) has net assets of at least \$2.5 million; or
2 (ii) has a gross income for each of the last 2 financial years
3 of at least \$250,000 a year.

4 Note: Section 9 defines *qualified accountant*.

- 5 (9) In calculating the amount payable, or paid, for securities for the
6 purposes of paragraph (8)(a) or (b), disregard any amount payable,
7 or paid, to the extent to which it is to be paid, or was paid, out of
8 money lent by the person offering the securities or an associate.

9 *Professional investors*

- 10 (10) An offer of securities does not need disclosure to investors under
11 this Part if it is made to:
12 (a) a person who is a licensed or exempt dealer and is acting as
13 principal; or
14 (b) a person who is a licensed or exempt investment adviser and
15 is acting as principal; or
16 (c) a body registered under the *Life Insurance Act 1995*; or
17 (d) a body registered under the *Financial Corporations Act*
18 *1974*; or
19 (e) a regulated superannuation fund, an approved deposit fund, a
20 pooled superannuation trust, or a public sector
21 superannuation scheme within the meaning of the
22 *Superannuation Industry (Supervision) Act 1993* if the fund,
23 trust or scheme has net assets of at least \$10 million; or
24 (f) a terminating building society within the meaning of the
25 *Financial Corporations Act 1974*; or
26 (g) a friendly society within the meaning of the *Life Insurance*
27 *Act 1995*; or
28 (h) a person who controls at least \$10 million (including any
29 amount held by an associate or under a trust that the person
30 manages) for the purpose of investment in securities.

31 Note 1: Section 68 defines *exempt dealer* and *exempt investment adviser*.

32 Note 2: An underwriter to a securities issue or sale will generally be a licensed
33 dealer.

1 *Offers of securities to people associated with the body*

- 2 (11) An offer of a body's securities does not need disclosure to
3 investors under this Part if it is made to:
4 (a) an executive officer of the body or a related body or their
5 spouse, parent, child, brother or sister; or
6 (b) a body corporate controlled by a person referred to in
7 paragraph (a).

8 *Certain offers to present holder of securities*

- 9 (12) An offer of securities for issue does not need disclosure to
10 investors under this Part if it is:
11 (a) an offer of fully-paid shares in a company to 1 or more
12 existing holders of shares in the company under a dividend
13 reinvestment plan or bonus share plan; or
14 (b) an offer of interests in a managed investment scheme to 1 or
15 more existing holders of interests in the scheme if:
16 (i) the offer is made under a distribution reinvestment plan
17 or switching facility; or
18 (ii) the scheme is of a kind commonly known as a cash
19 common fund or cash management trust.
- 20 (13) An offer of a disclosing entity's debentures for issue does not need
21 disclosure to investors under this Part if the offer is made to 1 or
22 more existing debenture holders.

23 *Issues or sales for no consideration*

- 24 (14) An offer of securities (other than options) does not need disclosure
25 to investors under this Part if no consideration is to be provided for
26 the issue or transfer of the securities.
- 27 (15) An offer of options does not need disclosure to investors under this
28 Part if:
29 (a) no consideration is to be provided for the issue or transfer of
30 the options; and

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- 1 (b) no consideration is to be provided for the underlying
2 securities on the exercise of the option.

3 *Compromise or arrangement under Part 5.1*

- 4 (16) An offer of securities does not need disclosure to investors under
5 this Part if it is made under a compromise or arrangement under
6 Part 5.1 approved at a meeting held as a result of an order under
7 subsection 411(1) or (1A).

8 *Takeovers*

- 9 (17) An offer of securities does not need disclosure to investors under
10 this Part if it is:
11 (a) made as consideration for an offer to acquire securities under
12 a takeover bid under Chapter 6; and
13 (b) accompanied by a bidder's statement.

14 Note: Although this offer does not need a disclosure document, similar
15 disclosures must be made about the securities in the bidder's statement
16 under section 636.

17 *Debentures of certain bodies*

- 18 (18) An offer of a body's debentures for issue or sale does not need
19 disclosure to investors under this Part if the body is:
20 (a) an Australian ADI; or
21 (b) registered under the *Life Insurance Act 1995*.

22 *Offers by exempt bodies*

- 23 (19) An offer of a body's securities does not need disclosure to
24 investors under this Part if the body is an exempt body of this
25 jurisdiction.

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

1 **Division 3—Types of disclosure documents**

2 **709 Prospectuses, short-form prospectuses, profile statements and**
3 **offer information statements**

4 *Prospectus or short-form prospectus*

- 5 (1) If an offer of securities needs disclosure to investors under this
6 Part, a prospectus must be prepared for the offer unless subsection
7 (4) allows an offer information statement to be used instead. Under
8 section 712, the prospectus may simply refer to material already
9 lodged with ASIC instead of including it.

10 Note: See sections 710 to 713 for the contents of a prospectus.

11 *Profile statement*

- 12 (2) A profile statement for an offer may be prepared in addition to the
13 prospectus if ASIC has approved the making of offers of that kind
14 with a profile statement instead of a disclosure document.

15 Note 1: See section 714 for the contents of a profile statement.

16 Note 2: Subsection 729(2) provides that there is still liability to investors on
17 the prospectus when a profile statement is used.

- 18 (3) ASIC may approve the use of profile statements for offers of
19 securities of a particular kind. The approval may specify
20 information to be included in the profile statement (including
21 information about a matter referred to in paragraphs 714(1)(a) to
22 (d)).

23 *Offer information statement*

- 24 (4) A body offering to issue securities may use an offer information
25 statement for the offer instead of a prospectus if the amount of
26 money to be raised by the body by issuing the securities, when
27 added to all amounts previously raised by:

- 28 (a) the body; or
29 (b) a related body corporate; or

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- 1 (c) an entity controlled by:
- 2 (i) a person who controls the body; or
- 3 (ii) an associate of that person;
- 4 by issuing securities under an offer information statement is \$5
- 5 million or less.
- 6 Note 1: See section 715 for the contents of an offer information statement. The
- 7 statement must include financial statements that are less than 6 months
- 8 old.
- 9 Note 2: Under section 740, ASIC may make a determination aggregating the
- 10 transactions of bodies that ASIC considers to be closely related.
- 11 (5) In working out the amount of money to be raised by a body or
- 12 entity by issuing securities, include the following:
- 13 (a) the amount payable for the securities at the time when they
- 14 are issued
- 15 (b) if the securities are issued partly-paid—any amount payable
- 16 at a future time if a call is made
- 17 (c) if the securities are options—any amount payable on the
- 18 exercise of the options
- 19 (d) if the securities carry a right to convert the securities into
- 20 other securities—any amount payable on the exercise of that
- 21 right.

22 **Division 4—Disclosure requirements**

23 **710 Prospectus content—general disclosure test**

- 24 (1) A prospectus for a body's securities must contain all the
- 25 information that investors and their professional advisers would
- 26 reasonably require to make an informed assessment of the matters
- 27 set out in the table below. The prospectus must contain this
- 28 information:
- 29 (a) only to the extent to which it is reasonable for investors and
- 30 their professional advisers to expect to find the information
- 31 in the prospectus; and

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- 1 (b) only if a person whose knowledge is relevant (see subsection
2 (3)):
3 (i) actually knows the information; or
4 (ii) in the circumstances ought reasonably to have obtained
5 the information by making enquiries.
6

Disclosures		[operative]
Offer	Matters	
1 offer to issue (or transfer) shares, debentures or interests in a managed investment scheme	<ul style="list-style-type: none"> • the rights and liabilities attaching to the securities offered • the assets and liabilities, financial position and performance, profits and losses and prospects of the body that is to issue (or issued) the shares, debentures or interests 	
2 offer to grant (or transfer) a legal or equitable interest in securities or grant (or transfer) an option over securities	<ul style="list-style-type: none"> • the rights and liabilities attaching to: <ul style="list-style-type: none"> - the interest or option - the underlying securities • for an option—the capacity of the person making the offer to issue or deliver the underlying securities • if the person making the offer is: <ul style="list-style-type: none"> - the body that issued or is to issue the underlying securities; or - a person who controls that body; the assets and liabilities, financial position and performance, profits and losses and prospects of that body • if subsection 707(3) or (5) applies to the offer—the assets and liabilities, financial position and performance, profits and losses and prospects of the body whose securities are offered 	

7 Note: Section 713 makes special provision for prospectuses for continuously
8 quoted securities.

- 9 (2) In deciding what information should be included under subsection
10 (1), have regard to:

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- 1 (a) the nature of the securities and of the body; and
2 (b) if the securities are investments in a managed investment
3 scheme—the nature of the scheme; and
4 (c) the matters that likely investors may reasonably be expected
5 to know; and
6 (d) the fact that certain matters may reasonably be expected to be
7 known to their professional advisers.
- 8 (3) For the purposes of this section, a person’s knowledge is relevant
9 only if they are one of the following:
10 (a) the person offering the securities
11 (b) if the person offering the securities is a body—a director of
12 the body
13 (c) a proposed director of the body whose securities will be
14 issued under the offer
15 (d) a person named in the prospectus as an underwriter of the
16 issue or sale
17 (e) a person named in the prospectus as a stockbroker to the
18 issue or sale if they participate in any way in the preparation
19 of the prospectus
20 (f) a person named in the prospectus with their consent as
21 having made a statement:
22 (i) that is included in the prospectus; or
23 (ii) on which a statement made in the prospectus is based
24 (g) a person named in the prospectus with their consent as
25 having performed a particular professional or advisory
26 function.

27 Note: Section 729 says who is liable for misstatements in, and omissions
28 from, a disclosure document.

29 **711 Prospectus content—specific disclosures**

30 *Terms and conditions of offer*

- 31 (1) The prospectus must set out the terms and conditions of the offer.

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Disclosure of interests and fees of certain people involved in the offer

- (2) The prospectus must set out the nature and extent of the interests (if any) that each person referred to in subsection (4) holds, or held at any time during the last 2 years, in:
- (a) the formation or promotion of the body; or
 - (b) property acquired or proposed to be acquired by the body in connection with:
 - (i) its formation or promotion; or
 - (ii) the offer of the securities; or
 - (c) the offer of the securities.
- (3) The prospectus must set out the amount that anyone has paid or agreed to pay, or the nature and value of any benefit anyone has given or agreed to give:
- (a) to a director, or proposed director, to induce them to become, or to qualify as, a director of the body; and
 - (b) for services provided by a person referred to in subsection (4) in connection with:
 - (i) the formation or promotion of the body; or
 - (ii) the offer of the securities; and
 - (c) if the prospectus is for interests in a managed investment scheme—to the responsible entity:
 - (i) to procure acquisitions of interests in the scheme; or
 - (ii) for services provided under the constitution of the scheme.
- To comply with this subsection it is not sufficient merely to state in the prospectus that a person has been paid or will be paid normal, usual or standard fees.
- (4) Disclosures need to be made under subsections (2) and (3) in relation to:
- (a) any directors and proposed directors of the body

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- 1 (b) a person named in the prospectus as performing a function in
2 a professional, advisory or other capacity in connection with
3 the preparation or distribution of the prospectus
4 (c) if the securities are interests in a managed investment
5 scheme—the person making the interests available and, if the
6 person is a body, its directors
7 (d) a promoter of the body
8 (e) a stockbroker or underwriter (but not a sub-underwriter) to
9 the issue or sale.

10 *Quotation of securities*

- 11 (5) If the prospectus for an offer of securities states or implies that the
12 securities are to be quoted on a stock market of a securities
13 exchange (whether in Australia or elsewhere), the prospectus must
14 state that:
15 (a) the securities have been admitted to quotation on that stock
16 market; or
17 (b) an application for admission of the securities to quotation on
18 that stock market has been made to that securities exchange;
19 or
20 (c) an application for admission of the securities to quotation on
21 that stock market will be made to that securities exchange
22 within 7 days after the date of the prospectus.

23 Note 1: Paragraph 724(1)(b) gives times within which the person should seek
24 and obtain admission to quotation.

25 Note 2: Subsection 716(1) requires the prospectus to be dated.

26 *Expiry date*

- 27 (6) The prospectus must state that no securities will be issued on the
28 basis of the prospectus after the expiry date specified in the
29 prospectus. The expiry date must not be later than 13 months after
30 the date of the prospectus. The expiry date of a replacement
31 prospectus must be the same as that of the original prospectus it
32 replaces.

33 Note 1: Subsection 716(1) requires the prospectus to be dated.

1 Note 2: Section 719 deals with replacement prospectuses.

2 *Lodgment with ASIC*

- 3 (7) The prospectus must state that:
4 (a) a copy of the prospectus has been lodged with ASIC; and
5 (b) ASIC takes no responsibility for the content of the
6 prospectus.

7 *Prescribed information*

- 8 (8) The prospectus must set out the information required by the
9 regulations.

10 **712 Prospectus content—short form prospectuses**

11 *Prospectus may simply refer to material lodged with ASIC*

- 12 (1) Instead of setting out information that is contained in a document
13 that has been lodged with ASIC, a prospectus may simply refer to
14 the document. The reference must:
15 (a) identify the document or the part of the document that
16 contains the information; and
17 (b) inform people of their right to obtain a copy of the document
18 (or part) under subsection (5).
- 19 (2) The reference must also include:
20 (a) if the information is primarily of interest to professional
21 analysts or advisers or investors with similar specialist
22 information needs:
23 (i) a description of the contents of the document (or part);
24 and
25 (ii) a statement to the effect that the information in the
26 document (or part) is primarily of interest to those
27 people; or

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- 1 (b) in any other case—sufficient information about the contents
2 of the document to allow a person to whom the offer is made
3 to decide whether to obtain a copy of the document (or part).
- 4 (3) The document (or part) referred to under subsection (1) is taken to
5 be included in the prospectus.
- 6 (4) A person who wishes to take advantage of subsection (1) may
7 lodge a document with ASIC even if this Law does not require the
8 document to be lodged.
- 9 (5) If the prospectus is taken to include a document, or part of a
10 document, under subsection (1), the person making the offer must
11 give a copy of the document (or part) free of charge to anyone who
12 asks for it during the application period of the prospectus.

13 **713 Special prospectus content rules for continuously quoted**
14 **securities**

15 *Alternative general disclosure test*

- 16 (1) A prospectus for an offer of:
17 (a) continuously quoted securities of a body; or
18 (b) options to acquire continuously quoted securities of a body;
19 satisfies section 710 if it complies with subsections (2), (3) and (4)
20 of this section.
- 21 (2) The prospectus must contain all the information investors and their
22 professional advisers would reasonably require to make an
23 informed assessment of:
24 (a) the effect of the offer on the body; and
25 (b) if the securities are interests in a managed investment
26 scheme—the effect of the offer on the scheme; and
27 (c) the rights and liabilities attaching to the securities offered;
28 and
29 (d) if the securities are options—the rights and liabilities
30 attaching to:

- 1 (i) the options themselves; and
2 (ii) the underlying securities.

3 The prospectus must contain this information only to the extent to
4 which it is reasonable for investors and their professional advisers
5 to expect to find the information in the prospectus.

6 (3) The prospectus must state that:

- 7 (a) as a disclosing entity, the body or scheme is subject to
8 regular reporting and disclosure obligations; and
9 (b) copies of documents lodged with ASIC in relation to the
10 body may be obtained from, or inspected at, an ASIC office.

11 (4) The prospectus must either:

- 12 (a) inform people of their right to obtain a copy of any of the
13 following documents:
14 (i) the annual financial report most recently lodged with
15 ASIC by the body or scheme
16 (ii) any half-year financial report lodged with ASIC by the
17 body or scheme after the lodgment of that annual
18 financial report and before the lodgment of the copy of
19 the prospectus with ASIC
20 (iii) any continuous disclosure notices given by the body or
21 scheme after the lodgment of that annual financial
22 report and before the lodgment of the copy of the
23 prospectus with ASIC; or
24 (b) include, or be accompanied by, a copy of the document.

25 If the prospectus informs people of their right to obtain a copy of
26 the document, the person making the offer must give a copy of the
27 document free of charge to anyone who asks for it during the
28 application period for the prospectus.

29 *Information excluded from continuous disclosure notice*

30 (5) Information about the offer must also be set out in the prospectus if
31 the information:

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- 1 (a) has been excluded from a continuous disclosure notice in
2 accordance with the listing rules of the securities exchange to
3 which the notice was given; and
4 (b) is information that investors and their professional advisers
5 would reasonably require for the purpose of making an
6 informed assessment of:
7 (i) the assets and liabilities, financial position and
8 performance, profits and losses and prospects of the
9 body; and
10 (ii) the rights and liabilities attaching to the securities being
11 offered.

12 The prospectus must contain this information only to the extent to
13 which it is reasonable for investors and their professional advisers
14 to expect to find the information in the prospectus.

15 *ASIC power to exclude entity from this section*

- 16 (6) ASIC may determine in writing that a body or scheme may not rely
17 on this section if it is satisfied that, in the previous 12 months, any
18 of the following provisions were contravened in relation to the
19 body or scheme:
20 (a) the provisions of Chapter 2M
21 (b) section 1001A
22 (c) section 724
23 (d) section 728.

24 ASIC must publish a copy of the determination in the *Gazette*.
25 While the determination is in force, section 710 and not this section
26 applies to securities of the body or scheme.

27 **714 Contents of profile statement**

- 28 (1) A profile statement must:
29 (a) identify the body and the nature of the securities; and
30 (b) state the nature of the risks involved in investing in the
31 securities; and

- 1 (c) give details of all amounts payable in respect of the securities
2 (including any amounts by way of fee, commission or
3 charge); and
4 (d) state that the person given the profile statement is entitled to
5 a copy of the prospectus free of charge; and
6 (e) state that:
7 (i) a copy of the statement has been lodged with ASIC; and
8 (ii) ASIC takes no responsibility for the content of the
9 statement; and
10 (f) give any other information required by the regulations or by
11 ASIC approval under subsection 709(3).
- 12 (2) The profile statement must state that no securities will be issued on
13 the basis of the statement after the expiry date specified in the
14 statement. The expiry date must not be later than 13 months after
15 the date of the prospectus. The expiry date of a replacement
16 statement must be the same as that of the original statement it
17 replaces.
- 18 Note 1: Subsection 716(1) requires the profile statement to be dated.
19 Note 2: Section 719 deals with supplementary and replacement profile
20 statements.

21 **715 Contents of offer information statement**

- 22 (1) An offer information statement for the issue of a body's securities
23 must:
24 (a) identify the body and the nature of the securities; and
25 (b) describe the body's business; and
26 (c) describe what the funds raised by the offers are to be used
27 for; and
28 (d) state the nature of the risks involved in investing in the
29 securities; and
30 (e) give details of all amounts payable in respect of the securities
31 (including any amounts by way of fee, commission or
32 charge); and
33 (f) state that:
-

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- 1 (i) a copy of the statement has been lodged with ASIC; and
2 (ii) ASIC takes no responsibility for the content of the
3 statement; and
4 (g) state that the statement is not a prospectus and that it has a
5 lower level of disclosure requirements than a prospectus; and
6 (h) state that investors should obtain professional investment
7 advice before accepting the offer; and
8 (i) include a copy of a financial report for the body; and
9 (j) include any other information that the regulations require to
10 be included in the statement.
- 11 (2) The financial report included under paragraph (1)(i) must:
12 (a) be a report for a 12 month period and have a balance date
13 that occurs within the last 6 months before the securities are
14 first offered under the statement; and
15 (b) be prepared in accordance with the accounting standards; and
16 (c) be audited.
- 17 (3) The statement must state that no securities will be issued on the
18 basis of the statement after the expiry date specified in the
19 statement. The expiry date must not be later than 13 months after
20 the date of the statement. The expiry date of a replacement
21 statement must be the same as that of the original statement it
22 replaces.
- 23 Note 1: Subsection 716(1) requires the statement to be dated.
24 Note 2: Section 719 deals with replacement statements.

25 **716 Disclosure document date and consents**

26 *Date of disclosure document*

- 27 (1) A disclosure document must be dated. The date is the date on
28 which it is lodged with ASIC.

Consent of person to whom statement attributed

- (2) A disclosure document may only include a statement by a person, or a statement said in the document to be based on a statement by a person, if:
- (a) the person has consented to the statement being included in the document in the form and context in which it is included; and
 - (b) the document states that the person has given this consent; and
 - (c) the person has not withdrawn this consent before the document is lodged with ASIC.

Division 5—Procedure for offering securities

717 Overview of procedure for offering securities

The following table summarises what a person who wants to offer securities must do to make an offer of securities that needs disclosure to investors under this Part and gives signposts to relevant sections:

Offering securities (disclosure documents and procedure)

	Action required	Sections	Comments and related sections
1	Prepare disclosure document, making sure that it:	710 711 712	Section 728 prohibits offering securities under a disclosure document that is materially deficient.
	• sets out all the information required	713	
	• does not contain any misleading or deceptive statements	714 715	Section 729 deals with the liability for breaches of this prohibition.
	• is dated	716	Sections 731, 732 and 733 set out defences.
	and that the directors consent to the disclosure document.		

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Chapter 6D Fundraising

Part 6D.2 Disclosure to investors about securities

Section 717

Offering securities (disclosure documents and procedure)

	Action required	Sections	Comments and related sections
2	Lodge the disclosure document with ASIC	718	Subsection 727(3) prohibits processing applications for non-quoted securities for 7 days after the disclosure document is lodged.
3	Offer the securities, making sure that the offer and any application form is either included in or accompanies: <ul style="list-style-type: none">• the disclosure document; or• a profile statement if ASIC has approved the use of a profile statement for offers of that kind.	721	Sections 727 and 728 make it an offence to: <ul style="list-style-type: none">• offer securities without a disclosure document• offer securities if the disclosure document is materially deficient. Subsection 729(3) deals with liability on the prospectus if a profile statement is used. The securities hawking provisions (section 736) restrict the way in which the securities can be offered.
4	If it is found that the disclosure document lodged was deficient or a significant new matter arises, either: <ul style="list-style-type: none">• lodge a supplementary or replacement document under section 719; or• return money to applicants under section 724.	719 724	Section 728 prohibits making offers after becoming aware of a material deficiency in the disclosure document or a significant new matter. Section 730 requires people liable on the disclosure document to inform the person making the offer about material deficiencies and new matters.
5	Hold application money received on trust until the securities are issued or transferred or the money returned.	722	Investors may have a right to have their money returned if certain events occur (see sections 724, 737 and 738).

Offering securities (disclosure documents and procedure)

Action required	Sections	Comments and related sections
<p>6 Issue or transfer the securities, making sure that:</p> <ul style="list-style-type: none"> • the investor used an application form distributed with the disclosure document; and • the disclosure document is current and not materially deficient; and • any minimum subscription or quotation condition has been satisfied. 	<p>723</p>	<p>Section 721 says which disclosure document must be distributed with the application form.</p> <p>Section 729 identifies the people who may be liable if:</p> <ul style="list-style-type: none"> • securities are issued in response to an improper application form; or • the disclosure document is not current or is materially deficient. <p>Sections 731, 732 and 733 provide defences for the contraventions.</p> <p>Section 737 provides remedies for an investor.</p>

1 **718 Lodging of disclosure document**

2 A disclosure document to be used for an offer of securities must be
3 lodged with ASIC.

4 Note 1: Subsection 727(3) makes it an offence to process applications for
5 non-quoted securities under an offer that needs a disclosure document
6 until 7 days after the disclosure document is lodged.

7 Note 2: See section 720 for the consents that need to be obtained before
8 lodgment.

9 Note 3: Section 351 says what signatures are necessary for documents that are
10 to be lodged with ASIC.

11 **719 Lodging supplementary or replacement document**

12 *Need for a supplementary or replacement document*

13 (1) If the person making the offer becomes aware of:

Section 719

- 1 (a) a misleading or deceptive statement in the disclosure
2 document; or
3 (b) an omission from the disclosure document of information
4 required by section 710, 711, 712, 713, 714 or 715; or
5 (c) a new circumstance that:
6 (i) has arisen since the disclosure document was lodged;
7 and
8 (ii) would have been required by section 710, 711, 712,
9 713, 714 or 715 to be included in the disclosure
10 document if it had arisen before the disclosure
11 document was lodged;
12 that is materially adverse from the point of view of an investor, the
13 person may lodge a supplementary or replacement document with
14 ASIC.

15 Note 1: Section 728 makes it an offence to continue making offers after the
16 person has become aware of a misleading or deceptive statement,
17 omission or new circumstance that is materially adverse from the
18 point of view of an investor unless the deficiency is corrected.

19 Note 2: Because of section 712, a prospectus may be taken to include
20 information in another document. This should be taken into account
21 when considering whether the prospectus is deficient.

22 Note 3: The power to issue a supplementary or replacement document is not
23 limited to the situations dealt with in this section.

24 Note 4: This section applies to a document that has already been previously
25 supplemented or replaced.

26 Note 5: See section 720 for the consents that need to be obtained before
27 lodgment.

28 *Form of supplementary document*

- 29 (2) At the beginning of a supplementary document, there must be:
30 (a) a statement that it is a supplementary document; and
31 (b) an identification of the disclosure document it supplements;
32 and
33 (c) an identification of any previous supplementary documents
34 lodged with ASIC in relation to the offer; and

1 (d) a statement that it is to be read together with the disclosure
2 document it supplements and any previous supplementary
3 documents.

4 The supplementary document must be dated. The date is the date
5 on which it is lodged with ASIC.

6 *Form of replacement document*

7 (3) At the beginning of a replacement document, there must be:

8 (a) a statement that it is a replacement document; and

9 (b) an identification of the disclosure document it replaces.

10 The replacement document must be dated. The date is the date on
11 which it is lodged with ASIC.

12 *Consequences of lodging a supplementary document*

13 (4) If a supplementary document is lodged with ASIC, the disclosure
14 document is taken to be the disclosure document together with the
15 supplementary document for the purposes of the application of this
16 Chapter to events that occur after the lodgment.

17 Note: This subsection means, for example, that offers made after lodgment
18 of the supplementary document must be accompanied by copies of
19 both the original disclosure document and the supplementary
20 document.

21 *Consequences of lodging a replacement document*

22 (5) If a replacement document is lodged with ASIC, the disclosure
23 document is taken to be the replacement document for the purposes
24 of the application of this Chapter to events that occur after the
25 lodgment.

26 Note: This subsection means, for example, that offers made after lodgment
27 of the replacement document must be accompanied by copies of the
28 replacement document and not the original disclosure document.

Section 720

1 **720 Consents needed for lodgment**

2 *Consents for issue offers*

3 The lodgment of a disclosure document, or a supplementary or
 4 replacement document, for the offer of a body's securities requires
 5 the consent of:
 6

Consents required for lodgment		[operative]
Type of offer	People whose consent is required	
<i>Issue offers</i>		
1 offer of securities for issue	every director of the body every person named in the document as a proposed director of the body if securities interests in a managed investment scheme made available by a body—every director of that body if securities interests in a managed investment scheme made available by an individual—that individual	
<i>sale offers (sale by controller)</i>		
2 offer of securities for sale that needs a disclosure document because of subsection 707(2)	if seller an individual—that individual if seller a body—every director of the body	

Section 721

Consents required for lodgment		[operative]
Type of offer	People whose consent is required	
<p style="margin: 0;"><i>sale offers (sale amounting to indirect issue)</i></p> <p style="margin: 0;">3 offer of securities for sale that needs a disclosure document because of subsection 707(3)</p>	<p style="margin: 0;">every director of the body whose securities are offered for sale</p> <p style="margin: 0;">if seller an individual—that individual</p> <p style="margin: 0;">if seller a body—every director of the body</p>	
<p style="margin: 0;"><i>sale offers (sale amounting to indirect sale by controller)</i></p> <p style="margin: 0;">4 offer of securities for sale that needs a disclosure document because of subsection 707(5)</p>	<p style="margin: 0;">if seller an individual—that individual</p> <p style="margin: 0;">if seller a body—every director of the body</p> <p style="margin: 0;">if individual controls the body whose securities are offered for sale—that individual</p> <p style="margin: 0;">if body controls the body whose securities are offered for sale—every director of the controlling body</p>	

1 **721 Offer must be made in, or accompanied by, the disclosure**
2 **document**

3 *Offers using prospectus alone*

4 (1) Offers of securities for which a prospectus is being used must be
5 made in, or accompanied by, the prospectus unless subsection (2)
6 allows a profile statement to be used instead.

7 Note 1: Subsection 727(1) makes it an offence to make an offer of securities
8 unless the offer is made in or accompanied by the disclosure
9 document and subsection 723(1) makes it an offence to issue

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Part 6D.2 Disclosure to investors about securities

Section 721

1 securities unless they are applied for on a form that was issued in or
2 together with the disclosure document.

3 Note 2: Section 736 makes it an offence to make unsolicited offers in a way
4 that amounts to securities hawking.

5 Note 3: Section 728 makes it an offence for a person to offer securities if the
6 disclosure document is deficient in a way that is material from the
7 point of view of an investor.

8 *Offers using prospectus and profile statement*

9 (2) An offer of securities may be made in, or accompanied by, a
10 profile statement if:

11 (a) under subsection 709(3), ASIC has approved the making of
12 offers of that kind with a profile statement instead of a
13 prospectus; and

14 (b) the profile statement complies with the requirements
15 specified in ASIC approval.

16 (3) If the offer that is made to a person is made in or accompanied by a
17 profile statement, the person making the offer must give the person
18 a copy of the prospectus free of charge if the person asks for it.

19 *Offers using offer information statement*

20 (4) Offers for which an offer information statement is being used must
21 be made in, or accompanied by, the offer information statement.

22 Note 1: Subsection 727(1) makes it an offence to make an offer of securities
23 unless the offer is made in or accompanied by the disclosure
24 document and subsection 723(1) makes it an offence to issue
25 securities unless they are applied for on a form that was issued in or
26 together with the disclosure document.

27 Note 2: Section 736 makes it an offence to make unsolicited offers in a way
28 that amounts to securities hawking.

29 Note 3: Section 728 makes it an offence for a person to offer securities if the
30 disclosure document is deficient in a way that is material from the
31 point of view of an investor.

1 **722 Application money to be held on trust**

- 2 (1) If a person offers securities for issue or sale under a disclosure
3 document, the person must hold:
4 (a) all application money received from people applying for
5 securities under the disclosure document; and
6 (b) all other money paid by them on account of the securities
7 before they are issued or transferred;
8 in trust under this section for the applicants until:
9 (c) the securities are issued or transferred; or
10 (d) the money is returned to the applicants.
- 11 (2) If the application money needs to be returned to an applicant, the
12 person must return the money as soon as practicable.

13 **723 Issuing or transferring the securities under a disclosure**
14 **document**

15 *Applications must be made on form included in, or accompanied*
16 *by, disclosure document*

- 17 (1) If an offer of securities needs a disclosure document, the securities
18 may only be issued or transferred in response to an application
19 form. The securities may only be issued or transferred if the person
20 issuing or transferring them has reasonable grounds to believe that:
21 (a) the form was included in, or accompanied by:
22 (i) the disclosure document; or
23 (ii) if subsection 721(2) allows a profile statement to be
24 used—the prospectus or the profile statement;
25 when the form was distributed by the person issuing or
26 transferring the securities; or
27 (b) the form was copied, or directly derived, by the person
28 making the application from a form referred to in paragraph
29 (a).

Section 723

1 *Minimum subscription condition must be fulfilled before issue or*
2 *transfer*

- 3 (2) If a disclosure document for an offer of securities states that the
4 securities will not be issued or transferred unless:
5 (a) applications for a minimum number of the securities are
6 received; or
7 (b) a minimum amount is raised;
8 the person making the offer must not issue or transfer any of the
9 securities until that condition is satisfied. For the purpose of
10 working out whether the condition has been satisfied, a person who
11 has agreed to take securities as underwriter is taken to have applied
12 for those securities.

13 Note 1: Under section 722, the application money must be held in trust until
14 the issue or transfer of the securities.

15 Note 2: This subsection prevents the issue or transfer of the securities not only
16 to those who apply for them in response to the disclosure document
17 but also to those who do not need to apply for them (for example,
18 because they are to take the securities under an underwriting
19 agreement).

20 *Quotation condition must be fulfilled before issue or transfer*

- 21 (3) If a disclosure document for an offer of securities states or implies
22 that the securities are to be quoted on a stock market of a securities
23 exchange (whether in Australia or elsewhere), the person making
24 the offer must not issue or transfer any of the securities until the
25 securities are admitted to quotation on that stock market.

26 Note 1: Under section 722, the application money must be held in trust until
27 the issue or transfer of the securities. Subsection 711(5) restricts the
28 statements about quotation that may be included in a prospectus.

29 Note 2: This subsection prevents the issue or transfer of the securities not only
30 to those who apply for them in response to the disclosure document
31 but also to those who do not need to apply for them (for example,
32 because they are to take the securities under an underwriting
33 agreement).

1 **724 Choices open to person making the offer if disclosure document**
2 **condition not met or disclosure document defective**

- 3 (1) If a person offers securities under a disclosure document and:
4 (a) the disclosure document states that the securities will not be
5 issued or transferred unless:
6 (i) applications for a minimum number of the securities are
7 received; or
8 (ii) a minimum amount raised;
9 and that condition is not satisfied within 4 months after the
10 date of the disclosure document; or
11 (b) the disclosure document states or implies that the securities
12 are to be quoted on a stock market of a securities exchange
13 (whether in Australia or elsewhere) and:
14 (i) an application for the admission to quotation is not
15 made within 7 days after the date of the disclosure
16 document; or
17 (ii) the securities are not admitted to quotation within 3
18 months after the date of the disclosure document; or
19 (c) the person becomes aware that:
20 (i) the disclosure document contains a misleading or
21 deceptive statement; or
22 (ii) there is an omission from the disclosure document of
23 information required by section 710, 711, 712, 713, 714
24 or 715;
25 that is materially adverse from the point of view of an
26 investor; or
27 (d) the person becomes aware of a new circumstance that:
28 (i) has arisen since the disclosure document was lodged;
29 and
30 (ii) would have been required by section 710, 711, 712,
31 713, 714 or 715 to be included in the disclosure
32 document if it had arisen before the disclosure
33 document was lodged; and

Section 724

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(iii) is materially adverse from the point of view of an investor;
the person must deal under subsection (2) with any applications for the securities made under the disclosure document that have not resulted in an issue or transfer of the securities. For the purpose of working out whether a condition referred to in paragraph (a) has been satisfied, a person who has agreed to take securities as underwriter is taken to have applied for those securities.

(2) The person must either:

- (a) repay the money received by the person from the applicants;
or
- (b) give the applicants:
 - (i) the documents required by subsection (3); and
 - (ii) a reasonable opportunity to withdraw their applications and be repaid; or
- (c) issue or transfer the securities to the applicants and give them:
 - (i) the documents required by subsection (3); and
 - (ii) a reasonable opportunity to return the securities and be repaid.

Note: Section 719 deals with lodging supplementary and replacement documents. Section 728 makes it an offence for a person to offer securities if the disclosure document is deficient in a way that is material from the point of view of an investor.

(3) The documents to be given are set out in the following table:

Documents to be given		[operative]
Circumstances	Documents	
1 the sole disclosure document is a prospectus	a supplementary or replacement prospectus that corrects the deficiency or changes the terms of the offer	

Section 725

Documents to be given		[operative]
Circumstances	Documents	
2	the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the prospectus	a statement that sets out the changes needed to the prospectus to correct the deficiency or change the terms of offer; and a statement that the person is entitled to a copy of the prospectus free of charge
3	the disclosure documents are a prospectus and a profile statement and subsection (1) applies to the profile statement <i>Note that item 2 and this item may both apply to the offer.</i>	a supplementary or replacement profile statement that corrects the deficiency or changes the terms of the offer
4	the disclosure document is an offer information statement	a supplementary or replacement offer information statement that corrects the deficiency or changes the terms of the offer

1 **725 Expiration of disclosure document**

2 (1) If a person offers securities under a disclosure document and the
3 disclosure document passes its expiry date, the person must deal
4 with applications for the securities under the document in
5 accordance with subsections (2) and (3).

6 (2) If an application is received on or before the expiry date, the
7 person may issue or transfer securities to the applicant.

8 Note: Subsection 723(1) (when read with subsections 719(4) and (5))
9 requires the person issuing or transferring the securities to have
10 reasonable grounds to believe that the application form was included

Schedule 1 Main amendments of the Corporations Law

Chapter 6D Fundraising

Part 6D.2 Disclosure to investors about securities

Section 725

- 1 in, or accompanied by, a disclosure document that was current at the
2 time.
- 3 (3) If an application is received after the expiry date, the person must
4 either:
- 5 (a) return any money received by the person from the applicant;
6 or
7 (b) give the applicant:
- 8 (i) a new disclosure document; and
9 (ii) a reasonable opportunity to withdraw their application
10 and be repaid; or
11 (c) issue or transfer the securities to the applicant and give them:
- 12 (i) a new disclosure document; and
13 (ii) a reasonable opportunity to return the securities and be
14 repaid.

1

2 **Part 6D.3—Prohibitions, liabilities and remedies**

3 **Division 1—Prohibitions and liabilities**

4 **726 Offering securities in a body that does not exist**

5 A person must not offer securities of:

- 6 (a) a body that has not been formed or does not exist; or
7 (b) a managed investment scheme that needs to be, or will need
8 to be, registered and that has not been registered;

9 if the offer would need disclosure to investors under Part 6D.2 if
10 the body or scheme did exist or had been registered. This is so even
11 if it is proposed to form, incorporate or register the body or
12 scheme.

13 **727 Offering securities without a current disclosure document**

14 *Offer of securities needs lodged disclosure document*

- 15 (1) A person must not make an offer of securities, or distribute an
16 application form for an offer of securities, that needs disclosure to
17 investors under Part 6D.2 unless a disclosure document for the
18 offer has been lodged with ASIC.

19 *Offer form to be included in or accompanied by disclosure
20 document*

- 21 (2) A person must not make an offer of securities, or distribute an
22 application form for an offer of securities, that needs disclosure to
23 investors under Part 6D.2 unless:
24 (a) if a prospectus is used for the offer—the offer or form is:
25 (i) included in the prospectus; or
26 (ii) accompanied by a copy of the prospectus; or
27 (b) if both a prospectus and a profile statement are used for the
28 offer—the offer or form is:
-

Section 728

- 1 (i) included in the prospectus or profile statement; or
2 (ii) accompanied by a copy of the prospectus or profile
3 statement; or
4 (c) if an offer information statement is used for the offer—the
5 offer or form is:
6 (i) included in the statement; or
7 (ii) accompanied by a copy of the statement.

8 Note: Sections 706, 707 and 708 say when the offer needs disclosure to
9 investors under Part 6D.2.

10 *Non-quoted securities—waiting period after lodgment before*
11 *processing applications for securities*

- 12 (3) A person must not accept an application for, or issue or transfer,
13 non-quoted securities offered under a disclosure document until the
14 period of 7 days after lodgment of the disclosure document has
15 ended. ASIC may extend the period by notice in writing to the
16 person offering the securities. The period as extended must end no
17 more than 14 days after lodgment

18 *Issue or transfer not to breach section 708 ceiling*

- 19 (4) If a person relies on subsection 708(1) to make offers of securities
20 without disclosure to investors under Part 6D.2, the person must
21 not issue or transfer securities without disclosure to investors under
22 that Part if the issue or transfer would result in a breach of the 20
23 investors ceiling or the \$2 million ceiling (see subsections 708(3),
24 (4), (5), (6) and (7)).

25 **728 Misstatement in, or omission from, disclosure document**

26 *Misleading or deceptive statements, omissions and new matters*

- 27 (1) A person must not offer securities under a disclosure document if
28 there is:
29 (a) a misleading or deceptive statement in:
30 (i) the disclosure document; or
-

- 1 (ii) any application form that accompanies the disclosure
2 document; or
3 (iii) any document that contains the offer if the offer is not in
4 the disclosure document or the application form; or
5 (b) an omission from the disclosure document of material
6 required by section 710, 711, 712, 713, 714 or 715; or
7 (c) a new circumstance that:
8 (i) has arisen since the disclosure document was lodged;
9 and
10 (ii) would have been required by section 710, 711, 712,
11 713, 714 or 715 to be included in the disclosure
12 document if it had arisen before the disclosure
13 document was lodged.

14 Note 1: The person may make further offers after making up the deficiency in
15 the current disclosure document by lodging a supplementary or
16 replacement document.

17 Note 2: See sections 731, 732 and 733 for defences.

18 Note 3: Section 995 imposes liabilities in respect of other conduct related to
19 the offering of the securities.

20 *Forecasts and other forward-looking statements*

- 21 (2) A person is taken to make a misleading statement about a future
22 matter (including the doing of, or refusing to do, an act) if they do
23 not have reasonable grounds for making the statement. This
24 subsection does not limit the meaning of a reference to a
25 misleading statement or a statement that is misleading in a material
26 particular.

27 *Offence if statement, omission or new matter materially adverse*

- 28 (3) A person commits an offence if they contravene subsection (1)
29 and:
30 (a) the misleading or deceptive statement; or
31 (b) the omission or new circumstance;
32 is materially adverse from the point of view of an investor.

Section 729

1 **729 Right to recover for loss or damage resulting from**
 2 **contravention**

3 *Right to compensation*

4 (1) A person who suffers loss or damage because an offer of securities
 5 under a disclosure document contravenes subsection 728(1) may
 6 recover the amount of the loss or damage from a person referred to
 7 in the following table if the loss or damage is one that the table
 8 makes the person liable for. This is so even if the person did not
 9 commit, and was not involved in, the contravention.
 10

People liable on disclosure document		[operative]
These people...	are liable for loss or damage caused by...	
1 the person making the offer	any contravention of subsection 728(1) in relation to the disclosure document	
2 each director of the body making the offer if the offer is made by a body	any contravention of subsection 728(1) in relation to the disclosure document	
3 a person named in the disclosure document with their consent as a proposed director of the body whose securities are being offered	any contravention of subsection 728(1) in relation to the disclosure document	
4 an underwriter (but not a sub-underwriter) to the issue or sale named in the disclosure document with their consent	any contravention of subsection 728(1) in relation to the disclosure document	
5 a person named in the disclosure document with their consent as having made a statement: (a) that is included in the disclosure document; or (b) on which a statement made in the disclosure document is based	the inclusion of the statement in the disclosure document	

People liable on disclosure document [operative]

These people...	are liable for loss or damage caused by...
6 a person who contravenes, or is involved in the contravention of, subsection 728(1)	that contravention

1 Note: Item 2—*director* includes a shadow director (see section 9).

2 (2) A person who acquires securities as a result of an offer that was
3 accompanied by a profile statement is taken to have acquired the
4 securities in reliance on both the profile statement and the
5 prospectus for the offer.

6 (3) An action under subsection (1) may begin at any time within 6
7 years after the day on which the cause of action arose.

8 (4) This Part does not affect any liability that a person has under any
9 other law.

10 Note: Conduct that contravenes subsection 728(1) is expressly excluded
11 from the operation of section 995A.

12 **730 People liable on disclosure document to inform person making**
13 **the offer about deficiencies in the disclosure document**

14 A person referred to in the table in section 729 must notify the
15 person making the offer in writing as soon as practicable if they
16 become aware during the application period that:

17 (a) a material statement in the disclosure document is misleading
18 or deceptive; or

19 (b) there is a material omission from the disclosure document of
20 material required by section 710, 711, 712, 713, 714 or 715;
21 or

22 (c) a material new circumstance that:

23 (i) has arisen since the disclosure document was lodged;
24 and

25 (ii) would have been required by section 710, 711, 712,
26 713, 714 or 715 to be included in the disclosure

Section 731

1 document if it had arisen before the disclosure
2 document was lodged.

3 **731 Due diligence defence for prospectuses**

4 *Reasonable inquiries and reasonable belief—statements*

- 5 (1) A person does not commit an offence against subsection 728(3),
6 and is not liable under section 729 for a contravention of
7 subsection 728(1), because of a misleading or deceptive statement
8 in a prospectus if the person proves that they:
9 (a) made all inquiries (if any) that were reasonable in the
10 circumstances; and
11 (b) after doing so, believed on reasonable grounds that the
12 statement was not misleading or deceptive.

13 *Reasonable inquiries and reasonable belief—omissions*

- 14 (2) A person does not commit an offence against subsection 728(3),
15 and is not liable under section 729 for a contravention of
16 subsection 728(1), because of an omission from a prospectus in
17 relation to a particular matter if the person proves that they:
18 (a) made all inquiries (if any) that were reasonable in the
19 circumstances; and
20 (b) after doing so, believed on reasonable grounds that there was
21 no omission from the prospectus in relation to that matter.

22 **732 Lack of knowledge defence for offer information statements and**
23 **profile statements**

24 *Not knowing statement misleading or deceptive*

- 25 (1) A person does not commit an offence against subsection 728(3),
26 and is not liable under section 729 for a contravention of
27 subsection 728(1), because of a misleading or deceptive statement
28 in an offer information statement or profile statement if the person

1 proves that they did not know that the statement was misleading or
2 deceptive.

3 *Not knowing there was an omission*

4 (2) A person does not commit an offence against subsection 728(3),
5 and is not liable under section 729 for a contravention of
6 subsection 728(1), because of an omission from an offer
7 information statement or profile statement in relation to a particular
8 matter if the person proves that they did not know that there was an
9 omission from the statement in relation to that matter.

10 **733 General defences for all disclosure documents**

11 *Reasonable reliance on information given by someone else—*
12 *statements and omissions*

13 (1) A person does not commit an offence against subsection 728(3),
14 and is not liable under section 729 for a contravention against
15 subsection 728(1), because of a misleading or deceptive statement
16 in, or an omission from, a disclosure document if the person proves
17 that they placed reasonable reliance on information given to them
18 by:

- 19 (a) if the person is a body—someone other than a director,
20 employee or agent of the body; or
21 (b) if the person is an individual—someone other than an
22 employee or agent of the individual.

23 (2) For the purposes of subsection (1), a person is not the agent of a
24 body or individual merely because they perform a particular
25 professional or advisory function for the body or individual.

26 *Withdrawal of consent—statements and omissions*

- 27 (3) A person who is named in a disclosure document as:
28 (a) being a proposed director or underwriter; or
29 (b) making a statement included in the document; or

Section 734

- 1 (c) making a statement on the basis of which a statement is
2 included in the document;
3 does not commit an offence against subsection 728(3), and is not
4 liable under section 729 for a contravention against subsection
5 728(1), because of a misleading or deceptive statement in, or an
6 omission from, a disclosure document if the person proves that
7 they publicly withdrew their consent to being named in the
8 document in that way.

9 *Unawareness of new matter*

- 10 (4) A person does not commit an offence against subsection 728(3),
11 and is not liable under section 729 for a contravention of
12 subsection 728(1), because of a new circumstance that has arisen
13 since the disclosure document was lodged if the person proves that
14 they were not aware of the matter.

15 **734 Restrictions on advertising and publicity**

16 *No advertising or publicity for offers covered by the exception for*
17 *20 issues in 12 months*

- 18 (1) A person must not:
19 (a) advertise; or
20 (b) publish a statement that directly or indirectly refers to;
21 an offer, or intended offer, of securities that would need a
22 disclosure document but for subsection 708(1) (exception for 20
23 issues in 12 months).

24 *Advertising or publicity for offers that need a disclosure document*

- 25 (2) If an offer, or intended offer, of securities needs a disclosure
26 document, a person must not:
27 (a) advertise the offer or intended offer; or
28 (b) publish a statement that:
29 (i) directly or indirectly refers to the offer or intended
30 offer; or

- 1 (ii) is reasonably likely to induce people to apply for the
2 securities;
3 unless the advertisement or publication is authorised by subsection
4 (4), (5), (6) or (7).

5 *Image advertising*

- 6 (3) In deciding whether a statement:
7 (a) indirectly refers to an offer, or intended offer, of securities; or
8 (b) is reasonably likely to induce people to apply for securities;
9 have regard to whether the statement:
10 (c) forms part of the normal advertising of a body's products or
11 services and is genuinely directed at maintaining its existing
12 customers, or attracting new customers, for those products or
13 services; and
14 (d) communicates information that materially deals with the
15 affairs of the body; and
16 (e) is likely to encourage investment decisions being made on
17 the basis of the statement rather than on the basis of
18 information contained in a disclosure document.

19 *Dissemination of disclosure document*

- 20 (4) A person may disseminate a disclosure document that has been
21 lodged with ASIC without contravening subsection (2). This does
22 not apply if an order under section 739 is in force in relation to the
23 offer.

24 *Advertising and publicity before the disclosure document is lodged*

- 25 (5) Before the disclosure document is lodged, an advertisement or
26 publication does not contravene subsection (2) if it:
27 (a) if the offer is of securities in a class already quoted—includes
28 a statement that:
29 (i) a disclosure document for the offer will be made
30 available when the securities are offered; and

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- 1 (ii) anyone who wishes to acquire the securities will need to
2 complete the application form that will be in or will
3 accompany the disclosure document; and
4 (b) in any other case—contains the following but nothing more:
5 (i) a statement that identifies the offeror and the securities
6 (ii) a statement that a disclosure document for the offer will
7 be made available when the securities are offered
8 (iii) a statement that anyone who wants to acquire the
9 securities will need to complete the application form
10 that will be in or will accompany the disclosure
11 document
12 (iv) a statement of how to arrange to receive a copy of the
13 disclosure document.

14 To satisfy paragraph (b), the advertisement or publication must
15 include all of the statements referred to in subparagraphs (i), (ii)
16 and (iii). It may include the statement referred to in subparagraph
17 (iv).

18 *Advertising and publicity after the disclosure document is lodged*

- 19 (6) After the disclosure document is lodged, an advertisement or
20 publication does not contravene subsection (2) if it includes a
21 statement that:
22 (a) the offers of the securities will be made in, or accompanied
23 by, a copy of the disclosure document; and
24 (b) anyone wishing to acquire the securities will need to
25 complete the application form that will be in or will
26 accompany the disclosure document.

27 *General exceptions*

- 28 (7) An advertisement or publication does not contravene subsection (2)
29 if it:
30 (a) relates to an offer of securities of a listed body and consists
31 of a notice or report by the body, or one of its officers, about
32 its affairs to the relevant securities exchange; or

- 1 (b) consists solely of a notice or report of a general meeting of
2 the body; or
3 (c) consists solely of a report about the body that is published by
4 the body and:
5 (i) does not contain information that materially affects
6 affairs of the body other than information previously
7 made available in a disclosure document that has been
8 lodged, an annual report or a report referred to in
9 paragraph (a) or (b); and
10 (ii) does not refer (whether directly or indirectly) to the
11 offer; or
12 (d) is a news report or is genuine comment, in a newspaper or
13 periodical or on radio or television relating to:
14 (i) a disclosure document that has been lodged or
15 information contained in such a disclosure document; or
16 (ii) a notice or report covered by paragraph (a), (b) or (c); or
17 (e) is a report about the securities of a body or proposed body
18 published by someone who is not:
19 (i) the body; or
20 (ii) acting at the instigation of, or by arrangement with, the
21 body; or
22 (iii) a director of the body; or
23 (iv) a person who has an interest in the success of the issue
24 or sale of the securities.

25 Paragraphs (d) and (e) do not apply if anyone gives consideration
26 or another benefit for publishing the report.

27 *Liability of publishers*

- 28 (8) A person does not contravene subsection (1) or (2) by publishing
29 an advertisement or statement if they publish it in the ordinary
30 course of a business of:
31 (a) publishing a newspaper or magazine; or
32 (b) broadcasting by radio or television;

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1 and the person did not know and had no reason to suspect that its
2 publication would amount to a contravention of a provision of this
3 Chapter.

4 Note: Depending on the circumstances of the publication, the person may,
5 however, commit an offence by being involved in someone else's
6 contravention of subsection (1) or (2).

7 *Pathfinder documents*

8 (9) A person does not contravene subsection (1) or (2) by sending a
9 draft disclosure document for securities to a person if an offer of
10 the securities to the person would not require a disclosure
11 document because of subsection 708(8) (sophisticated investors) or
12 708(10) (professional investors).

13 **735 Obligation to keep consents and other documents**

14 A person who offers securities under a disclosure document must
15 keep a consent required in respect of the document by subsection
16 716(2) or section 720.

17 **736 Securities hawking prohibited**

18 (1) A person must not offer securities for issue or sale in the course of,
19 or because of, an unsolicited:
20 (a) meeting with another person; or
21 (b) telephone call to another person;
22 unless the offer is exempted under subsection (2).

23 Note: Section 700 extends offers to include invitations and distributing
24 application forms.

25 (2) Subsection (1) does not prohibit an offer of securities if:
26 (a) the offer does not need a disclosure document because of
27 subsection 708(8) (sophisticated investors); or
28 (b) the offer does not need a disclosure document because of
29 subsection 708(10) (professional investors); or
30 (c) the offer is an offer of listed securities made by telephone by
31 a licensed securities dealer; or

- 1 (d) the offer is made to a client by a licensed securities dealer
2 through whom the client has bought or sold securities in the
3 last 12 months.

4 **Division 2—Remedies**

5 **737 Remedies for investors**

6 *Right to withdraw and have money returned*

- 7 (1) If securities are issued to a person in contravention of section 724
8 (situation calling for a supplementary or replacement document),
9 the person has the right to return the securities and to have their
10 application money repaid. This is so even if the company that
11 issued the securities is being wound up.
- 12 (2) A right referred to in subsection (1) is exercisable by written notice
13 given to the company within 1 month after the date of the issue.
- 14 (3) If the body or the seller does not repay the money as required by
15 subsection (1), the directors of the body or seller are personally
16 liable to repay the money.

17 **738 Securities may be returned and refund obtained**

18 If securities are issued or transferred to a person as a result of an
19 offer that contravenes section 736, the person may return the
20 securities within 1 month after the issue or transfer. If they do so,
21 they are entitled to be repaid the amount they paid for the
22 securities.

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Part 6D.4—ASIC's powers

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739 ASIC stop orders

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(1) If ASIC is satisfied that an offer of securities under a disclosure document lodged with ASIC would contravene section 728, ASIC may order that no offers, issues, sales or transfers of the securities be made while the order is in force.

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(2) Before making an order under subsection (1), ASIC must:

10

(a) hold a hearing; and

11

(b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.

12

13

14

(3) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

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(4) At any time during the hearing, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order lasts until:

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(a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or

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(b) the interim order is revoked;

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27

whichever happens first.

28

(5) An order under subsection (1), (3) or (4) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities under the disclosure document.

29

30

1 **740 Anti-avoidance determinations**

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

5 (a) an issue, sale or transfer of securities in any other bodies is
6 taken to also be an issue, sale or transfer of the securities of
7 each of the other bodies by those bodies; and

8 (b) any money received from an issue, sale or transfer of
9 securities in any of the bodies is taken to also be received by
10 each of the other bodies from an issue, sale or transfer of its
11 own securities.

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

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

17 (a) an issue of securities in the body is taken to also be the
18 transfer of the securities by the controller; and

19 (b) any money received from an issue of securities in the body is
20 taken to also be received by the controller from a transfer of
21 the securities; and

22 (c) a sale or transfer of securities in the body by the controller is
23 taken to also be the issue of the securities by the body; and

24 (d) any money received from a sale or transfer of securities in
25 the body by the controller is taken to also be received by the
26 body from an issue of the securities.

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

29 **741 ASIC's power to exempt and modify**

30 (1) ASIC may:

31 (a) exempt a person from a provision of this Chapter; or

Section 741

- 1 (b) declare that this Chapter applies to a person as if specified
2 provisions were omitted, modified or varied as specified in
3 the declaration.
- 4 (2) The exemption or declaration may do all or any of the following:
5 (a) apply to all or specified provisions of this Chapter
6 (b) apply to all persons, specified persons, or a specified class of
7 persons
8 (c) relate to all securities, specified securities or a specified class
9 of securities
10 (d) relate to any other matter generally or as specified.
- 11 (3) An exemption may apply unconditionally or subject to specified
12 conditions. A person to whom a condition specified in an
13 exemption applies must comply with the condition. The Court may
14 order the person to comply with the condition in a specified way.
15 Only ASIC may apply to the Court for the order.
- 16 (4) The exemption or declaration must be in writing and ASIC must
17 publish notice of it in the *Gazette*.
- 18 (5) For the purposes of this section, the *provisions of this Chapter*
19 include:
20 (a) regulations made for the purposes of this Chapter; and
21 (b) definitions in this Law or the regulations as they apply to
22 references in:
23 (i) this Chapter; or
24 (ii) regulations made for the purposes of this Chapter; and
25 (c) Division 12 of Part 11.2.

26 **6 Part 9.4B**

27 Repeal the Part, substitute:

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Part 9.4B—Civil consequences of contravening civil penalty provisions

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1317E Declarations of contravention

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(1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:

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8

(a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers' duties)

9

10

(b) subsection 209(2) (related parties rules)

11

(c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions)

12

13

(d) subsection 344(1) (requirements for financial reports)

14

(e) subsection 588G(2) (insolvent trading)

15

(f) subsection 601FC(1)

16

(g) subsection 601FD(1)

17

(h) subsection 601FE(1)

18

(i) section 601FG

19

(j) subsection 601JD(1).

20

These provisions are the *civil penalty provisions*.

21

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

22

23

24

(2) A declaration of contravention must specify the following:

25

(a) the Court that made the declaration

26

(b) the civil penalty provision that was contravened

27

(c) the person who contravened the provision

28

(d) the conduct that constituted the contravention

29

(e) the corporation or registered scheme to which the conduct related.

30

1 **1317F Declaration of contravention is conclusive evidence**

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

4 **1317G Pecuniary penalty orders**

5 (1) A Court may order a person to pay the Commonwealth a pecuniary
6 penalty of up to \$200,000 if:

7 (a) a declaration of contravention by the person has been made
8 under section 1317E; and

9 (b) the contravention:

10 (i) materially prejudices the interests of the corporation or
11 scheme, or its members; or

12 (ii) materially prejudices the corporation's ability to pay its
13 creditors; or

14 (iii) is serious.

15 (2) The penalty is a civil debt payable to ASIC on the
16 Commonwealth's behalf. ASIC or the Commonwealth may enforce
17 the order as if it were an order made in civil proceedings against
18 the person to recover a debt due by the person. The debt arising
19 from the order is taken to be a judgment debt.

20 **1317H Compensation orders**

21 *Compensation for damage suffered*

22 (1) A Court may order a person to compensate a corporation or
23 registered scheme for damage suffered by the corporation or
24 scheme if:

25 (a) the person has contravened a civil penalty provision in
26 relation to the corporation or scheme; and

27 (b) the damage resulted from the contravention.

28 The order must specify the amount of the compensation.

29 *Damage includes profits*

- 1 (2) In determining the damage suffered by the corporation or scheme
2 for the purposes of making a compensation order, include profits
3 made by any person resulting from the contravention or the
4 offence.

5 *Damage includes diminution of value of scheme property*

- 6 (3) In determining the damage suffered by the scheme for the purposes
7 of making a compensation order, include any diminution in the
8 value of the property of the scheme.

- 9 (4) If the responsible entity for a registered scheme is ordered to
10 compensate the scheme, the responsible entity must transfer the
11 amount of the compensation to scheme property. If anyone else is
12 ordered to compensate the scheme, the responsible entity may
13 recover the compensation on behalf of the scheme.

14 *Recovery of damage*

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

17 **1317J Who may apply for a declaration or order**

18 *Application by ASIC*

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

21 *Application by corporation*

- 22 (2) The corporation, or the responsible entity for the registered
23 scheme, may apply for a compensation order.
- 24 (3) The corporation, or the responsible entity for the registered
25 scheme, may intervene in an application for a declaration of
26 contravention or a pecuniary penalty order in relation to the
27 corporation or scheme. The corporation or responsible entity is

Schedule 1 Main amendments of the Corporations Law

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Section 1317K

1 entitled to be heard on all matters other than whether the
2 declaration or order should be made.

3 *No one else may apply*

4 (4) No person may apply for a declaration of contravention, a
5 pecuniary penalty order or a compensation order unless permitted
6 by this section.

7 (5) Subsection (4) does not exclude the operation of the *Director of*
8 *Public Prosecutions Act 1983* or that Act as applying as a law of
9 this jurisdiction.

10 **1317K Time limit for application for a declaration or order**

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

14 **1317L Civil evidence and procedure rules for declarations of**
15 **contravention and civil penalty orders**

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

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

20 **1317M Civil proceedings after criminal proceedings**

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

1 **1317N Criminal proceedings during civil proceedings**

- 2 (1) Proceedings for a declaration of contravention or pecuniary penalty
3 order against a person are stayed if:
4 (a) criminal proceedings are started or have already been started
5 against the person for an offence; and
6 (b) the offence is constituted by conduct that is substantially the
7 same as the conduct alleged to constitute the contravention.
- 8 (2) The proceedings for the declaration or order may be resumed if the
9 person is not convicted of the offence. Otherwise, the proceedings
10 for the declaration or order are dismissed.

11 **1317P Criminal proceedings after civil proceedings**

- 12 Criminal proceedings may be started against a person for conduct
13 that is substantially the same as conduct constituting a
14 contravention of a civil penalty provision regardless of whether:
15 (a) a declaration of contravention has been made against the
16 person; or
17 (b) a pecuniary penalty order has been made against the person;
18 or
19 (c) a compensation order has been made against the person; or
20 (d) the person has been disqualified from managing a
21 corporation under Part 2D.6.

22 **1317Q Evidence given in proceedings for penalty not admissible in**
23 **criminal proceedings**

- 24 Evidence of information given or evidence of production of
25 documents by an individual is not admissible in criminal
26 proceedings against the individual if:
27 (a) the individual previously gave the evidence or produced the
28 documents in proceedings for a pecuniary penalty order
29 against the individual for a contravention of a civil penalty
30 provision (whether or not the order was made); and

Section 1317R

1 (b) the conduct alleged to constitute the offence is substantially
2 the same as the conduct that was claimed to constitute the
3 contravention.

4 However, this does not apply to a criminal proceeding in respect of
5 the falsity of the evidence given by the individual in the
6 proceedings for the pecuniary penalty order.

7 **1317R ASIC requiring person to assist**

8 (1) ASIC may require a person to give all reasonable assistance in
9 connection with:

- 10 (a) an application for a declaration of contravention or a
11 pecuniary penalty order; or
12 (b) criminal proceedings for an offence against this Law.

13 (2) ASIC can require the person to assist in connection with an
14 application for a declaration or order if, and only if:

- 15 (a) it appears to ASIC that someone other than the person
16 required to assist may have contravened a civil penalty
17 provision; and
18 (b) ASIC suspects or believes that the person required to assist
19 can give information relevant to the application.

20 (3) ASIC can require the person to assist in connection with criminal
21 proceedings if, and only if:

- 22 (a) it appears to ASIC that the person required to assist is
23 unlikely to be a defendant in the proceedings; and
24 (b) the person required to assist is, in relation to a person who is
25 or should be a defendant in the proceedings:
26 (i) an employee or agent (including a banker or auditor) of
27 the other person; or
28 (ii) if the other person is a corporation—an officer of the
29 other person; or
30 (iii) if the other person is an individual—a partner of the
31 other person.

32 (4) ASIC can require the person to assist regardless of whether:

- 1 (a) an application for the declaration or penalty order has
2 actually been made; or
3 (b) criminal proceedings for the offence have actually begun.
- 4 (5) The person cannot be required to assist if they are or have been a
5 lawyer for:
6 (a) in an application for a declaration or penalty order—the
7 person suspected of the contravention; or
8 (b) in criminal proceedings—a defendant or likely defendant in
9 the proceedings.
- 10 (6) The requirement to assist must be given in writing.
- 11 (7) The Court may order the person to comply with the requirement in
12 a specified way. Only ASIC may apply to the Court for an order
13 under this subsection.
- 14 Note: The person must comply with the requirement and may commit an
15 offence if they do not, even if there is no order under this subsection
16 (see section 104 and subsection 1311(1)).
- 17 (8) This section does not limit and is not limited by section 49 of the
18 ASC Law.

19 **1317S Relief from liability for contravention of civil penalty**
20 **provision**

- 21 (1) In this section:
22 ***eligible proceedings:***
23 (a) means proceedings for a contravention of a civil penalty
24 provision (including proceedings under section 588M, 588W
25 or 1317H of the Corporations Law of this jurisdiction); and
26 (b) does not include proceedings for an offence (except so far as
27 the proceedings relate to the question whether the court
28 should make an order under section 588K or 1317H of that
29 Law).
- 30 (2) If:
-

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Section 1317S

- 1 (a) eligible proceedings are brought against a person; and
2 (a) in the proceedings it appears to the court that the person has,
3 or may have, contravened a civil penalty provision but that:
4 (i) the person has acted honestly; and
5 (ii) having regard to all the circumstances of the case
6 (including, where applicable, those connected with the
7 person's appointment as an officer of a corporation or of
8 a Part 5.7 body), the person ought fairly to be excused
9 for the contravention;
10 the court may relieve the person either wholly or partly from a
11 liability to which the person would otherwise be subject, or that
12 might otherwise be imposed on the person, because of the
13 contravention.
- 14 (3) In determining under subsection (2) whether a person ought fairly
15 to be excused for a contravention of section 588G, the matters to
16 which regard is to be had include, but are not limited to:
17 (a) any action the person took with a view to appointing an
18 administrator of the company or Part 5.7 body; and
19 (b) when that action was taken; and
20 (c) the results of that action.
- 21 (4) If a person thinks that eligible proceedings will or may be begun
22 against them, they may apply to the Court for relief.
- 23 (5) On an application under subsection (4), the Court may grant relief
24 under subsection (2) as if the eligible proceedings had been begun
25 in the Court.
- 26 (6) For the purposes of subsection (2) as applying for the purposes of a
27 case tried by a judge with a jury:
28 (a) a reference in that subsection to the court is a reference to the
29 judge; and
30 (b) the relief that may be granted includes withdrawing the case
31 in whole or in part from the jury and directing judgment to be
32 entered for the defendant on such terms as to costs as the
33 judge thinks appropriate.
-

- 1 (7) Nothing in this section limits, or is limited by, section 1318.

Section 1325A

1
2
3
4

5 **7 After section 1325**

6 Insert:

7 **1325A Orders if contravention of Chapter 6, 6A, 6B or 6C**

- 8 (1) The Court may make any order or orders (including a remedial
9 order) that it considers appropriate if a person:
- 10 (a) contravenes a provision of Chapter 6, 6A, 6B or 6C; or
 - 11 (b) contravenes a condition on a consent given by ASIC under
12 section 652B; or
 - 13 (c) states in a notice under section 672B about securities that
14 they do not know particular information about:
 - 15 (i) the securities; or
 - 16 (ii) someone who has a relevant interest in, or has given
17 instructions in relation to, the securities.

18 Note 1: Section 9 defines *remedial order*.

19 Note 2: Sections 659B and 659C deal with court proceedings during and after
20 a takeover bid.

- 21 (2) The Court may make any order or orders (including a remedial
22 order) that it considers appropriate if:
- 23 (a) the consideration offered under a takeover bid is or includes
24 securities; and
 - 25 (b) the offers under the bid or the bidder's statement states or
26 implies that the securities are to be quoted on a stock market
27 of a securities exchange (whether in Australia or elsewhere)
28 and:
 - 29 (i) an application for admission to quotation is not made
30 within 7 days after the start of the bid period; or
 - 31 (ii) permission for admission to quotation is not granted
32 within 7 days after the end of the bid period.

33 Note: Section 9 defines *remedial order*.

Section 1325B

- 1 (3) An order under this section may be made on application by the
2 following:
3 (a) ASIC
4 (b) the company, or the responsible entity of the registered
5 scheme, whose securities are involved in the contravention
6 (c) a member or former member of that company or scheme
7 (d) a person from whom the relevant interest in the securities
8 were acquired
9 (e) a person whose interests are affected by the contravention.

10 **1325B Court may order bidder to make offers**

- 11 (1) If a bidder making a takeover bid for a class of securities
12 contravenes section 631 by failing to make offers under the bid
13 within time and ASIC applies for an order under this section, the
14 Court may:
15 (a) order the bidder to send, to each holder of securities in that
16 class, an offer to which the bidder's statement relates within
17 a specified time; and
18 (b) make any ancillary orders it thinks appropriate including
19 orders that the bidder:
20 (i) send notices setting out specified information with the
21 offer; and
22 (ii) send copies of the notice within a specified period to the
23 target and, if the target is listed, to the relevant securities
24 exchange; and
25 (iii) lodge a copy of the notice with ASIC within a specified
26 period.
27 (2) Offers sent in accordance with an order under this section are taken
28 to be made under a takeover bid.

29 **1325C Unfair or unconscionable agreements, payments or benefits**

- 30 (1) The Court may make orders under subsection (2) if:
-

Section 1325C

- 1 (a) a body corporate gives, or enters into an agreement to give, a
2 director or secretary of the body corporate or a related body
3 corporate a benefit (including a payment or an agreement to
4 employ them, or engage their services, for a fixed period);
5 and
6 (b) the agreement is entered into or the benefit is given:
7 (i) within 12 months after the start of the bid period for a
8 takeover bid for the securities of the body corporate or a
9 related body corporate; or
10 (ii) at a time when the directors of the body corporate have
11 reason to believe that a takeover bid is to be made in
12 respect of securities of the body corporate or a related
13 body corporate; and
14 (c) the Court is satisfied that the agreement or benefit was unfair
15 or unconscionable having regard to the interests of the body
16 corporate.
- 17 (2) The Court may:
18 (a) declare the agreement, or any part of it, to be void or to have
19 always been void; or
20 (b) direct a person to whom a benefit is given, or another
21 specified person, to:
22 (i) make a payment or transfer property to the body
23 corporate; or
24 (ii) do any other act for the benefit of the body corporate; or
25 (c) make any other order it considers appropriate.
- 26 (3) This section does not apply to an agreement or benefit that has
27 been approved by an ordinary resolution of the body corporate
28 (whether before or after the agreement was entered into or the
29 benefit given) with no vote being cast by the person who is to
30 receive the benefit or their associates.
- 31 (4) An order under this section may be made on application by:
32 (a) the body corporate; or
33 (b) ASIC; or
-

- 1 (c) members who together hold shares carrying at least 10% of
2 the votes attached to voting shares in the body corporate or a
3 related body corporate;
4 within 12 months, or any longer period that the Court thinks
5 appropriate in the circumstances, after the agreement is entered
6 into or the benefit given.

7 **1325D Contravention due to inadvertence etc.**

- 8 (1) The Court may declare that any act, document or matter:
9 (a) is not invalid merely because a person has contravened a
10 provision of Chapter 6, 6A, 6B or 6C; and
11 (b) has had effect at all times as if there had been no
12 contravention;
13 if the Court is satisfied that the contravention ought to be excused
14 in all the circumstances.
- 15 (2) An application for an order under subsection (1) may be made by
16 any interested person.
- 17 (3) If the Court is satisfied that in all the circumstances a contravention
18 of a provision of Chapter 6, 6A, 6B or 6C ought to be excused, the
19 Court must not make an order under section 1325A, 1325B or
20 1325C other than:
21 (a) an order restraining the exercise of voting or other rights
22 attached to securities; or
23 (b) an order that an exercise of voting or other rights attached to
24 securities be disregarded.
- 25 (4) In determining whether or not a contravention of a provision by a
26 person ought to be excused, have regard to the contravention being
27 caused by any of the following:
28 (a) the person's inadvertence or mistake
29 (b) the person not having been aware of a relevant fact or
30 occurrence
31 (c) circumstances beyond the control of the person.

Section 1325E

- 1 (5) This section applies notwithstanding anything contained in any
2 other provision of this Chapter.

3 **1325E Orders to secure compliance**

4 In order to secure compliance with an order under section 1325A,
5 1325B or 1325C, the Court may direct a person to:

- 6 (a) do a specified act; or
7 (b) refrain from doing a specified act.

8 **8 After Division 11 of Part 11.2**

9 Insert:
10
11

12 **Division 12—Changes resulting from the Corporate Law**
13 **Economic Reform Program Act 1998**

14 **1466 Meaning of *commencement*, *new Law* and *old Law***

15 In this Division:

16 *commencement* means the commencement of Schedule 1 to the
17 *Corporate Law Economic Reform Program Act 1998*.

18 *new Law* means this Law as in force after commencement.

19 *old Law* means this Law as in force immediately before
20 commencement.

21 **1467 General—references to provisions of old Law in laws and other**
22 **documents**

- 23 (1) A reference in any law of the Commonwealth or of a State or
24 Territory, or in any document, to a provision of the old Law is to
25 be read after commencement as a reference to the corresponding
26 provision of the new Law except so far as the contrary intention
27 appears in the law or document.

Section 1468

- 1 (2) Without limiting subsection (1), the following table sets out
 2 provisions of the old Law that correspond to particular provisions
 3 of the new Law:
 4

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	Chapter 6C.1
5	Part 6.8	Chapter 6C.2
6	Part 7.12	Chapter 6D
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

5 **1468 General—references to old Law expressions used in existing**
 6 **laws and documents**

7 A reference in any law of the Commonwealth or of a State or
 8 Territory, or in any document, to a term set out in the old term
 9 column of the table (within the meaning of this Law) is to be read
 10 after commencement as including a reference to the corresponding

Section 1469

1 term set out in the new term column of the table (within the
 2 meaning of this Law) except so far as the contrary intention
 3 appears in the law or document.
 4

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

5 **1469 Directors' duties—application and transitional arrangements**

6 Column 2 of the table sets out things that have been done, or
 7 situations that have arisen, on or before the commencement of
 8 certain provisions of the new Law. Column 3 sets out how the
 9 things and situations will be dealt with after commencement—
 10 either under the old Law or the new Law.
 11

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.

Transitional arrangements

	If...	then, after commencement...
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.
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).

Section 1469

Transitional arrangements

	If...	then, after commencement...
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).
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).

Transitional arrangements

	If...	then, after commencement...
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.

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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).

1 **1470 Related party transactions—continued application of old Law**

2 Chapter 2E of the old Law continues to apply to the giving of a
3 financial benefit (within the meaning of the old law) if:

4 (a) the benefit was given before commencement; or

- 1 (b) some or all materials required to be lodged with ASIC in
2 relation to the benefit by section 243U of the old Law were
3 lodged with ASIC before commencement; or
4 (c) the benefit is given under a contract made before
5 commencement.

6 **1471 Oppressive conduct of affairs—applications made before**
7 **commencement**

8 If an application was made under section 246AA of the old Law
9 and not finally determined before the commencement of section
10 232 of the new Law, then section 246AA of the old Law continues
11 to apply in respect of the application.

12 **1472 Proceedings on behalf of a company—intervention in**
13 **proceedings started before commencement**

14 Under Part 2F.1A (sections 236 to 242) of the new Law, a person
15 may apply for leave to intervene, and intervene, in proceedings
16 started before commencement.

17 **1473 Civil penalty provisions—application of new Law**

- 18 (1) Part 9.4B of the old Law continues to apply in relation to:
19 (a) a contravention of a civil penalty provision listed in section
20 1317DA of the old Law; or
21 (b) an offence committed against one of those civil penalty
22 provisions;
23 despite its repeal.
- 24 (2) Part 9.4B of the new Law applies in relation to a contravention of a
25 civil penalty provision listed in section 1317E of the new law.

26 **1474 Civil penalty orders made under old Law**

- 27 (1) An order in force under paragraph 1317EA(3)(a) of the old Law
28 immediately before commencement continues to have effect after
-

Section 1475

- 1 commencement as if it were made under section 206C of the new
2 Law.
- 3 (2) An order in force under paragraph 1317EA(3)(b) of the old Law
4 immediately before commencement continues to have effect after
5 commencement as if it were made under section 1317G of the new
6 Law.
- 7 (3) An order in force under section 1317HA or 1317HB of the old Law
8 immediately before commencement continues to have effect after
9 commencement as if it were made under section 1317H of the new
10 Law.

11 **1475 Fundraising—general application**

12 *General rule (new law applies to offers made after commencement)*

- 13 (1) Except as provided for in subsection (2), this Chapter applies to
14 offers of securities made after the commencement of this Chapter.

15 *Prospectus, or section 1043C or 1043D notice, lodged before
16 commencement covered by old law*

- 17 (2) If a prospectus, or a notice under section 1043C or 1043D, is
18 lodged with ASIC before commencement, the old Law continues to
19 apply to:
20 (a) the prospectus or notice; and
21 (b) offers made under the prospectus or notice; and
22 (c) the issue or transfer of securities as a result of the offer.

23 **1476 Fundraising—application of new section 712**

24 Section 712 of the new Law (incorporation by reference of
25 documents lodged with ASIC) applies to documents lodged with
26 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.

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 61(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.

Section 1480

- 1 (3) Sections 1037 and 1041 of the old Law continue to apply after
2 commencement to an allotment of shares made before
3 commencement in contravention of Division 3 of Part 7.12 of the
4 old Law.
- 5 (4) Section 1047 of the old Law continues to apply after
6 commencement to:
- 7 (a) a request made before commencement under subsection
8 1047(5) or (6); or
9 (b) a notice given under subsection 1047(8).

10 **1480 Fundraising—application of section 111AF of the new Law**

- 11 Section 111AF of the new Law applies after commencement as if:
- 12 (a) a prospectus lodged before commencement under Part 7.12
13 of the old Law or a corresponding previous law; or
14 (b) a document relating to securities that was taken to be a
15 prospectus because of section 1030 of the old Law or a
16 corresponding previous provision;
- 17 were a disclosure document lodged with ASIC under Chapter 6D
18 of the new Law.

19 **1481 Debentures—application and transitional provisions**

- 20 (1) Paragraph 124(1)(b) of the new Law applies to all debentures or
21 trust deeds regardless of whether they were issued or made before
22 or after commencement.
- 23 (2) Section 563AAA applies in relation to the issue of debentures
24 regardless of whether that event occurs before or after
25 commencement.
- 26 (3) A provision in force immediately before the date of
27 commencement of section 1062 of the old Law is not void under
28 section 260JB of the new Law if a trustee who was entitled to the
29 benefit of the provision before that date remains a trustee of the
30 trust deed concerned.

Section 1482

- 1 (4) Subsection 260JB(1) does not deprive a trustee of an exemption or
 2 right to be indemnified for anything done or omitted to be done by
 3 the trustee while a term or provision was in force even if that
 4 provision later becomes void under subsection 260JB(1).

1482 Debentures—saving orders, notices etc. given under old Law

6 A document made or given under the old Law and specified in the
 7 following table continues to have effect after commencement as if
 8 it were made or given under the corresponding provision of the
 9 new Law:
 10

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)

- 13 If:
 14 (a) a Part A statement for a takeover scheme is lodged with
 15 ASIC; or
 16 (b) a takeover announcement is made;
 17 before commencement, Chapter 6 of the old Law continues to
 18 apply to the scheme or announcement.

1484 Takeovers—old Law continues to apply to certain Panel proceedings

- 21 Part 6.9 of the old Law continues to apply to:
 22 (a) an application made to the Panel before commencement; or

Section 1485

1 (b) an application to the Panel in respect of a takeover scheme or
2 takeover announcement to which Chapter 6 of the old Law
3 applies under section 1483.

4 **1485 Takeovers—application of new provisions to interests acquired**
5 **before commencement**

6 Chapter 6 of the new Law applies to relevant interests and other
7 interests acquired before commencement.

8 **1486 Takeovers—section 1043B notices**

9 The prohibitions in subsections 606(1) and (2) of the new Law do
10 not apply to an acquisition pursuant to an invitation or offer if
11 section 615 of the old Law would not have applied to the
12 acquisition because of section 622A of the old Law (acquisitions
13 under section 1043B notices) if the old Law had remained in force
14 after commencement.

15 **1487 Takeovers—saving orders, notices etc. given under old law**

16 A document made or given under the old Law and specified in the
17 following table continues to have effect after commencement as if
18 it were made or given under the corresponding provision of the
19 new Law:
20

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

Section 1488

Documents saved		
	Document	Corresponding provision of the new Law
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

1 **1488 Takeovers—notification obligations under Parts 6.7 and 6.8 of**
 2 **the old law**

3 An obligation under Part 6.7 or 6.8 of the old Law continues after
 4 commencement as if that Part had not been repealed if the period
 5 for complying with the obligation has commenced but not ended
 6 before commencement.

7 **1489 Takeovers—ASIC power to pass on information obtained**
 8 **under the old Law**

9 Section 672C of the new Law applies to information obtained
 10 under Part 6.8 of the old Law as if it had been obtained in response
 11 to a direction under section 672A of the new Law.

12 **1490 Takeovers—application of section 111AG of the new Law**

13 Section 111AG of the new Law applies after commencement as if
 14 a takeover scheme as defined in section 603 of the old Law or a
 15 corresponding previous law were an off-market takeover bid.

16 **1491 Compulsory acquisitions—application of Part 6A.5 of the new**
 17 **Law**

18 Part 6A.5 of the new Law (sections 668A and 668B) applies to
 19 consideration paid before commencement.

Section 1492

1 **1492 Compulsory acquisitions—unclaimed moneys**

2 If, immediately before commencement, a company holds property
3 in trust for a person under subsection 701(11) of the old Law, the
4 company must continue to hold the property in trust for the person
5 in accordance with subsection 666B(2) of the new Law.

6 **1493 Accounting standards—standards in force before**
7 **commencement**

8 For the avoidance of doubt, an accounting standard that was in
9 force under section 334 immediately before commencement
10 continues in force after that commencement as if it had been made
11 by the AASB under that section immediately after that
12 commencement.

1
2 **Schedule 2—Main amendments of the**
3 **Australian Securities and Investments**
4 **Commission Act 1989**

5 **1 Part 12**

6 Repeal the Part, substitute:

7 **Part 12—Accounting standards**
8

9 **224 Main objects of this Part**

10 The main objects of this Part are:

- 11 (a) to facilitate the development of accounting standards that
12 require the provision of financial information that:
- 13 (i) allows users to make and evaluate decisions about
14 allocating scarce resources; and
 - 15 (ii) assists directors to discharge their obligations in relation
16 to financial reporting; and
 - 17 (iii) is relevant to assessing performance, financial position,
18 financing and investment; and
 - 19 (iv) is relevant and reliable; and
 - 20 (v) facilitates comparability; and
 - 21 (vi) is readily understandable; and
- 22 (b) to facilitate the Australian economy by:
- 23 (i) reducing the cost of capital; and
 - 24 (ii) enabling Australian entities to compete effectively
25 overseas; and
 - 26 (iii) having accounting standards that are clearly stated and
27 easy to understand; and
- 28 (c) to maintain investor confidence in the Australian economy
29 (including its capital markets).

Part 12 Accounting standards

Section 225

1 **Division 1—The Australian financial reporting system**

2 **225 Establishment, functions and powers of the Financial Reporting**
3 **Council**

4 *Establishment*

5 (1) A Financial Reporting Council is established.

6 *Functions*

7 (2) The FRC functions are:

- 8 (a) to provide broad oversight of the process for setting
9 accounting standards in Australia and to give the Minister
10 reports and advice on that process; and
11 (b) to appoint the members of the AASB (other than the
12 Chairman); and
13 (c) to approve and monitor the AASB's:
14 (i) priorities; and
15 (ii) business plan; and
16 (iii) budget; and
17 (iv) staffing arrangements (including level, structure and
18 composition of staffing); and
19 (d) to determine the AASB's broad strategic direction; and
20 (e) to give the AASB directions, advice or feedback on matters
21 of general policy and the AASB's procedures; and
22 (f) to monitor the development of international accounting
23 standards and:
24 (i) to further the harmonisation of Australian accounting
25 standards with international standards; and
26 (ii) to promote a greater role for international standards in
27 the Australian accounting standard setting process if
28 doing so would be in the best interests of both the
29 private and public sectors of the Australian economy;
30 and
-

- 1 (g) to monitor:
- 2 (i) the operation of accounting standards to assess their
- 3 continued relevance and their effectiveness in achieving
- 4 their objectives in respect of both the private and public
- 5 sectors of the Australian economy; and
- 6 (ii) the effectiveness of the AASB's consultative
- 7 arrangements; and
- 8 (h) to seek contributions towards the costs of the Australian
- 9 accounting standard setting process; and
- 10 (i) to monitor and periodically review the level of funding, and
- 11 the funding arrangements, for the AASB; and
- 12 (j) to establish appropriate consultative mechanisms; and
- 13 (k) to advance and promote the main objects of this Part; and
- 14 (l) any other functions that the Minister confers on the FRC by
- 15 written notice to the FRC Chairman.

16 *Powers*

- 17 (3) As well as any other powers conferred by this Act, the FRC has
- 18 power to do all things necessary or convenient to be done for or in
- 19 connection with the performance of its functions.
- 20 (4) Without limiting subsection (3), the FRC may establish committees
- 21 and advisory groups.

22 **226 Establishment of the Australian Accounting Standards Board**

- 23 (1) An Australian Accounting Standards Board is established.

24 Note: Subsection 236B(3) specifies the qualifications needed for

25 appointment to the Board.

- 26 (2) The AASB:
- 27 (a) is a body corporate with perpetual succession; and
- 28 (b) must have a common seal; and
- 29 (c) may acquire, hold and dispose of real and personal property;
- 30 and
- 31 (d) may sue and be sued in its corporate name.
-

- 1 (b) establish committees, advisory panels and consultative
2 groups; and
3 (c) receive money contributed towards its operating costs; and
4 (d) do anything else that is necessary for, or reasonably
5 incidental to, the performance of its functions.

6 *Manner of making and formulating standards*

- 7 (3) Without limiting paragraph (1)(b) or (c), the AASB may make or
8 formulate an accounting standard by issuing the text of an
9 international accounting standard. The text of the international
10 accounting standard may be modified to the extent necessary to
11 take account of the Australian legal or institutional environment.

12 *Manner of participating in the development of international*
13 *standards*

- 14 (4) Without limiting paragraph (1)(d), the AASB may distribute the
15 text of a draft international accounting standard (whether or not
16 modified to take account of the Australian legal or institutional
17 environment) for the purposes of consultation.

18 *Constitutional basis*

- 19 (5) This Part confers functions and powers to the extent to which they
20 are not in excess of the legislative power of the Commonwealth.
21 (6) Without limiting subsection (5), this Part confers functions and
22 powers to the extent to which doing so promotes, encourages and
23 facilitates the integration and efficiency of, and investment in,
24 Australia's national economy.

Part 12 Accounting standards

Section 228

1 **Division 2—Accounting standards**

2 **228 Purposive interpretation of standards**

3 *Objects of this Part*

- 4 (1) In interpreting an accounting standard made or formulated by the
5 AASB, a construction that would promote the objects of this Part is
6 to be preferred to a construction that would not promote those
7 objects.

8 Note: Section 224 states the main objects of this Part.

9 *Purposes or objects of particular standard*

- 10 (2) In interpreting an accounting standard made or formulated by the
11 AASB, a construction that would promote a purpose or object of
12 the standard (to the extent to which it is not inconsistent with the
13 objects of this Part) is to be preferred to a construction that would
14 not promote that purpose or object. This is so even if the purpose
15 or object is not expressly stated in the standard.

16 **229 Generic and specific standards**

- 17 (1) Accounting standards made or formulated by the AASB may:
18 (a) be of general or limited application (including a limitation to
19 specified bodies or undertakings); and
20 (b) differ according to differences in time, place or circumstance.
- 21 (2) In making and formulating accounting standards, the AASB:
22 (a) must have regard to the suitability of a proposed standard for
23 different types of entities; and
24 (b) may apply different accounting requirements to different
25 types of entities; and
26 (c) must ensure that there are appropriate accounting standards
27 for each type of entity that must comply with accounting
28 standards.

1 **230 Comparative amounts**

2 The accounting standards for the preparation of financial reports
3 for a period may require the inclusion in those reports of
4 comparative amounts for earlier periods.

5 **231 Cost/benefit analysis**

- 6 (1) The AASB must carry out a cost/benefit analysis of the impact of a
7 proposed accounting standard before making or formulating the
8 standard. This does not apply where the standard is being made or
9 formulated by issuing the text of an international standard (whether
10 or not modified to take account of the Australian legal or
11 institutional environment).

12 Note: Subsection 227(3) allows the AASB to make or formulate a standard
13 by issuing the text of an international standard. Under subsection (2)
14 of this section, the AASB will have done a cost/benefit analysis of the
15 international standard used in that way.

- 16 (2) The AASB must carry out a cost/benefit analysis of the impact of a
17 proposed international accounting standard before:
18 (a) providing comments on a draft of the standard; or
19 (b) proposing the standard for adoption as an international
20 standard.
- 21 (3) The AASB has to comply with subsections (1) and (2) only to the
22 extent to which it is reasonably practicable to do so in the
23 circumstances.

24 **232 FRC views**

25 In performing its functions, the AASB must:

- 26 (a) follow the broad strategic direction determined by the FRC
27 under paragraph 225(2)(d); and
28 (b) follow the general policy directions given by the FRC under
29 paragraph 225(2)(e); and
30 (c) take into account the advice and feedback on matters of
31 general policy given by the FRC under paragraph 225(2)(e).

Part 12 Accounting standards

Section 233

1 **233 International accounting standards**

2 The Minister may give the AASB a direction about the role of
3 international accounting standards in the Australian accounting
4 standard setting system. Before giving a direction under this
5 section, the Minister must receive and consider a report from the
6 FRC about the desirability of giving the direction. The AASB must
7 comply with the direction.

8 **234 Validity of accounting standards**

9 A failure to comply with this Division in relation to the making of
10 an accounting standard does not affect the validity of the standard.

11 **Division 3—Administrative provisions**

12 **Subdivision A—The Financial Reporting Council**

13 **235A Membership of FRC**

- 14 (1) The members of the Council are appointed by the Minister in
15 writing. The Minister may appoint a person by specifying an
16 organisation or body that is to choose the person who is appointed.
- 17 (2) The members hold office on the terms and conditions that are
18 determined by the Minister.
- 19 (3) The Minister must appoint one of the members to be Chairman of
20 the Council. The appointment must be in writing. The Council may
21 appoint one of its members to be Deputy Chairman of the Council.

22 **235B Annual report**

- 23 (1) As soon as practicable after 30 June in each year, and in any event
24 before 31 October, the FRC must give the Minister a report on:
25 (a) the operations of:
26 (i) the FRC and its committees and advisory groups; and

Section 235C

- 1 (ii) the AASB and its committees, advisory panels and
2 consultative groups; and
3 (b) the achievement of the objects set out in section 224;
4 during the year that ended on 30 June in that year.
- 5 (2) The Minister may grant an extension of time in special
6 circumstances.
- 7 (3) The Minister must table the report in each House of the Parliament
8 as soon as practicable.
- 9 (4) If the FRC is established during the last 3 months of a year ending
10 on 30 June:
11 (a) the FRC is not required to prepare an annual report for that
12 year; and
13 (b) the period from the time of establishment to the end of that
14 year must be dealt with in the next annual report.
- 15 (5) If the FRC is established during the first 9 months of a year ending
16 on 30 June, the annual report for that year must cover the period
17 from the time of establishment to the end of that year.

18 **235C Procedure**

19 The FRC may determine its own procedural rules (including rules
20 as to notice of meetings, quorum and voting).

21 **Subdivision B—The Australian Accounting Standards Board**

22 **236A Procedure**

- 23 (1) Meetings of the AASB are to be chaired by:
24 (a) the Chairman; or
25 (b) the Deputy Chairman if the Chairman is absent; or
26 (c) a member chosen by the members present if both the
27 Chairman and the Deputy Chairman are absent.

Part 12 Accounting standards

Section 236B

- 1 (2) If a meeting of the AASB, or a part of one of its meetings,
2 concerns the contents of accounting standards or international
3 accounting standards, the meeting or that part of it must be held in
4 public.
- 5 (3) The AASB must:
6 (a) comply with any directions about its procedure that the FRC
7 gives under paragraph 225(2)(e); and
8 (b) take into account the advice and feedback about its procedure
9 that the FRC gives under paragraph 225(2)(e).
- 10 (4) Otherwise, the AASB may determine its own procedural rules
11 (including rules as to notice of meetings, quorum and voting).

236B Appointment of members of the AASB

Appointment of Chairman

- 13
14 (1) The Minister appoints the Chairman of the AASB.

Appointment of other members

- 15
16 (2) The FRC appoints the other members of the AASB. The AASB
17 may appoint one of its members to be Deputy Chairman of the
18 AASB.

Qualification for appointment

- 19
20 (3) A person must not be appointed as a member of the AASB unless
21 their knowledge of, or experience in, business, accounting, law or
22 government qualifies them for the appointment.

Appointment document

- 23
24 (4) An appointment under subsection (1) or (2) is to be made in
25 writing.

Period of appointment

- 1
- 2 (5) The appointment document must specify the period of the
- 3 appointment (not exceeding 5 years). A member holds office for
- 4 the period specified in the appointment document and is eligible
- 5 for reappointment.

6 *Terms and conditions of appointment*

- 7 (6) The Chairman holds office on the terms and conditions that are
- 8 determined by the Minister. The other members hold office on the
- 9 terms and conditions determined by the FRC.

10 **236C Resignation and termination of appointment**

11 *Resignation*

- 12 (1) A member of the AASB may resign their appointment by giving a
- 13 written resignation to:
- 14 (a) if the member is the Chairman of the AASB—the Minister;
- 15 or
- 16 (b) in any other case—the Chairman of the FRC.

17 *Termination of Chairman's appointment*

- 18 (2) The Chairman is not to be removed from office except as provided
- 19 by subsection (3) or (4).
- 20 (3) The Minister may terminate the appointment of the Chairman of
- 21 the AASB for:
- 22 (a) misbehaviour or physical or mental incapacity; or
- 23 (b) breach of the terms and conditions of their appointment.
- 24 (4) The Minister must terminate the appointment of the Chairman of
- 25 the AASB if the Chairman:
- 26 (a) becomes bankrupt; or
- 27 (b) applies to take the benefit of any law for the relief of
- 28 bankrupt or insolvent debtors; or

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Section 236D

- 1 (c) compounds with their creditors; or
2 (d) makes an assignment of their remuneration or property for
3 the benefit of their creditors; or
4 (e) contravenes section 237.

5 *Termination of ordinary member's appointment*

- 6 (5) A member of the AASB (other than the Chairman) is not to be
7 removed from office except as provided by subsection (6) or (7).
- 8 (6) The FRC may terminate the appointment of a member of the
9 AASB (other than the Chairman) for:
10 (a) misbehaviour or physical or mental incapacity; or
11 (b) breach of the terms and conditions of the member's
12 appointment.
- 13 (7) The FRC must terminate the appointment of a member of the
14 AASB (other than the Chairman) if the member:
15 (a) becomes bankrupt; or
16 (b) applies to take the benefit of any law for the relief of
17 bankrupt or insolvent debtors; or
18 (c) compounds with their creditors; or
19 (d) makes an assignment of their remuneration or property for
20 the benefit of their creditors; or
21 (e) contravenes section 237.

22 **236D Acting appointments**

- 23 (1) The Minister may appoint a person to act as Chairman of the
24 AASB:
25 (a) during a vacancy in the office of Chairman (whether or not
26 an appointment has previously been made to the office); or
27 (b) during any period, or during all periods, when the Chairman
28 is absent from duty or from Australia, or is for any reason
29 unable to perform the duties of the office.

-
- 1 (2) The AASB may appoint one of its members to act as Deputy
2 Chairman of the AASB:
- 3 (a) during a vacancy in the office of Deputy Chairman (whether
4 or not an appointment has previously been made to the
5 office); or
- 6 (b) during any period, or during all periods, when the Deputy
7 Chairman is absent from duty or from Australia, or is for any
8 reason unable to perform the duties of the office.
- 9 (3) The FRC may appoint a person to act as a member of the AASB
10 (other than the Chairman):
- 11 (a) during a vacancy in the office of member (whether or not an
12 appointment has previously been made to the office); or
- 13 (b) during any period, or during all periods, when the member is
14 absent from duty or from Australia, or is for any reason
15 unable to perform the duties of the office.
- 16 (4) Anything done by or in relation to a person purporting to act under
17 an appointment is not invalid merely because:
- 18 (a) the occasion for the appointment had not arisen; or
19 (b) there was a defect in connection with the appointment; or
20 (c) the appointment had ceased to have effect; or
21 (d) the occasion to act had not arisen or had ceased.

22 **Subdivision C—Confidentiality**

23 **237 Confidentiality**

- 24 (1) The FRC and the AASB must take all reasonable measures to
25 protect from unauthorised use or disclosure information given to it
26 in confidence.
- 27 (2) For the purposes of subsection (1), the disclosure of information is
28 taken to be authorised if the disclosure:
- 29 (a) is required or permitted by a law of the Commonwealth or a
30 prescribed law of this or any other jurisdiction; or

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- 1 (b) is made in order to enable an authority or person in a country
2 outside Australia and the external Territories to perform or
3 exercise a function or power that corresponds, or is
4 analogous, to any of the FRC's or the AASB's functions or
5 powers; or
6 (c) is made to a body that sets international accounting
7 standards; or
8 (d) is made to ASIC for the purposes of its performance of its
9 functions under national scheme laws.

10 **Subdivision D—Financial matters**

11 **238 Application of money**

- 12 The money of the AASB must be applied only:
13 (a) in payment or discharge of the costs, expenses and other
14 obligations incurred by the AASB in the performance of its
15 functions or the exercise of its powers under this Act; and
16 (b) in meeting the administrative expenses of the FRC and the
17 committees and advisory groups it establishes; and
18 (c) in payment of any remuneration and allowances payable to
19 any person appointed under this Part.

1 **Schedule 3—Consequential amendments of**
2 **the Corporations Law**

3 **Part 1—Amendments relating to new Chapter 6D**
4 **(Fundraising)**

5 **1 Subparagraph 8(5)(c)(xi)**

6 Omit “1039”, substitute “703”.

7 **2 Section 9**

8 Insert:

9 *admit to quotation*: securities are *admitted to quotation* on a stock
10 market of a securities exchange if the exchange has given
11 unconditional permission for quotation of the securities on the
12 stock market.

13 **3 Section 9 (definition of *application period*)**

14 Repeal the definition.

15 **4 Section 9**

16 Insert:

17 *continuously quoted securities* are securities that:

- 18 (a) are in a class of securities that were quoted ED securities at
19 all times in the 12 months before the date of the prospectus;
20 and
21 (b) are securities of an entity that was not covered by any of the
22 following at any time in that 12 months:
23 (i) an exemption under section 111AS or 111AT, or a
24 modification under section 111AV
25 (ii) an exemption under paragraph 741(1)(a), or a
26 declaration under paragraph 741(1)(b), relating to a
27 provision that is a disclosing entity provision for the
28 purposes of Division 4 of Part 1.2A

29 and, for these purposes, securities are not in different classes
30 merely because of a temporary difference in the dividend, or

1 distribution rights, attaching to the securities or because different
2 amounts have been paid up on the securities.

3 **5 Section 9**

4 Insert:

5 *continuous disclosure notice* means:

- 6 (a) a document used to notify a securities exchange of
7 information relating to a body under provisions of the
8 securities exchange's listing rules referred to in subsection
9 1001A(1); or
10 (b) a document under section 1001B lodged in relation to the
11 body.

12 **6 Section 9 (paragraph (a) of the definition of *dealers licence*)**

13 Omit “, 807 or 1017A”, substitute “or 807”.

14 **7 Section 9**

15 Insert:

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

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

20 **8 Section 9 (definition of *eligible communications service*)**

21 Repeal the definition.

22 **9 Section 9 (definition of *excluded invitation*)**

23 Repeal the definition.

24 **10 Section 9 (definition of *excluded issue*)**

25 Repeal the definition.

26 **11 Section 9 (definition of *excluded offer*)**

27 Repeal the definition.

28 **12 Section 9 (definition of *excluded prospectus*)**

1 Repeal the definition.

2 **13 Section 9 (definition of *exempt securities*)**

3 Repeal the definition.

4 **14 Section 9**

5 Insert:

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

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

10 **15 Section 9 (definition of *minimum subscription*)**

11 Repeal the definition.

12 **16 Section 9**

13 Insert:

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

16 **17 Section 9**

17 Insert:

18 *profile statement* means a profile statement that is lodged with
19 ASIC.

20 **18 Section 9 (definition of *promoter*)**

21 Repeal the definition.

22 **19 Section 9 (definition of *prospectus*)**

23 Repeal the definition, substitute:

24 *prospectus* means a prospectus that is lodged with ASIC.

25 **20 Section 9**

26 Insert:

1 *qualified accountant* means a member of a professional body that
2 is approved by ASIC in writing for the purposes of this definition.

3 **21 Section 9 (definition of *replacement prospectus*)**

4 Repeal the definition.

5 **22 Section 9 (paragraph (c) of the definition of *securities***
6 ***exchange***

7 Omit “Part 7.12”, substitute “Chapter 6D”.

8 **23 Section 9 (definition of *stock exchange*)**

9 Omit “, section 869 or 1115 or Part 7.12”, substitute “or section 869 or
10 1115”.

11 **24 Section 9**

12 Insert:

13 *State Fair Trading Act* means the following Acts for each
14 jurisdiction:

15

State Fair Trading Acts		
	Jurisdiction	Act
1	New South Wales	Fair Trading Act 1987 (NSW)
2	Victoria	Fair Trading Act 1985
3	Queensland	Fair Trading Act 1987
4	South Australia	Fair Trading Act 1987
5	Western Australia	Fair Trading Act 1987
6	Tasmania	Fair Trading Act 1990
7	Northern Territory	Fair Trading Act 1990
8	Australian Capital Territory	Fair Trading Act 1992

16 **25 Section 9 (definition of *supplementary prospectus*)**

17 Repeal the definition.

18 **26 Section 9 (definition of *underlying*)**

19 Repeal the definition.

1 **27 Section 9**

2 Insert:

3 *underlying securities* means:

- 4 (a) in relation to an option over securities—those securities; and
5 (b) in relation to scrip that is constituted by documents that are,
6 or are documents of title to, securities—those securities.

7 **28 Subsection 45A(1) (note 2)**

8 Omit “lodgment of a prospectus under Part 7.12”, substitute “disclosure
9 to investors under Chapter 6D”.

10 **29 Subsection 57A(3)**

11 Repeal the subsection, substitute:

- 12 (3) A financial institution (as defined by section 111AZA) is not a
13 corporation for the purposes of this Law.

14 **30 Section 66**

15 Repeal the section.

16 **31 Section 69A**

17 Repeal the section.

18 **32 Section 78**

19 Repeal the section.

20 **33 Section 79**

21 Omit “Subject to section 1006, a person”, substitute “A person”.

22 **34 Subsections 92(3), (4), (5) and (6)**

23 Repeal the subsections, substitute:

- 24 (3) In Chapters 6 to 6D (inclusive):

25 *securities* means:

- 26 (a) shares in a body
27 (b) debentures of a body
-

- 1 (c) interests in a registered managed investment scheme
2 (d) legal or equitable rights or interests in:
3 (i) shares; or
4 (ii) debentures; or
5 (iii) interests in a registered managed investment scheme
6 (e) options to acquire (whether by way of issue or transfer) a
7 security covered by paragraph (a), (b), (c) or (d).

8 It does not cover a futures contract or an option approved by a
9 securities exchange as an exchange traded option.

10 Note: Section 9 defines *body* and sections 9 and 72 define *futures contract*.

11 **35 Section 99**

12 Repeal the section.

13 **36 Subsection 102A(3)**

14 Omit “1020A,”.

15 **37 Paragraph 111AF(1)(a)**

16 Repeal the paragraph, substitute:

- 17 (a) a disclosure document in relation to securities in that class
18 has been lodged with ASIC under Chapter 6D; or

19 **38 Paragraphs 111AF(1)(b) and (c)**

20 Omit “prospectus” (wherever occurring), substitute “disclosure
21 document”.

22 **39 Section 111AQ**

23 Omit “1022AA”, substitute “713”.

24 **40 Section 111AQ**

25 Omit “1022”, substitute “710”

26 **41 Section 111AX**

27 Omit “1084”, substitute “741”.

28 **42 Subsection 111AZF(2) (table item 4)**

1 Omit “Parts 7.11 and 7.12”, substitute “Chapter 6D and Part 7.11”.

2 **43 Subsection 111AZF(2) (table item 4)**

3 Omit “The application of those Parts to financial institutions is subject
4 to the exceptions in sections 1015A and 1083A.”

5 **44 Section 8 of the Small business guide in Part 1.5**

6 Omit “the company to lodge a prospectus with ASIC”, substitute
7 “disclosure to investors under Chapter 6D”.

8 **45 Section 11 of the Small business guide in Part 1.5 (note at
9 end)**

10 Omit “1018”, substitute “707”.

11 **46 Subsection 113(3)**

12 Omit “the lodgment with ASIC of a prospectus under Part 7.12”,
13 substitute “disclosure to investors under Chapter 6D”.

14 **47 Subsection 163(3) (note)**

15 Repeal the note, substitute:

16 Note: An offer of shares associated with a proposed change of type may
17 need disclosure to investors under Part 6D.2 (see sections 706, 707
18 and 708).

19 **48 Section 254Y (note)**

20 Omit “subsection 1024E(7)”, substitute “subsections 258E(2) and (3)”.

21 **49 Paragraph 258E(b)**

22 Omit “share capital; or”, substitute “share capital.”.

23 **50 Paragraph 258E(c)**

24 Repeal the paragraph.

25 **51 At the end of section 258E**

26 Add:

1 (2) A company may cancel shares returned to it under section 651C,
2 724(2), 737 or 738 and any reduction in the company's share
3 capital that is involved is authorised by this subsection.

4 (3) Any reduction in a company's share capital because of an order
5 under section 1325A is authorised by this subsection.

6 **52 Subsection 601ED(2)**

7 Omit "were excluded issues (disregarding paragraph 66(2)(da))",
8 substitute "did not need disclosure to investors under Part 6D.2 (see
9 sections 706 and 708)".

10 **53 Paragraph 601MB(1)(b)**

11 Omit "Part 7.12", substitute "Chapter 6D".

12 **54 Paragraph 601PA(2)(b)**

13 Omit "excluded issues", substitute "Chapter 6D not applying".

14 **55 Subsection 765(2)**

15 Repeal the subsection.

16 **56 Division 1 of Part 7.11**

17 Repeal the Division.

18 **57 Part 7.12**

19 Repeal the Part.

20 **58 Subparagraph 995(2)(b)(ii)**

21 Repeal the subparagraph, substitute:
22 (ii) a notice published in relation to securities;

23 **59 After subsection 995(2)**

24 Insert:

25 (2A) Conduct that contravenes:

26 (a) section 670A (misleading or deceptive takeover document);

27 or

28 (b) section 728 (misleading or deceptive fundraising document);

1 does not contravene subsection (2). For this purpose, conduct
2 contravenes the provision even if the conduct does not constitute
3 an offence, or does not lead to any liability, because of the
4 availability of a defence.

5 **60 Subsection 995(4)**

6 Omit “Part 7.12”, substitute “Chapter 6D”.

7 **61 After section 995**

8 Insert:

9 **995A Application of State Fair Trading Act provisions**

10 The provisions of the State Fair Trading Act do not apply to
11 dealings in securities.

12 **62 Section 996**

13 Repeal the section.

14 **63 Paragraph 1001B(1)(b)**

15 Omit “prospectus” (twice occurring), substitute “disclosure document”.

16 **64 Division 3 of Part 7.11**

17 Repeal the Division.

18 **65 Subsection 1005(1)**

19 Omit “or Part 7.12”.

20 Note: The heading to section 1005 is altered by omitting “**or Part 7.12**”.

21 **66 Subsection 1005(4)**

22 Omit “or Part 7.12” (twice occurring).

23 **67 Subdivision B of Division 4 of Part 7.11**

24 Repeal the Subdivision.

25 **68 Division 5 of Part 7.11**

26 Repeal the Division.

1 **69 Subparagraph 1274(2)(a)(ia)**

2 Omit “7.12 or”.

3 **70 After section 1324**

4 Insert:

5 **1324A Provisions relating to prosecutions**

6 In the prosecution of a person for an offence in respect of a
7 contravention of a provision of Chapter 5C or 6D or Part 7.11, the
8 Court may do either or both of the following:

- 9 (a) grant an injunction under section 1324 against the person in
10 relation to:
- 11 (i) the conduct that constitutes, or is alleged to constitute,
12 the offence; or
 - 13 (ii) other conduct of that kind
- 14 (b) make an order under section 1324B in respect of the person.

15 **1324B Order to disclose information or publish advertisements**

16 Without limiting section 1324, if, on the application of ASIC, the
17 Court is satisfied that a person has engaged in conduct constituting
18 a contravention of a provision of Chapter 5C or 6D or Part 7.11,
19 the Court may make either or both of the following orders against
20 that person or a person involved in the contravention:

- 21 (a) an order requiring the person to whom it is directed to
22 disclose, in the manner specified in the order, to:
- 23 (i) the public; or
 - 24 (ii) a particular person; or
 - 25 (iii) a particular class of persons;
- 26 the information, or information of a kind, that is specified in
27 the order and is in the person’s possession or to which the
28 person has access
- 29 (b) an order requiring the person to whom it is directed to
30 publish, at the person’s own expense, in the manner and at
31 times specified in the order, advertisements whose terms are

1 specified in, or are to be determined in accordance with, the
2 order.

3 **71 Subsection 1325(1)**

4 Omit “Part 7.11 or 7.12” (wherever occurring), substitute “Chapter 5C
5 or 6D or Part 7.11”.

6 **72 Subsection 1325(2)**

7 Omit “Part 7.11 or 7.12”, substitute “Chapter 5C or 6D or Part 7.11”.

8 **73 Subsection 1325(3)**

9 Omit “Part 7.11 or 7.12” (wherever occurring), substitute “Chapter 5C
10 or 6D or Part 7.11”.

11 **74 Section 1326**

12 After “1324”, insert “,1324A, 1324B,”.

13 **75 Schedule 3**

14 Repeal the items relating to sections 996, 1018, 1019 and 1020,
15 subsections 1023A(1), 1023B(2), 1024(2), 1024C(3), 1024D(2),
16 1024E(8) and 1024G(4) to (7), sections 1025, 1026, 1027 and 1028,
17 subsections 1031(6), 1031(8) and 1031(9) and sections 1032, 1036,
18 1040, 1043, 1043B 1078, 1079 and 1081 and insert each of the
19 following items in their appropriate place according to the order that the
20 provision referred to in the item appears in the Corporations Law:

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

Schedule 3 Consequential amendments of the Corporations Law
Part 1 Amendments relating to new Chapter 6D (Fundraising)

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

1

2 **Part 2—Amendments relating to new Chapter 2L**
3 **(Debentures)**

4 **76 Section 9 (definition of *borrowing corporation*)**

5 Repeal the definition.

6 **77 Section 9**

7 Insert:

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

10 **78 Section 9 (definition of *debenture*)**

11 Repeal the definition, substitute:

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

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

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

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

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

28 (c) an undertaking to pay money under:

29 (i) a cheque; or

30 (ii) an order for the payment of money; or

31 (iii) a bill of exchange

- 1 (d) an undertaking to pay money under a promissory note that
2 has a face value of at least \$50,000
3 (e) an undertaking by a body corporate to pay money to a related
4 body corporate
5 (f) an undertaking to repay money that is prescribed by the
6 regulations.

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

13 **79 Section 9 (definition of *eligible money market dealer*)**

14 Omit “paragraph 65(1)(a)”, substitute “section 65”.

15 **80 Section 9 (definition of *excluded corporation*)**

16 Repeal the definition.

17 **81 Section 9 (definition of *exempt securities*)**

18 Repeal the definition.

19 **82 Section 9 (definition of *guarantor body*)**

20 Repeal the definition.

21 **83 Section 9**

22 Insert:

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

26 **84 Section 65**

27 Repeal the section, substitute:

1 **65 Eligible money market dealer**

2 ASIC may declare a body corporate to be an authorised dealer in
3 the short term money market by notice published in the *Gazette*.

4 **85 Paragraph 111AH(1)(a)**

5 Omit “1047”, substitute “601CZB”.

6 **86 Section 111AI**

7 Repeal the section, substitute:

8 **111AI Debentures that need trustee appointed under section 260FA**

9 Debentures of a borrower are *ED securities* if section 260FA
10 requires the borrower to appoint a trustee.

11 **87 At the end of paragraph 124(1)(b)**

12 Add “(despite any rule of law or equity to the contrary, this power
13 includes a power to issue debentures that are irredeemable, redeemable
14 only if a contingency, however remote, occurs, or redeemable only at
15 the end of a period, however long)”.

16 **88 Subsection 168(2)**

17 Repeal the subsection, substitute:

18 (2) For the purposes of this Part, choses in action (including an
19 undertaking) that fall into one of the exceptions in paragraphs (a),
20 (b), (e) and (f) of the definition of *debenture* in section 9 must also
21 be entered into the register of debenture holders.

22 **89 Subsection 216A(2)**

23 Repeal the subsection, substitute:

24 *Certain documents are debentures*

25 (2) For the purposes of this Part, choses in action (including an
26 undertaking) that fall into one of the exceptions in paragraphs (a),
27 (b), (e) and (f) of the definition of *debenture* in section 9 must also
28 be entered into the register of debenture holders.

1 **90 Paragraph 260C(3)(a)**

2 Omit “borrowing corporation”, substitute “borrower in relation to
3 debentures”.

4 Note: The heading to subsection 260C(3) is altered by omitting “*borrowing corporation*” and
5 substituting “*debenture issuers*”.

6 **91 Paragraph 260C(3)(b)**

7 Omit “borrowing corporation”, substitute “borrower”.

8 **92 Paragraph 260C(3)(c)**

9 Repeal the paragraph, substitute:

10 (c) the borrower is a borrower in relation to the debentures
11 because it is or will be liable to repay the money; and

12 **93 Section 302 (note 2)**

13 Omit “borrowing corporations”, substitute “borrowers in relation to
14 debentures”.

15 **94 Subsection 313(1)**

16 Omit “A borrowing corporation’s auditor”, substitute “The auditor of a
17 borrower in relation to debentures”.

18 Note: The heading to section 313 is altered by omitting “**borrowing corporations and**
19 **guarantor bodies**” and substituting “**debenture issuers and guarantors**”.

20 **95 Paragraph 313(1)(a)**

21 Omit “borrowing corporation”, substitute “borrower”.

22 **96 Subsection 313(1)**

23 Omit “borrowing corporation” (last occurring), substitute “borrower”.

24 **97 Subsection 313(2)**

25 Omit “a borrowing corporation or guarantor body”, substitute “a
26 borrower, or guarantor, in relation to debentures”.

27 **98 Subsection 313(2)**

28 Omit “the borrowing corporation or guarantor body”, substitute “the
29 borrower or guarantor”.

1 **99 Subsection 318(1)**

2 Omit “borrowing corporation”, substitute “borrower in relation to
3 debentures”.

4 **100 Subsection 318(4)**

5 Omit “borrowing corporation”, substitute “borrower in relation to
6 debentures”.

7 **101 At the end of section 601CD**

8 Add:

- 9 (2) For the purposes of this Division, a foreign company carries on
10 business in this jurisdiction if it:
11 (a) offers debentures in this jurisdiction; or
12 (b) is a guarantor body for debentures offered in this jurisdiction;
13 and Part 2L.1 applies to the debentures.

14 **102 After Division 3 of Part 5B.2**

15 Insert:

16 **Division 4—Register of debenture holders for**
17 **non-companies**

18 **601CZA Certain documents are debentures**

19 For the purposes of this Division, choses in action (including an
20 undertaking) that fall into one of the exceptions in paragraphs (a),
21 (b), (e) and (f) of the definition of *debenture* in section 9 must also
22 be entered into the register of debenture holders.

23 **601CZB Register of debenture holders to be maintained by**
24 **non-companies**

- 25 (1) A body that is not a company must set up and maintain a register of
26 debenture holders if it issues debentures covered by Chapter 2L.

27 Note 1: Companies have to keep a register of debenture holders under sections
28 168 and 171.

29 Note 2: The register may be kept on computer (see section 1306).

- 1 (2) The register must contain the following information about each
2 debenture holder:
3 (a) their name and address
4 (b) the amount of the debentures held.
- 5 (3) A body's failure to comply with this section in relation to a
6 debenture does not affect the debenture itself.

7 **601CZC Location of register**

- 8 (1) The register must be kept at:
9 (a) the body's registered office; or
10 (b) the body's principal place of business in Australia; or
11 (c) a place in Australia (whether of the body or of someone else)
12 where the work involved in maintaining the register is done;
13 or
14 (d) another place approved by ASIC.
- 15 (2) The body must lodge with ASIC a notice of the address at which
16 the register is kept within 7 days after the register is:
17 (a) established at an office that is neither the body's registered
18 office nor at its principal place of business; or
19 (b) moved from one office to another.
- 20 Notice is not required for moving the register between the
21 registered office and an office at the principal place of business.

22 **601CZD Application of sections 173 to 177**

23 Sections 173 to 177 apply to a register kept under this Division as
24 if it were kept under Chapter 2C.

25 Note: Sections 173 to 177 deal with rights to inspect the register and get
26 copies, the obligations of agents who maintain the register, correction
27 of the register, the evidential value of the register and the use of
28 information on the register.

29 **103 After section 563A**

30 Insert:

1 **563AAA Redemption of debentures**

2 *Priorities*

3 (1) Debentures of a company under a trust deed that are issued in place
4 of debentures under that deed that have been redeemed have the
5 priority that the redeemed debentures would have had if they had
6 never been redeemed.

7 *Deposit of debentures to secure advance*

8 (2) Debentures of a company are not to be taken to be redeemed
9 merely because:

- 10 (a) the debentures secure advances on current account or
11 otherwise; and
12 (b) the company's account ceases to be in debit while those
13 debentures remain available.

14 **104 Subsection 1302(1)**

15 Omit "or 1047".

16 **105 Schedule 3**

17 Repeal the items relating to sections 1052 and 1054. Insert each of the
18 following items in their appropriate place according to the order that the
19 provision referred to occurs in the Corporations Law:

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.

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.

1

2 **Part 3—Amendments relating to new Chapter 2D**
3 **(Officers)**

4 **106 Section 9 (definition of *administration*)**

5 Omit “or relevant body”.

6 **107 Section 9 (paragraph (a) of the definition of**
7 ***administrator*)**

8 Omit “or relevant body”.

9 **108 Section 9 (definition of *benefit*)**

10 Repeal the definition, substitute:

11 ***benefit:***

- 12 (a) means any benefit, whether by way of payment of cash or
13 otherwise; and
14 (b) when used in Division 2 of Part 2D.2 (sections 200B to
15 1813)—means:
16 (i) a payment or other valuable consideration; or
17 (ii) an interest in property of any kind; and
18 (iii) any other benefit.

19 **109 Section 9**

20 Insert:

21 ***board or managerial office*** (when used in Division 2 of Part 2D.2
22 (sections 200B to 1813) in relation to a body corporate) means:

- 23 (a) an office of director of the body corporate; and
24 (b) any other office in connection with the management of the
25 body corporate’s affairs that is held by:
26 (i) a person who also holds an office of director of the body
27 corporate or a related body corporate; or
28 (ii) a person who has held an office of director of the body
29 corporate or a related body corporate at any time within

1 the 12 months immediately before the loss of, or
2 retirement from, that office.

3 **110 Section 9 (definition of *director*)**

4 Repeal the definition, substitute:

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

6 (a) a person who:

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

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

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

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

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

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

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

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

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

29 **111 Section 9**

30 Insert:

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

33 **112 Section 9 (definition of *manage*)**

1 Repeal the definition.

2 **113 Section 9 (definition of *officer*)**

3 Repeal the definition, substitute:

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

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

6 (b) a person:

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

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

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

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

20 (d) an administrator of the corporation; or

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

23 (f) a liquidator of the corporation; or

24 (g) a trustee or other person administering a compromise or
25 arrangement made between the corporation and someone
26 else.

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

28 **114 Section 9**

29 Insert:

30 ***payment*** (when used in Division 2 of Part 2D.2 (sections 200B to
31 1813)) includes a payment by way of damages for breach of
32 contract.

33 **115 Section 9 (definition of *person*)**

1 Repeal the definition, substitute:

2 *person:*

3 (a) has a meaning affected by section 85A; and

4 (b) when used in Division 2 of Part 2D.2 (sections 200B to
5 1813)—includes a superannuation fund.

6 **116 Section 9 (paragraph (a) of the definition of *public***
7 ***company*)**

8 Omit “paragraph 228(1)(b) and subsection 879(1)”, substitute
9 “subsection 849(1)”.

10 **117 Section 9 (paragraph (b) of the definition of *public***
11 ***company*)**

12 Omit “232A”, substitute “195”.

13 **118 Section 9 (definition of *relevant body*)**

14 Repeal the definition.

15 **119 Section 9 (definition of *section 229 prohibition*)**

16 Repeal the definition.

17 **120 Section 9 (definition of *section 230 order*)**

18 Repeal the definition.

19 **121 Section 9 (definition of *section 599 order*)**

20 Repeal the definition.

21 **122 Section 9 (definition of *section 600 notice*)**

22 Repeal the definition.

23 **123 Subsection 31(1)**

24 Omit “235”, substitute “205G”.

25 **124 Paragraph 43(a)**

26 Omit “235”, “substitute “205G”.

1 **125 Section 60**

2 Repeal the section.

3 **126 Subsection 83(2)**

4 Repeal the subsection.

5 **127 Section 91A**

6 Repeal the section.

7 **128 Paragraph 103(2)(a)**

8 Omit “232A, 232B”.

9 **129 Subsection 109X(2)**

10 Omit “242(1), or (3)”, substitute 205B(1), (2) or (4)”.

11 **130 Subsection 117(2) (note 2)**

12 Omit “242AA”, substitute “205D”.

13 **131 Subsection 135(1) (note)**

14 Omit “section 224B”, substitute “sections 198E, 201F and 202C”.

15 **132 Section 141 (table item 1)**

16 Omit “224C”, substitute “201G”.

17 **133 Section 141 (table item 2)**

18 Omit “224D”, substitute “201H”.

19 **134 Section 141 (table item 3)**

20 Omit “225A”, substitute “201K”.

21 **135 Section 141 (table item 4)**

22 Omit “226A”, substitute “198A”.

23 **136 Section 141 (table item 5)**

24 Omit “226B”, substitute “198B”.

1 **137 Section 141 (table item 6)**

2 Omit “226C”, substitute “198C, 201J, 203F”.

3 **138 Section 141 (table item 7)**

4 Repeal the item.

5 **139 Section 141 (table item 8)**

6 Omit “226E”, substitute “203C”.

7 **140 Section 141 (table item 9)**

8 Omit “227A”, substitute “203A”.

9 **141 Section 141 (table item 11)**

10 Omit “236A”, substitute “202A”.

11 **142 Section 141 (table item 11)**

12 Repeal the item, substitute:

10 Material interests—directors of proprietary companies 194

13 **143 Section 141 (table item 31)**

14 Omit “240(4A)”, substitute “204F”.

15 **144 Subsection 248B(2) (note 1)**

16 Omit “231,”.

17 **145 Section 248C (note)**

18 Omit “section 225A”, substitute “subsection 201K(2)”.

19 **146 Section 248F (note 1)**

20 Omit “sections 232A and 232B”, substitute “section 195”.

21 **147 Paragraph 249H(3)(a)**

22 Omit “227”, substitute “203D”.

23 **148 Paragraph 249H(3)(b)**

24 Omit “section; or”, substitute “section.”.

1 **149 Paragraph 249H(3)(c)**

2 Repeal the paragraph.

3 **150 Section 260E**

4 Omit “section 232”, substitute “sections 180, 181, 182, 183 and 184”.

5 **151 Paragraph 300(8)(a)**

6 Omit “241(2) or (3)”, substitute “199A(2) or (3)”.

7 **152 Paragraph 300(8)(b)**

8 Omit “and that is covered by subsection 241A(3)”, substitute “for legal
9 costs”.

10 **153 Subsection 300(8)**

11 Omit “For the purposes of this subsection, *officer* has the same meaning
12 as in section 241.”.

13 **154 Subsection 300(8) (note)**

14 Omit “241 and 241A”, substitute “199A and 199B”.

15 **155 Subsection 300(11) (note)**

16 Omit “235”, substitute “205G”.

17 **156 Subsection 420A(2)**

18 Omit “232”, substitute “180, 181, 182, 183 or 184”.

19 **157 Section 348 (table item 5)**

20 Omit “*section 242AA*”, substitute “*subsection 205D(2)*”.

21 **158 Subsection 497(6)**

22 After “secretary”, insert “(if the company has one)”.

23 **159 At the end of subsection 497(6)**

24 Add:

25 If the company has 2 or more directors, the director so appointed
26 must not also attend in the capacity of a secretary.

1 **160 Division 7 of Part 5.7B (heading)**

2 Repeal the heading, substitute:

3 **Division 7—Person managing a corporation while**
4 **disqualified may become liable for corporation’s**
5 **debts**

6 **161 Subparagraph 588Z(b)(i)**

7 Omit “229, 230, 599, 600 or 1317EF”, substitute “206A”.

8 **162 Paragraph 588Z(b)**

9 Omit “(as defined by section 91A)”.

10 **163 Section 599**

11 Repeal the section.

12 **164 Section 600**

13 Repeal the section.

14 **165 Subsection 601BC(2) (note 1)**

15 Omit “242AA”, substitute “205D”.

16 **166 Paragraph 1015(1)(a)**

17 Omit “subsection 232(7)”, substitute “Part 9.4B”.

18 **167 Paragraph 1265(3)(a)**

19 Omit “subsection 232(7)”, substitute “Part 9.4B”.

20 **168 Subparagraph 1274(2)(a)(iaa)**

21 Omit “242(6)” substitute “205D(3)”.

22 **169 After section 1274**

23 Insert:

1 **1274AA Register of disqualified company directors and other**
2 **officers**

- 3 (1) ASIC must keep a register of persons who have been disqualified
4 from managing corporations under this Part or prohibited from
5 managing a corporation under any previous Law.
- 6 (2) The register must contain a copy of:
- 7 (a) each order made by the Court disqualifying a person from
8 managing a corporation, or prohibiting a person from
9 managing a corporation, under a corresponding previous law
10 of this jurisdiction before the commencement of this Part;
11 and
- 12 (b) every notice that was served under:
- 13 (i) section 206F; or
14 (ii) a previous law of this jurisdiction before the
15 commencement of this Part that corresponds to section
16 206F; and
- 17 (c) every order lodged under section 206G.
- 18 (3) Subsections 1274(2) and (5) apply to a copy of an order or notice
19 as if that copy were a document lodged with ASIC.

20 **170 After section 1274B**

21 Insert:

22 **1274C ASIC certificate**

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

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

29 **171 Subsection 1280(3)**

30 Omit all the words after “a person who”, substitute “is disqualified from
31 managing corporations under Part 2D.6”.

1 **172 Subsection 1282(4)**

2 Omit all the words after “a person who”, substitute “is disqualified from
3 managing corporations under Part 2D.6”.

4 **173 Subsection 1287(4)**

5 Repeal the subsection, substitute:

6 (4) If a person who is registered as an auditor, as a liquidator or as a
7 liquidator of a specified corporate body is disqualified from
8 managing corporations under Part 2D.6, then, within a period of 3
9 days after they become disqualified, they must lodge written
10 particulars in the prescribed form of the circumstances because of
11 which they become disqualified.

12 **174 Paragraph 1292(7)(a)**

13 Repeal the paragraph, substitute:

14 (a) that the person is disqualified from managing corporations
15 under Part 2D.6; or

16 **175 Paragraph 1381(a)**

17 Omit “or relevant body”.

18 **176 Paragraph 1381(b)**

19 Omit “or relevant body”.

20 **177 Paragraph 1381(c)**

21 Omit “or relevant body”.

22 **178 Paragraph 1381(d)**

23 Omit “, of a relevant body,”.

24 **179 Section 1424 (table item 7)**

25 Omit “subsection 227(3A)”, substitute “subsection 203D(2)”.

26 **180 Schedule 3**

1 Omit the items relating to sections 222A, 229, 230, 231, 235 and 236,
2 subsections 242(1), (3) and (4) and 1317(1) and (4) and sections 242A,
3 599 and 600. Insert each of the following items in their appropriate
4 place according to the order that the provision referred to occurs in the
5 Corporations Law:

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(3)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 200B

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 81(3)

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 224

Penalty: 200 penalty units or imprisonment for 5 years, or both.

Section 225

Penalty: 5 penalty units.

1

2 **Part 4—Amendments relating to new Chapter 2E**
3 **(Related Parties)**

4 **181 Subparagraph 8(5)(c)(vi)**

5 Omit “243L(2)”, substitute “213(2)”.

6 **182 Section 9 (definition of *child entity*)**

7 Repeal the definition.

8 **183 Section 9 (definition of *control*)**

9 Repeal the definition, substitute:

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

11 **184 Section 9**

12 Insert:

13 *entity*: for the purposes of Chapter 2E an *entity* is any of the
14 following:

- 15 (a) a body corporate
16 (b) a partnership
17 (c) an unincorporated body
18 (d) an individual
19 (e) for a trust that has only 1 trustee—the trustee
20 (f) for a trust that has more than 1 trustee—the trustees together.

21 **185 Section 9 (definition of *financial benefit*)**

22 Repeal the definition, substitute:

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

25 **186 Section 9 (definition of *parent entity*)**

26 Repeal the definition.

27 **187 Section 9 (definition of *related party*)**

1 Repeal the definition, substitute:

2 *related party* (when used in Chapter 2E) has the meaning given by
3 section 228.

4 **188 Section 9**

5 Insert:

6 *remuneration* of an officer or employee of a corporation. A benefit
7 given to an officer or employee of a corporation is *remuneration* if
8 and only if the benefit, were it received by a director of the
9 corporation, would be remuneration of the director for the purposes
10 of an accounting standard that deals with disclosure in companies'
11 financial reports of information about related parties. For the
12 purposes of this definition, the following are not officers of a
13 corporation:

- 14 (a) a receiver, or receiver and manager, of the property of the
15 corporation
16 (b) an administrator of the corporation
17 (c) an administrator of a deed of company arrangement executed
18 by the corporation
19 (d) a liquidator of the corporation
20 (e) a trustee or other person administering a compromise or
21 arrangement made between the corporation and someone
22 else.

23 **189 Section 9 (definition of *sibling entity*)**

24 Repeal the definition.

25 **190 After section 50**

26 Insert in Division 6 of Part 1.2:

27 **50AA Control**

28 (1) For the purposes of this Law, an entity controls a second entity if
29 the first entity has the capacity to determine the outcome of
30 decisions about the second entity's financial and operating policies.

31 (2) In determining whether the first entity has this capacity:

- 1 (a) the practical influence the first entity can exert (rather than
2 the rights it can enforce) is the issue to be considered; and
3 (b) any practice or pattern of behaviour affecting the second
4 entity's financial or operating policies is to be taken into
5 account (even if it involves a breach of an agreement or a
6 breach of trust).
- 7 (3) The first entity does not control the second entity merely because
8 the first entity and a third entity jointly have the capacity to
9 determine the outcome of decisions about the second entity's
10 financial and operating policies.
- 11 (4) If the first entity:
12 (a) has the capacity to influence decisions about the second
13 entity's financial and operating policies; and
14 (b) is under a legal obligation to exercise that capacity for the
15 benefit of someone other than the first entity's members;
16 the first entity is taken not to control the second entity.

17 **191 Paragraph 103(2)(a)**

18 Omit "243H, 243ZE", substitute "208, 209".

19 **192 Section 256E (table item 5)**

20 Omit "members of a public company, or diminish or endanger its
21 resources", substitute "a public company's members as a whole".

22 **193 Section 283B (note 1)**

23 Omit "243E", substitute "50AA".

24 **194 Subsection 300(4)**

25 Repeal the subsection.

26 **195 Section 601LA**

27 Omit "Part 3.2A", substitute "Chapter 2E"

28 **196 Sections 601LB to 601LE**

29 Repeal the sections, substitute:

1 **601LB Replacement section 207**

2 Chapter 2E applies as if section 207 were replaced by the
3 following section:

4 **207 Purpose**

5 The rules in this Chapter, as they apply to a registered scheme, are
6 designed to protect the interests of the scheme's members as a
7 whole, by requiring member approval for giving financial benefits
8 to the responsible entity or its related parties that come out of
9 scheme property or that could endanger those interests.

10 **601LC Replacement section 208**

11 Chapter 2E applies as if section 208 were replaced by the
12 following section:

13 **208 Need for member approval for financial benefit**

14 (1) If all the following conditions are satisfied in relation to a financial
15 benefit:

16 (a) the benefit is given by:

17 (i) the responsible entity of a registered scheme; or

18 (ii) an entity that the responsible entity controls; or

19 (iii) an agent of, or person engaged by, the responsible entity

20 (b) the benefit either:

21 (i) is given out of the scheme property; or

22 (ii) could endanger the scheme property

23 (c) the benefit is given to:

24 (i) the person or a related party; or

25 (ii) another person referred to in paragraph (a) or a related
26 party of that person;

27 then, for the person referred to in paragraph (a) to give the benefit,
28 either:

29 (d) the person referred to in paragraph (a) must:

30 (i) obtain the approval of the scheme's members in the way
31 set out in sections 217 to 227; and

- 1 (ii) give the benefit within 15 months after the approval; or
2 (e) the giving of the benefit must fall within an exception set out
3 in sections 210 to 216.

4 Note: Section 228 defines *related party*, section 191 defines *entity*, section
5 191 defines *control* and section 229 affects the meaning of *giving a*
6 *financial benefit*.

7 (2) If:

- 8 (a) the giving of the benefit is required by a contract; and
9 (b) the making of the contract was approved in accordance with
10 subparagraph (1)(d)(i) as a financial benefit given to the
11 entity or related party; and
12 (c) the contract was made:
13 (i) within 15 months after that approval; or
14 (ii) before that approval, if the contract was conditional on
15 the approval being obtained;
16 member approval for the giving of the benefit is taken to have been
17 given and the benefit need not be given within the 15 months.
- 18 (3) Subsection (1) does not prevent the responsible entity from paying
19 itself fees, and exercising rights to an indemnity, as provided for in
20 the scheme's constitution under subsection 601GA(2).

21 **601LD Omission of sections 213, 214 and 224**

22 Chapter 2E applies as if sections 213, 214 and 224 were omitted.

23 Note: Instead of section 224, the rule in section 253E will apply.

24 **601LE Modification of section 225**

25 Chapter 2E applies as if subsection 225(1) were amended by
26 omitting "subsection 224(1)" and substituting "section 253E".

27 **197 Schedule 3**

28 Repeal the items relating to sections 243ZF and 243ZH. Insert the
29 following item in its appropriate place according to the order that the
30 provision referred to occurs in the Corporations Law:

Subsection 209(3)

Penalty: 2000 penalty units, or imprisonment for 5 years, or both.

1

2

Part 5—Amendments relating to new Part 2F.1 (Oppressive conduct of affairs)

3

4

198 Section 53

5

Omit “ or 246AA”, substitute “232, 233 or 234”.

6

199 At the end of paragraph 136(1)(b)

7

Add “or a court order is made under section 233 that requires the
company to adopt the constitution”.

8

9

200 At the end of subsection 136(2)

10

Add:

11

Note: The company may need leave of the Court to modify or repeal its
constitution if it was adopted as the result of a Court order (see
subsection 233(3)).

12

13

14

201 Section 137

15

Repeal the section, substitute:

16

137 Date of effect of adoption, modification or repeal of constitution

17

If a new constitution is adopted or an existing constitution is
modified or repealed, that adoption, modification or repeal takes
effect:

18

19

20

(a) if it is the result of a special resolution:

21

(i) on the date on which the resolution is passed if it
specified no later date; or

22

23

(ii) on a date specified in, or determined in accordance with,
the resolution if the relevant date is later than the date
on which the resolution is passed; or

24

25

26

(b) if it is the result of a Court order made under section 233:

27

(i) on the date on which the order is made if it specifies no
later date; or

28

29

(ii) on a date specified by the order.

30

202 Section 459B

Schedule 3 Consequential amendments of the Corporations Law

Part 5 Amendments relating to new Part 2F.1 (Oppressive conduct of affairs)

1 Omit “246AA”, substitute “234”.

2 Note: The heading to section 459B of the Corporations Law is altered by omitting “246AA”
3 and substituting “234”.

4 **203 Paragraph 459C(1)(a)**

5 Omit “246AA”, substitute “234”.

6 **204 Section 467B**

7 Omit “246AA”, substitute “233”.

8 **205 Section 513A**

9 Omit “246AA”, substitute “233”.

10 **206 Paragraph 513D(a)**

11 Omit “246AA”, substitute “233”.

12 **207 Schedule 3**

13 Repeal the item relating to section 246AA and insert the following item
14 in its appropriate place according to the order that the provision referred
15 to occurs in the Corporations Law:

Section 235

Penalty: 50 penalty units or imprisonment for 1 year, or both.

1
2 **Part 6—Amendments relating to new Part 2F.1A**
3 **(Proceedings on behalf of a company by**
4 **members and others)**

5 **208 At the end of section 247A**

6 Add:

- 7 (3) A person who:
8 (a) is granted leave under section 237; or
9 (b) applies for leave under that section; or
10 (c) is eligible to apply for leave under that section;
11 may apply to the Court for an order under this section.
- 12 (4) On application, the Court may make an order authorising:
13 (a) the applicant to inspect books of the company; or
14 (b) another person to inspect books of the company on the
15 applicant's behalf.
- 16 (5) The Court may make the order only if it is satisfied that:
17 (a) the applicant is acting in good faith; and
18 (b) the inspection is to be made for a purpose connected with:
19 (i) applying for leave under section 237; or
20 (ii) bringing or intervening in proceedings with leave under
21 that section.
- 22 (6) A person authorised to inspect books may make copies of the
23 books unless the Court orders otherwise.

24 **209 At the end of section 300**

25 Add:

26 *Proceedings on behalf of a company*

- 27 (14) The report for a company must also include the following details of
28 any application for leave under section 237 made in respect of the
29 company:
30 (a) the applicant's name; and
-

Schedule 3 Consequential amendments of the Corporations Law

Part 6 Amendments relating to new Part 2F.1A (Proceedings on behalf of a company by members and others)

- 1 (b) a statement whether leave was granted.
- 2 (15) The report for a company must also include the following details of
- 3 any proceedings that a person has brought or intervened in on
- 4 behalf of the company with leave under section 237:
- 5 (a) the person's name
- 6 (b) the names of the parties to the proceedings
- 7 (c) sufficient information to enable members to understand the
- 8 nature and status of the proceedings (including the cause of
- 9 action and any orders made by the court).

1

2

Part 7—Amendments relating to new Part 9.4B (Civil penalty provisions)

3

4

210 Section 9 (definition of *civil penalty order*)

5

Repeal the definition, substitute:

6

civil penalty order means any of the following:

7

(a) a declaration of contravention under section 1317F

8

(b) a pecuniary penalty order under section 1317G

9

(c) a compensation order under section 1317H

10

(d) an order under section 206C disqualifying a person from managing corporations.

11

12

211 Section 9 (definition of *civil penalty provision*)

13

Repeal the definition, substitute:

14

civil penalty provision has the meaning given in subsection 1317E(1).

15

16

212 Subsection 91(4A)

17

Omit “relating to the person”, substitute “disqualifying the person from managing corporations”.

18

19

213 Subsection 91(4A)

20

Repeal the subsection.

21

214 Section 111AZH

22

Repeal the section.

23

215 Paragraph 1.3 (note) of the Small business guide in Part 1.5

24

25

Omit “232, 233”, substitute “197”.

26

216 Paragraph 1.3 (note) of the Small business guide in Part 1.5

27

28

Omit “1317HA, 1317HD”, substitute “1317H”.

1 **217 Paragraph 5.1 (note) of the Small business guide in Part**
2 **1.5**

3 Omit “1317EA(3)”, substitute “206C, 1317G”.

4 **218 Paragraph 5.3 (note) of the Small business guide in Part**
5 **1.5**

6 Repeal the note, substitute:

7 [Sections 180, 181, 182, 183, 184, 475, 530A, 588G, 596, 601AE, 601AH,
8 1317H]

9 **219 Paragraph 9 (note) of the Small business guide in Part**
10 **1.5**

11 Repeal the note, substitute:

12 [588G, 1317H]

13 **220 Subsection 254L(2) (note)**

14 Omit “section 1317DA”, substitute “section 1317E”.

15 **221 Section 254L (note)**

16 Omit “Note”, substitute “Note 1”.

17 **222 At the end of section 254L**

18 Add:

19 Note 2: Section 79 defines *involved*.

20 **223 At the end of section 254L (after the notes)**

21 Add:

22 (3) A person commits an offence if they are involved in a company’s
23 contravention of section 254J or 254K and the involvement is
24 dishonest.

25 **224 Subsection 256D(3) (note)**

26 Omit “section 1317DA”, substitute “section 1317E”.

27 **225 Section 256D (note)**

28 Omit “Note”, substitute “Note 1”.

1 **226 At the end of section 256D**

2 Add:

3 Note 2: Section 79 defines *involved*.

4 **227 At the end of section 256D (after the notes)**

5 Add:

6 (4) A person commits an offence if they are involved in a company's
7 contravention of section 256B and the involvement is dishonest.

8 **228 Section 256E (table item 1)**

9 Omit "1317HA", substitute "1317H".

10 **229 Section 257J (table item 1)**

11 Omit "section 1317HA", substitute "section 1317H".

12 **230 Subsection 259F(2) (note)**

13 Omit "section 1317DA", substitute "section 1317E".

14 **231 Section 259F (note)**

15 Omit "Note", substitute "Note 1".

16 **232 At the end of section 259F**

17 Add:

18 Note 2: Section 79 defines *involved*.

19 **233 At the end of section 259F (after the notes)**

20 Add:

21 (3) A person commits an offence if they are involved in a company's
22 contravention of section 259A or subsection 259B(1) and the
23 involvement is dishonest.

24 **234 Subsection 260D(2) (note)**

25 Omit "section 1317DA", substitute "section 1317E".

26 **235 Section 260D (note)**

1 Omit “Note”, substitute “Note 1”.

2 **236 At the end of section 260D**

3 Add:

4 Note 2: Section 79 defines *involved*.

5 **237 At the end of section 260D (after the notes)**

6 Add:

7 (3) A person commits an offence if they are involved in a company’s
8 contravention of section 260A and the involvement is dishonest.

9 **238 Section 260E**

10 Omit “section 232”, substitute “section 180, 181, 182, 183 or 184”.

11 **239 At the end of section 344**

12 Add “a person commits an offence if they contravene subsection (1) and
13 the contravention is dishonest”.

14 **240 Subsection 344(1) (note)**

15 Omit “section 1317DA”, substitute “section 1317E”.

16 **241 Subsection 420A(2)**

17 Omit “section 232”, substitute “180 or 181”.

18 **242 Paragraph 588E(1)(e)**

19 Omit “section 588G”, substitute “subsection 588G(2)”.

20 **243 At the end of subsection 588G(2)**

21 Add:

22 Note: This subsection is a civil penalty provision (see subsection 1317E(1)).

23 **244 Subsection 588G(3)**

24 Repeal the subsection, substitute:

25 (3) A person commits an offence if:

- 1 (a) the person is a director of the company when it incurs a debt;
2 and
3 (b) the company is insolvent at that time, or becomes insolvent
4 by incurring that debt, or by incurring at that time debts
5 including that debt; and
6 (c) the person suspected at the time when the company incurred
7 the debt that the company was insolvent or would become
8 insolvent as a result of incurring that debt or other debts (as
9 in paragraph (1)(b)); and
10 (d) the person's failure to prevent the company incurring the
11 debt was dishonest.

12 **245 Subsection 588H(1)**

13 Omit "section 588G", substitute "subsection 588G(2)".

14 **246 Subsection 588J(1)**

15 Omit "section 588G", substitute "subsection 588G(2)".

16 **247 Subsection 588J(1)**

17 Omit "an order under subsection 1317EA(3)", substitute "a pecuniary
18 penalty order under section 1317G or an order under section 206C
19 disqualifying a person from managing corporations".

20 **248 Subsection 588J(2)**

21 Omit "section 588G, unless the application was made under Division 4
22 of Part 9.4B", substitute "subsection 588G(2)".

23 **249 Paragraph 588K(1)(a)**

24 Omit "constituted by a contravention of section 588G", substitute
25 "under subsection 588G(3)".

26 **250 Subsection 588K(2)**

27 Repeal the subsection.

28 **251 Paragraph 588M(1)(a)**

29 Omit "section 588G", substitute "subsection 588G(2) or (3)".

1 **252 Section 588Q**

2 Omit “section 588G”, substitute “subsection 588G(3)”.

3 **253 Paragraph 588U(1)(c)**

4 Omit “section 588G”, substitute “subsection 588G(2)”.

5 **254 Schedule 3**

6 Repeal the item relating to subsections 1317EF(1) and (4). Insert each
7 of the following items in their appropriate place according to the order
8 that the provision referred to in the item appears in the Corporations
9 Law:

Subsection 254L(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 256D(4)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

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 344(1)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

Subsection 588G(3)

Penalty: 2,000 penalty units, or imprisonment for 5 years, or both.

1

2 **Part 8—Amendments relating to new Part 12 of the**
3 **ASIC Act (Accounting standards)**

4 **255 Subsection 334(3)**

5 Repeal the subsection.

6 **256 Section 336**

7 Repeal the section.

1

2

Part 9—Amendments relating to new Chapters 6 to 6C (Takeovers)

3

4

257 Section 9 (paragraphs (b) and (c) of the definition of *acquire*)

5

6

Repeal the paragraphs, substitute:

7

- (b) in relation to shares—has, in Chapter 7, the meaning given by subsection 51(1).

8

9

258 Section 9

10

Insert:

11

appropriate dealer for a market bid means a member of the relevant securities exchange.

12

13

259 Section 9 (definition of *associate*)

14

Repeal the definition, substitute:

15

associate: The following are the associates of a bidder making a takeover offer, a substantial holder or a 90% holder:

16

17

- (a) if the bidder or holder is a body corporate:

18

(i) a body corporate it controls; or

19

(ii) a body corporate that controls it; or

20

(iii) a body corporate that is controlled by an entity that controls it

21

22

- (b) a person with whom the bidder or holder has, or proposes to enter into, a relevant agreement for the purpose of controlling or influencing the composition of the body's board or the conduct of the body's affairs

23

24

25

26

- (c) a person with whom the bidder or holder is acting, or proposes to act, in concert in relation to the body's affairs.

27

28

Otherwise a person's associates are determined under sections 10 to 17.

29

30

260 Section 9

31

Insert:

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

3 **261 Section 9**

4 Insert:

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

9 Note: The dealer who announces a market bid is not the bidder; the bidder is
10 the person or people on whose behalf the announcement is made.

11 **262 Section 9**

12 Insert:

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

15 **263 Section 9**

16 Insert:

17 *bid period*:

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

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

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

22 (b) for a market bid—starts when the bid is announced to the
23 relevant securities exchange and ends at the end of the offer
24 period.

25 **264 Section 9 (definition of *body corporate*)**

26 Repeal the definition, substitute:

27 *body corporate*:

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

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

1 **265 Section 9 (definition of *Chapter 6 body*)**

2 Repeal the definition.

3 **266 Section 9 (definition of *Chapter 6 company*)**

4 Repeal the definition.

5 **267 Section 9**

6 Insert:

7 *class* of securities has the meaning given by section 605.

8 **268 Section 9 (paragraph (c) of the definition of *company*)**

9 Omit “body; and”, substitute “body.”

10 **269 Section 9 (paragraph (d) of the definition of *company*)**

11 Repeal the paragraph.

12 **270 Section 9**

13 Insert:

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

19 **271 Section 9**

20 Insert:

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

24 **272 Section 9**

25 Insert:

26 *date* of a takeover bid is:

- 1 (a) for an off-market bid—the date on which offers are first
2 made under the bid; or
3 (b) for a market bid—the date on which the bid is announced to
4 the relevant securities exchange.

5 **273 Section 9**

6 Insert:

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

- 8 (a) will, in circumstances referred to in the condition, result in
9 the rescission of, or entitle the bidder to rescind, a takeover
10 contract; or
11 (b) prevents a binding takeover contract from resulting from an
12 acceptance of the offer unless or until the condition is
13 fulfilled.

14 **274 Section 9 (definition of *dispose of*)**

15 Repeal the definition, substitute:

16 *dispose* of a futures contract has the meaning given by sections 24,
17 26, 27 and 28. For the purposes of Chapter 6, a person who has a
18 relevant interest in securities *disposes* of the securities if, and only
19 if, they cease to have a relevant interest in the securities.

20 **275 Section 9 (definition of *enter into*)**

21 Repeal the definition, substitute:

22 *enter into*: A person who:

- 23 (a) enters into, or becomes a party to, a relevant agreement in
24 relation to voting shares or other securities; or
25 (b) exercises an option to have voting shares or other securities
26 issued or granted;
27 is taken to enter into a transaction in relation to the shares or
28 securities. *Enter into*, in relation to a futures contract, has a
29 meaning affected by subsection 72(2).

30 **276 Section 9 (paragraph (a) of the definition of *Exchange***
31 ***subsidiary*)**

1 Repeal the paragraph.

2 **277 Section 9**

3 Insert:

4 *exchange traded option* means an option declared by a securities
5 exchange to be an exchange traded option.

6 **278 Section 9**

7 Insert:

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

11 **279 Section 9**

12 Insert:

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

16 **280 Section 9**

17 Insert:

18 *listed*: A company, managed investment scheme or other body is
19 listed if it is included in the official list of a securities exchange.

20 **281 Section 9 (definition of *listing rules*)**

21 Repeal the definition, substitute:

22 *listing rules*, when used in Chapter 7, has the meaning given by
23 section 761.

24 **282 Section 9 (definition of *make*)**

25 Repeal the definition.

26 **283 Section 9**

27 Insert:

1 *mandatory bid* means a takeover bid made as result of an
2 acquisition to which item 5 of the table in section 611 applies.

3 **284 Section 9**

4 Insert:

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

7 **285 Section 9**

8 Insert:

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

12 **286 Section 9 (definition of offer)**

13 Repeal the definition.

14 **287 Section 9**

15 Insert:

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

18 **288 Section 9**

19 Insert:

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

22 **289 Section 9**

23 Insert:

24 *on-market*: a transaction of any kind is an *on-market* transaction if
25 it is effected on a stock market of a securities exchange and is:

26 (a) an on-market transaction as defined in the rules governing
27 the operation of the exchange; or

1 (b) if those rules do not define on-market transactions—effected
2 in the ordinary course of trading on the stock market.

3 **290 Section 9**

4 Insert:

5 *proportional takeover approval provisions*, in relation to a
6 company, means provisions of the kind referred to in subsection
7 648D(1) that are contained in, or that it is proposed to insert in, the
8 constitution of the company.

9 **291 Section 9**

10 Insert:

11 *proportional takeover bid* means an off-market bid for a specified
12 proportion of the securities in the bid class (see paragraph
13 618(1)(b)).

14 **292 Section 9**

15 Insert:

16 *public authority of the Commonwealth or a State* means:
17 (a) a Minister or State Minister; or
18 (b) the holder of an office established by a Commonwealth or
19 State law; or
20 (c) a body corporate incorporated for a public purpose by a
21 Commonwealth or State law to the extent to which it is
22 exercising a power conferred by a Commonwealth or State
23 law.

24 **293 Section 9 (definition of *relevant interest*)**

25 Repeal the definition, substitute:

26 *relevant interest*, in relation to securities, has a meaning given by
27 sections 608 and 609.

28 **294 Section 9**

29 Insert:

1 *relevant securities exchange* for a listed company, or listed
2 registered managed investment scheme, means:

- 3 (a) the securities exchange on whose stock market the company
4 or scheme is listed; or
5 (b) if the company or scheme is listed on 2 or more exchanges—
6 each of those exchanges.

7 **295 Section 9**

8 Insert:

9 *remedial order* means an order that:

- 10 (a) restrains a person from exercising any voting or other rights
11 attached to securities
12 (b) directs a body corporate not to make or to defer payment of
13 an amount due from the body corporate in respect of
14 securities
15 (c) restrains a person from acquiring securities or an interest in
16 securities
17 (d) directs a person to dispose of, or not to dispose of, securities
18 or interests in securities
19 (e) directs the disposal referred to in paragraph (d):
20 (i) to be made within a specified time; or
21 (ii) to be made subject to specified conditions; or
22 (iii) not to be made to a specified person or persons or to a
23 specified class or classes of persons
24 (f) directs a specified person to pay to the body corporate an
25 amount equal to any profit or benefit that the person obtains
26 because of the disposal referred to in paragraph (d)
27 (g) vests securities, or an interest in securities, in ASIC
28 (h) directs a body corporate not to register the transfer or
29 transmission of securities
30 (i) cancels securities issued as consideration for offers under a
31 takeover bid
32 (j) declares that an exercise of the voting or other rights attached
33 to securities be disregarded
34 (k) cancels or declares voidable:

- 1 (i) an agreement or offer relating to a takeover bid, or a
2 proposed takeover bid; or
3 (ii) any other agreement or offer in connection with the
4 acquisition of securities or relevant interests in
5 securities
6 (l) directs a person to give specified information to the holders
7 of securities of a body corporate
8 (m) directs a body corporate not to issue securities to a person
9 (n) if an order of a kind referred to in paragraphs (a) to (m) is in
10 force in respect of securities—directs the registered holder of
11 the securities to give written notice of the order to any person
12 whom the holder knows to be entitled to exercise a right to
13 vote attached to those securities
14 (o) directs a body corporate to repeal or modify its existing
15 constitution or adopt a particular constitution
16 (p) if a person has failed to comply with a requirement of
17 Chapter 6, 6A, 6B or 6C—directs that person to comply with
18 that requirement.

19 **296 Section 9**

20 Insert:

21 *renounceable option* means an assignable option to have an
22 allotment of shares in a body corporate made to the holder of the
23 option.

24 **297 Section 9 (definition of *stock market*)**

25 Omit “and, in Chapter 6, has a meaning affected by the definition of
26 *stock market* in section 603;”.

27 **298 Section 9**

28 Insert:

29 *substantial holding*: A person has a substantial holding in a body
30 corporate, or listed registered managed investment scheme, if:

- 31 (a) the total votes attached to voting shares in the body, or voting
32 interests in the scheme, in which they or their associates:
33 (i) have relevant interests; and
-

- 1 (ii) would have a relevant interest but for subsection 609(6)
2 (exchange traded options) or 609(7) (conditional
3 agreements);
4 is 5% or more of the total number of votes attached to voting
5 shares in the body, or interests in the scheme; or
6 (b) the person has made a takeover bid for voting shares in the
7 body, or voting interests in the scheme, and the takeover
8 period has started and not yet ended.

9 Note: For *relevant interest*, see section 608.

10 **299 Section 9 (definition of *takeover bid*)**

11 Repeal the definition, substitute:

12 *takeover bid* means an off-market bid or market bid made under
13 Chapter 6.

14 **300 Section 9**

15 Insert:

16 *takeover contract* means a contract that results from the acceptance
17 of an offer made under a takeover bid.

18 **301 Section 9 (definition of *takeover scheme*)**

19 Repeal the definition.

20 **302 Section 9**

21 Insert:

22 *target* for a takeover bid means the company, listed body or
23 managed investment scheme whose securities are to be acquired
24 under the bid.

25 **303 Section 9**

26 Insert:

27 *target's statement* means a target's statement under sections 638 to
28 640 as supplemented.

29 **304 Section 9**

1 Insert:

2 *trading day* of a securities exchange or stock exchange means a
3 day on which a stock market of the exchange or stock exchange is
4 open for trading in securities.

5 **305 Section 9 (definition of *unclaimed property*)**

6 Omit “(except in section 701)”.

7 **306 Section 9**

8 Insert:

9 *voting interest*, in relation to a managed investment scheme, means
10 an issued interest in the scheme that confers a right to vote, not
11 being a right to vote that is exercisable only in one or more of the
12 following circumstances:

- 13 (a) on a proposal that affects rights attached to the interests
14 (b) on a proposal to wind up the scheme
15 (c) on a proposal for the disposal of the whole of the scheme
16 property, business and undertaking
17 (d) during the winding up of the scheme.

18 **307 Section 9**

19 Insert:

20 *voting power* in a company has the meaning given by section 610.

21 **308 Section 9**

22 Insert:

23 *voting share* in a body corporate means an issued share in the body
24 that carries any voting rights beyond the following:

- 25 (a) a right to vote while a dividend (or part of a dividend) in
26 respect of the share is unpaid
27 (b) a right to vote on a proposal to reduce the body’s share
28 capital
29 (c) a right to vote on a resolution to approve the terms of a
30 buy-back agreement

- 1 (d) a right to vote on a proposal that affects the rights attached to
2 the share
3 (e) a right to vote on a proposal to wind the body up
4 (f) a right to vote on a proposal for the disposal of the whole of
5 the body's property, business and undertaking
6 (g) a right to vote during the body's winding up.

7 **309 Paragraphs 12(1)(b) and (c)**

8 Repeal the paragraphs, substitute:

- 9 (b) the primary person's voting power in a body corporate; or
10 (c) a takeover bid for securities in a body corporate;

11 **310 Paragraph 16(1)(c)**

12 Repeal the paragraph, substitute:

- 13 (c) one had sent, or proposes to send, to the other an offer under
14 a takeover bid for shares held by the other;

15 **311 Division 5 of Part 1.2**

16 Repeal the Division.

17 **312 Subsection 51(1)**

18 Omit "Chapters 6 and 7", substitute "Chapter 7".

19 **313 Subsection 51(2)**

20 Repeal the subsection.

21 **314 Section 53A**

22 Repeal the section.

23 **315 Paragraph 111AG(1)(a)**

24 Repeal the paragraph, substitute:

- 25 (a) securities in that class have been issued by the body as
26 consideration for offers under an off-market bid; and

27 Note: The heading to section 111AG is altered by omitting "a takeover scheme" and
28 substituting "an off-market takeover bid".

29 **316 Paragraph 111AG(1)(b)**

1 Omit “pursuant to the takeover scheme”, substitute “under the
2 off-market bid”.

3 **317 Subsection 111AZF(2) (table item 3.1)**

4 Omit “purposes, except for paragraph (d). Under that paragraph,
5 financial institutions may be companies for the purposes of Chapter 6.”,
6 substitute “purposes.”.

7 **318 Paragraph 140(2)(c)**

8 Repeal the paragraph, substitute:

- 9 (c) imposes or increases restrictions on the right to transfer the
10 shares already held by the member, unless the modification is
11 made:
12 (i) in connection with the company’s change from a public
13 company to a proprietary company under Part 2B.7; or
14 (ii) to insert proportional takeover approval provisions into
15 the company’s constitution.

16 **319 Subsection 168(1) (note 1)**

17 Repeal the note, substitute:

18 Note 1: See also section 271 (register of charges).

19 **320 Paragraph 169(5)(b)**

20 Repeal the paragraph, substitute:

21 (b) is not a listed company;

22 **321 Subsection 169(6)**

23 Omit “720 or 722”, substitute “672B or 672C”.

24 **322 Subsection 252L(1)**

25 Omit “special or extraordinary”.

26 **323 After subsection 252L**

27 Insert:

28 (1A) The resolution must be:

29 (a) a special resolution; or

- 1 (b) an extraordinary resolution; or
2 (c) a resolution to remove the responsible entity of a scheme that
3 is listed and choose a new responsible entity.

4 **324 Subsection 252M(1)**

5 Omit “special or extraordinary”.

6 **325 Section 253E**

7 After “as a member.”, insert “However, if the scheme is listed, the
8 responsible entity and its associates are entitled to vote their interest on
9 resolutions to remove the responsible entity and choose a new
10 responsible entity.”.

11 **326 Section 256E (table item 3)**

12 Repeal the item.

13 **327 Section 257J (table item 3)**

14 Repeal the item.

15 **328 Section 257J (table item 4)**

16 Omit “section 42A”, substitute “subsection 609(4)”.

17 **329 Section 257J (table item 4)**

18 Omit “section 623A”, substitute “section 611 (item 19 of the table)”.

19 **330 Paragraph 324(1)(e)**

20 Omit “is a substantial shareholder for the purposes of Part 6.7”,
21 substitute “has a substantial holding”.

22 **331 Paragraph 324(1)(f)**

23 Omit “is a substantial shareholder for the purposes of Part 6.7”,
24 substitute “has a substantial holding”.

25 **332 Paragraph 331AA(1)(e)**

26 Omit “is a substantial shareholder for the purposes of Part 6.7”,
27 substitute “has a substantial holding”.

1 **333 Paragraph 331AA(2)(f)**

2 Omit “is a substantial shareholder for the purposes of Part 6.7”,
3 substitute “has a substantial holding”.

4 **334 Paragraph 331AD(b)**

5 Omit “an extraordinary resolution”, substitute “a resolution”.

6 **335 Paragraph 331AD(d)**

7 Omit “an extraordinary resolution” (twice occurring), substitute “a
8 resolution”.

9 **336 Subsection 414(2)**

10 Omit “takeover offers, or a takeover announcement, under Chapter 6”,
11 substitute “offers under a takeover bid”.

12 **337 Paragraph 448C(1)(a)**

13 Omit “is a substantial shareholder for the purposes of Part 6.7”,
14 substitute “has a substantial holding”.

15 **338 Paragraph 532(2)(a)**

16 Omit “is a substantial shareholder for the purposes of Part 6.7”,
17 substitute “has a substantial holding”.

18 **339 Paragraph 601CQ(a)**

19 Omit “414 or 701”, substitute “414, 661A or 664A”.

20 **340 Subsection 601FL(1)**

21 Repeal the subsection, substitute:

22 (1) If the responsible entity of a registered scheme wants to retire, it
23 must call a members’ meeting to explain its reason for wanting to
24 retire and to enable the members to vote on a resolution to choose a
25 company to be the new responsible entity. The resolution must be
26 an extraordinary resolution if the scheme is not listed.

27 **341 Subsection 601FM(1)**

28 Repeal the subsection, substitute:

1 (1) If members of a registered scheme want to remove the responsible
2 entity, they may take action under Division 1 of Part 2G.4 for the
3 calling of a members' meeting to consider and vote on a resolution
4 that the current responsible entity should be removed and a
5 resolution choosing a company to be the new responsible entity.
6 The resolutions must be extraordinary resolutions if the scheme is
7 not listed.

8 **342 Subsection 601FQ(1)**

9 Omit "extraordinary resolution", substitute "resolution".

10 **343 Subsection 601FQ(1)**

11 After "the new responsible entity.", insert "The resolution must be an
12 extraordinary resolution if the scheme is not listed."

13 **344 Paragraph 601NE(1)(d)**

14 Omit "an extraordinary resolution to remove", substitute "a resolution
15 removing".

16 **345 Paragraph 601NE(1)(d)**

17 Omit "an extraordinary resolution" (second occurring), substitute "a
18 resolution".

19 **346 Section 766E**

20 Repeal the section, substitute:

21 **766E Unacceptable ownership situation**

22 For the purposes of this Division, an unacceptable ownership
23 situation exists if any one person's voting power in the Exchange
24 exceeds 5%.

25 **347 Subsection 779J(2)**

26 Omit "a share or".

27 **348 Paragraph 857(2)(b)**

28 Omit "is a substantial shareholder for the purposes of Part 6.7",
29 substitute "has a substantial holding".

1 **349 Subsection 879(2)**

2 Omit “relevant interest” (twice occurring), substitute “relevant
3 interests”.

4 **350 Paragraph 881(2)(b)**

5 Omit “a relevant interest”, substitute “relevant interests”.

6 **351 Subsection 881(2)**

7 Omit “relevant interest in those securities”, substitute “relevant interests
8 in those securities”.

9 **352 Subsection 881(3)**

10 Omit “a relevant interest”, substitute “relevant interests”.

11 **353 Subsection 881(3)**

12 Omit “relevant interest in those securities”, substitute “relevant interests
13 in those securities”.

14 **354 Subsection 881(4)**

15 Omit “relevant interest”, substitute “relevant interests”.

16 **355 Subsection 881(5)**

17 Omit “a relevant interest”, substitute “relevant interests”.

18 **356 Subsection 881(5)**

19 Omit “the relevant interest”, substitute “the relevant interests”.

20 **357 Subsection 881(6)**

21 Omit “relevant interest in” (twice occurring), substitute “relevant
22 interests in”.

23 **358 Paragraph 881(6)(a)**

24 Omit “relevant interest”, substitute “relevant interests”.

25 **359 Paragraph 881(6)(b)**

26 Omit “relevant interest relates”, substitute “relevant interests relate”.

1 **360 Paragraph 881(6)(c)**

2 Omit “the relevant interest was acquired”, substitute “the relevant
3 interests were acquired”.

4 **361 Subsection 954A(1) (subparagraph (b)(ii) of the definition
5 of security benefit)**

6 Omit “takeover”, substitute “takeover bid”.

7 **362 Subparagraph 995(2)(b)(iii)**

8 Repeal the subparagraph, substitute:

- 9 (iii) the making of, or the making of an evaluation of, or of a
10 recommendation in relation to, offers under a takeover
11 bid;

12 **363 After section 1002L**

13 Insert:

14 **1002LA Exceptions for acquisition triggering mandatory takeover
15 bid**

16 (1) Subsection 1002G(2) does not apply to a purchase or sale of
17 securities, or an agreement to purchase or sell securities, involved
18 in an acquisition to which item 5 of the table in section 611 applies.

19 (2) Subsection 1002G(3) does not apply to the communication of
20 information in accordance with paragraph (f) of item 5 of the table
21 in section 611.

22 **364 Subsection 1096A(8) (definition of *company*)**

23 Repeal the definition.

24 **365 Paragraph 1097B(3)(b)**

25 Omit “642A”, substitute “653A”.

26 **366 Paragraph 1215(2)(e)**

27 Omit “is a substantial shareholder for the purposes of Part 6.7”,
28 substitute “has a substantial holding”.

1 **367 Paragraph 1215(3)(f)**

2 Omit “is a substantial shareholder for the purposes of Part 6.7”,
3 substitute “has a substantial holding”.

4 **368 Paragraph 1252(1)(b)**

5 Omit “is, for the purposes of Part 6.7, a substantial shareholder”,
6 substitute “has a substantial holding”.

7 **369 Subparagraph 1252(1)(c)(ii)**

8 Omit “is, for the purposes of Part 6.7, a substantial shareholder”,
9 substitute “has a substantial holding”.

10 **370 After paragraph 1317C(g)**

11 Insert:

- 12 (ga) a decision of ASIC under section 655A; or
13 (gb) a decision of ASIC under section 673 in relation to securities
14 of the target of a takeover bid during the bid period; or
15 (gc) a decision by ASIC whether to make an application under
16 section 657C, 657G, 659B, 1325A, 1325B or 1325C; or

17 **371 Schedule 3**

18 Repeal the items relating to Chapter 6 (other than a provision referred to
19 in a later heading in this Schedule), sections 672, 704 and 705 and
20 subsections 746(2) and 746(4). Insert each of the following items in
21 their appropriate place according to the order that the provision referred
22 to occurs in the Corporations Law:
23

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.

Subsections 623(1), (2) and (3)

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 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.

1
2 **Schedule 4—Consequential amendments of**
3 **Australian Securities and Investments**
4 **Commission Act 1989**

5 **Part 1—Amendments relating to new Chapter 6D**
6 **(Fundraising)**

7 **1 After subsection 12DA(1)**

8 Insert:

9 (1A) This section does not apply to dealings in securities.

10 **2 At the end of section 12DB**

11 Add:

12 (2) This section does not apply to dealings in securities.

13 **3 At the end of section 12DD**

14 Add:

15 (2) This section does not apply to dealings in securities.

1

2 **Part 2—Amendments relating to new Chapter 2F.1**
3 **(Oppression)**

4 **4 Subsection 5(1) (definition of *affairs*)**

5 Omit “246AA”, substitute “232”.

1
2 **Part 3—Amendments relating to new accounting**
3 **standards provisions in ASIC Act**

4 **5 Section 5**

5 Insert:

6 *AASB* means the Australian Accounting Standards Board
7 established by section 226.

8 **6 Section 5 (definition of *Director*)**

9 Repeal the definition.

10 **7 Section 5**

11 Insert:

12 *FRC* means the Financial Reporting Council established by section
13 225.

14 **8 Section 5**

15 Insert:

16 *international accounting standards* means accounting standards
17 made by:

- 18 (a) the Board of the International Accounting Standards
19 Committee; or
20 (b) another body specified by the regulations.

21 **9 Section 5 (paragraph (c) of the definition of *meeting*)**

22 Omit “Board; and”, substitute “Board.”.

23 **10 Section 5 (paragraph (d) of the definition of *meeting*)**

24 Repeal the paragraph.

25 **11 Section 5 (paragraph (a) of the definition of *member*)**

26 Omit “Standards Board”, substitute “FRC, the AASB”.

27 **12 Section 5 (paragraph (e) of the definition of *member*)**

Schedule 4 Consequential amendments of Australian Securities and Investments
Commission Act 1989

Part 3 Amendments relating to new accounting standards provisions in ASIC Act

- 1 Repeal the paragraph, substitute:
2 (e) in relation to the FRC—a member of the FRC; and
3 (ea) in relation to the AASB—a member of the AASB; and

4 **13 Section 5 (definition of *Standards Board*)**

- 5 Repeal the definition.

6 **14 Subparagraph 135(1)(a)(iv)**

- 7 Omit “Standards Board”, substitute “AASB”.

1
2 **Part 4—Amendments relating to new Chapter 6**
3 **(Takeovers)**

4 **15 Subsection 5(1)**

5 Insert:

6 *Panel proceedings* means proceedings before the Panel on an
7 application made to the Panel under the Corporations Law.

8 **16 Subsection 5(1) (paragraph (b) of the definition of *witness*)**

9 Repeal the paragraph, substitute:

10 (b) in relation to Panel proceedings, means a person appearing in
11 the proceedings to give evidence.

12 **17 Subsection 13(2)**

13 Omit “Part 6.9”, substitute “Subdivision B of Division 2 of Part 6.12”.

14 **18 Paragraph 13(2)(a)**

15 Omit “subsection 733(1) or 734(2)”, substitute “section 657C”.

16 **19 Paragraph 43(1)(c)**

17 Omit “Part 6.7 or 6.8”, substitute “Chapter 6C”.

18 **20 Paragraph 43(1)(f)**

19 Omit “subsection 734(5)”, substitute “section 657F”.

20 **21 Paragraph 43(4)(c)**

21 Omit “subsection 733(1) or 734(2), or section 736, as the case may be,”,
22 substitute “section 657C or 657G”.

23 **22 Subsection 51(1)**

24 Omit “733, 734 or 736”, substitute “657C or 657G”.

25 **23 Paragraph 184(4)(a)**

26 Omit “an inquiry”, substitute “proceedings”.

1 **24 Paragraph 184(4)(b)**

2 Repeal the paragraph, substitute:

- 3 (b) if one of those persons ceases to be a member, or ceases to be
4 available for the purposes of proceedings in relation to a
5 matter, during the proceedings or after the completion of the
6 proceedings but before the matter to which the proceedings
7 relate is determined—at any time after the person so ceases
8 to be a member or to be available;

9 **25 Heading to Division 3 of Part 10**

10 Repeal the heading, substitute:

11 **Division 3—Panel proceedings**

12 **26 Subsection 187(1)**

13 Repeal the subsection.

14 **27 Subsection 188(1)**

15 Omit “hold inquiries”, substitute “conduct proceedings”.

16 Note: The heading to section 188 is altered by omitting “**hold inquiries**” and substituting
17 “**conduct proceedings**”.

18 **28 Subsection 188(2)**

19 Omit “an inquiry”, substitute “proceedings”.

20 **29 Section 189**

21 Repeal the section.

22 **30 Subsection 190(1)**

23 Omit “an inquiry”, substitute “Panel proceedings”.

24 **31 Paragraph 190(2)(a)**

25 Omit “inquiry”, substitute “proceedings”.

26 **32 At the end of section 190**

27 Add:

1 (3) In this section:

2 *Panel proceedings* includes a part of Panel proceedings.

3 **33 Section 191**

4 Repeal the section.

5 **34 Paragraph 192(1)(a)**

6 Omit “an inquiry”, substitute “Panel proceedings”.

7 **35 Subsection 192(2)**

8 Omit “At an inquiry”, substitute “In Panel proceedings”.

9 **36 Paragraphs 192(2)(a) and (b)**

10 Omit “at the inquiry” (wherever occurring), substitute “in the
11 proceedings”.

12 **37 Subsection 192(4)**

13 Omit “an inquiry”, substitute “Panel proceedings”.

14 **38 Paragraphs 192(4)(a) and (b)**

15 Omit “at the inquiry” (wherever occurring), substitute “in the
16 proceedings”.

17 **39 Subsection 192(6)**

18 Repeal the subsection, substitute:

19 (6) If:

20 (a) a person appears at an inquiry pursuant to a summons issued
21 under this section; and

22 (b) the summons was issued at a person’s request;
23 the person appearing is entitled to be paid the prescribed
24 allowances and expenses (if any) by the person at whose request
25 the summons was issued.

26 **40 Section 193**

27 Repeal the section.

1 **41 Section 193A**

2 Repeal the section, substitute:

3 **193 Quorum**

4 In Panel proceedings, 2 members form a quorum.

5 **42 Section 194**

6 Repeal the section.

7 **43 Section 195**

8 Repeal the section, substitute:

9 **195 Procedure**

- 10 (1) Subject to subsections (2) to (4), the Panel may determine the
11 procedural rules to be followed in Panel proceedings.
- 12 (2) Panel proceedings are to be conducted in accordance with (in order
13 of priority):
- 14 (a) the requirements of this Division; and
15 (b) the requirements of the regulations.
- 16 (3) Without limiting paragraph (2)(b), the regulations may deal with:
- 17 (a) making submissions or giving evidence in Panel proceedings;
18 and
19 (b) the right (if any) to appear, or be represented, in Panel
20 proceedings; and
21 (c) the matters that the Panel is to take into account when
22 making a decision in the course of Panel proceedings.
- 23 (4) The rules of procedural fairness, to the extent that they are not
24 inconsistent with the provisions of this Act or the regulations made
25 under it, apply to Panel proceedings.

26 **44 Section 196**

27 Repeal the section.

28 **45 Subsection 197(1)**

1 Omit “an inquiry”, substitute “Panel proceedings”.

2 **46 Subsection 197(3)**

3 Omit “at an inquiry” (wherever occurring), substitute “in Panel
4 proceedings”.

5 **47 Paragraph 199(1)(a)**

6 Omit “an inquiry”, substitute “Panel proceedings”.

7 **48 Paragraph 199(1)(b)**

8 Omit “at an inquiry”, substitute “in Panel proceedings”.

9 **49 Paragraph 200(1)(b)**

10 Omit “an inquiry”, substitute “Panel proceedings”.

11 **50 Subsection 201(1)**

12 Omit “a particular inquiry”, substitute “particular Panel proceedings”.

13 **51 Subsection 201(1)**

14 Omit “at, or in relation to, that inquiry”, substitute “in, or in relation to,
15 those proceedings”.

16 **52 Subsection 201A(1)**

17 Omit “During an inquiry”, substitute “In Panel proceedings”.

18 **53 Subsection 201A(1)**

19 Omit “the inquiry” (wherever occurring), substitute “the proceedings”.

1
2
3
4

Schedule 5—Consequential amendment of other Acts

5

Air Navigation Act 1920

6

1 Subsection 11A(3)

7

Repeal the subsection, substitute:

8

- (3) For the purposes of this section, a person has a relevant interest in a share if, and only if, the person would be taken to have a relevant interest in the share for the purposes of the Corporations Law if paragraph 608(3)(a) of that Law were disregarded.

9

10

11

12

Commonwealth Authorities and Companies Act 1997

13

2 Section 5

14

Insert:

15

books includes:

16

(a) a register; and

17

(b) any other record of information; and

18

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

19

20

(d) a document.

21

3 Section 5

22

Insert:

23

civil penalty provision has the meaning given by subclause 1(1) of Schedule 2.

24

25

4 Section 5

26

Insert:

27

court means any court exercising jurisdiction under this Act.

28

5 Section 5

1 Insert:

2 ***Court*** means:

- 3 (a) the Federal Court of Australia; or
4 (b) the Supreme Court of a State or Territory.

5 **6 Section 5**

6 Insert:

7 ***enabling legislation***, in relation to a Commonwealth authority,
8 means the Act, regulations or Ordinance under which the authority
9 is incorporated.

10 **7 Section 5**

11 Insert:

12 ***involved***: a person is involved in a contravention if, and only if, the
13 person has:

- 14 (a) aided, abetted, counselled or procured the contravention; or
15 (b) has induced, whether by threats or promises or otherwise, the
16 contravention; or
17 (c) has been in any way, by act or omission, directly or
18 indirectly, knowingly concerned in or party to the
19 contravention; or
20 (d) has conspired with others to effect the contravention.

21 **8 Subsection 6(1)**

22 Omit “Schedule 2”, substitute “Division 4 of Part 3”.

23 **9 Subsection 6(2)**

24 Omit “and criminal”.

25 **10 At the end of section 6**

26 Add:

- 27 (4) A maximum penalty that is specified:
28 (a) at the foot of a clause of a Schedule to this Act (other than a
29 clause that is divided into subclauses); or
-

1 (b) at the foot of a subclause of a Schedule to this Act;
2 indicates that a person who contravenes the clause or subclause is
3 guilty of an offence against the clause or subclause that is
4 punishable, on conviction, by a penalty up to that maximum.

5 Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of
6 criminal responsibility.

7 Note 2: If the specified penalty is imprisonment only, section 4B of the
8 *Crimes Act 1914* allows the court to impose a fine instead of
9 imprisonment or in addition to imprisonment.

10 **11 Division 4 of Part 3**

11 Repeal the Division, substitute:

12 **Division 4—Conduct of officers**

13 **21 Background to duties of directors, other officers and employees**

14 (1) This Part sets out some of the most significant duties of officers
15 and employees of Commonwealth authorities. Other duties are
16 imposed by other provisions of this Act and other laws (including
17 the general law).

18 (2) Section 5 defines both *director* and *officer*. *Officer* includes, as
19 well as directors, other people who are concerned in, or take part
20 in, the management of the authority.

21 **Subdivision A—General duties**

22 **22 Care and diligence—civil obligation only**

23 *Care and diligence—officers*

24 (1) An officer of a Commonwealth authority must exercise his or her
25 powers and discharge his or her duties with the degree of care and
26 diligence that a reasonable person would exercise if he or she:
27 (a) were an officer of a Commonwealth authority in the
28 Commonwealth authority's circumstances; and
29 (b) occupied the office held by, and had the same responsibilities
30 within the Commonwealth authority as, the officer.

1 Note: This subsection is a civil penalty provision (see Schedule 2).

2 *Business judgment rule*

3 (2) An officer of a Commonwealth authority who makes a business
4 judgment is taken to meet the requirements of subsection (1), and
5 their equivalent duties at common law and in equity, in respect of
6 the judgment if he or she:

- 7 (a) makes the judgment in good faith for a proper purpose; and
- 8 (b) does not have a material personal interest in the subject
9 matter of the judgment; and
- 10 (c) informs himself or herself about the subject matter of the
11 judgment to the extent he or she reasonably believes to be
12 appropriate; and
- 13 (d) rationally believes that the judgment is in the best interests of
14 the Commonwealth authority.

15 The officer's belief that the judgment is in the best interests of the
16 Commonwealth authority is a rational one unless the belief is one
17 that no reasonable person in his or her position would hold.

18 Note: This subsection only operates in relation to duties under this section
19 and their equivalents at common law or in equity (including the duty
20 of care that arises under the common law principles governing liability
21 for negligence)—it does not operate in relation to duties under any
22 other provision of this Act or under any other laws.

23 (3) In this section:

24 *business judgment* means any decision to take or not take action in
25 respect of a matter relevant to the operations of the Commonwealth
26 authority.

27 **23 Good faith—civil obligations**

28 *Good faith—officers*

- 29 (1) An officer of a Commonwealth authority must exercise his or her
30 powers and discharge his or her duties:
 - 31 (a) in good faith in what he or she believes to be the best
32 interests of the Commonwealth authority; and
 - 33 (b) for a proper purpose.

1 Note 1: This subsection is a civil penalty provision (see Schedule 2).

2 Note 2: Section 187 of the Corporations Law deals with the position of
3 directors of wholly-owned subsidiaries of Commonwealth authorities.

4 (2) A person who is involved in a contravention of subsection (1)
5 contravenes this subsection.

6 Note 1: Section 5 defines *involved*.

7 Note 2: This subsection is a civil penalty provision (see Schedule 2).

8 **24 Use of position—civil obligations**

9 *Use of position—officers and employees*

10 (1) An officer or employee of a Commonwealth authority must not
11 improperly use his or her position to:

12 (a) gain an advantage for him or her or someone else; or

13 (b) cause detriment to the Commonwealth authority or to another
14 person.

15 Note 1: Section 27A makes provision for officers who are also public
16 servants.

17 Note 2: This subsection is a civil penalty provision (see Schedule 2).

18 (2) A person who is involved in a contravention of subsection (1)
19 contravenes this subsection.

20 Note 1: Section 5 defines *involved*.

21 Note 2: This subsection is a civil penalty provision (see Schedule 2).

22 **25 Use of information—civil obligations**

23 *Use of information—officers and employees*

24 (1) A person who obtains information because they are, or have been,
25 an officer or employee of a Commonwealth authority must not
26 improperly use the information to:

27 (a) gain an advantage for himself or herself or someone else; or

28 (b) cause detriment to the Commonwealth authority or to another
29 person.

30 Note 1: Section 27A makes provision for officers who are also public
31 servants.

1 Note 2: This duty continues after the person stops being an officer or
2 employee of the Commonwealth authority.

3 Note 3: This subsection is a civil penalty provision (see Schedule 2).

4 (2) A person who is involved in a contravention of subsection (1)
5 contravenes this subsection.

6 Note 1: Section 5 defines *involved*.

7 Note 2: This subsection is a civil penalty provision (see Schedule 2).

8 **26 Good faith, use of position and use of information—criminal**
9 **offences**

10 *Good faith—officers*

11 (1) An officer of a Commonwealth authority commits an offence if he
12 or she intentionally or recklessly fails to exercise his or her powers
13 and discharge his or her duties:

14 (a) in good faith in what he or she believes to be in the best
15 interests of the Commonwealth authority; or

16 (b) for a proper purpose;
17 and he or she does so dishonestly.

18 Note : Section 187 of the Corporations Law deals with the position of
19 directors of wholly-owned subsidiaries of Commonwealth authorities.

20 Penalty: Imprisonment for 5 years.

21 *Use of position—directors, other officers and employees*

22 (2) An officer or employee of a Commonwealth authority commits an
23 offence if he or she uses his or her position dishonestly:

24 (a) with the intention of directly or indirectly gaining an
25 advantage for himself or herself, or someone else, or causing
26 detriment to the Commonwealth authority or to another
27 person; or

28 (b) recklessly as to whether the use may result in him or her or
29 someone else directly or indirectly gaining an advantage, or
30 in causing detriment to the Commonwealth authority or to
31 another person.

32 Penalty: Imprisonment for 5 years.

1 *Use of information—officers and employees*

- 2 (3) A person who obtains information because he or she is, or has
3 been, an officer or employee of a Commonwealth authority
4 commits an offence if he or she uses the information dishonestly:
5 (a) with the intention of directly or indirectly gaining an
6 advantage for himself or herself, or someone else, or causing
7 detriment to the Commonwealth authority or to another
8 person; or
9 (b) recklessly as to whether the use may result in himself or
10 herself or someone else directly or indirectly gaining an
11 advantage, or in causing detriment to the Commonwealth
12 authority or to another person.

13 Maximum penalty: Imprisonment for 5 years.

14 **27A Compliance with statutory duties**

- 15 (1) An officer does not contravene section 23, 24 or 25, or commit an
16 offence against section 26, by doing an act that another provision
17 of this Act requires the officer to do.
18 (2) If an officer of a Commonwealth authority is also a public servant,
19 the officer does not contravene section 23, 24 or 25, or commit an
20 offence against section 26, by doing an act in the course of the
21 performance of his or her duties as a public servant. For this
22 purpose, *public servant* means an officer or employee within the
23 meaning of the *Public Service Act 1922*.

24 **27B Interaction of sections 22 to 26 with other laws etc.**

25 Sections 22 to 26:

- 26 (a) have effect in addition to, and not in derogation of, any rule
27 of law relating to the duty or liability of a person because of
28 his or her office or employment in relation to a
29 Commonwealth authority; and
30 (b) do not prevent the commencement of proceedings for a
31 breach of duty or in respect of a liability referred to in
32 paragraph (a).

1 This section does not apply to subsections 22(2) and (3) to the
2 extent to which they operate on the duties at common law and in
3 equity that are equivalent to the requirements of subsection 22(1).

4 **27C Disqualification order for contravention of civil penalty**
5 **provision**

- 6 (1) The Court may disqualify a person from managing bodies
7 corporate for a period that the Court considers appropriate if:
8 (a) a declaration is made under clause 1 of Schedule 2 (civil
9 penalty provision) that the person has contravened a civil
10 penalty provision; and
11 (b) the Court is satisfied that the disqualification is justified.
- 12 (2) An application for a disqualification order under subsection (2)
13 may be made by:
14 (a) the Finance Minister; or
15 (b) some other person authorised in writing by the Finance
16 Minister, under this paragraph, to make the application.
17 An authorisation for the purposes of paragraph (b) may relate to
18 applications in relation to specified contraventions, or to all
19 contraventions, of civil penalty provisions.
- 20 (3) In determining whether the disqualification is justified, the Court
21 may have regard to:
22 (a) the person's conduct in relation to the management, business
23 or property of any Commonwealth authority or other body
24 corporate; and
25 (b) any other matters that the Court considers appropriate.
- 26 (4) If a disqualification order under subsection (1) is in force against a
27 person, the person must not be a director of a Commonwealth
28 authority except with the leave of the Court.
- 29 Maximum penalty: Imprisonment for 1 year.
- 30 (5) When granting leave under subsection (4), the Court may impose
31 conditions or restrictions that the Court considers appropriate.

1 (6) A person must not contravene a condition or restriction imposed
2 under subsection (5).

3 Maximum penalty: Imprisonment for 1 year.

4 (7) A person may only apply for leave under subsection (4) if he or she
5 has given the Finance Minister at least 21 days notice of the
6 application.

7 (8) On the application of the Finance Minister, the Court may revoke
8 leave granted under subsection (4).

9 **27D Reliance on information or advice provided by others**

10 If:

- 11 (a) a director relies on information, or professional or expert
12 advice, given or prepared by:
- 13 (i) an employee of the Commonwealth authority whom the
14 director believes on reasonable grounds to be reliable
15 and competent in relation to the matters concerned; or
 - 16 (ii) a professional adviser or expert in relation to matters
17 that the director believes on reasonable grounds to be
18 within the person's professional or expert competence;
19 or
 - 20 (iii) another director or officer in relation to matters within
21 the director's or officer's authority; or
 - 22 (iv) a committee of directors on which the director did not
23 serve in relation to matters within the committee's
24 authority; and
- 25 (b) the reliance was made:
- 26 (i) in good faith; and
 - 27 (ii) after making proper inquiry if the circumstances
28 indicated the need for inquiry; and
- 29 (c) the reasonableness of the director's reliance on the
30 information or advice arises in proceedings brought to
31 determine whether a director has performed a duty under this
32 Division or an equivalent general law duty;
- 33 the director's reliance on the information or advice is taken to be
34 reasonable unless the contrary is proved.
-

1 **27E Responsibility for actions of delegate**

- 2 (1) If the directors of a Commonwealth authority delegate a power
 3 under its enabling legislation, a director is responsible for the
 4 exercise of the power by the delegate as if the power had been
 5 exercised by the directors themselves.
- 6 (2) A director is not responsible under subsection (1) if:
- 7 (a) the director believed on reasonable grounds at all times that
 8 the delegate would exercise the power in conformity with the
 9 duties imposed on directors of the Commonwealth authority
 10 by this Act and the authority's enabling legislation; and
- 11 (b) the director believed:
- 12 (i) on reasonable grounds; and
 13 (ii) in good faith; and
 14 (iii) after making proper inquiry if the circumstances
 15 indicated the need for inquiry;
 16 that the delegate was reliable and competent in relation to the
 17 power delegated.

18 **Subdivision B—Disclosure of, and voting on matters involving,
 19 material personal interests**

20 **27F Material personal interest—director's duty to disclose**

21 *Director's duty to notify other directors of material personal*
 22 *interest when conflict arises*

- 23 (1) A director of a Commonwealth authority who has a material
 24 personal interest in a matter that relates to the affairs of the
 25 authority must give the other directors notice of the interest unless
 26 subsection (2) says otherwise.
- 27 (2) The director does not need to give notice of an interest under
 28 subsection (1) if:
- 29 (a) the interest:
- 30 (i) arises in relation to the director's remuneration as a
 31 director of the authority; or

- 1 (ii) relates to a contract that insures, or would insure, the
2 director against liabilities the director incurs as an
3 officer of the authority (but only if the contract does not
4 make the authority or a subsidiary of the authority the
5 insurer); or
6 (iii) relates to any payment by the authority or a subsidiary
7 of the authority in respect of an indemnity permitted
8 under section 27K or any contract relating to such an
9 indemnity; or
10 (iv) is in a contract, or proposed contract, with, or for the
11 benefit of, or on behalf of, a subsidiary of the authority
12 and arises merely because the director is a director of
13 the subsidiary; or
14 (b) all the following conditions are satisfied:
15 (i) the director has already given notice of the nature and
16 extent of the interest and its relation to the affairs of the
17 authority under subsection (1)
18 (ii) if a person who was not a director of the authority at the
19 time when the notice under subsection (1) was given is
20 appointed as a director of the authority—the notice is
21 given to that person
22 (iii) the nature or extent of the interest has not materially
23 increased above that disclosed in the notice; or
24 (c) the director has given a standing notice of the nature and
25 extent of the interest under section 27G and the notice is still
26 effective in relation to the interest.
27 (3) The notice required by subsection (1) must:
28 (a) give details of:
29 (i) the nature and extent of the interest; and
30 (ii) the relation of the interest to the affairs of the authority;
31 and
32 (b) be given at a directors' meeting as soon as practicable after
33 the director becomes aware of his or her interest in the
34 matter.
35 The details must be recorded in the minutes of the meeting.
-

1 *Effect of contravention by director*

- 2 (4) A contravention of this section by a director does not affect the
3 validity of any act, transaction, agreement, instrument, resolution
4 or other thing.

5 **27G Director may give other directors standing notice about an**
6 **interest**

7 *Power to give notice*

- 8 (1) A director of a Commonwealth authority who has an interest in a
9 matter may give the other directors standing notice of the nature
10 and extent of the interest in the matter in accordance with
11 subsection (2). The notice may be given at any time and whether or
12 not the matter relates to the affairs of the authority at the time the
13 notice is given.

14 Note: The standing notice may be given to the other directors before the
15 interest becomes a material personal interest.

- 16 (2) The notice under subsection (1) must:
17 (a) give details of the nature and extent of the interest; and
18 (b) be given:
19 (i) at a directors' meeting (either orally or in writing); or
20 (ii) to the other directors individually in writing.
21 The standing notice is given under subparagraph (b)(ii) when it has
22 been given to every director.

23 *Standing notice must be tabled at meeting if given to directors*
24 *individually*

- 25 (3) If the standing notice is given to the other directors individually in
26 writing it must be tabled at the next directors' meeting after it is
27 given.

28 *Nature and extent of interest must be recorded in minutes*

- 29 (4) The director must ensure that the nature and extent of the interest
30 disclosed in the standing notice is recorded in the minutes of the
31 meeting at which the standing notice is given or tabled.
-

1 *Dates of effect and expiry of standing notice*

2 (5) The standing notice:

3 (a) takes effect as soon as it is given; and

4 (b) ceases to have effect if a person who was not a director of the
5 authority at the time when the notice was given is appointed
6 as a director of the authority.

7 A standing notice that ceases to have effect under paragraph (b)
8 commences to have effect again if it is given to the person referred
9 to in that paragraph.

10 *Effect of material increase in nature or extent of interest*

11 (6) The standing notice ceases to have effect in relation to a particular
12 interest if the nature or extent of the interest materially increases
13 above that disclosed in the notice.

14 *Effect of contravention by director*

15 (7) A contravention of this section by a director does not affect the
16 validity of any act, transaction, agreement, instrument, resolution
17 or other thing.

18 **27H Interaction of sections 27F and 27G with other laws etc.**

19 Sections 27F and 27G have effect in addition to, and not in
20 derogation of:

21 (a) any general law rule about conflicts of interest; and

22 (b) any provision in the Commonwealth authority's enabling
23 legislation that restricts a director from:

24 (i) having a material personal interest in a matter; or

25 (ii) holding an office or possessing property;

26 involving duties or interests that conflict with their duties or
27 interests as a director.

1 **27J Restrictions on voting**

2 *Restrictions on voting and being present*

- 3 (1) A director of a Commonwealth authority who has a material
4 personal interest in a matter that is being considered at a directors'
5 meeting must not:
6 (a) be present while the matter is being considered at the
7 meeting; or
8 (b) vote on the matter;
9 unless:
10 (c) subsection (2) or (3) allows the director to be present; or
11 (d) the interest does not need to be disclosed under section 27F.

12 *Participation with approval of other directors*

- 13 (2) The director may be present and vote if directors who do not have
14 a material personal interest in the matter have passed a resolution
15 that:
16 (a) identifies the director, the nature and extent of the director's
17 interest in the matter and its relation to the affairs of the
18 authority; and
19 (b) states that those directors are satisfied that the interest should
20 not disqualify the director from voting or being present.

21 *Participation with Ministerial approval*

- 22 (3) The director may be present and vote if they are so entitled under a
23 declaration or order made by the responsible Minister under
24 section 27K.

25 *Effect of contravention by director*

- 26 (4) A contravention by a director of:
27 (a) this section; or
28 (b) a condition attached to a declaration or order made by the
29 responsible Minister under section 27K;
30 does not affect the validity of any resolution.

1 **27K Minister's power to make declarations and class orders**

2 *Minister's power to make specific declarations*

3 (1) The responsible Minister may declare in writing that a director of a
4 Commonwealth authority who has a material personal interest in a
5 matter that is being, or is to be, considered at a directors' meeting
6 may, despite the director's interest, be present while the matter is
7 being considered at the meeting, vote on the matter, or both be
8 present and vote. However, the Minister may only make the
9 declaration if:

10 (a) the number of directors entitled to be present and vote on the
11 matter would be less than the quorum for a directors' meeting
12 if the director were not allowed to vote on the matter at the
13 meeting; and

14 (b) the matter needs to be dealt with urgently, or if there is some
15 other compelling reason for the matter being dealt with at the
16 directors' meeting.

17 (2) The declaration may:

18 (a) apply to all or only some of the directors; or

19 (b) specify conditions that the company or director must comply
20 with.

21 *Responsible Minister's power to make class orders*

22 (3) The responsible Minister may make an order in writing that
23 enables directors who have a material personal interest in a matter
24 to be present while the matter is being considered at a directors'
25 meeting, vote on that matter, or both be present and vote. The order
26 may be made in respect of a specified class of Commonwealth
27 authorities, directors, resolutions or interests.

28 (4) The order may be expressed to be subject to conditions.

29 (5) Notice of the making, revocation or suspension of the order must
30 be published in the *Gazette*.

1 **27L Right of access to authority's books**

2 *Right while director*

- 3 (1) A director of a Commonwealth authority may inspect the books of
4 the authority at all reasonable times for the purposes of a legal
5 proceeding:
6 (a) to which the director is a party; or
7 (b) that the director proposes in good faith to bring; or
8 (c) that the director has reason to believe will be brought against
9 him or her.

10 *Right during 7 years after ceasing to be director*

- 11 (2) A person who has ceased to be a director of a Commonwealth
12 authority may inspect the books of the authority at all reasonable
13 times for the purposes of a legal proceeding:
14 (a) to which the person is a party; or
15 (b) that the person proposes in good faith to bring; or
16 (c) that the person has reason to believe will be brought against
17 him or her.

18 This right continues for 7 years after the person ceased to be a
19 director of the authority.

20 *Right to take copies*

- 21 (3) A person authorised to inspect books under this section for the
22 purposes of a legal proceeding may make copies of the books for
23 the purposes of those proceedings.

24 *Commonwealth authority not to refuse access*

- 25 (4) A Commonwealth authority must allow a person to exercise his or
26 her rights to inspect or take copies of the books under this section.

1 **Division 4A—Restrictions on indemnities and insurance**
2 **for officers**

3 **27M Indemnification and exemption of officer**

4 *Power to indemnify officers*

- 5 (1) Except as provided in this section, a Commonwealth authority may
6 indemnify a person who is or has been an officer of the authority
7 from any liability incurred by the person as an officer of the
8 authority.

9 *Exemptions not allowed*

- 10 (2) A Commonwealth authority, or a subsidiary of a Commonwealth
11 authority, must not exempt a person (whether directly or through
12 an interposed entity) from a liability to the authority incurred as an
13 officer of the authority.

14 *When indemnity for liability (other than for legal costs) not*
15 *allowed*

- 16 (3) A Commonwealth authority, or a subsidiary of a Commonwealth
17 authority, must not indemnify a person (whether by agreement or
18 by making a payment and whether directly or through an
19 interposed entity) against any of the following liabilities incurred
20 as an officer of the authority:
21 (a) a liability owed to the authority or a subsidiary of the
22 authority; or
23 (b) a liability for a civil penalty order under clause 3 of Schedule
24 2 or a compensation order under clause 4 of Schedule 2; or
25 (c) a liability that is owed to someone other than the authority or
26 a subsidiary of the authority and did not arise out of conduct
27 in good faith.

28 This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

- 1
- 2 (4) A Commonwealth authority, or a subsidiary of a Commonwealth
 3 authority, must not indemnify a person (whether by agreement or
 4 by making a payment and whether directly or through an
 5 interposed entity) against legal costs incurred in defending an
 6 action for a liability incurred as an officer of the authority if the
 7 costs are incurred:
- 8 (a) in defending or resisting a proceedings in which the person is
 9 found to have a liability for which they could not be
 10 indemnified under subsection (3); or
- 11 (b) in defending or resisting criminal proceedings in which the
 12 person is found guilty; or
- 13 (c) in defending or resisting proceedings brought by the Finance
 14 Minister for a court order if the grounds for making the order
 15 are found by the court to have been established; or
- 16 (d) in connection with proceedings for relief to the person under
 17 this Act in which the Court denies the relief.

18 Paragraph (c) does not apply to costs incurred in responding to
 19 actions taken by the Finance Minister as part of an investigation
 20 before commencing proceedings for the court order.

21 Note: Paragraph (c)—This includes proceedings by the Finance Minister for
 22 an order under section 27C (disqualification order) or clause 3 or 4 of
 23 Schedule 2 (civil penalties).

- 24 (5) For the purposes of subsection (4), the outcome of proceedings is
 25 the outcome of the proceedings and any appeal in relation to the
 26 proceedings.

27 **27N Insurance for certain liabilities of officers**

- 28 (1) Except as provided in subsection (2), a Commonwealth authority
 29 may insure a person who is or has been an officer against liabilities
 30 incurred by the person as an officer.
- 31 (2) A Commonwealth authority, or a subsidiary of a Commonwealth
 32 authority, must not pay, or agree to pay, a premium for a contract
 33 insuring a person who is, or has been, an officer of the authority
 34 against a liability (other than one for legal costs) arising out of:

- 1 (a) conduct involving a wilful breach of duty in relation to the
2 authority; or
3 (b) a contravention of section 24 or 25.
4 This section applies to a premium whether it is paid directly or
5 through an interposed entity.

6 **27P Certain indemnities, exemptions, payments and agreements not**
7 **authorised and certain documents void**

- 8 (1) Sections 27M and 27N do not authorise anything that would
9 otherwise be unlawful.
10 (2) Anything that purports to indemnify or insure a person against a
11 liability or exempt them from a liability is void to the extent that it
12 contravenes section 27M or 27N.

13 **12 Schedule 2**

14 Repeal the Schedule, substitute:

15 **Schedule 2—Civil consequences of**
16 **contravening civil penalty provisions**

17 Note: See section 6.
18
19

20 **1 Declarations of contravention**

- 21 (1) If a Court is satisfied that a person has contravened 1 of the
22 following provisions, it must make a declaration of contravention:
23 (a) subsections 22(1) and 23(1) and (2), 24(1) and (2), 25(1) and
24 (2) (officers' duties)
25 (b) subsection 11(1) (annual reporting rules)
26 These provisions are the *civil penalty provisions*.
27 Note: Once a declaration has been made, the Finance Minister can then seek
28 a pecuniary penalty order (clause 3) or a disqualification order
29 (section 27C).
30 (2) A declaration of contravention must specify the following:
31 (a) the Court that made the declaration;
-

- 1 (b) the civil penalty provision that was contravened;
- 2 (c) the person who contravened the provision;
- 3 (d) the conduct that constituted the contravention;
- 4 (e) the Commonwealth authority to which the conduct related.

5 **2 Declaration of contravention is conclusive evidence**

6 A declaration of contravention is conclusive evidence of the
7 matters referred to in subclause 1(2).

8 **3 Pecuniary penalty orders**

- 9 (1) A Court may order a person to pay the Commonwealth a pecuniary
10 penalty of up to \$200,000 if:
 - 11 (a) a declaration of contravention by the person has been made
12 under clause 1; and
 - 13 (b) the contravention:
 - 14 (i) materially prejudices the interests of the Commonwealth
15 authority; or
 - 16 (ii) materially prejudices the Commonwealth authority's
17 ability to pay its creditors; or
 - 18 (iii) is serious.
- 19 (2) The penalty is a civil debt payable to the Commonwealth. The
20 Commonwealth may enforce the order as if it were an order made
21 in civil proceedings against the person to recover a debt due by the
22 person. The debt arising from the order is taken to be a judgment
23 debt.

24 **4 Compensation orders**

25 *Compensation for damage suffered*

- 26 (1) A Court may order a person to compensate a Commonwealth
27 authority for damage suffered by the authority if:
 - 28 (a) the person has contravened a civil penalty provision in
29 relation to the authority; and
 - 30 (b) the damage resulted from the contravention.

1 The order must specify the amount of the compensation.

2 *Damage includes profits*

3 (2) In determining the damage suffered by the Commonwealth
4 authority for the purposes of making a compensation order, include
5 profits made by any person resulting from the contravention or the
6 offence.

7 *Recovery of damage*

8 (3) A compensation order may be enforced as if it were a judgment of
9 the Court.

10 **5 Effect of clause 4**

11 Clause 4:

12 (a) has effect in addition to, and not in derogation of, any rule of
13 law about the duty or liability of a person because of the
14 person's office or employment in relation to a
15 Commonwealth authority; and

16 (b) does not prevent proceedings from being instituted in respect
17 of such a duty or in respect of such a liability.

18 **6 Who may apply for a declaration or order**

19 *Application by Finance Minister*

20 (1) The Finance Minister, or some other person authorised in writing
21 by the Finance Minister under this subclause to make the
22 application, may apply for a declaration of contravention, a
23 pecuniary penalty order or a compensation order.

24 *Application by Commonwealth authority*

25 (2) The Commonwealth authority may apply for a compensation order.

26 (3) The Commonwealth authority may intervene in an application for a
27 declaration of contravention or a pecuniary penalty order in
28 relation to the Commonwealth authority. The Commonwealth

1 authority is entitled to be heard on all matters other than whether
2 the declaration or order should be made.

3 *No one else may apply*

4 (4) No person may apply for a declaration of contravention, a
5 pecuniary penalty order or a compensation order unless permitted
6 by this clause.

7 (5) Subclause (4) does not exclude the operation of the *Director of*
8 *Public Prosecutions Act 1983* or that Act as applying as a law of
9 this jurisdiction.

10 **7 Time limit for application for a declaration or order**

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

14 **8 Civil evidence and procedure rules for declarations of** 15 **contravention and civil penalty orders**

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

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

20 **9 Civil proceedings after criminal proceedings**

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

26 **10 Criminal proceedings during civil proceedings**

27 (1) Proceedings for a declaration of contravention or pecuniary penalty
28 order against a person are stayed if:

- 1 (a) criminal proceedings are started or have already been started
2 against the person for an offence; and
3 (b) the offence is constituted by conduct that is substantially the
4 same as the conduct alleged to constitute the contravention.
- 5 (2) The proceedings for the declaration or order may be resumed if the
6 person is not convicted of the offence. Otherwise, the proceedings
7 for the declaration or order are dismissed.

8 **11 Criminal proceedings after civil proceedings**

- 9 Criminal proceedings may be started against a person for conduct
10 that is substantially the same as conduct constituting a
11 contravention of a civil penalty provision regardless of whether:
12 (a) a declaration of contravention has been made against the
13 person; or
14 (b) a pecuniary penalty order has been made against the person;
15 or
16 (c) a compensation order has been made against the person; or
17 (d) the person has been disqualified from managing a
18 Commonwealth authority under section 27C.

19 **12 Evidence given in proceedings for penalty not admissible in**
20 **criminal proceedings**

- 21 Evidence of information given or evidence of production of
22 documents by an individual is not admissible in criminal
23 proceedings against the individual if:
24 (a) the individual previously gave the evidence or produced the
25 documents in proceedings for a pecuniary penalty order
26 against the individual for a contravention of a civil penalty
27 provision (whether or not the order was made); and
28 (b) the conduct alleged to constitute the offence is substantially
29 the same as the conduct that was claimed to constitute the
30 contravention.
- 31 However, this does not apply to a criminal proceeding in respect of
32 the falsity of the evidence given by the individual in the
33 proceedings for the pecuniary penalty order.

1 **13 Finance Minister requiring person to assist**

2 (1) The Finance Minister may require a person to give all reasonable
3 assistance in connection with:

- 4 (a) an application for a declaration of contravention or a
5 pecuniary penalty order; or
6 (b) criminal proceedings for an offence against this Act.

7 The person must comply with the request.

8 Maximum penalty: 5 penalty units.

9 (2) The Finance Minister can require the person to assist in connection
10 with an application for a declaration or order if, and only if:

- 11 (a) it appears to the Finance Minister that someone other than the
12 person required to assist may have contravened a civil
13 penalty provision; and
14 (b) the Finance Minister suspects or believes that the person
15 required to assist can give information relevant to the
16 application.

17 (3) The Finance Minister can require the person to assist in connection
18 with criminal proceedings if, and only if:

- 19 (a) it appears to the Finance Minister that the person required to
20 assist is unlikely to be a defendant in the proceedings; and
21 (b) the person required to assist is, in relation to a person who is
22 or should be a defendant in the proceedings:
23 (i) an employee or agent (including a banker or auditor) of
24 the other person; or
25 (ii) if the other person is a Commonwealth authority—an
26 officer of the other person; or
27 (iii) if the other person is an individual—a partner of the
28 other person.

29 (4) The Finance Minister can require the person to assist regardless of
30 whether:

- 31 (a) an application for the declaration or penalty order has
32 actually been made; or
33 (b) criminal proceedings for the offence have actually begun.

- 1 (5) The person cannot be required to assist if they are or have been a
2 lawyer for:
3 (a) in an application for a declaration or penalty order—the
4 person suspected of the contravention; or
5 (b) in criminal proceedings—a defendant or likely defendant in
6 the proceedings.
- 7 (6) The requirement to assist must be given in writing.
- 8 (7) The Court may order the person to comply with the requirement in
9 a specified way. Only the Finance Minister may apply to the Court
10 for an order under this subsection.

11 **14 Relief from liability for contravention of civil penalty provision**

- 12 (1) In this section:
13 *eligible proceedings*:
14 (a) means proceedings for a contravention of a civil penalty
15 provision (including proceedings under clause 4); and
16 (b) does not include proceedings for an offence (except so far as
17 the proceedings relate to the question whether the court
18 should make an order under clause 4).
- 19 (2) If:
20 (a) eligible proceedings are brought against a person; and
21 (b) in the proceedings it appears to the court that the person has,
22 or may have, contravened a civil penalty provision but that:
23 (i) the person has acted honestly; and
24 (ii) having regard to all the circumstances of the case, the
25 person ought fairly to be excused for the contravention;
26 the court may relieve the person either wholly or partly from a
27 liability to which the person would otherwise be subject, or that
28 might otherwise be imposed on the person, because of the
29 contravention.
- 30 (3) If a person thinks that eligible proceedings will or may be begun
31 against them, they may apply to the Court for relief.

- 1 (4) On an application under subclause (3), the Court may grant relief
 2 under subclause (2) as if the eligible proceedings had been begun
 3 in the Court.
- 4 (5) For the purposes of subclause (2) as applying for the purposes of a
 5 case tried by a judge with a jury:
- 6 (a) a reference in that subclause to the court is a reference to the
 7 judge; and
- 8 (b) the relief that may be granted includes withdrawing the case
 9 in whole or in part from the jury and directing judgment to be
 10 entered for the defendant on such terms as to costs as the
 11 judge thinks appropriate.

12 **15 Power to grant relief**

- 13 (1) If:
- 14 (a) civil proceedings are brought against an officer of a
 15 Commonwealth authority for negligence, default, breach of
 16 trust or breach of duty in a capacity as such an officer; and
- 17 (b) in the proceedings it appears to the court before which the
 18 proceedings are taken that:
- 19 (i) the officer is or may be liable in respect of the
 20 negligence, default or breach; and
- 21 (ii) the officer has acted honestly; and
- 22 (iii) having regard to all the circumstances of the case
 23 (including those connected with the officer's
 24 appointment), the officer ought fairly to be excused for
 25 the negligence, default or breach;
- 26 the court may relieve the officer either wholly or partly from
 27 liability on the terms that the court thinks appropriate.
- 28 (2) An officer of a Commonwealth authority who has reason to
 29 apprehend that a claim will or might be made against him or her
 30 for negligence, default, breach of trust or breach of duty in a
 31 capacity as such an officer may apply to the Court for relief. On the
 32 application, the Court has the same power to relieve the officer as
 33 it would have had under subclause (1) if it had been a court before
 34 which proceedings against the officer for negligence, default,
 35 breach of trust or breach of duty had been brought.

- 1 (3) If:
2 (a) a case to which subclause (1) applies is being tried by a judge
3 with a jury; and
4 (b) the judge after hearing the evidence is satisfied that the
5 defendant ought pursuant to that subclause to be relieved
6 either wholly or partly from the liability sought to be
7 enforced against the officer;
8 the judge may withdraw the case in whole or in part from the jury
9 and forthwith direct judgment to be entered for the defendant on
10 the terms as to costs or otherwise that the judge thinks proper.

11 **Schedule 3—Application, transitional and**
12 **savings provisions**
13
14

15 **1 Meaning of *commencement*, *new Law* and *old Law***

16 In this Schedule:

17 *commencement* means the commencement of the *Corporate Law*
18 *Economic Reform Program Act 1998*.

19 *new Law* means this Act as in force after commencement.

20 *old Law* means this Act as in force immediately before
21 commencement.

22 **2 References to provisions of old Law in laws and other documents**

23 (1) A reference in any law of the Commonwealth or of a State or
24 Territory, or in any document, to a provision of the old Law is to
25 be read after commencement as a reference to the corresponding
26 provision of the new Law except so far as the contrary intention
27 appears in the law or document.

28 (2) Without limiting subclause (1), sections 27F to 27K of the new
29 Law correspond to section 21 of the old Law.

3 Conduct of officers

Column 2 of the table sets out things that have been done, or situations that have arisen, on or before commencement. 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 commencement, a director of a Commonwealth authority who had an interest in a matter declared the nature of the interest in accordance with subsection 21(1) of the old Law	the director is taken to have disclosed the interest as a material personal interest in accordance with section 27F of the new Law and to have made the disclosure on commencement.
2	before commencement, the Board of a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination is taken to be a resolution passed in accordance with subsection 27J(2) of the new Law.
3	before commencement, the responsible Minister for a Commonwealth authority made a determination under subsection 21(3) of the old Law	the determination has effect as if it were a determination under section 27K of the new Law.
4	before commencement, an officer of a Commonwealth authority incurred a liability	sections 27M and 27N 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 26 and 27 of the old Law continue to apply.
5	before commencement, an application for a civil penalty order was made and not dealt with under Schedule 2 to the old Law	Schedule 2 to the old Law continues to apply in relation to the application
6	before commencement, a person was granted leave under subclause 8(2) of Schedule 2 to the old Law	the leave has effect as if it were granted under subsection 27C(4) of the new Law

1 **4 Contraventions of, and offences against, civil penalty provisions**

- 2 (1) Schedule 2 to the old Law continues to apply in relation to:
3 (a) a contravention of a civil penalty provision listed in clause 2
4 of Schedule 2 to the old Law; or
5 (b) an offence committed against one of those civil penalty
6 provisions;
7 despite its repeal.
- 8 (2) Schedule 2 to the new Law applies in relation to a contravention of
9 a civil penalty provision listed in subclause 1(1) of Schedule 2 to
10 the new law.

11 **5 Civil penalty orders made under old Law**

- 12 (1) An order in force under paragraph 4(a) of Schedule 2 to the old
13 Law immediately before commencement continues to have effect
14 after commencement as if it were made under section 27C of the
15 new Law.
- 16 (2) An order in force under paragraph 4(b) of Schedule 2 to the old
17 Law immediately before commencement continues to have effect
18 after commencement as if it were made under clause 3 of Schedule
19 2 to the new Law.

20 ***Commonwealth Serum Laboratories Act 1961***

21 **13 Subsection 19B(3)**

22 Repeal the subsection, substitute:

- 23 (3) For the purposes of this Part, a person has a relevant interest in a
24 share if, and only if, the person would be taken to have a relevant
25 interest in the share for the purposes of the Corporations Law if
26 paragraph 608(3)(a) of that Law were disregarded.

27 ***Corporations Act 1989***

28 **14 After subsection 17(1)**

29 Insert:

1 (1A) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of the
2 Capital Territory bind the Crown in right of the Commonwealth.

3 **15 At the end of section 18**

4 Add:

5 (2) Chapters 6, 6A, 6B, 6C and 6D of the Corporations Law of each
6 jurisdiction other than the Capital Territory bind the Crown in right
7 of the Commonwealth.

8 ***Income Tax Assessment Act 1997***

9 **16 Paragraph 166-245(1)(a)**

10 Omit “709”, substitute “671B”.

11 **17 Paragraph 166-245(1)(b)**

12 Omit “710”, substitute “671B”.

13 **18 Paragraph 166-245(2)(a)**

14 Omit “710”, substitute “671B”.

15 **19 Paragraph 166-245(2)(b)**

16 Omit “711”, substitute “671B”.

17 **20 Section 995-1 (definition of *relevant interest*)**

18 Repeal the definition, substitute:

19 *relevant interest* has the same meaning as in the Corporations Law.

20 ***Life Insurance Act 1995***

21 **21 Section 238**

22 Omit “Part 7.12”, substitute “Chapter 6D”.

23 **22 Section 238**

24 Omit “prospectus”, substitute “disclosure document”.

1 Note: The heading to section 238 is altered by omitting “**Prospectus**” and substituting
2 “**Disclosure document**”.

3 **23 Subsection 239(1)**

4 Repeal the subsection, substitute:

5 (1) This section applies if:

6 (a) a life company or the holding company of a life company:

7 (i) lodges a document, or a copy of a document, with
8 ASIC; or

9 (ii) is given a document, or a copy of a document;

10 for the purposes of a provision in Parts 6.4 to 6.8 of the
11 Corporations Law of a State or an internal Territory; and

12 (b) the document:

13 (i) relates to an off-market bid; and

14 (ii) is not given under section 641 of that Law.

15 Note: The heading to section 239 is altered by omitting “**takeover schemes**” and substituting
16 “**off-market takeover bids**”.

17 **24 Subsection 239(2)**

18 Omit “paragraph (1)(a) or (b)”, substitute “subsection (1)”.

19 ***Qantas Sale Act 1992***

20 **25 Subsection 7(2)**

21 Repeal the subsection, substitute:

22 (2) For the purposes of this section, a person has a relevant interest in a
23 share if, and only if, the person would be taken to have a relevant
24 interest in the share for the purposes of the Corporations Law if
25 paragraph 608(3)(a) of that Law were disregarded.

26 **26 Subsection 9(3)**

27 Repeal the subsection, substitute:

28 (3) For the purposes of this section, a person has a relevant interest in a
29 share if, and only if, the person would be taken to have a relevant

1 interest in the share for the purposes of the Corporations Law if
2 paragraph 608(3)(a) of that Law were disregarded.

1
2 **Schedule 6—Miscellaneous amendments of**
3 **the Corporations Law**
4

5 **1 Section 9 (at the end of the definition of *contributory*)**

6 Add:

- 7 (c) in relation to a no liability company—subject to section 385,
8 a member of the company.

9 **2 Section 9 (both definitions of *financial statements*)**

10 Repeal the definitions, substitute:

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

13 **3 Subsection 227(3)**

14 Repeal the subsection.

15 **4 After subsection 249D(1)**

16 Insert:

17 (1A) The regulations may prescribe a different number of members for
18 the purposes of the application of paragraph (1)(b) to:

- 19 (a) a particular company; or
20 (b) a particular class of company.

21 Without limiting this, the regulations may specify the number as a
22 percentage of the total number of members of the company.

23 **5 After subsection 249N(1)**

24 Insert:

25 (1A) The regulations may prescribe a different number of members for
26 the purposes of the application of paragraph (1)(b) to:

- 27 (a) a particular company; or
28 (b) a particular class of company.

29 Without limiting this, the regulations may specify the number as a
30 percentage of the total number of members of the company.

1 **6 After subsection 249P(2)**

2 Insert:

3 (2A) The regulations may prescribe a different number of members for
4 the purposes of the application of paragraph (2)(b) to:

5 (a) a particular company; or

6 (b) a particular class of company.

7 Without limiting this, the regulations may specify the number as a
8 percentage of the total number of members of the company.

9 **7 After subsection 252B(1)**

10 Insert:

11 (1A) The regulations may prescribe a different number of members for
12 the purposes of the application of paragraph (1)(b) to:

13 (a) a particular scheme; or

14 (b) a particular class of scheme.

15 Without limiting this, the regulations may specify the number as a
16 percentage of the total number of members of the scheme.

17 **8 After subsection 252L(1)**

18 Insert:

19 (1A) The regulations may prescribe a different number of members for
20 the purposes of the application of paragraph (1)(b) to:

21 (a) a particular scheme; or

22 (b) a particular class of scheme.

23 Without limiting this, the regulations may specify the number as a
24 percentage of the total number of members of the scheme.

25 **9 After subsection 252N(2)**

26 Insert:

27 (2A) The regulations may prescribe a different number of members for
28 the purposes of the application of paragraph (2)(b) to:

29 (a) a particular scheme; or

30 (b) a particular class of scheme.

1 Without limiting this, the regulations may specify the number as a
2 percentage of the total number of members of the scheme.

3 **10 Subsection 329(1)**

4 Omit “special notice”, substitute “notice under subsection (1A)”.

5 **11 Subsection 329(2)**

6 Omit “special notice”, substitute “notice under subsection (1A)”.

7 **12 Subsection 340(1)**

8 Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

9 **13 Subsection 341(1)**

10 Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

11 **14 Subsection 342(1)**

12 Omit “and 2M.3”, substitute “, 2M.3 and 2M.4”.

13 **15 Subsection 1209(6)**

14 Repeal the subsection, substitute:

- 15 (6) A futures broker must not deal with property deposited by the
16 broker in safe custody under subsection (3) except:
- 17 (a) in accordance with the terms and conditions on which it was
18 deposited with, or received by, the broker; or
 - 19 (b) for the purpose of meeting obligations incurred by the broker
20 in connection with margining, guaranteeing, securing,
21 transferring, adjusting or settling dealings in futures contracts
22 effected by the broker on behalf of clients only.

1
2 **Schedule 7—Miscellaneous amendments of**
3 **other Acts**
4

5 *Australian Securities and Investments Commission Act 1989*

6 **1 Subsection 12GB(1)**

7 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
8 “Subdivision D (sections 12DA to 12DN)”.

9 Note: The heading to section 12GB is altered by omitting “**or E**”.

10 **2 Paragraph 12GB(2)(a)**

11 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
12 “Subdivision D (sections 12DA to 12DN)”.

13 **3 Paragraph 12GB(3)(a)**

14 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
15 “Subdivision D (sections 12DA to 12DN)”.

16 **4 Subsection 12GB(4)**

17 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
18 “Subdivision D (sections 12DA to 12DN)”.

19 **5 Section 12GE**

20 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
21 “Subdivision D (sections 12DA to 12DN)”.

22 **6 Subsection 12GF(1)**

23 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
24 “Subdivision D (sections 12DA to 12DN)”.

25 **7 Subsection 12GI(1)**

26 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
27 “Subdivision D (sections 12DA to 12DN)”.

28 **8 Subsection 12GI(4)**

1 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
2 “Subdivision D (sections 12DA to 12DN)”.

3 **9 Subsection 12GI(4)**

4 Omit “or E” (second occurring).

5 **10 Paragraph 12GM(5)(b)**

6 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
7 “Subdivision D (sections 12DA to 12DN)”.

8 **11 Paragraph 12GN(1)(c)**

9 Omit “Subdivision D or E (sections 12DA to 12ED)”, substitute
10 “Subdivision D (sections 12DA to 12DN)”.

11 ***Financial Sector Reform (Consequential Amendments) Act***
12 ***1998***

13 **12 Schedule 3 (heading)**

14 Repeal the heading, substitute:

15 **Schedule 3—Amendment of the Corporations**
16 **Law set out in section 82 of the**
17 **Corporations Act 1989**

18 Note: The heading to section 12DL of the *Australian Securities and Investments Commission*
19 *Act 1989* is altered by omitting “**credit and**”.

1
2 **Schedule 8—Further amendment of the**
3 **Corporations Law**
4

5 **1 Subsection 172(1)**

6 After “this Chapter”, insert “that relates to a company”.

7 **2 Subsection 172(1A)**

8 Omit “Part”, substitute “Chapter”.

9 **3 Heading to Part 2M.4**

10 Repeal the heading, substitute:

11 **Part 2M.4—Appointment and removal of auditors**

12 **4 After the Heading to Part 2M.4**

13 Insert:

14 **Division 1—Companies**

15 **5 Heading to Division 1A of Part 2M.4**

16 Repeal the heading, substitute:

17 **Division 2—Registered schemes**

18 **6 Section 601LA**

19 Omit “Part 3.2A”, substitute “Chapter 2E”.

20 Note: The heading to section 601LA is altered by omitting “**Part 3.2A**” and substituting
21 “**Chapter 2E**”.

22 **7 Section 601LB**

23 Omit “Part 3.2A”, substitute “Chapter 2E”.

24 **8 Section 601LC**

25 Omit “Part 3.2A”, substitute “Chapter 2E”.

1 **9 Section 601LD**

2 Omit “Part 3.2A”, substitute “Chapter 2E”.

3 **10 Section 601LE**

4 Omit “Part 3.2A”, substitute “Chapter 2E”.

5 **11 Subsection 601QA(2)**

6 Repeal the subsection, substitute:

7 (2) The exemption or declaration may:

8 (a) apply to all or specified provisions of this Chapter; and

9 (b) apply to all persons, specified persons, or a specified class of
10 persons; and

11 (c) relate to all securities, specified securities or a specified class
12 of securities; and

13 (d) relate to any other matter generally or as specified.

14 **12 Section 1465 (table item 1)**

15 Omit “managed investment”, substitute “interest in a managed
16 investment scheme”.

17 **13 Division 11 of Part 11.2 (first occurring) (heading)**

18 Repeal the heading, substitute:

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

21 **14 Section 1451 (definition of *old Law*)**

22 Omit “this law”, substitute “this Law”.

23 **15 Schedule 3**

24 Repeal the items relating to sections 1064, 1065, 1072 and 1074.

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Schedule 9—Further amendment of other legislation

Company Law Review Act 1998

1 Schedule 4

Omit “*Australian Securities Commission Act 1989*”, substitute
“*Australian Securities and Investments Commission Act 1989*”.

Managed Investments Act 1998

2 Part 2 of Schedule 2 (heading)

Repeal the heading, substitute:

Part 2—Amendment of the Australian Securities and Investments Commission Act 1989