



Australian Securities and Investments Commission Act 2001

Act No. 51 of 2001 as amended

This compilation was prepared on 2 March 2005
taking into account amendments up to Act No. 8 of 2005

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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Contents

Part 1—Preliminary	1
Division 1—Objects	1
1 Objects	1
Division 2—Citation	3
1A Short title [<i>see</i> Note 1]	3
Division 3—Commencement and application	4
2 Commencement [<i>see</i> Note 1]	4
4 Application of this Act	4
4A Application of the <i>Criminal Code</i>	5
Division 4—Interpretation	6
5 Interpretation	6
5A Application of the <i>Acts Interpretation Act 1901</i>	14
6 Giving information	14
Part 2—Australian Securities and Investments Commission and consumer protection in relation to financial services	15
Division 1—Australian Securities and Investments Commission	15
8 ASIC is a body corporate	15
9 Membership	15
10 Chairperson and Deputy Chairperson	16
11 Corporations legislation functions and powers and other functions and powers conferred by the States and Territories	16
12 Directions by Minister	18
12A Other functions and powers	19
Division 2—Unconscionable conduct and consumer protection in relation to financial services	21
Subdivision A—Application	21
12AC Division extends to some conduct outside Australia	21
12AD Application of Division to Commonwealth and Commonwealth authorities	22
12AE Saving of other laws and remedies	22
Subdivision B—Interpretation	23
12BA Interpretation	23
12BAA Definition of <i>financial product</i>	26
12BAB Meaning of <i>financial service</i>	32
12BB Misleading representations	36
12BC Consumers	37

12BD	Acquisition, supply and re-supply.....	39
12BE	Application of Division in relation to leases and licences of land and buildings.....	39
Subdivision C—Unconscionable conduct		40
12CA	Unconscionable conduct within the meaning of the unwritten law of the States and Territories.....	40
12CB	Unconscionable conduct	40
12CC	Unconscionable conduct in business transactions.....	41
Subdivision D—Consumer protection		47
12DA	Misleading or deceptive conduct	47
12DB	False or misleading representations	48
12DC	False representations and other misleading or offensive conduct in relation to financial products that involve interests in land	49
12DD	Cash price to be stated in certain circumstances	51
12DE	Offering gifts and prizes	51
12DF	Certain misleading conduct in relation to financial services.....	52
12DG	Bait advertising.....	52
12DH	Referral selling.....	53
12DI	Accepting payment without intending or being able to supply as ordered.....	54
12DJ	Harassment and coercion	55
12DK	Pyramid selling of financial products [<i>see Note 2</i>]	55
12DL	Unsolicited credit cards and debit cards.....	58
12DM	Assertion of right to payment for unsolicited financial services	59
12DN	Application of provisions of Division to prescribed information providers.....	61
Subdivision E—Conditions and warranties in consumer transactions		62
12EA	Conflict of laws.....	62
12EB	Application of provisions not to be excluded or modified	63
12EC	Limitation of liability for breach of certain conditions or warranties.....	63
12ED	Warranties in relation to the supply of financial services	64
Subdivision G—Enforcement and remedies		65
12GA	Interpretation.....	65
12GB	Offences against Subdivision D.....	66
12GC	Enforcement and recovery of certain fines.....	68
12GCA	Preference must be given to compensation for victims.....	70
12GD	Injunctions	70
12GF	Actions for damages	72
12GG	Finding in proceedings to be evidence.....	73

12GH	Conduct by directors, employees or agents.....	73
12GI	Defences	74
12GJ	Jurisdiction of courts.....	76
12GK	Transfer of matters.....	77
12GL	Transfer of certain proceedings to Family Court	78
12GLA	Non-punitive orders	80
12GLB	Punitive orders requiring adverse publicity.....	82
12GM	Other orders	82
12GN	Power of Court to prohibit payment or transfer of money or other property.....	85
12GNA	Limit on liability for misleading or deceptive conduct	88
12GO	Intervention by ASIC.....	89
Subdivision GA—Proportionate liability for misleading and deceptive conduct		89
12GP	Application of Subdivision	89
12GQ	Certain concurrent wrongdoers not to have benefit of apportionment	90
12GR	Proportionate liability for apportionable claims.....	90
12GS	Defendant to notify plaintiff of concurrent wrongdoer of whom defendant is aware.....	91
12GT	Contribution not recoverable from defendant	92
12GU	Subsequent actions.....	92
12GV	Joining non-party concurrent wrongdoer in the action.....	93
12GW	Application of Subdivision	93
Subdivision H—Miscellaneous		93
12HA	Relationship of this Subdivision to Part 3	93
12HB	Disclosure of documents by ASIC [<i>see</i> Note 2].....	94
12HC	Prosecutions.....	95
12HD	Jurisdiction of Court to make declarations and orders	95
Part 3—Investigations and information-gathering		97
Division 1—Investigations		97
13	General powers of investigation.....	97
14	Minister may direct investigations	97
15	Investigation after report of receiver or liquidator	98
16	Interim report on investigation.....	98
17	Final report on investigation	99
18	Distribution of report	100
Division 2—Examination of persons		101
19	Notice requiring appearance for examination	101
20	Proceedings at examination	101
21	Requirements made of examinee	101

22	Examination to take place in private.....	102
23	Examinee’s lawyer may attend	102
24	Record of examination.....	103
25	Giving to other persons copies of record	103
26	Copies given subject to conditions.....	104
27	Record to accompany report	104
Division 3—Inspection of books		106
28	When certain powers may be exercised	106
29	ASIC may inspect books without charge	106
30	Notice to produce books about affairs of body corporate or registered scheme.....	107
31	Notice to produce books about financial products	107
32A	Notice to produce books about financial services	108
33	Notice to produce documents in person’s possession	109
34	ASIC may authorise persons to require production of books.....	109
35	Application for warrant to seize books not produced.....	110
36	Grant of warrant.....	110
37	Powers where books produced or seized.....	111
38	Powers where books not produced.....	113
39	Power to require person to identify property of body corporate	113
39A	ASIC may give copy of book relating to registered scheme to another person.....	113
Division 4—Requirements to disclose information about financial products		114
40	When certain powers may be exercised	114
41	Acquisitions and disposals of financial products	114
43	Exercise of certain powers of ASIC in relation to financial products	116
47	Disclosures to take place in private.....	118
48	Lawyer of person making disclosure may attend	118
Division 5—Proceedings after an investigation		119
49	ASIC may cause prosecution to be begun.....	119
50	ASIC may cause civil proceeding to be begun.....	120
Division 6—Hearings		121
51	Power to hold hearings.....	121
52	General discretion to hold hearing in public or private	121
53	Request by person appearing at hearing that it take place in public	121
54	Certain hearings to take place in private	122
55	ASIC may restrict publication of certain material.....	122
56	Who may be present when hearing takes place in private.....	122
57	Involvement of person entitled to appear at hearing	123

58	Power to summon witnesses and take evidence	124
59	Proceedings at hearings.....	125
60	ASIC to take account of evidence and submissions.....	125
61	Reference to Court of question of law arising at hearing	126
62	Protection of members etc.....	126
Division 7—Offences		127
63	Non-compliance with requirements made under this Part.....	127
64	False information	128
65	Obstructing person acting under this Part	128
66	Contempt of ASIC	129
67	Concealing books relevant to investigation	130
68	Self-incrimination	130
69	Legal professional privilege.....	131
70	Powers of Court where non-compliance with Part.....	132
Division 8—ASIC’s powers where non-compliance with Part		133
71	Orders by ASIC	133
72	Orders in relation to securities of a body corporate	133
73	Orders in relation to financial products generally	134
75	Orders under this Division	135
Division 9—Evidentiary use of certain material		136
76	Statements made at an examination: proceedings against examinee	136
77	Statements made at an examination: other proceedings.....	136
78	Weight of evidence admitted under section 77	137
79	Objection to admission of statements made at examination.....	138
80	Copies of, or extracts from, certain books.....	139
81	Report under Division 1	139
82	Exceptions to admissibility of report	140
83	Material otherwise admissible	141
Division 10—Miscellaneous		142
84	Requirement made of a body corporate	142
85	Evidence of authority.....	142
86	Giving documents to natural persons	142
87	Place and time for production of books	143
88	Application of Crimes Act and Evidence Act	143
89	Allowances and expenses	143
90	Expenses of investigation under Division 1	144
91	Recovery of expenses of investigation.....	144
92	Compliance with Part.....	145
93	Effect of Part.....	145
93AA	Enforcement of undertakings	145

Part 3A—Enforceable undertakings in relation to registered schemes	147
93A Undertakings by responsible entity	147
Part 4—ASIC’s business	149
Division 1—General	149
94 Arrangement of ASIC’s business	149
95 ASIC to establish offices	149
96 Regional Commissioners	149
Division 2—Divisions of ASIC	150
97 ASIC may establish Division	150
98 Effect of direction establishing Division	150
99 ASIC may reconstitute Division	150
100 Effect of reconstituting Division	150
101 Multiple Divisions	151
Division 3—Delegation by ASIC	152
102 Delegation	152
Division 4—Meetings of ASIC	154
103 Convening of meetings	154
104 Approved methods of communication	154
105 Quorum	154
106 Who is to preside at meetings	155
107 Procedure at meetings	155
Part 5—ASIC’s members	156
Division 1—Terms and conditions	156
108 Term of office as member	156
109 Term of office as Chairperson or Deputy Chairperson	156
110 Resignation	156
111 Termination of appointment	156
112 Remuneration and allowances etc	158
113 Leave of absence	158
114 Superannuation arrangements	158
115 Other terms and conditions	159
Division 2—Acting appointments	160
116 Acting members	160
117 Acting Chairperson	160
118 Acting Deputy Chairperson	160
119 Limitation on appointments to act during vacancy	161
Division 3—Delegation by members	162
119A Delegation by members	162

Part 6—ASIC’s staff	163
120 Staff	163
121 Consultants etc.....	163
122 Staff seconded to ASIC.....	163
Part 7—Preventing conflicts of interest and misuse of information	165
Division 1—Disclosure of interests	165
123 Members to disclose certain interests to Minister	165
124 Members to disclose certain interests to Chairperson	166
125 Notification of interests to ASIC.....	167
126 Defence	167
Division 2—Confidentiality	168
127 Confidentiality	168
Part 8—Finance	173
Division 1—General	173
133 Payments to ASIC by Commonwealth.....	173
134 ASIC’s money	173
135 How ASIC’s money to be applied	173
137 Limitation on contracts and leases	174
138 Extra matters to be included in annual report.....	175
139 Liability to taxation.....	175
Division 2—Trust property	177
140 ASIC may accept property on trust.....	177
141 Trust money to be paid into bank account	177
142 How trust property to be applied.....	177
Part 9—The Corporations and Markets Advisory Committee	178
Division 1—General	178
146 CAMAC is a body corporate	178
147 Membership	178
148 Functions	179
149 Term of office as member.....	180
150 Resignation	180
151 Termination of appointment.....	180
152 Remuneration and allowances etc.....	180
153 Meetings	181
154 CAMAC to inform itself in any manner	181
155 Publication of advice or recommendations	181
Division 2—Staff and finance	182
156 Staff	182

157	Consultants etc.....	182
158	Staff seconded to CAMAC	182
159	Payments to CAMAC by Commonwealth	183
160	CAMAC's money	183
161	How CAMAC's money to be applied.....	183
163	Limitation on contracts and leases	184
165	Liability to taxation.....	184
166	CAMAC may accept property on trust	184
167	Trust money to be paid into bank account	185
168	How trust property to be applied.....	185
Part 10—The Takeovers Panel		186
Division 1—General		186
172	Membership	186
173	President	187
174	Functions and powers of Panel	187
175	Term of office as member.....	187
176	Term of office as President.....	187
177	Resignation	188
178	Termination of appointment.....	188
179	Remuneration and allowances	188
180	Leave of absence.....	189
181	Other terms and conditions	189
182	Acting President.....	189
183	Annual report.....	189
Division 2—Conduct of Panel's business		191
184	Constitution of Panel in relation to particular matters.....	191
185	Disclosure of interests by members	192
186	Application of Division 2 of Part 7	193
Division 3—Panel proceedings		194
187	Interpretation.....	194
188	Power to conduct proceedings	194
190	Panel may restrict publication of certain material.....	194
192	Power to summon witnesses and take evidence	195
193	Quorum.....	196
194	Legal representation in proceedings before the Panel.....	196
195	Procedure	196
197	Protection of members etc.....	197
198	Non-compliance with requirements made under section 192.....	197
199	False evidence	197
200	Contempt of Panel	198
201	Powers of Court where non-compliance with section 192.....	199
201A	Undertakings to the Panel	199

Part 11—Companies Auditors and Liquidators Disciplinary Board	200
Division 1—Constitution of Disciplinary Board	200
203 Membership of Disciplinary Board.....	200
204 Functions and powers of Disciplinary Board	201
205 Term of office	201
206 Resignation from office	201
207 Termination of appointment.....	201
208 Acting Chairperson	202
208A Acting Deputy Chairperson	203
210 Meetings of the Disciplinary Board	203
210A Panel to be constituted to deal with application	204
210B Meetings of Panel of the Disciplinary Board	206
211 Disclosure of interests.....	207
212 Remuneration and allowances	207
213 Confidentiality	208
214 Annual report.....	208
Division 2—Hearings by Disciplinary Board	210
215 Definition.....	210
216 Hearings	210
217 Power to summon witnesses and take evidence	212
218 Proceedings at hearings.....	212
219 Failure of witnesses to attend and answer questions	213
220 Contempt of Disciplinary Board	215
221 Protection of members etc.....	215
222 Hearings taken to be judicial proceedings.....	216
223 Costs	216
Part 12—The Australian financial reporting system	219
224 Main objects of this Part	219
Division 1—The financial reporting system	220
225 Functions and powers of the Financial Reporting Council	220
225A Financial Reporting Council’s information gathering powers	224
226 The Australian Accounting Standards Board.....	226
227 AASB’s functions and powers	227
227A The Auditing and Assurance Standards Board.....	228
227B AUASB’s functions and powers	229
Division 2—Accounting standards	231
228 Purposive interpretation of standards	231
229 Generic and specific standards.....	231
230 Comparative amounts	232
231 Cost/benefit analysis	232

232	FRC views	232
233	International accounting standards.....	233
234	Validity of accounting standards.....	233
Division 2A—Auditing standards		234
234A	Purposive interpretation of standards.....	234
234B	Generic and specific standards.....	234
234C	FRC views	234
234D	International auditing standards.....	235
234E	Validity of auditing standards.....	235
Division 3—Administrative provisions		236
Subdivision A—The Financial Reporting Council		236
235A	Membership of FRC	236
235B	Annual report.....	236
235BA	Report on auditor independence functions.....	237
235C	Procedure.....	237
Subdivision B—The Australian Accounting Standards Board		237
236A	Procedures.....	237
236B	Appointment of members of the AASB.....	238
236C	Resignation and termination of appointment	239
236D	Acting appointments.....	240
Subdivision BA—The Auditing and Assurance Standards Board		241
236E	Procedures.....	241
236F	Appointment of members of the AUASB.....	242
236G	Resignation and termination of appointment	243
236H	Acting appointments.....	244
Subdivision C—Confidentiality		245
237	Confidentiality.....	245
Subdivision D—Financial matters		245
238	Application of money	245
Part 13—Financial Reporting Panel		247
Division 1—General		247
239AA	Financial Reporting Panel.....	247
239AB	Membership.....	247
239AC	Chairperson.....	247
239AD	Functions and powers of Financial Reporting Panel.....	248
239AE	Term of office as member.....	248
239AF	Term of office as Chairperson	248
239AG	Resignation	248
239AH	Termination of appointment.....	248

239AI	Remuneration and allowances	249
239AJ	Leave of absence.....	249
239AK	Other terms and conditions	249
239AL	Acting Chairperson	249
239AM	Annual report	250
Division 2—Conduct of Financial Reporting Panel’s business		251
239BA	Constitution of Financial Reporting Panel in relation to particular matters	251
239BB	Disclosure of interests by members	252
239BC	Application of Division 2 of Part 7	253
Division 3—Financial Reporting Panel proceedings		254
239CA	Interpretation.....	254
239CB	Power to conduct proceedings	254
239CC	Financial Reporting Panel proceedings.....	255
239CD	Financial Reporting Panel may restrict publication of certain material	256
239CE	Power to summon witnesses and take evidence	257
239CF	Quorum.....	258
239CG	No legal representation in proceedings before the Financial Reporting Panel.....	259
239CH	Procedure	259
239CI	Protection of members etc.....	260
239CJ	Non-compliance with requirements made under section 239CE	260
239CK	Contempt of Financial Reporting Panel	260
239CL	Powers of Court where non-compliance with section 239CE	261
Part 14—The Parliamentary Joint Committee on Corporations and Financial Services		262
241	Membership	262
242	Powers and proceedings.....	263
243	Duties.....	263
Part 15—Miscellaneous		264
243B	Offences committed partly in and partly out of the jurisdiction	264
243D	Financial transaction reports	264
244	Review by Administrative Appeals Tribunal of certain decisions	265
244A	Notice of reviewable decision and review rights	265
245	Validity of certain actions	266
246	Liability for damages	266
247	Duplicate seals	267
248	Judicial notice of ASIC’s seal and members’ signatures	268

251	The regulations	268
Part 16—Transition from the old ASIC legislation		269
Division 1—Preliminary		269
253	Object of Part.....	269
254	Definitions	270
255	Relationship of Part with State validation Acts.....	274
256	References to things taken or deemed to be the case etc.....	275
257	Existence of several versions of the old ASIC legislation does not result in this Part operating to take the same thing to be done several times under the new ASIC legislation etc.....	275
258	Penalty units in respect of pre-commencement conduct remain at \$100	276
259	Ceasing to be a referring State does not affect previous operation of this Part.....	276
Division 2—Carrying over bodies established etc. or persons appointed under the old ASIC Act		278
260	Division has effect subject to Division 7 regulations.....	278
261	Carrying over bodies established under the old ASIC Act.....	278
262	Carrying over the Chairman and Deputy Chairman of the Financial Reporting Council	278
Division 3—Carrying over the old ASIC Regulations		279
263	Division has effect subject to Division 7 regulations.....	279
264	Old ASIC Regulations continue to have effect	279
Division 4—Court proceedings and orders		280
265	Division has effect subject to Division 7 regulations.....	280
266	Definitions	280
267	Treatment of court proceedings under or related to the old ASIC legislation—proceedings other than federal ASIC proceedings	282
268	Treatment of court proceedings under or related to the old ASIC legislation—federal ASIC proceedings.....	284
268A	Appeals etc. in relation to some former federal corporations proceedings	286
268B	Effect of decisions and orders made in federal corporations proceedings before commencement.....	286
269	References to proceedings and orders in the new ASIC legislation.....	287
Division 5—Functions and powers of ASIC		289
270	Division has effect subject to Division 7 regulations.....	289
271	Non-federal proceedings etc.	289
272	NCSC’s functions and powers	290

Division 6—General transitional provisions relating to other things done etc. under the old ASIC legislation	291
273 Provisions in this Division have effect subject to the other Divisions	291
274 Provisions of this Division may have an overlapping effect	292
275 Things done by etc. carried over provisions continue to have effect	292
276 Creation of equivalent rights and liabilities to those that existed before the commencement under carried over provisions of the old ASIC legislation	294
277 Creation of equivalent rights and liabilities to those that existed before the commencement under repealed provisions of the old ASIC legislation.....	295
278 Old ASIC legislation time limits continue to run.....	296
279 Preservation of significance etc. of events or circumstances	297
280 References in the new ASIC legislation generally include references to events, circumstances or things that happened or arose before the commencement.....	298
281 References in the new ASIC legislation to that legislation or the new corporations legislation generally include references to corresponding provisions of the old ASIC legislation or old corporations legislation.....	298
282 Carrying over references to corresponding previous laws or relevant previous laws.....	299
283 References to ASIC legislation in instruments.....	300
284 Old transitional provisions continue to have their effect.....	301
Division 7—Regulations dealing with transitional matters	304
285 Regulations may deal with transitional matters.....	304
Part 17—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004	305
285A Definitions	305
286 Application of new subsection 225A(5).....	305
287 Application of Part 8 of Schedule 1 to the amending Act	305
288 Application of Schedule 3 to the amending Act.....	306
Notes	307

An Act to provide for the Australian Securities and Investments Commission, a Corporations and Markets Advisory Committee and certain other bodies, and for other purposes

Part 1—Preliminary

Division 1—Objects

1 Objects

- (1) The objects of this Act are:
 - (a) to provide for the Australian Securities and Investments Commission (*ASIC*) which will administer such laws of the Commonwealth, a State or a Territory as confer functions and powers under those laws on ASIC; and
 - (b) to provide for ASIC's functions, powers and business; and
 - (c) to establish a Corporations and Markets Advisory Committee to provide informed and expert advice to the Minister about the content, operation and administration of the corporations legislation (other than the excluded provisions), about corporations and about financial products and financial markets; and
 - (d) to establish a Takeovers Panel, a Companies Auditors and Liquidators Disciplinary Board, a Financial Reporting Council, an Australian Accounting Standards Board, an Auditing and Assurance Standards Board, a Financial Reporting Panel and a Parliamentary Joint Committee on Corporations and Financial Services.
- (2) In performing its functions and exercising its powers, ASIC must strive to:
 - (a) maintain, facilitate and improve the performance of the financial system and the entities within that system in the interests of commercial certainty, reducing business costs, and the efficiency and development of the economy; and

Section 1

- (b) promote the confident and informed participation of investors and consumers in the financial system; and
 - (d) administer the laws that confer functions and powers on it effectively and with a minimum of procedural requirements; and
 - (e) receive, process and store, efficiently and quickly, the information given to ASIC under the laws that confer functions and powers on it; and
 - (f) ensure that information is available as soon as practicable for access by the public; and
 - (g) take whatever action it can take, and is necessary, in order to enforce and give effect to the laws of the Commonwealth that confer functions and powers on it.
- (3) This Act has effect, and is to be interpreted, accordingly.

Division 2—Citation

1A Short title [see Note 1]

This Act may be cited as the *Australian Securities and Investments Commission Act 2001*.

Division 3—Commencement and application

2 Commencement [*see* Note 1]

This Act commences at the same time as the *Corporations Act 2001*.

4 Application of this Act

- (1) This Act applies:
 - (a) in this jurisdiction; and
 - (b) in a State that is not a referring State (but only to the extent to which the application would be within the legislative powers of the Parliament (including powers it has under paragraphs 51(xxxvii) and (xxxix) of the Constitution)); and
 - (c) in such external Territories (if any) as are prescribed.
- (2) Without limiting paragraph (1)(c), if an external Territory is prescribed, regulations prescribing the external Territory may provide:
 - (a) that only some of the provisions of this Act apply in the external Territory; and
 - (b) that provisions that apply in the external Territory only apply in specified circumstances.
- (3) If:
 - (a) an external Territory is prescribed; and
 - (b) in a provision of this Act that applies (either generally or in particular circumstances) in the external Territory, there is:
 - (i) a reference to “Australia” or “this jurisdiction”; or
 - (ii) a reference to a term the definition of which includes a reference to “Australia” or “this jurisdiction”;then, unless a contrary intention appears, the reference to “Australia” or “this jurisdiction” in that provision as so applying, or in that definition as applying for the purposes of that provision as so applying, includes a reference to that external Territory.

4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 4—Interpretation

5 Interpretation

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

AASB means the Australian Accounting Standards Board.

absent from office, in relation to a holder of an office, means:

- (a) absent from duty or from Australia; or
- (b) unable, for any reason, to perform the functions of the office.

accounting member of the Disciplinary Board has the meaning given by subsection 203(1A).

affairs, in relation to a body corporate, has the same meaning as in section 232 of the Corporations Act.

APRA means the Australian Prudential Regulation Authority.

ASIC means the Australian Securities and Investments Commission.

ASIC delegate means a person to whom, or a body to which, a function or power is delegated under section 102.

assist, in relation to an ASIC delegate, means:

- (a) to perform functions:
 - (i) as a member, officer or employee of the ASIC delegate; and
 - (ii) in connection with the ASIC delegate's performance or exercise of a function or power delegated under section 102; or
- (b) to perform services for the ASIC delegate in connection with the ASIC delegate's performance or exercise of a function or power delegated under section 102.

AUASB means the Auditing and Assurance Standards Board.

auditor independence requirements means the auditor independence requirements provided for in:

- (a) the Corporations Act; and
- (b) the codes of professional conduct.

Australia has a meaning affected by subsection 4(3).

Australian auditor means:

- (a) an individual auditor; or
- (b) an audit firm; or
- (c) an audit company;

that is conducting, or that has conducted, audits undertaken for the purposes of the Corporations Act and includes a registered company auditor who is participating in, or has participated in, audits of that kind.

books includes:

- (a) a register; and
- (b) financial reports or financial records, however compiled, recorded or stored; and
- (c) a document; and
- (d) banker's books; and
- (e) any other record of information.

business member of the Disciplinary Board has the meaning given by subsection 203(1A).

CAMAC means the Corporations and Markets Advisory Committee.

Chairperson means:

- (a) except in Part 11 or in relation to the Disciplinary Board—the Chairperson of ASIC; and
- (b) in Part 11 or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board.

contravention, in relation to a law, includes an ancillary offence relating to an offence against that law.

Convenor means the Convenor of CAMAC.

Corporations Act means the *Corporations Act 2001* and regulations made under that Act.

Section 5

corporations legislation means:

- (a) this Act; and
- (b) the Corporations Act.

court, except in section 248, includes a tribunal having power to require the production of documents or the answering of questions.

CPAA member of the Disciplinary Board has the meaning given by subsection 203(1A).

Deputy Chairperson means the Deputy Chairperson of ASIC.

Disciplinary Board means the Companies Auditors and Liquidators Disciplinary Board.

eligible employee has the same meaning as in the *Superannuation Act 1976*.

eligible person, in relation to a person, means a person who:

- (a) if the first-mentioned person is a body corporate—is or has been an officer of the body within the meaning of the corporations legislation (other than the excluded provisions); or
- (b) in any case:
 - (i) is or has been an employee, agent, banker, solicitor or auditor of; or
 - (ii) is acting, or has acted, in any other capacity on behalf of;the first-mentioned person.

engage in conduct:

- (a) in Division 2 of Part 2—has the meaning given by subsection 12BA(2); and
- (b) in the other provisions of this Act—means do an act or omit to do an act.

examination means an examination of a person pursuant to a requirement made under section 19.

excluded provisions means section 12A and Division 2 of Part 2.

expenses, in relation to an investigation under Division 1 of Part 3, includes costs and expenses incurred in relation to a proceeding begun under section 50 as a result of the investigation.

fail means refuse or fail.

financial product:

- (a) in Division 2 of Part 2—has the meaning given by section 12BAA; and
- (b) in the other provisions of this Act—has the same meaning as it has in Chapter 7 of the Corporations Act.

financial service:

- (a) in Division 2 of Part 2—has the meaning given by section 12BAB; and
- (b) in the other provisions of this Act—has the same meaning as it has in Chapter 7 of the Corporations Act.

foreign country includes:

- (a) a part of a foreign country; and
- (b) when used in a provision of this Act that does not apply (either generally or in particular circumstances) to a particular external Territory—that external Territory (but only to the extent that the provision does not apply in that external Territory).

FRC means the Financial Reporting Council.

give has:

- (a) in relation to a document—a meaning affected by section 86; and
- (b) in relation to information—a meaning affected by section 6.

hearing, in this section and Part 3, means a hearing before ASIC and, in sections 52, 54, 55 and 56, includes a part of such a hearing.

House means a House of the Parliament.

ICAA member of the Disciplinary Board has the meaning given by subsection 203(1A).

information has a meaning affected by section 6.

Section 5

international accounting standards means accounting standards made by:

- (a) the International Accounting Standards Board; or
- (b) another body specified by the regulations.

international auditing standards means auditing standards made by:

- (a) the International Auditing and Assurance Standards Board; or
- (b) another body specified by the regulations.

investigate, in relation to ASIC, means investigate in the course of performing or exercising any of ASIC's functions and powers.

meeting means:

- (a) in Part 4—a meeting of ASIC;
- (b) in Part 9—a meeting of CAMAC;
- (c) in Part 11—a meeting of the Disciplinary Board.

member means:

- (a) except in Division 2 of Part 4, in Part 9, 10, 11, 12 or 14, or in relation to a Division, CAMAC, the Panel, the Disciplinary Board, the FRC, the AASB or the Parliamentary Committee—a member of ASIC; and
- (b) in Part 9 or in relation to CAMAC—a member of CAMAC; and
- (c) in Part 10 or in relation to the Panel—a member of the Panel; and
- (d) in Part 11 or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board; and
- (e) in relation to the FRC—a member of the FRC; and
- (ea) in relation to the AASB—a member of the AASB; and
- (eb) in relation to the AUASB—a member of the AUASB; and
- (f) in Part 14 or in relation to the Parliamentary Committee—a member of the Parliamentary Committee.

officer means:

- (a) an officer within the meaning of the Corporations Act; or
- (b) a provisional liquidator.

Panel means the Takeovers Panel.

Panel of the Disciplinary Board means a Panel constituted by the Chairperson of the Disciplinary Board under section 210A to hear a particular matter.

Panel proceedings means proceedings before the Panel on:

- (a) an application made to the Panel under the Corporations Act;
or
- (b) a reference of a decision to the Panel for review under the Corporations Act.

Parliamentary Committee means the Parliamentary Joint Committee on Corporations and Financial Services.

power includes an authority.

prescribed means prescribed by this Act or the regulations.

President means the President of the Panel.

proceeding means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal;

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature.

produce, except in Part 3, includes permit access to.

professional accounting body means a body prescribed by the regulations for the purposes of this definition.

property means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and money.

record, in relation to an examination, means the whole or a part of a record made under section 24 of statements made at the examination.

regulations means regulations made under this Act.

Section 5

report includes an interim report.

staff member means:

- (a) a member of the staff referred to in subsection 120(1) or a person employed under subsection 120(3); or
- (b) a person engaged under subsection 121(1); or
- (c) any of the officers, employees and persons who under section 122 are to assist ASIC.

statement, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination.

superannuation benefits includes:

- (a) benefits in the nature of superannuation benefits; and
- (b) benefits similar to benefits provided under the *Superannuation Act 1976*; and
- (c) benefits similar to the benefits provided under the *Superannuation Act 1990*.

Territory has the meaning given by the following paragraphs:

- (a) a reference in a provision of this Act to a Territory covers the Capital Territory and the Northern Territory;
- (b) if the reference is in a provision of this Act that applies (either generally or in particular circumstances) to a particular external Territory—the reference also covers that external Territory, but only to the extent that the provision applies in that external Territory;
- (c) if the reference is to a Territory in a geographical sense—the reference also covers, for each Territory that the reference covers because of paragraph (a) or (b), to the same extent that the reference covers the Territory, that Territory's coastal sea.

this Act includes the regulations.

this jurisdiction means:

- (a) each referring State (including its coastal sea); and
- (b) the Capital Territory (including the coastal sea of the Jervis Bay Territory); and
- (c) the Northern Territory (including its coastal sea).

Its meaning is also affected by subsection 4(3) (relating to external Territories).

tribunal means:

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence.

trust money means money ASIC receives or holds on trust.

witness:

- (a) in relation to a hearing before ASIC, means a person appearing at the hearing to give evidence; or
- (b) in relation to Panel proceedings, means a person appearing in the proceedings to give evidence.

written record, in relation to an examination, means:

- (a) a record of the examination:
 - (i) that is made in writing; or
 - (ii) as reduced to writing; or
- (b) a part of such a record.

(2) Unless the contrary intention appears:

- (a) an expression that:
 - (i) is used, but not defined, in this Act; and
 - (ii) is defined in section 761A of the Corporations Act (regardless of whether it is also defined in another section of that Act);has the same meaning in this Act as in section 761A of the Corporations Act; and
- (b) an expression that:
 - (i) is used, but not defined, in this Act; and
 - (ii) is not defined in section 761A of the Corporations Act; and
 - (ii) is used in the Corporations Act;has the same meaning in this Act as in the Corporations Act.

Section 5A

- (3) Except so far as the contrary intention appears in this Act, Parts 1.2 and 1.3 of the Corporations Act apply for the purposes of this Act as if the provisions of this Act were provisions of that Act.

5A Application of the *Acts Interpretation Act 1901*

- (1) Until the date of commencement of section 4 of the *Legislative Instruments (Transitional and Consequential Amendments) Act 2003* (the ***Legislative Instruments commencement day***), the *Acts Interpretation Act 1901* as in force on 1 November 2000 applies to this Act.
- (2) On and after the Legislative Instruments commencement day, the *Acts Interpretation Act 1901* as in force on that day applies to this Act.
- (3) Amendments of the *Acts Interpretation Act 1901* made after the Legislative Instruments commencement day do not apply to this Act.

6 Giving information

A reference in this Act to giving information includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

Part 2—Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 1—Australian Securities and Investments Commission

8 ASIC is a body corporate

ASIC:

- (a) is a body corporate, with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold and dispose of real and personal property;
and
- (d) may sue and be sued in its corporate name.

Note 1: ASIC was established by section 7 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to ASIC. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

9 Membership

- (1) ASIC is to consist of not fewer than 3 nor more than 8 members.
- (2) The Governor-General appoints the members on the nomination of the Minister.
- (3) At least 3 of the members must be appointed as full-time members and each of the remaining members (if any) may be appointed as a full-time member or as a part-time member.
- (4) The Minister is to nominate a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely:

Section 10

- (a) business;
 - (b) administration of companies;
 - (c) financial markets;
 - (d) financial products and financial services;
 - (e) law;
 - (f) economics;
 - (g) accounting.
- (5) The performance of ASIC's functions or the exercise of ASIC's powers is not affected by reason only that the number of members, or the number of full-time members, is less than 3 unless a continuous period of 3 months has elapsed since the number of members, or the number of full-time members, as the case may be, fell below 3.
- (6) For the purposes of subsection (5), an acting member is taken to be a member.

10 Chairperson and Deputy Chairperson

The Governor-General is to appoint as Chairperson of ASIC a person who is, or is to be, a full-time member and may appoint as Deputy Chairperson of ASIC a person (other than the Chairperson) who is, or is to be, a full-time member.

Note: For the manner in which the Chairperson and Deputy Chairperson may be referred to, see section 18B of the *Acts Interpretation Act 1901*.

11 Corporations legislation functions and powers and other functions and powers conferred by the States and Territories

- (1) ASIC has such functions and powers as are conferred on it by or under the corporations legislation (other than the excluded provisions).
- (2) ASIC also has the following functions:
- (a) to provide such staff and support facilities to the Panel, the Disciplinary Board and the Review Board as are necessary or desirable for the performance and exercise by the Panel, the

Section 11

Disciplinary Board and the Review Board of their respective functions and powers;

- (b) to advise the Minister about any changes to the corporations legislation (other than the excluded provisions) that, in ASIC's opinion, are needed to overcome, or would assist in overcoming, any problems that ASIC has encountered in the course of performing or exercising any of its functions and powers.
- (3) ASIC may, on its own initiative or when requested by the Minister, advise the Minister, and make to the Minister such recommendations as it thinks fit, about any matter of a kind referred to in section 148.
- (4) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.
- (6) Subject to this Act, ASIC has the general administration of this Act.
- (8) ASIC may, with the consent of the Minister, enter into an agreement or arrangement with a State or Territory for the performance of functions or the exercise of powers by ASIC as an agent of the State or Territory.
- (9) ASIC has such functions and powers as are referred to in such an agreement or arrangement. However, ASIC is not under a duty to perform such functions or exercise such powers.
- (9A) ASIC may have functions or powers conferred on it by or under a law of a State or Territory if:
 - (a) that law provides for, or relates to, the repeal, amendment or termination (however described) of the operation of, any of the replaced legislation within the meaning of item 22 of Schedule 8 to the *Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999*; and
 - (b) the conferral of the powers or functions is in accordance with:
 - (i) provisions of an agreement entered into by the Commonwealth and the State or Territory, being provisions approved by the Minister for the purposes of this subsection; or

Section 12

- (ii) an approval given by the Minister for the purposes of this subsection.

ASIC has the functions and powers so conferred by that law. However, ASIC is not under a duty to perform such functions or exercise such powers.

- (9B) ASIC is not subject to any directions of the Minister in relation to:
 - (a) entering an agreement under subsection 11(8); or
 - (b) performing functions or exercising powers referred to in subsection 11(9); or
 - (c) performing functions or exercising powers conferred under subsection 11(9A).

12 Directions by Minister

- (1) The Minister may give ASIC a written direction about policies it should pursue, or priorities it should follow, in performing or exercising any of its functions or powers under the corporations legislation (other than the excluded provisions).
- (2) The Minister must not give a direction under subsection (1) unless he or she has:
 - (a) notified ASIC in writing that he or she is considering giving the direction; and
 - (b) given the Chairperson an adequate opportunity to discuss with the Minister the need for the proposed direction.
- (3) The Minister must not give a direction under subsection (1) about a particular case.
- (4) ASIC must comply with a direction under subsection (1).
- (5) The Minister must cause a copy of an instrument under subsection (1):
 - (a) to be published in the *Gazette* within 21 days after the instrument is made; and
 - (b) to be laid before each House of the Parliament within 15 sitting days of that House after the publication;but failure of the Minister to do so does not affect the instrument's validity.

12A Other functions and powers

- (1) ASIC has the functions and powers that are conferred on it by or under Division 2 of Part 2 of this Act and by or under the following Acts:
 - (c) the *Insurance Contracts Act 1984*;
 - (d) the *Superannuation (Resolution of Complaints) Act 1993*;
 - (e) the *Life Insurance Act 1995*;
 - (f) the *Retirement Savings Accounts Act 1997*;
 - (g) the *Superannuation Industry (Supervision) Act 1993*.
- (2) ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the Australian financial system.
- (3) ASIC has the function of monitoring and promoting market integrity and consumer protection in relation to the payments system by:
 - (a) promoting the adoption of approved industry standards and codes of practice; and
 - (b) promoting the protection of consumer interests; and
 - (c) promoting community awareness of payments system issues; and
 - (d) promoting sound customer-banker relationships, including through:
 - (i) monitoring the operation of industry standards and codes of practice; and
 - (ii) monitoring compliance with such standards and codes.
- (4) Subsections (2) and (3) confer functions and powers to the extent to which they are not in excess of the legislative power of the Commonwealth.
- (5) ASIC may:
 - (a) advise the Minister about any changes to a law listed in subsection (1) that ASIC thinks are needed to help overcome any problems that ASIC has encountered in the course of performing its functions or exercising any of its powers under that law; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 1 Australian Securities and Investments Commission

Section 12A

- (b) advise the Minister and make such recommendations as it thinks fit about any matter relating to its functions in subsections (2) and (3).
- (6) ASIC has power to do whatever is necessary for or in connection with, or reasonably incidental to, the performance of its functions.

Division 2—Unconscionable conduct and consumer protection in relation to financial services

Subdivision A—Application

12AC Division extends to some conduct outside Australia

- (1) This Division extends to the engaging in conduct outside Australia by:
 - (a) bodies corporate incorporated or carrying on business within Australia; or
 - (b) Australian citizens; or
 - (c) persons ordinarily resident within Australia.
- (2) If a claim under section 12GF is made in a proceeding, a person may rely at a hearing in respect of that proceeding on conduct to which a provision of this Division extends because of subsection (1) of this section only if the Minister consents in writing to the reliance.
- (3) A person other than the Minister or ASIC may apply to the Court for an order under subsection 12GM(1) or (2) in a proceeding in respect of conduct to which a provision of this Division extends because of subsection (1) of this section only if the Minister consents in writing to the application.
- (4) The Minister must give a consent under subsection (2) or (3) in respect of a proceeding unless, in the Minister's opinion:
 - (a) the law of the country in which the conduct concerned was engaged in required or specifically authorised the engaging in of the conduct; and
 - (b) it is not in the national interest to give the consent.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12AD

12AD Application of Division to Commonwealth and Commonwealth authorities

- (1) Subject to this section, this Division binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth carries on a business, either directly or by an authority of the Commonwealth.
- (3) Nothing in this Division makes the Crown in right of the Commonwealth liable to a pecuniary penalty or to be prosecuted for an offence.
- (4) The protection in subsection (3) does not apply to an authority of the Commonwealth.
- (5) For the purposes of this section, the following transactions do not amount to carrying on a business:
 - (a) a transaction involving only persons who are all acting for the Crown in right of the Commonwealth (and none of whom is an authority of the Commonwealth);
 - (b) a transaction involving only persons who are all acting for the same authority of the Commonwealth;
 - (c) a transaction involving only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth;
 - (d) a transaction involving only non-commercial authorities of the Commonwealth.
- (6) Subsection (5) does not limit the things that do not amount to carrying on a business for the purposes of this section.
- (7) For the purposes of this section, an authority of the Commonwealth is **non-commercial** if:
 - (a) it is constituted by only one person; and
 - (b) it is neither a trading corporation nor a financial corporation.

12AE Saving of other laws and remedies

- (1) Except as provided by subsection (2), Subdivision C (sections 12CA to 12CC), Subdivision D (sections 12DA to 12DN)
-

Section 12BA

and Subdivision E (sections 12EA to 12ED) are not intended to exclude or limit the concurrent operation of any law of a State or Territory.

- (2) If:
- (a) an act or omission of a person is both an offence against section 12GB and an offence under the law of a State or Territory; and
 - (b) the person is convicted of either of those offences;
- the person is not liable to be convicted of the other of those offences.
- (3) Except as expressly provided by Subdivision C (sections 12CA to 12CC), Subdivision D (sections 12DA to 12DN) or Subdivision E (sections 12EA to 12ED), nothing in those Subdivisions is taken to limit, restrict or otherwise affect any right or remedy a person would have had if that Subdivision had not been enacted.
- (4) This Division does not affect the operation of:
- (a) the law relating to restraint of trade in so far as that law is capable of operating concurrently with this Division; or
 - (b) the law relating to breaches of confidence;
- but nothing in the law referred to in paragraph (a) or (b) affects the interpretation of this Division.

Subdivision B—Interpretation

12BA Interpretation

- (1) In this Division, unless the contrary intention appears:
- acquire*, in relation to services, includes accept.
- acquisition* of services has the meaning given by section 12BD.
- authority*, in relation to a State or Territory (including an external Territory), means:
- (a) a body corporate established for a purpose of the State or the Territory by or under a law of the State or Territory; or

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BA

- (b) an incorporated company in which the State or the Territory, or a body corporate referred to in paragraph (a), has a controlling interest.

authority of the Commonwealth means:

- (a) a body corporate established for a purpose of the Commonwealth by or under a law of the Commonwealth or a law of a Territory; or
- (b) an incorporated company in which the Commonwealth, or a body corporate referred to in paragraph (a), has a controlling interest.

business includes a business not carried on for profit.

conduct has the meaning given by subsection (2).

consumer has the meaning given by section 12BC.

contract has the meaning given by section 12BE.

covenant means a covenant (including a promise not under seal) annexed to or running with an estate or interest in land (whether at law or in equity and whether or not for the benefit of other land) and **proposed covenant** has a corresponding meaning.

engage in conduct has the meaning given by subsection (2).

Family Court Judge means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge).

financial corporation:

- (a) means a financial corporation within the meaning of paragraph 51(xx) of the Constitution; and
- (b) includes a body corporate that carries on as its sole or principal business the business of:
 - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned).

financial product has the meaning given by section 12BAA.

financial service has the meaning given by section 12BAB.

misleading has the meaning given by section 12BB.

price includes a charge of any description.

provision, in relation to an understanding, means any matter forming part of the understanding.

re-supply of services has the meaning given by section 12BD.

send includes deliver, and ***sent*** and ***sender*** have corresponding meanings.

services includes any rights (including rights in relation to, and interests in, real or personal property), benefits, privileges or facilities that are, or are to be, provided, granted or conferred in trade or commerce but does not include:

- (a) the supply of goods within the meaning of the *Trade Practices Act 1974*; or
- (b) the performance of work under a contract of service.

supply:

- (a) includes provide, grant or confer when used as a verb in relation to services; and
- (b) has a corresponding meaning when used as a noun; and ***supplied*** and ***supplier*** have corresponding meanings.

supply of services has the meaning given by section 12BD.

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

trade or commerce means trade or commerce within Australia or between Australia and places outside Australia.

trading corporation means a trading corporation within the meaning of paragraph 51(xx) of the Constitution.

unsolicited financial services means financial services supplied to a person without any request made by the person or on the person's behalf.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BAA

- (2) In this Division:
- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including:
 - (i) making, or giving effect to a provision of, a contract or arrangement; or
 - (ii) arriving at, or giving effect to a provision of, an understanding; or
 - (iii) requiring the giving of, or giving, a covenant; and
 - (b) a reference to conduct, when that expression is used as a noun otherwise than as mentioned in paragraph (a), is a reference to doing or refusing to do any act, including:
 - (i) making, or giving effect to a provision of, a contract or arrangement; or
 - (ii) arriving at, or giving effect to a provision of, an understanding; or
 - (iii) requiring the giving of, or giving, a covenant; and
 - (c) a reference to refusing to do an act includes a reference to:
 - (i) refraining (otherwise than inadvertently) from doing that act; or
 - (ii) making it known that that act will not be done; and
 - (d) a reference to a person offering to do an act, or to do an act on a particular condition, includes a reference to the person making it known that the person will accept applications, offers or proposals for the person to do that act or to do that act on that condition, as the case may be.

12BAA Definition of *financial product*

General definition of financial product

- (1) Subject to subsection (8), for the purposes of this Division, a ***financial product*** is a facility through which, or through the acquisition of which, a person does one or more of the following:
- (a) makes a financial investment (see subsection (4));
 - (b) manages financial risk (see subsection (5));
 - (c) makes non-cash payments (see subsection (6)).

Section 12BAA

- (2) Subject to subsection (8), for the purposes of this Division, a particular facility that is of a kind through which people commonly make financial investments, manage financial risks or make non-cash payments is a **financial product** even if that facility is acquired by a particular person for some other purpose.
- (3) A facility does not cease to be a financial product merely because:
- (a) the facility has been acquired by a person other than the person to whom it was originally issued; and
 - (b) that person, in acquiring the product, was not making a financial investment or managing a financial risk.

Meaning of makes a financial investment

- (4) For the purposes of this section, a person (the **investor**) **makes a financial investment** if:
- (a) the investor gives money or money's worth (the **contribution**) to another person and any of the following apply:
 - (i) the other person uses the contribution to generate a financial return, or other benefit, for the investor;
 - (ii) the investor intends that the other person will use the contribution to generate a financial return, or other benefit, for the investor (even if no return or benefit is in fact generated);
 - (iii) the other person intends that the contribution will be used to generate a financial return, or other benefit, for the investor; and
 - (b) the investor has no day-to-day control over the use of the contribution to generate the return or benefit.

Note 1: Examples of actions that constitute making a financial investment under this subsection are:

- (a) a person paying money to a company for the issue to the person of shares in the company (the company uses the money to generate dividends for the person and the person, as a shareholder, does not have control over the day-to-day affairs of the company); or
- (b) a person contributing money to acquire interests in a registered scheme from the responsible entity of the scheme (the scheme uses the money to generate financial or other benefits for the

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BAA

person and the person, as a member of the scheme, does not have day-to-day control over the operation of the scheme).

Note 2: Examples of actions that do not constitute making a financial investment under this subsection are:

- (a) a person purchasing real property or bullion (while the property or bullion may generate a return for the person, it is not a return generated by the use of the purchase money by another person); or
- (b) a person giving money to a financial services licensee who is to use it to purchase shares for the person (while the purchase of the shares will be a financial investment made by the person, the mere act of giving the money to the licensee will not of itself constitute making a financial investment).

Meaning of manages a financial risk

- (5) For the purposes of this section, a person ***manages financial risk*** if they:
- (a) manage the financial consequences to them of particular circumstances happening; or
 - (b) avoid or limit the financial consequences of fluctuations in, or in the value of, receipts or costs (including prices and interest rates).

Note 1: Examples of actions that constitute managing a financial risk are:

- (a) taking out insurance; or
- (b) hedging a liability by acquiring a futures contract or entering into a currency swap.

Note 2: An example of an action that does not constitute managing a financial risk is employing a security firm (while that is a way of managing the risk that thefts will happen, it is not a way of managing the financial consequences if thefts do occur).

Meaning of makes non-cash payments

- (6) For the purposes of this section, a person ***makes non-cash payments*** if they make payments, or cause payments to be made, otherwise than by the physical delivery of Australian currency in the form of notes and/or coins.

Note: Examples of actions that constitute making non-cash payments are:

- (a) making payments by means of a facility for direct debit of a deposit account; or

Section 12BAA

- (b) making payments by means of a facility for the use of cheques;
or
- (c) making payments by means of a purchased payment facility
within the meaning of the *Payment Systems (Regulation) Act
1998*, such as a smart card; or
- (d) making payments by means of traveller's cheques in Australian
currency.

*Specific things that are **financial products** (subject to
subsection (8))*

- (7) Subject to subsection (8), the following are **financial products** for
the purposes of this Division:
- (a) a security;
 - (b) any of the following in relation to a managed investment
scheme:
 - (i) an interest in the scheme;
 - (ii) a legal or equitable right or interest in an interest
covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right
covered by subparagraph (i) or (ii);
 - (c) a derivative;
 - (d) a contract of insurance (see subsection (9)) (except health
insurance provided as part of a health insurance business as
defined by subsection 67(4) of the *National Health Act
1953*);
 - (e) a life policy, or a sinking fund policy, within the meaning of
the *Life Insurance Act 1995*, that is not a contract of
insurance (see subsection (9));
 - (f) a beneficial interest in a superannuation fund (as defined by
section 10 of the *Superannuation Industry (Supervision) Act
1993*);
 - (g) an RSA (retirement savings account) within the meaning of
the *Retirement Savings Accounts Act 1997*;
 - (h) any deposit-taking facility made available by an ADI (within
the meaning of the *Banking Act 1959*) in the course of its
banking business (within the meaning of that Act), other than
an RSA (RSAs are covered by paragraph (g));

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BAA

- (i) a debenture, stock or bond issued or proposed to be issued by a government;
- (j) a foreign exchange contract;
- (k) a credit facility (within the meaning of the regulations);
- (m) anything declared by the regulations to be a financial product for the purposes of this subsection.

Note: Even though something is expressly excluded from one of these paragraphs, it may still be a financial product (subject to subsection (8)) either because:

- (a) it is covered by another of these paragraphs; or
- (b) it is covered by the general definition in subsection (1).

Specific things that are not financial products

(8) Despite anything else in this section, the following are not **financial products** for the purposes of this Division:

- (a) an excluded security;
- (b) health insurance provided as part of a health insurance business (as defined in subsection 67(4) of the *National Health Act 1953*);
- (c) State insurance or Northern Territory insurance, including insurance entered into by:
 - (i) a State or the Northern Territory; and
 - (ii) some other insurer;as joint insurers;
- (d) a facility:
 - (i) that is an approved RTGS system for the purposes of the *Payment Systems and Netting Act 1998*; or
 - (ii) for the transmission and reconciliation of non-cash payments (see subsection (6)), and the establishment of final positions, for settlement through an approved RTGS system within the meaning of the *Payment Systems and Netting Act 1998*;
- (e) a facility that is a designated payment system for the purposes of the *Payment Systems (Regulation) Act 1998*;
- (f) a facility for the exchange and settlement of non-cash payments (see subsection (6)) between providers of non-cash payment facilities;

Section 12BAA

- (g) a facility that is:
 - (i) a financial market; or
 - (ii) a clearing and settlement facility; or
 - (iii) a payment system operated as part of a clearing and settlement facility;
 - (h) so much of an arrangement as is not a derivative within the meaning of the Corporations Act because of paragraph 761D(3)(a) of that Act;
 - (i) an arrangement that is not a derivative within the meaning of the Corporations Act because of paragraph 761D(3)(b) of that Act;
 - (j) an arrangement that is not a derivative within the meaning of the Corporations Act because of subsection 761D(4) of that Act;
 - (k) any of the following:
 - (i) an interest in something that is not a managed investment scheme within the meaning of the Corporations Act because of paragraph (c), (e), (f), (k), (l) or (m) of the definition of *managed investment scheme* in section 9 of that Act;
 - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
 - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i);
 - (m) a deposit-taking facility that is used for State banking;
 - (n) equipment or infrastructure by which something else that is a financial product is provided;
 - (o) a funeral benefit;
 - (p) a facility, interest or other thing declared by regulations made for the purposes of this subsection not to be a financial product.
- (9) For the purpose of paragraphs (7)(d) and (e), *contract of insurance* includes:
- (a) a contract that would ordinarily be regarded as a contract of insurance even if some of its provisions are not by way of insurance; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BAB

- (b) a contract that includes provisions of insurance in so far as those provisions are concerned, even if the contract would not ordinarily be regarded as a contract of insurance.

12BAB Meaning of *financial service*

When does a person provide a financial service?

- (1) For the purposes of this Division, subject to paragraph (2)(b), a person provides a *financial service* if they:
 - (a) provide financial product advice (see subsection (5)); or
 - (b) deal in a financial product (see subsection (7)); or
 - (c) make a market for a financial product (see subsection (11)); or
 - (d) operate a registered scheme; or
 - (e) provide a custodial or depository service (see subsection (12)); or
 - (f) operate a financial market (see subsection (15)) or clearing and settlement facility (see subsection (17)); or
 - (g) provide a service that is otherwise supplied in relation to a financial product; or
 - (h) engage in conduct of a kind prescribed in regulations made for the purposes of this paragraph.
- (2) The regulations may set out:
 - (a) the circumstances in which persons facilitating the provision of a financial service (for example, by publishing information) are taken also to provide that service; or
 - (b) the circumstances in which persons are taken to provide, or are taken not to provide, a financial service.
- (4) For the purposes of this section, a person is not *operating a registered scheme* merely because:
 - (a) they are acting as an agent or employee of another person; or
 - (b) they are taking steps to wind up the scheme.

Meaning of financial product advice

- (5) For the purposes of this section, **financial product advice** means a recommendation or a statement of opinion, or a report of either of those things, that:
- (a) is intended to influence a person or persons in making a decision in relation to a particular financial product or class of financial products, or an interest in a particular financial product or class of financial products; or
 - (b) could reasonably be regarded as being intended to have such an influence;
- but does not include anything in:
- (c) a document prepared in accordance with requirements of Chapter 7 of the Corporations Act, other than a document of a kind prescribed by regulations made for the purposes of this paragraph; or
 - (d) any other document of a kind prescribed by regulations made for the purposes of this paragraph.
- (6) Advice given by a lawyer in his or her professional capacity about matters of law, legal interpretation or the application of the law to any facts is not **financial product advice**.

Meaning of dealing

- (7) For the purposes of this section, the following conduct constitutes **dealing** in a financial product:
- (a) applying for or acquiring a financial product;
 - (b) issuing a financial product;
 - (c) in relation to securities or managed investment interests—
underwriting the securities or interests;
 - (d) varying a financial product;
 - (e) disposing of a financial product.
- (8) Arranging for a person to engage in conduct referred to in subsection (7) is also **dealing** in a financial product, unless the actions concerned amount to providing financial product advice.
- (9) A person is taken not to **deal** in a financial product if the person deals in the product on their own behalf, unless:

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BAB

- (a) the person is an issuer of financial products; and
 - (b) the dealing is in relation to one or more of those products.
- (10) The regulations may prescribe conduct that is taken to be, or not to be, **dealing** in a financial product. Regulations made for the purposes of this subsection have effect despite anything else in this section.

*Meaning of **makes a market** for a financial product*

- (11) For the purposes of this section, a person **makes a market** for a financial product if:
- (a) either through a facility, at a place or otherwise, the person regularly states the prices at which they propose to acquire or dispose of financial products on their own behalf; and
 - (b) other persons have a reasonable expectation that they will be able to regularly effect transactions at the stated prices; and
 - (c) the actions of the person do not, or would not if they happened through a facility or at a place, constitute operating a financial market because of the effect of paragraph (16)(a).

*Meaning of provide a **custodial or depository service***

- (12) For the purposes of this section, a person (the **provider**) provides a **custodial or depository service** to another person (the **client**) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.
- (14) However, the following conduct does not constitute providing a **custodial or depository service**:
- (a) the operation of a clearing and settlement facility;
 - (b) the operation of a registered scheme, or the holding of the assets of a registered scheme;
 - (c) the operation of a regulated superannuation fund, an approved deposit fund or a pooled superannuation trust

Section 12BAB

(within the meaning of the *Superannuation Industry
(Supervision) Act 1993*);

- (d) the provision of services to a related body corporate;
- (e) any other conduct of a kind prescribed by regulations made for the purposes of this paragraph.

Meaning of financial market

- (15) For the purposes of this section, a **financial market** is a facility through which:
 - (a) offers to acquire or dispose of financial products are regularly made or accepted; or
 - (b) offers or invitations are regularly made to acquire or dispose of financial products that are intended to result or may reasonably be expected to result, directly or indirectly, in:
 - (i) the making of offers to acquire or dispose of financial products; or
 - (ii) the acceptance of such offers.
- (16) However, the following conduct does not constitute operating a **financial market** for the purposes of this section:
 - (a) a person making or accepting offers or invitations to acquire or dispose of financial products on the person's own behalf, or on behalf of one party to the transaction only;
 - (b) conducting treasury operations between related bodies corporate;
 - (c) conducting an auction of forfeited shares;
 - (d) any other conduct of a kind prescribed by regulations made for the purposes of this paragraph.

Meaning of clearing and settlement facility

- (17) For the purposes of this section, a **clearing and settlement facility** is a facility that provides a regular mechanism for the parties to transactions relating to financial products to meet obligations to each other that:
 - (a) arise from entering into the transactions; and
 - (b) are of a kind prescribed by regulations made for the purposes of this paragraph.
-

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12BB

- (18) However, the following conduct does not constitute operating a *clearing and settlement facility* for the purposes of this section:
- (a) an ADI (within the meaning of the *Banking Act 1959*) acting in the ordinary course of its banking business;
 - (b) a person acting on their own behalf, or on behalf of one party to a transaction only;
 - (c) a person who provides financial services to another person dealing with the other person's accounts in the ordinary course of the first person's business activities;
 - (d) the actions of a participant in a clearing and settlement facility who has taken on the delivery or payment obligations, in relation to a particular financial product, of another person who is a party to a transaction relating to a financial product;
 - (e) conducting treasury operations between related bodies corporate;
 - (h) operating a facility for the exchange and settlement of non-cash payments between providers of non-cash payment facilities;
 - (i) any other conduct of a kind prescribed by regulations made for the purposes of this paragraph.

12BB Misleading representations

- (1) For the purposes of Subdivision D (sections 12DA to 12DN), if a person makes a representation about a future matter (including the doing of, or the refusing to do, any act) and the person does not have reasonable grounds for making the representation, the representation is taken to be misleading.
- (2) For the purpose of applying subsection (1) to a proceeding concerning a representation made by a person about a future matter, the person is taken not to have had reasonable grounds for making the representation unless it adduces evidence to the contrary.
- (3) Subsection (1) does not limit by implication the meaning of a reference in this Division to:
 - (a) a misleading representation; or

- (b) a representation that is misleading in a material particular; or
- (c) conduct that is misleading or is likely or liable to mislead.

12BC Consumers

- (1) For the purposes of this Division, unless the contrary intention appears, a person is taken to have acquired particular financial services as a consumer if, and only if:
 - (a) the price of the services did not exceed the prescribed amount; or
 - (b) if the price of the services exceeded the prescribed amount—the services were of a kind ordinarily acquired for personal, domestic or household use; or
 - (c) if the services were acquired for use in connection with a small business (see subsection (2)) and the price of the services exceeded the prescribed amount—the services were of a kind ordinarily acquired for business use.
- (2) For the purposes of subsection (1):

small business means a business employing less than:

 - (a) if the business is or includes the manufacture of goods—100 people; or
 - (b) otherwise—20 people.
- (3) For the purposes of subsection (1):
 - (a) the prescribed amount is:
 - (i) \$40,000; or
 - (ii) if a greater amount is prescribed for the purposes of this paragraph—that greater amount; and
 - (b) subject to paragraph (c), the price of services purchased by a person is taken to have been the amount paid or payable by the person for the services; and
 - (c) if a person purchased services together with other property or services, or with both other property and services, and a specified price was not allocated to the services in the contract under which they were purchased, the price of the services is taken to have been:

Section 12BC

- (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier without the other property or services; or
 - (ii) if, at the time of the acquisition, the services were only available for purchase from the supplier together with the other property or services but, at that time, services of the kind acquired were available for purchase from another supplier without other property or services—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (iii) if, at the time of the acquisition, services of the kind acquired were not available for purchase from any supplier except together with other property or services—the value of the services at that time; and
- (d) if a person acquired services otherwise than by way of purchase, the price of the services is taken to have been:
- (i) the price at which, at the time of the acquisition, the person could have purchased the services from the supplier; or
 - (ii) if, at the time of the acquisition, the services were not available for purchase from the supplier, or were available only together with other property or services, but, at that time, services of the kind acquired were available for purchase from another supplier—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (iii) if services of the kind acquired were not available, at the time of the acquisition, for purchase from any supplier, or were not available except together with other property or services—the value of the services at that time; and
- (e) without limiting by implication the meaning of the expression *services* in subsection 12BA(1), the obtaining of credit by a person in connection with the person's acquisition of services is taken to be the acquisition by the person of a service and any amount by which the amount paid or payable

Section 12BD

by the person for the services is increased by reason of the person's so obtaining credit is taken to be paid or payable by the person for that service.

- (4) If it is alleged in a proceeding under this Division, or in any other proceeding in respect of a matter arising under this Division, that a person was a consumer in relation to particular services, it is presumed that the person was a consumer in relation to those services unless the contrary is established.

12BD Acquisition, supply and re-supply

In this Division, unless the contrary intention appears:

- (a) a reference to the supply or acquisition of services includes a reference to agreeing to supply or acquire services; and
- (b) a reference to the supply or acquisition of services includes a reference to the supply or acquisition of services together with property or other services, or both; and
- (c) a reference to the re-supply of services (the *original services*) acquired from a person (the *original supplier*) includes a reference to:
 - (i) a supply of the original services to another person in an altered form or condition; and
 - (ii) a supply to another person of other services that are substantially similar to the original services and could not have been supplied if the original services had not been acquired by the person who acquired them from the original supplier.

12BE Application of Division in relation to leases and licences of land and buildings

In this Division:

- (a) a reference to a contract includes a reference to a lease of, or a licence in respect of, land or a building or part of a building (despite the express references in this Division to such leases or licences); and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12CA

- (b) a reference to making or entering into a contract, in relation to such a lease or licence, is a reference to granting or taking the lease or licence.

Subdivision C—Unconscionable conduct

12CA Unconscionable conduct within the meaning of the unwritten law of the States and Territories

- (1) A person must not, in trade or commerce, engage in conduct in relation to financial services if the conduct is unconscionable within the meaning of the unwritten law, from time to time, of the States and Territories.
- (2) This section does not apply to conduct that is prohibited by section 12CB.

12CB Unconscionable conduct

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services to a person, engage in conduct that is, in all the circumstances, unconscionable.
- (2) Without limiting the matters to which the Court may have regard for the purpose of determining whether a person (the *supplier*) has contravened subsection (1) in connection with the supply or possible supply of services to a person (the *consumer*), the Court may have regard to:
 - (a) the relative strengths of the bargaining positions of the supplier and the consumer; and
 - (b) whether, as a result of conduct engaged in by the supplier, the consumer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
 - (c) whether the consumer was able to understand any documents relating to the supply or possible supply of the services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the consumer or a person acting on behalf of the consumer by the supplier or a

Section 12CC

- person acting on behalf of the supplier in relation to the supply or possible supply of the services; and
- (e) the amount for which, and the circumstances under which, the consumer could have acquired identical or equivalent services from a person other than the supplier.
- (3) A person is not taken for the purposes of this section to engage in unconscionable conduct in connection with the supply or possible supply of financial services to another person merely because the person:
- (a) institutes legal proceedings in relation to that supply or possible supply; or
 - (b) refers a dispute or claim in relation to that supply or possible supply to arbitration.
- (4) For the purpose of determining whether a person has contravened subsection (1) in connection with the supply or possible supply of financial services to another person:
- (a) the Court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and
 - (b) the Court may have regard to conduct engaged in, or circumstances existing, before the commencement of this section.
- (5) A reference in this section to financial services is a reference to financial services of a kind ordinarily acquired for personal, domestic or household use.

12CC Unconscionable conduct in business transactions

- (1) A person must not, in trade or commerce, in connection with:
- (a) the supply or possible supply of financial services (see subsection (6)) to another person (other than a listed public company); or
 - (b) the acquisition or possible acquisition of financial services (see subsection (7)) from another person (other than a listed public company);
- engage in conduct that is, in all the circumstances, unconscionable.

Section 12CC

- (2) Without in any way limiting the matters to which the Court may have regard for the purpose of determining whether a person (the *supplier*) has contravened subsection (1) in connection with the supply or possible supply of financial services to another person (the *service recipient*), the Court may have regard to:
- (a) the relative strengths of the bargaining positions of the supplier and the service recipient; and
 - (b) whether, as a result of conduct engaged in by the supplier, the service recipient was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; and
 - (c) whether the service recipient was able to understand any documents relating to the supply or possible supply of the financial services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the service recipient or a person acting on behalf of the service recipient by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the financial services; and
 - (e) the amount for which, and the circumstances under which, the service recipient could have acquired identical or equivalent financial services from a person other than the supplier; and
 - (f) the extent to which the supplier's conduct towards the service recipient was consistent with the supplier's conduct in similar transactions between the supplier and other like service recipients; and
 - (g) if the person is a corporation—the requirements of any applicable industry code (see subsection (11)); and
 - (h) the requirements of any other industry code (see subsection (11)), if the service recipient acted on the reasonable belief that the supplier would comply with that code; and
 - (i) the extent to which the supplier unreasonably failed to disclose to the service recipient:
 - (i) any intended conduct of the supplier that might affect the interests of the service recipient; and

- (ii) any risks to the service recipient arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the service recipient); and
 - (j) the extent to which the supplier was willing to negotiate the terms and conditions of any contract for supply of the financial services with the service recipient; and
 - (k) the extent to which the supplier and the service recipient acted in good faith.
- (3) Without in any way limiting the matters to which the Court may have regard for the purpose of determining whether a person (the **acquirer**) has contravened subsection (1) in connection with the acquisition or possible acquisition of financial services from a person (the **business supplier**), the Court may have regard to:
- (a) the relative strengths of the bargaining positions of the acquirer and the business supplier; and
 - (b) whether, as a result of conduct engaged in by the acquirer, the business supplier was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the acquirer; and
 - (c) whether the business supplier was able to understand any documents relating to the acquisition or possible acquisition of the financial services; and
 - (d) whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business supplier or a person acting on behalf of the business supplier by the acquirer or a person acting on behalf of the acquirer in relation to the acquisition or possible acquisition of the financial services; and
 - (e) the amount for which, and the circumstances in which, the business supplier could have supplied identical or equivalent financial services to a person other than the acquirer; and
 - (f) the extent to which the acquirer's conduct towards the business supplier was consistent with the acquirer's conduct in similar transactions between the acquirer and other like business suppliers; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12CC

- (g) if the person is a corporation—the requirements of any applicable industry code (see subsection (11)); and
 - (h) the requirements of any other industry code (see subsection (11)), if the business supplier acted on the reasonable belief that the acquirer would comply with that code; and
 - (i) the extent to which the acquirer unreasonably failed to disclose to the business supplier:
 - (i) any intended conduct of the acquirer that might affect the interests of the business supplier; and
 - (ii) any risks to the business supplier arising from the acquirer’s intended conduct (being risks that the acquirer should have foreseen would not be apparent to the business supplier); and
 - (j) the extent to which the acquirer was willing to negotiate the terms and conditions of any contract for the acquisition of the financial services with the business supplier; and
 - (k) the extent to which the acquirer and the business supplier acted in good faith.
- (4) A person is not taken for the purposes of this section to engage in unconscionable conduct in connection with:
- (a) the supply or possible supply of financial services to another person; or
 - (b) the acquisition or possible acquisition of financial services from another person;
- merely because the person institutes legal proceedings in relation to that supply, possible supply, acquisition or possible acquisition or refers a dispute or claim in relation to that supply, possible supply, acquisition or possible acquisition to arbitration.
- (5) For the purpose of determining whether a person has contravened subsection (1) in connection with the supply, possible supply, acquisition, or possible acquisition of financial products:
- (a) the Court must not have regard to any circumstances that were not reasonably foreseeable at the time of the alleged contravention; and

Section 12CC

- (b) the Court may have regard to circumstances existing before the commencement of this section but not to conduct engaged in before that commencement.
- (6) Subject to subsection (8), a reference in this section to the ***supply or possible supply of financial services*** is a reference to the supply or possible supply of financial services to a person whose acquisition or possible acquisition of the financial services is or would be for the purpose of trade or commerce.
- (7) Subject to subsection (9), a reference in this section to the ***acquisition or possible acquisition of financial services*** is a reference to the acquisition or possible acquisition of financial services by a person whose acquisition or possible acquisition of the financial services is or would be for the purpose of trade or commerce.
- (8) A reference in this section to the supply or possible supply of financial services does not include a reference to the supply or possible supply of financial services at a price in excess of \$3,000,000, or such higher amount as is prescribed.
- (9) A reference in this section to the acquisition or possible acquisition of financial services does not include a reference to the acquisition or possible acquisition of financial services at a price in excess of \$3,000,000, or such higher amount as is prescribed.
- (10) For the purposes of subsections (8) and (9):
- (a) subject to paragraphs (b), (c), (d) and (e), the price for:
 - (i) the supply or possible supply of financial services to a person; or
 - (ii) the acquisition or possible acquisition of financial services by a person;is taken to be the amount paid or payable by the person for the financial services; and
 - (b) if a person:
 - (i) was supplied financial services pursuant to a purchase; or
 - (ii) acquired financial services by way of purchase;

Section 12CC

together with other property or services, or with both other property and services, and a specified price was not allocated to the services in the contract under which they were purchased, the price of the services is taken to have been:

- (iii) the price at which, at the time of the supply or acquisition, the person could have purchased the services from the supplier without the other property or services; or
 - (iv) if, at the time of the purchase, the services were only available for purchase together with the other property or services but, at that time, services of the kind purchased were available for purchase from another supplier without other property or services—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (v) if, at the time of the purchase, services of the kind purchased were not available for purchase from any supplier except together with other property or services—the value of the services at that time; and
- (c) if a person is supplied with financial services otherwise than pursuant to a purchase, the price of the services is taken to have been:
- (i) the price at which, at the time of the supply, the person could have purchased the services from the supplier; or
 - (ii) if, at the time of the supply, the services were not available for purchase from the supplier, or were available only together with other property or services, but, at that time, services of the kind supplied were available for purchase from another supplier—the lowest price at which the person could, at that time, reasonably have purchased services of that kind from another supplier; or
 - (iii) if services of the kind supplied were not available, at the time of the supply, for purchase from any supplier, or were not available except together with other property or services—the value of the services at that time; and

- (d) without limiting by implication the meaning of the expression *services* in subsection 12BA(1):
 - (i) the obtaining of credit by a person in connection with the supply of financial services to the person is taken to be the acquisition by the person of a service; and
 - (ii) any amount by which the amount paid or payable by the person for the services is increased by reason of the person's so obtaining credit is taken to be paid or payable by the person for that service; and
- (e) the price for the supply or possible supply, or the acquisition or possible acquisition, of services comprising or including a loan or loan facility is taken to include the capital value of the loan or loan facility.

(11) In this section:

applicable industry code, in relation to a corporation, has the same meaning as it has in subsection 51ACA(1) of the *Trade Practices Act 1974*.

industry code has the same meaning as it has in subsection 51ACA(1) of the *Trade Practices Act 1974*.

listed public company has the same meaning as it has in the *Income Tax Assessment Act 1997*.

Subdivision D—Consumer protection

12DA Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct in relation to financial services that is misleading or deceptive or is likely to mislead or deceive.

(1A) Conduct:

- (a) that contravenes:
 - (i) section 670A of the Corporations Act (misleading or deceptive takeover document); or
 - (ii) section 728 of the Corporations Act (misleading or deceptive fundraising document); or

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DB

- (b) in relation to a disclosure document or statement within the meaning of section 953A of the Corporations Act; or
 - (c) in relation to a disclosure document or statement within the meaning of section 1022A of the Corporations Act;
- does not contravene subsection (1). For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.
- (2) Nothing in sections 12DB to 12DN limits by implication the generality of subsection (1).

12DB False or misleading representations

- (1) A person must not, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services:
 - (a) falsely represent that services are of a particular standard, quality, value or grade; or
 - (b) falsely represent that a particular person has agreed to acquire services; or
 - (c) represent that services have sponsorship, approval, performance characteristics, uses or benefits they do not have; or
 - (d) represent that the person has a sponsorship, approval or affiliation it does not have; or
 - (e) make a false or misleading representation with respect to the price of services; or
 - (f) make a false or misleading representation concerning the need for any services; or
 - (g) make a false or misleading representation concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) Conduct:
 - (a) that contravenes:
-

Section 12DC

- (i) section 670A of the Corporations Act (misleading or deceptive takeover document); or
 - (ii) section 728 of the Corporations Act (misleading or deceptive fundraising document); or
 - (b) in relation to a disclosure document or statement within the meaning of section 953A of the Corporations Act; or
 - (c) in relation to a disclosure document or statement within the meaning of section 1022A of the Corporations Act;
- does not contravene subsection (1). For this purpose, conduct contravenes the provision even if the conduct does not constitute an offence, or does not lead to any liability, because of the availability of a defence.
- (3) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DC False representations and other misleading or offensive conduct in relation to financial products that involve interests in land

- (1) A person must not, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of a financial product that consists of, or includes, an interest in land, or in connection with the promotion by any means of a financial product that consists of, or includes, an interest in land:
- (a) represent that the person has a sponsorship, approval or affiliation it does not have; or
 - (b) make a false or misleading representation concerning the nature of the interest in the land, the price payable for the financial product, the location of the land, the characteristics of the land, the use to which the land is capable of being put or may lawfully be put or the existence or availability of facilities associated with the land.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (1A) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DC

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) A person contravenes this subsection if:
- (a) the person offers gifts, prizes or other free items; and
 - (b) the person offers the gifts, prizes or other free items, in trade or commerce, in connection with the sale or grant, or the possible sale or grant, of a financial product, mentioned in subsection (1), or in connection with the promotion by any means of the sale or grant of such a financial product; and
 - (c) when the person so offers the gifts, prizes or other free items the person intends not to provide them, or not to provide them as offered.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2A) A person contravenes this subsection if:
- (a) a person uses physical force or undue harassment or coercion; and
 - (b) the person uses such force, harassment or coercion in connection with the sale or grant, or the possible sale or grant, of a financial product mentioned in subsection (1), or the payment for such a financial product.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2B) For the purposes of the application of the *Criminal Code* in relation to an offence under subsection 12GB(1) relating to subsection (2) of this section, paragraphs (2)(b) and (c) of this section are taken to be circumstances in which the conduct described in paragraph (2)(a) of this section occurs.

- (2C) For the purposes of the application of the *Criminal Code* in relation to an offence under subsection 12GB(1), strict liability applies to paragraphs (2)(b) and (2A)(b) of this section.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2D) Nothing in this section is to be taken as implying that other provisions in this Subdivision do not apply in relation to the supply or acquisition, or the possible supply or acquisition, of a financial product mentioned in subsection (1).

(3) In this section:

interest, in relation to land, means:

- (a) a legal or equitable estate or interest in the land; or
- (b) a right of occupancy of the land, or of a building or part of a building erected on the land, arising by virtue of the holding of shares, or by virtue of a contract to purchase shares, in an incorporated company that owns the land or building; or
- (c) a right, power or privilege over, or in connection with, the land.

12DD Cash price to be stated in certain circumstances

- (1) A person must not, in trade or commerce, in connection with:
- (a) the supply or possible supply of financial services; or
 - (b) the promotion by any means of the supply or use of financial services;

make a representation about an amount that, if paid, would constitute a part of the consideration for the supply of the services unless the person also specifies the cash price for the services.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) This section does not apply to dealings in securities (within the meaning of Chapter 6 of the Corporations Act).
- (3) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DE Offering gifts and prizes

- (1) A person contravenes this subsection if:
- (a) the person offers gifts, prizes or other free items; and
 - (b) the person offers the gifts, prizes or other free items in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DF

(c) when the person so offers them, the person intends not to provide them, or not to provide them as offered.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) For the purposes of the application of the *Criminal Code* in relation to subsection (1), paragraphs (1)(b) and (c) are taken to be circumstances in which the conduct described in paragraph (1)(a) occurs.

(3) For the purposes of the application of the *Criminal Code* in relation to an offence under subsection 12GB(1), strict liability applies in relation to paragraph (1)(b) of this section.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DF Certain misleading conduct in relation to financial services

(1) A person must not, in trade or commerce, engage in conduct that is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose or the quantity of any financial services.

Note: Failure to comply with this subsection is an offence (see section 12GB).

(2) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DG Bait advertising

(1) A person must not, in trade or commerce, advertise financial services for supply at a specified price, if there are reasonable grounds, of which the person is aware or ought reasonably to be aware, for believing that the person will not be able to offer for supply those services at that price:

(a) for a period that is; and

(b) in quantities that are;

reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Section 12DH

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) A person that has, in trade or commerce, advertised financial services for supply at a specified price must offer such services for supply at that price:

- (a) for a period that is; and
- (b) in quantities that are;

reasonable having regard to the nature of the market in which the person carries on business and the nature of the advertisement.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2A) An offence under subsection 12GB(1) relating to subsection (1) or (2) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) In a prosecution of a person under Subdivision G (sections 12GA to 12GO) in relation to a failure to offer financial services to a person (the *customer*) in accordance with subsection (2), it is a defence if the person establishes that:

- (a) it offered to supply, or to procure an alternative supplier to supply, services of the kind advertised to the customer within a reasonable time, in a reasonable quantity and at the advertised price; or
- (b) it offered to supply immediately, or to procure an alternative supplier to supply within a reasonable time, equivalent services to the customer in a reasonable quantity and at the price at which the first-mentioned services were advertised;

and, in either case, if the offer was accepted by the customer, the person has so supplied, or procured an alternative supplier to supply, services.

Note: A defendant bears a legal burden in relation to the matters in subsection (3), see section 13.4 of the *Criminal Code*.

12DH Referral selling

- (1) A person must not, in trade or commerce, induce a consumer to acquire financial services by representing that the consumer will,

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DI

after the contract to acquire the services is made, receive a rebate, commission or other benefit in return for:

- (a) giving the person the names of prospective customers; or
- (b) otherwise assisting the person to supply financial services to other consumers;

if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DI Accepting payment without intending or being able to supply as ordered

- (1) A person contravenes this subsection if:

- (a) the person, in trade or commerce, accepts payment or other consideration for financial services; and
- (b) at the time of acceptance, the person intends:
 - (i) not to supply the financial services; or
 - (ii) to supply financial services materially different from the financial services in respect of which the payment or other consideration is accepted.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) For the purposes of the application of the *Criminal Code* in relation to an offence under subsection 12GB(1), strict liability applies to paragraph (1)(a) of this section.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person contravenes this subsection if:

- (a) the person, in trade or commerce, accepts payment or other consideration for financial services; and
- (b) at the time of acceptance, there are reasonable grounds for believing that the person will not be able to supply the

Section 12DJ

financial services within the period specified by the person
or, if no period is specified, within a reasonable time.

Note: Failure to comply with this subsection is an offence (see
section 12GB).

- (4) An offence under subsection 12GB(1) relating to subsection (3) of
this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DJ Harassment and coercion

- (1) A person contravenes this subsection if:
- (a) the person uses physical force or undue harassment or coercion; and
 - (b) the person uses such force, harassment or coercion in connection with the supply or possible supply of financial services to a consumer, or the payment for financial services by a consumer.

Note: Failure to comply with this subsection is an offence (see
section 12GB).

- (2) Strict liability applies to paragraph (1)(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

12DK Pyramid selling of financial products [see Note 2]

- (1) A person contravenes this section if:
- (a) the person is the promoter of, or (if there are more than one) one of the promoters of, or is a participant in, a trading scheme to which this section applies; and
 - (b) another person (the *targeted person*), who is a participant in that trading scheme, or has applied or been invited to become a participant in that trading scheme, makes any payment to or for the benefit of the person; and
 - (c) the targeted person is induced to make the payment because the prospect is held out to him or her of receiving payments or other benefits in respect of the introduction (whether by himself or herself or by another person) of other persons who become participants in that trading scheme.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DK

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) A person also contravenes this section if:
- (a) the person is the promoter of, or (if there are more than one) one of the promoters of, is a participant in, or is otherwise acting in accordance with, a trading scheme to which this section applies; and
 - (b) the person, by holding out to another person (the *targeted person*) the prospect of receiving payments or other benefits in respect of the introduction (whether by the targeted person or by another person) of other persons who become participants in that trading scheme, attempts to induce the targeted person:
 - (i) if he or she is already a participant in that trading scheme, to make any payment to or for the benefit of the promoter or any of the promoters or to or for the benefit of a participant in that trading scheme; or
 - (ii) if he or she is not already a participant in that trading scheme, to become such a participant and to make a payment of a kind mentioned in subparagraph (i).

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (3) A person (the *promoter*) also contravenes this section if the promoter promotes, or takes part in the promotion of, a scheme under which:
- (a) a payment is to be made by another person (the *targeted person*) who participates, or who has applied or been invited to participate, in the scheme to or for the benefit of the promoter or another person who takes part in the promotion of the scheme or to or for the benefit of any person other than the targeted person who participates in the scheme; and
 - (b) the inducement for making the payment is the holding out to the targeted person the prospect of receiving payments from other persons who may participate in the scheme.

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (3A) An offence under subsection 12GB(1) relating to subsection (1), (2) or (3) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) For the purposes of subsection (1), (2) or (3):
- (a) a prospect of a kind mentioned in that subsection is taken to be held out to a person whether it is held out so as to confer on him or her a legally enforceable right or not; and
 - (b) in determining whether an inducement or attempt to induce is made by holding out a prospect of a kind mentioned in that subsection, it is sufficient if a prospect of that kind constitutes or would constitute a substantial part of the inducement; and
 - (c) any reference to the making of a payment to or for the benefit of a person includes a reference to the making of a payment partly to or for the benefit of that person and partly to or for the benefit of one or more other persons.
- (5) For the purposes of this section, a scheme is a trading scheme to which this section applies if the scheme includes the following elements:
- (a) financial products are to be provided by the person promoting the scheme (the *promoter*) or, in the case of a scheme promoted by 2 or more persons acting in concert (the *promoters*), are to be provided by one or more of those persons; and
 - (b) the financial products so provided are to be supplied to or for other persons under transactions arranged or effected by persons who participate in the scheme (each of whom is in this section referred to as a *participant*), being persons not all of whom are promoters.
- (6) For the purposes of subsection (5):
- (a) a scheme is taken to include the element referred to in paragraph (5)(b) whether a participant who is not a promoter acts in relation to a transaction referred to in that paragraph in the capacity of an employee or agent of the promoter or of one of the promoters or in any other capacity; and

Section 12DL

- (b) a scheme includes any arrangements made in connection with the carrying on of a business, whether those arrangements are made or recorded wholly or partly in writing or not; and
- (c) a reference to the provision of a financial product by a person includes a reference to the provision of a financial product under arrangements to which that person is a party.

12DL Unsolicited credit cards and debit cards

- (1) A person must not send another person (the *targeted person*) a credit card or a debit card except in accordance with subsection (2).

Note: Failure to comply with this subsection is an offence (see section 12GB).

- (2) A person may send the targeted person the card:

- (a) in pursuance of a request in writing by the person (the *liable person*) who will be under a liability to the issuer of the card in respect of the use of the card; or
- (b) in renewal or replacement of, or in substitution for:
 - (i) a card of the same kind previously sent to the targeted person in pursuance of a request in writing by the liable person to the issuer of the previous card; or
 - (ii) a card of the same kind previously sent to the targeted person and used for a purpose for which it was intended to be used.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (3) Subsection (1) applies only in relation to the sending of a card by or on behalf of the issuer of the card.

- (4) A person must not take any action that enables:

- (a) another person who has a credit card to use the card as a debit card; or
- (b) another person who has a debit card to use the card as a credit card;

except in accordance with a request in writing by the other person.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Section 12DM

- (4A) An offence under subsection 12GB(1) relating to subsection (1) or (4) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) In this section:

article includes a token, card or document.

credit card means an article that:

- (a) is of a kind described in one or more of the following subparagraphs:
- (i) an article of a kind commonly known as a credit card;
 - (ii) a similar article intended for use in obtaining cash, goods or services on credit;
 - (iii) an article of a kind that persons carrying on business commonly issue to their customers or prospective customers for use in obtaining goods or services from those persons on credit; and
- (b) is part of, or provides access to, a credit facility that is a financial product;

or an article that may be used as an article referred to in paragraphs (a) and (b).

debit card means:

- (a) an article intended for use by a person in obtaining access to an account that is:
- (i) held by the person for the purpose of withdrawing or depositing cash or obtaining goods or services; and
 - (ii) a financial product; or
- (b) an article that may be used as an article referred to in paragraph (a).

12DM Assertion of right to payment for unsolicited financial services

- (1) A person must not, in trade or commerce, assert a right to payment from another person for unsolicited financial services.

Note: Failure to comply with this subsection is an offence (see section 12GB).

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12DM

(1A) Subsection (1) does not apply if the person had reasonable cause to believe that there was a right to payment.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

(1B) An offence under subsection 12GB(1) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) For the purposes of this section, a person is taken to assert a right to a payment from another person for unsolicited financial services if the person:

- (a) makes a demand for the payment or asserts a present or prospective right to the payment; or
- (b) threatens to bring any legal proceedings with a view to obtaining the payment; or
- (c) places, or causes to be placed, the name of the other person on a list of defaulters or debtors, or threatens to do so, with a view to obtaining the payment; or
- (d) invokes, or causes to be invoked, any other collection procedure, or threatens to do so, with a view to obtaining the payment; or
- (e) sends any invoice or other document stating the amount of the payment or setting out the price of the services and not stating as prominently (or more prominently) that no claim is made to the payment or to payment of the price.

(3) For the purposes of this section, an invoice or other document purporting to have been sent by or on behalf of a person is taken to have been sent by that person unless the contrary is established.

(4) In a proceeding against a person in respect of a contravention of this section, the burden lies on the person of proving that the person had reasonable cause to believe that there was a right to payment.

**12DN Application of provisions of Division to prescribed
information providers**

- (1) Nothing in section 12DA, 12DB, 12DC or 12DF applies to a prescribed publication of matter by a prescribed information provider, other than:
- (a) a publication of matter in connection with:
 - (i) the supply or possible supply of financial services; or
 - (ii) the sale or grant, or possible sale or grant, of financial products that consist of, or include, interests in land; or
 - (iii) the promotion by any means of the supply or use of financial services; or
 - (iv) the promotion by any means of the sale or grant of financial products that consist of, or include, interests in land;
 - if:
 - (v) the services were relevant services, or the interests in land were relevant interests in land, as the case may be, in relation to the prescribed information provider; or
 - (vi) the publication was made on behalf of, or pursuant to a contract, arrangement or understanding with:
 - (A) a person who supplies financial services of that kind, or who sells or grants financial products of that kind; or
 - (B) a body corporate that is related to a body corporate that supplies financial services of that kind, or that sells or grants financial products of that kind; or
 - (b) a publication of an advertisement.
- (2) For the purposes of this section, a publication by a prescribed information provider is a prescribed publication if:
- (a) in any case—the publication was made by the prescribed information provider in the course of carrying on a business of providing information; or
 - (b) in the case of a person who is a prescribed information provider by virtue of paragraph (a), (b) or (c) of the definition of *prescribed information provider* in subsection (3)

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12EA

(whether or not the person is also a prescribed information provider by virtue of another operation of that definition)—the publication was by way of a radio or television broadcast by the prescribed information provider.

(3) In this section:

prescribed information provider means a person who carries on a business of providing information and, without limiting the generality of the foregoing, includes:

- (a) the holder of a licence granted under the *Broadcasting Services Act 1992*; and
- (b) a person who is the provider of a broadcasting service under a class licence under that Act; and
- (c) the holder of a licence continued in force by subsection 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*; and
- (d) the Australian Broadcasting Corporation; and
- (e) the Special Broadcasting Service Corporation.

relevant financial services, in relation to a prescribed information provider, means financial services of a kind supplied by the prescribed information provider or, if the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

relevant interests in land, in relation to a prescribed information provider, means interests in land, being interests of a kind sold or granted by the prescribed information provider or, if the prescribed information provider is a body corporate, by a body corporate that is related to the prescribed information provider.

Subdivision E—Conditions and warranties in consumer transactions

12EA Conflict of laws

If:

Section 12EB

- (a) the proper law of a contract for the supply by a person of financial services to a consumer would, but for a term that it should be the law of some other country or a term to the like effect, be the law of any part of Australia; or
- (b) a contract for the supply by a person of financial services to a consumer contains a term that purports to substitute, or has the effect of substituting, provisions of the law of some other country, or of a State or Territory, for all or any of the provisions of this Subdivision (sections 12EA to 12ED);
this Subdivision applies to the contract notwithstanding that term.

12EB Application of provisions not to be excluded or modified

- (1) A term of a contract (including a term that is not set out in the contract but is incorporated in the contract by another term of the contract) is void if it purports to exclude, restrict or modify or has the effect of excluding, restricting or modifying:
 - (a) the application of all or any of the provisions of this Subdivision (sections 12EA to 12ED); or
 - (b) the exercise of a right conferred by such a provision; or
 - (c) any liability of the person for breach of a condition or warranty implied by such a provision.
- (2) A term of a contract is not taken to exclude, restrict or modify the application of a provision of this Subdivision unless the term does so expressly or is inconsistent with that provision.

12EC Limitation of liability for breach of certain conditions or warranties

- (1) Subject to this section, a term of a contract for the supply by a person (the *supplier*) of financial services other than services of a kind ordinarily acquired for personal, domestic or household use is not void under section 12EB merely because the term limits the liability of the supplier for a breach of a condition or warranty to:
 - (a) the supplying of the services again; or
 - (b) the payment of the cost of having the services supplied again.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12ED

- (2) Subsection (1) does not apply in relation to a term of a contract if the person to whom the services were supplied establishes that it is not fair or reasonable for the supplier to rely on that term of the contract.
- (3) In determining for the purposes of subsection (2) whether or not reliance on a term of a contract is fair or reasonable, a court must have regard to all the circumstances of the case and, in particular, to the following matters:
 - (a) the strength of the bargaining positions of the supplier and the person to whom the services were supplied (the *buyer*) relative to each other, taking into account, among other things, the availability of equivalent services and suitable alternative sources of supply;
 - (b) whether the buyer received an inducement to agree to the term or, in agreeing to the term, had an opportunity to acquire the services or equivalent services from any source of supply under a contract that did not include that term;
 - (c) whether the buyer knew or ought reasonably to have known of the existence and extent of the term (having regard, among other things, to any custom of the trade and any previous course of dealing between the parties).

12ED Warranties in relation to the supply of financial services

- (1) In every contract for the supply of financial services by a person to a consumer in the course of a business, there is an implied warranty that:
 - (a) the services will be rendered with due care and skill; and
 - (b) any materials supplied in connection with those services will be reasonably fit for the purpose for which they are supplied.
- (2) If:
 - (a) a person supplies financial services to a consumer in the course of a business; and
 - (b) the consumer, expressly or by implication, makes known to the person:
 - (i) any particular purpose for which the services are required; or

Section 12GA

(ii) the result that he or she desires the services to achieve;
there is an implied warranty that:

(c) the services supplied under the contract for the supply of the
services; and

(d) any materials supplied in connection with those services;
will be reasonably fit for that purpose or are of such a nature and
quality that they might reasonably be expected to achieve that
result, except if the circumstances show that the consumer does not
rely, or that it is unreasonable for him or her to rely, on the
person's skill or judgment.

(2A) If:

(a) there is a breach of an implied warranty that exists because of
this section in a contract made after the commencement of
this subsection; and

(b) the law of a State or Territory is the proper law of the
contract;

the law of the State or Territory applies to limit or preclude liability
for the breach, and recovery of that liability (if any), in the same
way as it applies to limit or preclude liability, and recovery of a
liability, for breach of another term of the contract.

(3) A reference in this section to financial services does not include a
reference to services that are, or are to be, provided, granted or
conferred under a contract of insurance.

Subdivision G—Enforcement and remedies

12GA Interpretation

In this Subdivision, unless the contrary intention appears:

(a) a reference to the Court in relation to a matter is a reference
to any court having jurisdiction in the matter; and

(b) a reference to the Federal Court is a reference to the Federal
Court of Australia; and

(c) a reference to a judgment is a reference to a judgment, decree
or order, whether final or interlocutory.

Section 12GB

12GB Offences against Subdivision D

- (1) A person who:
- (a) contravenes; or
 - (b) aids, abets, counsels or procures a person to contravene; or
 - (c) induces, or attempts to induce, a person whether by threats or promises or otherwise, to contravene; or
 - (d) is in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of; or
 - (e) conspires with others to contravene;
- a provision of Subdivision D (sections 12DA to 12DN) other than section 12DA, is guilty of an offence punishable on conviction:
- (f) in the case of a person who is not a body corporate—by a fine not exceeding 2,000 penalty units; or
 - (g) in the case of a person who is a body corporate—by a fine not exceeding 10,000 penalty units.

(1A) Subsections 11.2(2) to (5) (inclusive) of the *Criminal Code* apply in relation to paragraph (1)(b) of this section in the same way that they apply in relation to subsection 11.2(1) of the *Criminal Code*.

(1B) Subsections 11.5(2) to (5) (inclusive) of the *Criminal Code* apply in relation to paragraph (1)(e) of this section in the same way that they apply in relation to the offence of conspiracy under subsection 11.5(1) of the *Criminal Code*.

- (2) If:
- (a) a person is convicted of 2 or more offences constituted by, or relating to, contraventions of the same provision of Subdivision D (sections 12DA to 12DN); and
 - (b) the contraventions appear to the Court to have been of the same nature or a substantially similar nature and to have occurred at or about the same time;

the Court must not, in respect of the offences, impose on the person fines that, in the aggregate, exceed the maximum fine that would be applicable in respect of one offence by that person against that provision. This applies whether or not the person is also convicted of an offence or offences constituted by, or relating to, another

Section 12GB

contravention or other contraventions of that provision that were of a different nature or occurred at a different time.

(3) If:

- (a) a person is convicted of an offence constituted by, or relating to, a contravention of a provision of Subdivision D (sections 12DA to 12DN); and
- (b) a fine has, or fines have, previously been imposed on the person by the Court for an offence or offences constituted by, or relating to, another contravention or other contraventions of the same provision, being a contravention that, or contraventions each of which, appears to the Court to have been of the same nature as, or of a substantially similar nature to, and to have occurred at or about the same time as, the contravention referred to in paragraph (a);

the Court must not, in respect of the offence referred to in paragraph (a), impose on the person a fine that exceeds the amount (if any) by which the maximum fine applicable (under subsection (1)) in respect of the offence referred to in paragraph (a) is greater than the amount of the fine, or the sum of the amounts of the fines, referred to in paragraph (b). This applies whether or not a fine has, or fines have, also previously been imposed on the person for an offence or offences constituted by, or relating to, a contravention or contraventions of that provision that were of a different nature or occurred at a different time.

(4) In proceedings under this section against a person for contravening a provision of Subdivision D (sections 12DA to 12DN), the Court may:

- (a) grant an injunction under section 12GD against the person in relation to:
 - (i) the conduct that constitutes, or is alleged to constitute, the contravention; or
 - (ii) other conduct of that kind; or
- (b) make an order under section 12GLA (non-punitive orders) in relation to the contravention; or
- (c) make an order under section 12GLB (punitive orders requiring adverse publicity) in relation to the contravention.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GC

- (5) Sections 11.1, 11.2, 11.3, and 11.4 of the *Criminal Code* and section 11.6 of the *Criminal Code* to the extent that it applies in relation to those sections, do not apply in relation to an offence against subsection (1).
- (6) A prosecution for an offence against subsection (1) may be commenced within 3 years after the commission of the offence.

12GC Enforcement and recovery of certain fines

- (1) If a person on whom a fine has been imposed for an offence against section 12GB or subsection 12GN(5) defaults in payment of the fine, a Court may:
 - (a) exercise any power that the Court has apart from this section with respect to the enforcement and recovery of fines imposed by the Court; or
 - (b) make an order, on the application of the Minister or ASIC, declaring that the fine is to have effect, and may be enforced, as if it were a judgment debt under a judgment of the Court.
- (2) If a person in relation to whom an order is made under subsection (1) in respect of a fine gives security for the payment of the fine, the Court must cancel the order in respect of the fine.
- (3) If the Court makes an order in relation to a person in respect of a fine, the Court may, at any time before the order is executed in respect of the fine, allow the person a specified time in which to pay the fine or allow the person to pay the fine by specified instalments, and, in that case:
 - (a) the order must not be executed unless the person fails to pay the fine within that time or fails to pay an instalment at or before the time when it becomes payable, as the case may be; and
 - (b) if the person pays the fine within that time or pays all the instalments, as the case may be, the order is taken to have been discharged in respect of the fine.
- (4) Subject to subsection (7), an order under subsection (1) in respect of a fine ceases to have effect:
 - (a) on payment of the fine; or

- (b) if the fine is not paid—on full compliance with the order.
- (5) The term of a sentence of imprisonment imposed by an order under a law of a State or Territory applied by section 15A of the *Crimes Act 1914* in respect of a fine must be calculated at the rate of one day's imprisonment for each \$25 of the amount of the fine that is from time to time unpaid.
- (6) Subject to subsection (7), if a person is required to serve periods of imprisonment under an order or orders under subsection (1) in respect of 2 or more fines, those periods of imprisonment must be served consecutively.
- (7) Subject to subsection (8), if:
- (a) a person would, but for this subsection, be required under an order or orders under subsection (1) in respect of 3 or more fines to serve periods of imprisonment in respect of those fines exceeding in the aggregate 3 years; and
 - (b) those fines were imposed (whether or not in the same proceedings) for offences constituted by contraventions that occurred within a period of 2 years, being contraventions that appear to the Court to have been of the same nature or a substantially similar nature;
- the Court must, by order, declare that the order or orders are to cease to have effect in respect of those fines after the person has served an aggregate of 3 years' imprisonment in respect of those fines.
- (8) If subsection (7) would, but for this subsection, apply to a person with respect to offences committed by the person within 2 or more overlapping periods of 2 years, the Court must make an order under that subsection with respect to one only of those periods, being whichever period would give the person the maximum benefit from the application of that subsection.
- (9) For the purposes of subsection (8), the Court may vary or revoke an order made under subsection (7).
- (10) Paragraphs 15A(1)(b), (c) and (d) of the *Crimes Act 1914* do not apply with respect to fines referred to in subsection (1).
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Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GCA

12GCA Preference must be given to compensation for victims

If:

- (a) the Court considers that it is appropriate to impose a fine under section 12GB in respect of a contravention, or an involvement in a contravention, of this Division; and
 - (b) it is appropriate to order the defendant to pay compensation to a person who has suffered loss or damage in respect of the contravention or the involvement; and
 - (c) the defendant does not have sufficient financial resources to pay both the pecuniary penalty or fine and the compensation;
- the Court must give preference to making an order for compensation.

12GD Injunctions

- (1) If, on the application of the Minister, ASIC or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
 - (a) a contravention of a provision of this Division; or
 - (b) attempting to contravene such a provision; or
 - (c) aiding, abetting, counselling or procuring a person to contravene such a provision; or
 - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision; or
 - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
 - (f) conspiring with others to contravene such a provision;the Court may grant an injunction in such terms as the Court determines to be appropriate.

Section 12GD

- (2) If an application for an injunction under subsection (1) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).
- (3) If in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (4) The Court may rescind or vary an injunction granted under subsection (1) or (3).
- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
 - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
 - (b) whether or not the person has previously engaged in conduct of that kind; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
 - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
 - (b) whether or not the person has previously refused or failed to do that act or thing; and
 - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) If the Minister or ASIC makes an application to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

Section 12GF

- (8) If, in a case to which subsection (7) does not apply:
- (a) the Court would, but for this subsection, require a person to give an undertaking as to damages or costs; and
 - (b) the Minister gives the undertaking;
- the Court must accept the undertaking by the Minister and must not require a further undertaking from any other person.

12GF Actions for damages

- (1) A person who suffers loss or damage by conduct of another person that contravenes a provision of Subdivision C (sections 12CA to 12CC) or Subdivision D (sections 12DA to 12DN) may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.

- (1A) Subsection (1) has effect subject to section 12GNA.

Note: Section 12GNA may limit the amount that the person may recover for a contravention of section 12DA (Misleading or deceptive conduct) from the other person or from another person involved in the contravention.

- (1B) Despite subsection (1), if:

- (a) a person (the *claimant*) makes a claim under subsection (1) in relation to:
 - (i) economic loss; or
 - (ii) damage to property;caused by conduct of another person (the *defendant*) that was done in contravention of section 12DA; and
 - (b) the claimant suffered the loss or damage:
 - (i) as a result partly of the claimant's failure to take reasonable care; and
 - (ii) as a result partly of the conduct referred to in paragraph (a); and
 - (c) the defendant:
 - (i) did not intend to cause the loss or damage; and
 - (ii) did not fraudulently cause the loss or damage;
- the damages that the claimant may recover in relation to the loss or damage are to be reduced to the extent to which the court thinks

just and equitable having regard to the claimant's share in the responsibility for the loss or damage.

Note: Subdivision GA also applies proportionate liability to a claim for damages under this section for a contravention of section 12DA.

- (2) An action under subsection (1) may be commenced within 6 years after the day on which the cause of action that relates to the conduct accrued.

12GG Finding in proceedings to be evidence

In a proceeding against a person under section 12GF or in an application under subsection 12GM(2) for an order against a person, a finding of any fact by a court made in proceedings under section 12GD, 12GLA or 12GLB, or for an offence against section 12GB, in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of this Division is prima facie evidence of that fact. The finding may be proved by production of a document under the seal of the court from which the finding appears.

12GH Conduct by directors, employees or agents

- (1) If, in a proceeding under this Subdivision in respect of conduct engaged in by a body corporate, being conduct in relation to which the Division applies, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in within the scope of the person's actual or apparent authority, had that state of mind.
- (2) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, employee or agent of the body corporate within the scope of the person's actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, employee or agent of the body corporate, if the giving of the direction, consent or agreement is within the scope of the

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GI

actual or apparent authority of the director, employee or agent;

is taken, for the purposes of this Division, to have been engaged in also by the body corporate.

- (3) If, in a proceeding under this Subdivision in respect of conduct engaged in by a person other than a body corporate, being conduct in relation to which a provision of this Division applies, it is necessary to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person, being an employee or agent by whom the conduct was engaged in within the scope of the employee's or agent's actual or apparent authority, had that state of mind.
- (4) Conduct engaged in on behalf of a person (the *principal*) other than a body corporate:
 - (a) by an employee or agent of the person within the scope of the actual or apparent authority of the employee or agent; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the principal, if the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the employee or agent;is taken, for the purposes of this Division, to have been engaged in also by the principal.
- (5) A reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the person's intention, opinion, belief or purpose.
- (6) Part 2.5 of the *Criminal Code* does not apply in relation to an offence against a provision of this Subdivision.

12GI Defences

- (1) Subject to subsection (3), in a prosecution under this Subdivision in relation to a contravention of a provision of Subdivision D (sections 12DA to 12DN), it is a defence if the defendant establishes:

Section 12GI

- (a) that the contravention in respect of which the proceeding was instituted was due to reasonable mistake; or
- (b) that the contravention in respect of which the proceeding was instituted was due to reasonable reliance on information supplied by another person; or
- (c) that:
 - (i) the contravention in respect of which the proceeding was instituted was due to the act or default of another person, to an accident or to some other cause beyond the defendant's control; and
 - (ii) the defendant took reasonable precautions and exercised due diligence to avoid the contravention.

Note: A defendant bears a legal burden in relation to the matters in subsection (1) (see section 13.4 of the *Criminal Code*).

- (1A) Paragraph (1)(a) is to be interpreted as having the same effect in relation to a contravention of a provision of this Subdivision as section 9.2 of the *Criminal Code* has in relation to offences of strict liability.
- (2) In paragraphs (1)(b) and (c), **another person** does not include a person who was:
 - (a) an employee or agent of the defendant; or
 - (b) in the case of a defendant being a body corporate, a director, employee or agent of the defendant;at the time when the contravention occurred.
- (3) If a defence provided by subsection (1) involves an allegation that a contravention was due to reliance on information supplied by another person or to the act or default of another person, the defendant is not, without leave of the Court, entitled to rely on that defence unless he or she has, not later than 7 days before the day on which the hearing of the proceeding commences, served on the person by whom the proceeding was instituted a notice in writing giving such information that would identify or assist in the identification of the other person as was then in his or her possession.
- (4) In a proceeding under this Subdivision in relation to a contravention of a provision of Subdivision D (sections 12DA to

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GJ

12DN) committed by the publication of an advertisement, it is a defence if the defendant establishes that he or she is a person whose business it is to publish or arrange for the publication of advertisements and that he or she received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to a contravention of a provision of Subdivision D.

Note: A defendant bears a legal burden in relation to the matters in subsection (4) (see section 13.4 of the *Criminal Code*).

12GJ Jurisdiction of courts

- (1) Jurisdiction is conferred on the Federal Court in any matter:
 - (a) arising under this Division; or
 - (b) arising under Part 3 in its application in relation to an investigation of a contravention of this Division;in respect of which a civil proceeding may be instituted under this Subdivision or under Part 3 as so applying.
- (2) With respect to any matter:
 - (a) arising under this Division; or
 - (b) arising under Part 3 in its application in relation to an investigation of a contravention of this Division;in respect of which a civil proceeding is instituted under this Subdivision or under Part 3 as so applying:
 - (c) the several courts of the States are invested with federal jurisdiction within the limits of their several jurisdictions, whether those limits are as to locality, subject-matter or otherwise; and
 - (d) subject to the Constitution, jurisdiction is conferred on the several courts of the Territories.
- (3) Nothing in subsection (2) is taken to enable an inferior court of a State or Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.
- (4) The jurisdiction conferred by subsection (1) on the Federal Court is exclusive of the jurisdiction of any other court other than the

jurisdiction of the several courts of the States and Territories under subsection (2) and the jurisdiction of the High Court under section 75 of the Constitution.

12GK Transfer of matters

- (1) If:
- (a) a civil proceeding instituted by a person is pending in the Federal Court; and
 - (b) a matter for determination in the proceeding arose under:
 - (i) this Division; or
 - (ii) Part 3 in its application in relation to an investigation of a contravention of this Division;
- the Federal Court may, subject to subsection (2), upon the application of a party or of the Federal Court's own motion, transfer the matter to a court of a State or Territory and may also transfer to that court any other matter for determination in the proceeding.
- (2) The Federal Court must not transfer a matter to another court under subsection (1) unless the other court has power to grant the remedies sought before the Federal Court in the matter and it appears to the Federal Court that:
- (a) the matter arises out of or is related to a proceeding that is pending in the other court; or
 - (b) it is otherwise in the interests of justice that the matter be determined by the other court.
- (3) If the Federal Court transfers a matter to another court under subsection (1):
- (a) further proceedings in the matter must be as directed by the other court; and
 - (b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.
- (4) If:
- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GL

(b) a matter for determination in the proceeding arose under:

- (i) this Division; or
- (ii) Part 3 in its application in relation to an investigation of a contravention of this Division;

the court must, if directed to do so by the Federal Court, transfer to the Federal Court the matter and such other matters for determination in the proceeding, as the Federal Court decides, the determination of which would, apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction, be within the jurisdiction of the Federal Court.

(5) If:

(a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and

(b) a matter for determination in the proceeding arose under:

- (i) this Division; or
- (ii) Part 3 in its application in relation to an investigation of a contravention of this Division;

the court may, subject to subsection (6), upon the application of a party or of the court's own motion, transfer the matter to a court (other than the Supreme Court) of a State or Territory other than the State or Territory referred to in paragraph (a).

(6) The court must not transfer the matter to another court under subsection (5) unless the other court has power to grant the remedies sought in the matter and it appears to the court that:

- (a) the matter arises out of or is related to a proceeding that is pending in the other court; or
- (b) it is otherwise in the interests of justice that the matter be determined by the other court.

(7) If a court transfers a matter to another court under subsection (5), further proceedings in the matter must be as directed by the other court.

12GL Transfer of certain proceedings to Family Court

(1) If:

- (a) a civil proceeding is pending in the Federal Court; and

- (b) a matter for determination in the proceeding arises under this Division;
- the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.
- (3) Subject to subsection (4), if a proceeding is transferred to the Family Court:
- (a) the Family Court has jurisdiction to hear and determine the proceeding; and
 - (b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether under paragraph (a) or otherwise):
 - (i) that are associated with matters arising in the proceeding; or
 - (ii) that, apart from subsection 32(1) of the *Federal Court of Australia Act 1976*, the Federal Court would have had jurisdiction to hear and determine in the proceeding; and
 - (c) the Family Court may, in and in relation to the proceeding:
 - (i) grant such remedies; and
 - (ii) make orders of such kinds; and
 - (iii) issue, and direct the issue of, writs of such kinds; as the Federal Court could have in and in relation to the proceeding; and
 - (d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court; and
 - (e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and
 - (f) subject to paragraphs (a) to (e) (inclusive), this Division, the regulations, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GLA

- (i) a reference to the Federal Court (other than in the expression *the Court or a Judge*) included a reference to the Family Court; and
 - (ii) a reference to a Judge of the Federal Court (other than in the expression *the Court or a Judge*) included a reference to a Family Court Judge; and
 - (iii) a reference to the expression *the Court or a Judge* when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers; and
 - (iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and
 - (v) any other necessary changes were made.
- (4) If any difficulty arises in the application of paragraphs (3)(c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.
- (5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Division to the Family Court.

12GLA Non-punitive orders

- (1) The Court may, on application by ASIC, make one or more of the orders mentioned in subsection (2) in relation to a person who has engaged in contravening conduct.
- (2) The orders that the Court may make in relation to the person are:
 - (a) a community service order; and
 - (b) a probation order for a period of no longer than 3 years; and
 - (c) an order requiring the person to disclose, in the way and to the persons specified in the order, such information as is so specified, being information that the person has possession of or access to; and
 - (d) an order requiring the person to publish, at the person's expense and in the way specified in the order, an

advertisement in the terms specified in, or determined in
accordance with, the order.

(3) This section does not limit the Court's powers under any other
provision of this Act.

(4) In this section:

community service order, in relation to a person who has engaged
in contravening conduct, means an order directing the person to
perform a service that:

- (a) is specified in the order; and
- (b) relates to the conduct;

for the benefit of the community or a section of the community.

Example: The following are examples of community service orders:

- (a) an order requiring a person who has made false representations to
make available a training video which explains advertising obligations
under this Act; and
- (b) an order requiring a person who has engaged in misleading or
deceptive conduct in relation to a financial product to carry out a
community awareness program to address the needs of consumers
when purchasing the financial product.

contravening conduct means conduct that:

- (a) contravenes a provision of Subdivision C (sections 12CA to
12CC); or
- (b) contravenes a provision of Subdivision D (sections 12DA to
12DN); or
- (c) contravenes a provision of Subdivision E (sections 12EA to
12ED); or
- (d) constitutes an involvement in a contravention of any of those
provisions.

probation order, in relation to a person who has engaged in
contravening conduct, means an order that is made by the Court for
the purpose of ensuring that the person does not engage in the
contravening conduct, similar conduct or related conduct during
the period of the order, and includes:

- (a) an order directing the person to establish a compliance
program for employees or other persons involved in the

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GLB

person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the contravening conduct, similar conduct or related conduct; and

- (b) an order directing the person to establish an education and training program for employees or other persons involved in the person's business, being a program designed to ensure their awareness of the responsibilities and obligations in relation to the contravening conduct, similar conduct or related conduct; and
- (c) an order directing the person to revise the internal operations of the person's business which lead to the person engaging in the contravening conduct.

12GLB Punitive orders requiring adverse publicity

- (1) The Court may, on application by ASIC, make an adverse publicity order in relation to a person who is guilty of an offence under section 12GB.
- (2) In this section, an *adverse publicity order*, in relation to a person, means an order that:
 - (a) requires the person to disclose, in the way and to third parties specified in the order, such information as is so specified, being information that the person has possession of or access to; and
 - (b) requires the person to publish, at the person's expense and in the way specified in the order, an advertisement in the terms specified in, or determined in accordance with, the order.
- (3) This section does not limit the Court's powers under any other provision of this Act.

12GM Other orders

- (1) Without limiting the generality of section 12GD, if, in a proceeding instituted under, or for an offence against, this Division, the Court finds that a person who is a party to the proceeding has suffered, or is likely to suffer, loss or damage by conduct of another person that

Section 12GM

was engaged in in contravention of a provision of this Division, the Court may, whether or not it grants an injunction under section 12GD or makes an order under section 12GF, 12GLA or 12GLB, make such order or orders as it thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (7) of this section) if the Court considers that the order or orders concerned will compensate the first-mentioned person in whole or in part for the loss or damage or will prevent or reduce the loss or damage.

- (2) Without limiting the generality of section 12GD, the Court may, on the application of:
- (a) a person who has suffered, or is likely to suffer, loss or damage by conduct of another person that was engaged in in contravention of a provision of this Division; or
 - (b) ASIC in accordance with subsection (3) on behalf of such a person or persons;
- make such order or orders as the Court thinks appropriate against the person who engaged in the conduct or a person who was involved in the contravention (including all or any of the orders mentioned in subsection (7)) if the Court considers that the order or orders concerned will:
- (c) compensate the person who made the application, or the person or any of the persons on whose behalf the application was made, in whole or in part for the loss or damage; or
 - (d) prevent or reduce the loss or damage suffered, or likely to be suffered, by such a person or persons.
- (3) ASIC may only make an application under paragraph (2)(b) on behalf of one or more persons identified in the application who:
- (a) have suffered, or are likely to suffer, loss or damage by the conduct of another person that was engaged in in contravention of a provision of this Division; and
 - (b) have consented in writing to the application being made before it is made.
- (4) An application may be made under subsection (2) in relation to a contravention of this Division notwithstanding that a proceeding

Section 12GM

has not been instituted under another provision of this Part in relation to that contravention.

- (5) An application under subsection (2) may be made at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (6) For the purpose of determining whether to make an order under this section in relation to a contravention of Subdivision C (sections 12CA to 12CC), the Court may have regard to the conduct of parties to the proceeding since the contravention occurred.
- (7) Without limiting the generality of subsections (1) and (2), the orders referred to in those subsections include the following:
 - (a) an order declaring the whole or any part of a contract made between the person who suffered, or is likely to suffer, the loss or damage and the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, or of a collateral arrangement relating to such a contract, to be void and, if the Court thinks fit, to have been void *ab initio* or at all times on and after a date before the date on which the order is made;
 - (b) an order varying such a contract or arrangement in such manner as is specified in the order and, if the Court thinks fit, declaring the contract or arrangement to have had effect as so varied on and after a date before the date on which the order is made;
 - (c) an order refusing to enforce any or all of the provisions of such a contract;
 - (d) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to refund money or return property to the person who suffered the loss or damage;
 - (e) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to pay to the person who suffered the loss or damage the amount of the loss or damage;

Section 12GN

- (f) an order directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct, at his or her own expense, to supply specified services to the person who suffered, or is likely to suffer, the loss or damage;
 - (g) an order, in relation to an instrument creating or transferring an interest in land, directing the person who engaged in the conduct or a person who was involved in the contravention constituted by the conduct to execute an instrument that:
 - (i) varies, or has the effect of varying, the first-mentioned instrument; or
 - (ii) terminates or otherwise affects, or has the effect of terminating or otherwise affecting, the operation or effect of the first-mentioned instrument.
- (7A) Subsections (1) and (2) have effect subject to section 12GNA.
- Note: Section 12GNA may limit the liability, under an order under subsection (1) or (2) of this section, of a person for his or her contravention of section 12DA (Misleading or deceptive conduct) or involvement in such a contravention.
- (8) The powers conferred on the Court under this section in relation to a contract or covenant do not affect any powers that any other court may have in relation to the contract or covenant in proceedings instituted in that other court in respect of the contract or covenant.
 - (9) In subsection (7):
interest, in relation to land, has the same meaning as in subsection 12DC(3).

12GN Power of Court to prohibit payment or transfer of money or other property

- (1) If:
 - (a) proceedings have been commenced against a person for an offence against section 12GB; or
 - (b) an application has been made under section 12GD for an injunction against a person in relation to a contravention of a provision of this Division; or

Section 12GN

- (c) an action has been commenced under subsection 12GF(1) against a person in relation to a contravention of a provision of Subdivision D (sections 12DA to 12DN); or
- (d) an application for an order under subsection 12GM(2) or (3) has been or may be made against a person in relation to a contravention of a provision of this Division;

the Court may, on the application of the Minister or ASIC, make an order or orders mentioned in subsection (2) if the Court is satisfied that:

- (e) it is necessary or desirable to do so for the purpose of preserving money or other property held by or on behalf of a person referred to in paragraph (a), (b), (c) or (d), as the case may be (the *relevant person*), if the relevant person is liable or may become liable under this Division to pay money by way of a fine, damages, compensation, refund or otherwise or to transfer, sell or refund other property; and
 - (f) it will not unduly prejudice the rights and interests of any other person.
- (2) The orders referred to in subsection (1) are the following:
- (a) an order prohibiting, either absolutely or subject to conditions, a person who is indebted to the relevant person or to an associate of the relevant person from making a payment in total or partial discharge of the debt to, or to another person at the direction or request of, the person to whom the debt is owed;
 - (b) an order prohibiting, either absolutely or subject to conditions, a person who is holding money or other property on behalf of the relevant person or on behalf of an associate of the relevant person from paying all or any of the money, or transferring, or otherwise parting with possession of, the other property, to, or to another person at the direction or request of, the person on whose behalf the money or other property is held;
 - (c) an order prohibiting, either absolutely or subject to conditions, the taking or sending by any person of money of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the money is held;

Section 12GN

- (d) an order prohibiting, either absolutely or subject to conditions, the taking, sending or transfer by any person of other property of the relevant person or of an associate of the relevant person to a place outside the State or Territory in which the other property is located;
 - (e) an order appointing, if the relevant person is a natural person, a receiver or trustee of the property or of part of the property of the relevant person with such powers as are specified in the order.
- (3) Subject to subsection (4), an order under this section may be expressed to operate:
- (a) for a period specified in the order; or
 - (b) until proceedings under any other provision of this Part in relation to which the order was made have been concluded.
- (4) An order under this section made on an application *ex parte* must not be expressed to operate for a period exceeding 30 days.
- (5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person is guilty of an offence punishable on conviction:
- (a) in the case of a person not being a body corporate—by a fine not exceeding 200 penalty units; or
 - (b) in the case of a person being a body corporate—by a fine not exceeding 1,000 penalty units.
- (5A) Subsection (5) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (6) Nothing in this section affects the powers that the Court has apart from this section.
- (7) This section has effect subject to the *Bankruptcy Act 1966*.
- (8) A reference in this section to a person who is an associate of a relevant person is a reference to:
- (a) a person holding money or other property on behalf of the relevant person; or

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GNA

- (b) if the relevant person is a body corporate—a wholly owned subsidiary of the relevant person.

12GNA Limit on liability for misleading or deceptive conduct

State or Territory professional standards law limits liability

- (1) A professional standards law of a State, the Australian Capital Territory or the Northern Territory applies to limit occupational liability relating to an action for contravention of section 12DA in the same way as it limits occupational liability arising under a law of the State or Territory.

Note: Section 12DA prohibits misleading or deceptive conduct by a person in relation to financial services.

- (2) However, the professional standards law applies for that purpose:
 - (a) only in relation to a scheme that was prescribed by the regulations at the time (the *contravention time*) of the contravention; and
 - (b) as if the scheme were in force under that law at the contravention time in the form the scheme would have been in if:
 - (i) the scheme had not been amended or revoked under that law since the scheme was first prescribed; and
 - (ii) the modifications (if any) prescribed by the regulations at the contravention time had been made to the scheme.

Which State's or Territory's professional standards law applies?

- (3) For the purposes of working out whether a professional standards law of a particular State or Territory applies under subsection (1) in relation to a particular contravention of section 12DA, choice of law rules operate in relation to the contravention in the same way as they operate in relation to a tort.

Definitions

- (4) In this section:

modifications includes additions, omissions and substitutions.

occupation includes profession and trade.

occupational association means a body:

- (a) that represents the interests of persons who have the same occupation; and
- (b) whose membership is limited principally to such persons.

occupational liability means civil liability arising directly or vicariously from anything done or omitted by a member of an occupational association in the course of his or her occupation.

professional standards law means a law providing for the limitation of occupational liability by reference to schemes for limiting that liability that were formulated and published in accordance with that law.

12GO Intervention by ASIC

- (1) ASIC may, with the leave of the Court and subject to any conditions imposed by the Court, intervene in any proceeding instituted under this Division.
- (2) If ASIC intervenes in a proceeding, it is taken to be a party to the proceeding and has all the rights, duties and liabilities of such a party.

Subdivision GA—Proportionate liability for misleading and deceptive conduct

12GP Application of Subdivision

- (1) This Subdivision applies to a claim (an *apportionable claim*) if the claim is a claim for damages made under section 12GF for:
 - (a) economic loss; or
 - (b) damage to property;caused by conduct that was done in a contravention of section 12DA.
- (2) For the purposes of this Subdivision, there is a single apportionable claim in proceedings in respect of the same loss or damage even if

Section 12GQ

the claim for the loss or damage is based on more than one cause of action (whether or not of the same or a different kind).

- (3) In this Subdivision, a ***concurrent wrongdoer***, in relation to a claim, is a person who is one of 2 or more persons whose acts or omissions (or act or omission) caused, independently of each other or jointly, the damage or loss that is the subject of the claim.
- (4) For the purposes of this Subdivision, apportionable claims are limited to those claims specified in subsection (1).
- (5) For the purposes of this Subdivision, it does not matter that a concurrent wrongdoer is insolvent, is being wound up or has ceased to exist or died.

12GQ Certain concurrent wrongdoers not to have benefit of apportionment

- (1) Nothing in this Subdivision operates to exclude the liability of a concurrent wrongdoer (an ***excluded concurrent wrongdoer***) in proceedings involving an apportionable claim if:
 - (a) the concurrent wrongdoer intended to cause the economic loss or damage to property that is the subject of the claim; or
 - (b) the concurrent wrongdoer fraudulently caused the economic loss or damage to property that is the subject of the claim.
- (2) The liability of an excluded concurrent wrongdoer is to be determined in accordance with the legal rules (if any) that (apart from this Subdivision) are relevant.
- (3) The liability of any other concurrent wrongdoer who is not an excluded concurrent wrongdoer is to be determined in accordance with the provisions of this Subdivision.

12GR Proportionate liability for apportionable claims

- (1) In any proceedings involving an apportionable claim:
 - (a) the liability of a defendant who is a concurrent wrongdoer in relation to that claim is limited to an amount reflecting that proportion of the damage or loss claimed that the court

Section 12GS

- considers just having regard to the extent of the defendant's responsibility for the damage or loss; and
- (b) the court may give judgment against the defendant for not more than that amount.
- (2) If the proceedings involve both an apportionable claim and a claim that is not an apportionable claim:
- (a) liability for the apportionable claim is to be determined in accordance with the provisions of this Subdivision; and
- (b) liability for the other claim is to be determined in accordance with the legal rules, if any, that (apart from this Subdivision) are relevant.
- (3) In apportioning responsibility between defendants in the proceedings:
- (a) the court is to exclude that proportion of the damage or loss in relation to which the plaintiff is contributorily negligent under any relevant law; and
- (b) the court may have regard to the comparative responsibility of any concurrent wrongdoer who is not a party to the proceedings.
- (4) This section applies in proceedings involving an apportionable claim whether or not all concurrent wrongdoers are parties to the proceedings.
- (5) A reference in this Subdivision to a defendant in proceedings includes any person joined as a defendant or other party in the proceedings (except as a plaintiff) whether joined under this Subdivision, under rules of court or otherwise.

12GS Defendant to notify plaintiff of concurrent wrongdoer of whom defendant is aware

- (1) If:
- (a) a defendant in proceedings involving an apportionable claim has reasonable grounds to believe that a particular person (the *other person*) may be a concurrent wrongdoer in relation to the claim; and

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12GT

- (b) the defendant fails to give the plaintiff, as soon as practicable, written notice of the information that the defendant has about:
 - (i) the identity of the other person; and
 - (ii) the circumstances that may make the other person a concurrent wrongdoer in relation to the claim; and
 - (c) the plaintiff unnecessarily incurs costs in the proceedings because the plaintiff was not aware that the other person may be a concurrent wrongdoer in relation to the claim;
- the court hearing the proceedings may order that the defendant pay all or any of those costs of the plaintiff.
- (2) The court may order that the costs to be paid by the defendant be assessed on an indemnity basis or otherwise.

12GT Contribution not recoverable from defendant

A defendant against whom judgment is given under this Subdivision as a concurrent wrongdoer in relation to an apportionable claim:

- (a) cannot be required to contribute to any damages or contribution recovered from another concurrent wrongdoer in respect of the apportionable claim (whether or not the damages or contribution are recovered in the same proceedings in which judgment is given against the defendant); and
- (b) cannot be required to indemnify any such wrongdoer.

12GU Subsequent actions

- (1) In relation to an apportionable claim, nothing in this Subdivision or any other law prevents a plaintiff who has previously recovered judgment against a concurrent wrongdoer for an apportionable part of any damage or loss from bringing another action against any other concurrent wrongdoer for that damage or loss.
- (2) However, in any proceedings in respect of any such action, the plaintiff cannot recover an amount of damages that, having regard to any damages previously recovered by the plaintiff in respect of

the damage or loss, would result in the plaintiff receiving compensation for damage or loss that is greater than the damage or loss actually sustained by the plaintiff.

12GV Joining non-party concurrent wrongdoer in the action

- (1) The court may give leave for any one or more persons to be joined as defendants in proceedings involving an apportionable claim.
- (2) The court is not to give leave for the joinder of any person who was a party to any previously concluded proceedings in respect of the apportionable claim.

12GW Application of Subdivision

Nothing in this Subdivision:

- (a) prevents a person being held vicariously liable for a proportion of an apportionable claim for which another person is liable; or
- (b) prevents a partner from being held severally liable with another partner for that proportion of an apportionable claim for which the other partner is liable; or
- (c) affects the operation of any other Act to the extent that it imposes several liability on any person in respect of what would otherwise be an apportionable claim.

Subdivision H—Miscellaneous

12HA Relationship of this Subdivision to Part 3

- (1) The powers (and any restrictions on them) in this Subdivision are in addition to any powers ASIC has under Part 3 when investigating a contravention, or suspected contravention, of a provision of this Division. The powers may be used only when ASIC is so investigating.
- (2) For the purposes of Part 3, an exercise of a power in this Subdivision is taken to be an exercise of that power under, or for the purposes of, Part 3.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12HB

12HB Disclosure of documents by ASIC [*see* Note 2]

- (1) If:
 - (a) a proceeding is instituted against a person under section 12GD; or
 - (b) an application is made under section 12GE or subsection 12GM(2) or 12GN(1) for an order against a person;ASIC must, at the request of the person and upon payment of the prescribed fee (if any), give to the person:
 - (c) a copy of every document that has been given to, or obtained by, ASIC in connection with the matter to which the application, notice or proceeding relates and tends to establish the case of the person; and
 - (d) a copy of any other document in ASIC's possession that comes to ASIC's attention in connection with the matter to which the application, notice or proceeding relates and tends to establish the case of the person;not being a document obtained from the person or prepared by an officer or professional adviser of ASIC.
- (2) If ASIC does not comply with a request under subsection (1), the Court must, subject to subsection (3), upon application by the person who made the request, make an order directing ASIC to comply with the request.
- (3) The Court may refuse to make an order under subsection (2) in respect of a document or part of a document if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person, or for any other reason.
- (4) Before the Court gives a decision on an application under subsection (2), the Court may require any documents to be produced to it for inspection.
- (5) An order under this section may be expressed to be subject to conditions specified in the order.

12HC Prosecutions

- (1) Prosecutions for offences:
 - (a) against this Division; or
 - (b) against Part 3 in its application in relation to an investigation of a contravention of this Division;must be brought only in the Court.
- (2) Jurisdiction is conferred on the Court to hear and determine such prosecutions.
- (3) Proceedings before the Court under this section, other than proceedings instituted by:
 - (a) ASIC; or
 - (b) a person authorised in writing by ASIC;must not be instituted except with the consent in writing of the Minister or of a person authorised by the Minister in writing to give such consents.

12HD Jurisdiction of Court to make declarations and orders

- (1) Subject to this section, a person may institute a proceeding in the Court seeking, in relation to a matter arising under this Division or under Part 3 in its application in relation to an investigation of a contravention of this Division, the making of:
 - (a) a declaration in relation to the operation or effect of any provision of:
 - (i) this Division other than the provisions of Subdivision E (sections 12EA to 12ED); or
 - (ii) Part 3 as so applying; or
 - (b) a declaration in relation to the validity of any act or thing done, proposed to be done or purporting to have been done, under this Division or Part 3 as so applying; or
 - (c) an order by way of, or in the nature of, prohibition, certiorari or mandamus;or both such a declaration and such an order, and the Court has jurisdiction to hear and determine the proceeding.

Part 2 Australian Securities and Investments Commission and consumer protection in relation to financial services

Division 2 Unconscionable conduct and consumer protection in relation to financial services

Section 12HD

- (2) The Minister may institute a proceeding in the Court under this section and may intervene in any proceeding instituted in the Court under this section or in a proceeding instituted in any other court in which a party is seeking the making of a declaration or an order of a kind mentioned in subsection (1).
- (3) In this section, *proceeding* includes a cross-proceeding.

Part 3—Investigations and information-gathering

Division 1—Investigations

13 General powers of investigation

- (1) ASIC may make such investigation as it thinks expedient for the due administration of the corporations legislation (other than the excluded provisions) where it has reason to suspect that there may have been committed:
 - (a) a contravention of the corporations legislation (other than the excluded provisions); or
 - (b) a contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that:
 - (i) concerns the management or affairs of a body corporate or managed investment scheme; or
 - (ii) involves fraud or dishonesty and relates to a body corporate or managed investment scheme or to financial products.
- (2) Where ASIC has reason to suspect that unacceptable circumstances within the meaning of Subdivision B of Division 2 of Part 6.12 of the Corporations Act have, or may have, occurred, ASIC may make such investigation as it thinks expedient:
 - (a) for the purposes of determining whether or not to make an application under section 657C of that Act; or
 - (b) otherwise for the due administration of the corporations legislation (other than the excluded provisions).
- (6) If ASIC has reason to suspect that a contravention of a provision of Division 2 of Part 2 may have been committed, ASIC may make such investigation as it thinks appropriate.

14 Minister may direct investigations

- (1) Where, in the Minister's opinion, it is in the public interest in respect of this jurisdiction for a particular matter to which

Section 15

subsection (2) applies to be investigated, he or she may by writing direct ASIC to investigate that matter.

- (2) This subsection applies to a matter relating to any of the following:
 - (a) an alleged or suspected contravention of the corporations legislation (other than the excluded provisions);
 - (b) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that:
 - (i) concerns the management or affairs of a body corporate; or
 - (ii) involves fraud or dishonesty and relates to a body corporate or financial products;
 - (c) the affairs, or particular affairs, of a corporation;
 - (d) dealing in financial products;
 - (f) the establishment or conducting of a financial market;
 - (g) the provision of a clearing and settlement facility;
 - (j) the giving of advice, analyses or reports about financial products;
 - (k) the provision of compensation arrangements for a financial market.
- (3) ASIC must comply with a direction under subsection (1).
- (4) A direction under subsection (1) does not prevent ASIC from delegating a function or power.

15 Investigation after report of receiver or liquidator

If a report has been lodged under section 422 or 533 of the Corporations Act, ASIC may investigate a matter to which the report relates for the purpose of determining whether or not a person ought to be prosecuted for an offence against the corporations legislation (other than the excluded provisions).

16 Interim report on investigation

- (1) Where, in the course of an investigation under this Division, ASIC forms the opinion that:

- (a) a serious contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, has been committed; or
- (b) to prepare an interim report about the investigation would enable or assist the protection, preservation or prompt recovery of property; or
- (c) there is an urgent need for the corporations legislation (other than the excluded provisions) to be amended;

it must prepare an interim report that relates to the investigation and sets out:

- (d) if paragraph (a) applies—its findings about the contravention, and the evidence and other material on which those findings are based; or
 - (e) if paragraph (b) applies—such matters as, in its opinion, will so enable or assist; or
 - (f) if paragraph (c) applies—its opinion about amendment of that legislation, and its reasons for that opinion;
- and such other matters relating to, or arising out of, the investigation as it thinks fit.

- (2) ASIC may prepare an interim report about an investigation under this Division and must do so if the Minister so directs.
- (3) A report under subsection (2) must set out such matters relating to, or arising out of, the investigation as ASIC thinks fit or the Minister directs.

17 Final report on investigation

- (1) At the end of an investigation under section 13 or 15, ASIC may prepare a report about the investigation and must do so if the Minister so directs.
- (2) At the end of an investigation under section 14, ASIC must prepare a report about the investigation.
- (3) A report under this section must set out:
 - (a) ASIC's findings about the matters investigated; and
 - (b) the evidence and other material on which those findings are based; and

Section 18

- (c) such other matters relating to, or arising out of, the investigation as ASIC thinks fit or the Minister directs.

18 Distribution of report

- (1) As soon as practicable after preparing a report under this Division, ASIC must give a copy of the report to the Minister.
- (2) Where a report, or part of a report, under this Division relates to a serious contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, ASIC may give a copy of the whole or a part of the report to:
 - (a) the Australian Federal Police; or
 - (b) the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*); or
 - (c) the Director of Public Prosecutions; or
 - (d) a prescribed agency.
- (3) Where a report, or part of a report, under this Division relates to a person's affairs to a material extent, ASIC may, at the person's request or of its own motion, give to the person a copy of the report or of part of the report.
- (4) The Minister may cause the whole or a part of a report under this Division to be printed and published.

Division 2—Examination of persons

19 Notice requiring appearance for examination

- (1) This section applies where ASIC, on reasonable grounds, suspects or believes that a person can give information relevant to a matter that it is investigating, or is to investigate, under Division 1.
- (2) ASIC may, by written notice in the prescribed form given to the person, require the person:
 - (a) to give to ASIC all reasonable assistance in connection with the investigation; and
 - (b) to appear before a specified member or staff member for examination on oath and to answer questions.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) A notice given under subsection (2) must:
 - (a) state the general nature of the matter referred to in subsection (1); and
 - (b) set out the effect of subsection 23(1) and section 68.

20 Proceedings at examination

The remaining provisions of this Division apply where, pursuant to a requirement made under section 19 for the purposes of an investigation under Division 1, a person (in this Division called the *examinee*) appears before another person (in this Division called the *inspector*) for examination.

21 Requirements made of examinee

- (1) The inspector may examine the examinee on oath or affirmation and may, for that purpose:
 - (a) require the examinee to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to the examinee.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

Section 22

- (1A) An offence under subsection 63(3) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The oath or affirmation to be taken or made by the examinee for the purposes of the examination is an oath or affirmation that the statements that the examinee will make will be true.
- (3) The inspector may require the examinee to answer a question that is put to the examinee at the examination and is relevant to a matter that ASIC is investigating, or is to investigate, under Division 1.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

22 Examination to take place in private

- (1) The examination must take place in private and the inspector may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present at the examination unless he or she:
- (a) is the inspector, the examinee or a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection 23(1).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (3) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

23 Examinee's lawyer may attend

- (1) The examinee's lawyer may be present at the examination and may, at such times during it as the inspector determines:
- (a) address the inspector; and
 - (b) examine the examinee;
- about matters about which the inspector has examined the examinee.

- (2) If, in the inspector's opinion, a person is trying to obstruct the examination by exercising rights under subsection (1), the inspector may require the person to stop addressing the inspector, or examining the examinee, as the case requires.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) An offence under subsection 63(4) relating to subsection (2) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

24 Record of examination

- (1) The inspector may, and must if the examinee so requests, cause a record to be made of statements made at the examination.
- (2) If a record made under subsection (1) is in writing or is reduced to writing:
- (a) the inspector may require the examinee to read it, or to have it read to him or her, and may require him or her to sign it; and
 - (b) the inspector must, if requested in writing by the examinee to give to the examinee a copy of the written record, comply with the request without charge but subject to such conditions (if any) as the inspector imposes.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) An offence under subsection 63(3) relating to paragraph (2)(a) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

25 Giving to other persons copies of record

- (1) ASIC may give a copy of a written record of the examination, or such a copy together with a copy of any related book, to a person's lawyer if the lawyer satisfies ASIC that the person is carrying on, or is contemplating in good faith, a proceeding in respect of a matter to which the examination related.

Section 26

- (2) If ASIC gives a copy to a person under subsection (1), the person, or any other person who has possession, custody or control of the copy or a copy of it, must not, except in connection with preparing, beginning or carrying on, or in the course of, a proceeding:
- (a) use the copy or a copy of it; or
 - (b) publish, or communicate to a person, the copy, a copy of it, or any part of the copy's contents.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) ASIC may, subject to such conditions (if any) as it imposes, give to a person a copy of a written record of the examination, or such a copy together with a copy of any related book.

26 Copies given subject to conditions

- (1) If a copy is given to a person under subsection 24(2) or 25(3) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (2) Subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

27 Record to accompany report

- (1) If a report about the investigation referred to in section 20 is prepared under section 17, each record (if any) of the examination must accompany the report.
- (2) If:
- (a) in ASIC's opinion, a statement made at an examination is relevant to any other investigation under Division 1; and
 - (b) a record of the statement was made under section 24; and
 - (c) a report about the other investigation is prepared under section 17;

a copy of the record must accompany the report.

Division 3—Inspection of books

28 When certain powers may be exercised

A power conferred by this Division (other than sections 29, 35, 36 and 39A) may only be exercised:

- (a) for the purposes of the performance or exercise of any of ASIC's functions and powers under the corporations legislation; or
- (b) for the purposes of ensuring compliance with the corporations legislation; or
- (c) in relation to:
 - (i) an alleged or suspected contravention of the corporations legislation; or
 - (ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate or financial products; or
- (d) for the purposes of an investigation under Division 1.

29 ASIC may inspect books without charge

- (1) A book that the corporations legislation (other than the excluded provisions) requires a person to keep must be open for inspection (without charge) by a person authorised in writing by ASIC.
- (2) A person authorised under this section may require a person in whose possession the book is to make the book available for inspection by the first-mentioned person.
- (2A) An offence under subsection 63(3) relating to subsection (2) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) An authorisation under this section may be of general application or may be limited by reference to the books to be inspected.

30 Notice to produce books about affairs of body corporate or registered scheme

(1) ASIC may give to:

- (a) a body corporate that is not an exempt public authority; or
- (b) an eligible person in relation to such a body corporate;

a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to affairs of the body.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

(2) ASIC may give to:

- (a) the responsible entity of a registered scheme; or
- (b) an eligible person in relation to the responsible entity;

a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to the operation of the scheme.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

31 Notice to produce books about financial products

(1) ASIC may give to:

- (a) the operator of a financial market or clearing and settlement facility; or
- (b) a member of the board of the operator of a financial market or clearing and settlement facility; or
- (c) a person who either carries on or has carried on (either alone or together with any other person or persons) a financial services business, or who is a representative of such a person; or
- (d) a nominee controlled by a person of a kind referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is such a person; or
- (e) an eligible person in relation to a person of a kind referred to in paragraph (a), (b), (c) or (d); or
- (f) any other person who, in ASIC's opinion, has been a party to a dealing in financial products;

Part 3 Investigations and information-gathering

Division 3 Inspection of books

Section 32A

a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to:

- (g) the business or affairs of a financial market or clearing and settlement facility; or
- (h) a dealing in financial products; or
- (j) advice given, or an analysis or report issued or published, about financial products; or
- (k) the character or financial position of, or a business carried on by, a person of a kind referred to in paragraph (c) or (d); or
- (m) an audit of, or a report of an auditor about, a dealing in financial products or accounts or records of a person who either carries on or has carried on (either alone or together with any other person or persons) a financial services business, or who is a representative of such a person.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (2) A reference in subsection (1) to a dealing in financial products, or to a business carried on by a person, includes a reference to a dealing in financial products by a person as a trustee, or to a business carried on by a person as a trustee, as the case may be.

32A Notice to produce books about financial services

For the purposes of Division 2 of Part 2, ASIC may give to:

- (a) a person who supplies, or has supplied, a financial service; or
- (b) an eligible person in relation to that person;

a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books relating to:

- (c) the supply of the financial service; or
- (d) the financial service.

Note: Failure to comply with a requirement made under this section is an offence (see section 63).

33 Notice to produce documents in person's possession

ASIC may give to a person a written notice requiring the production to a specified member or staff member, at a specified place and time, of specified books that are in the first-mentioned person's possession and relate to:

- (a) affairs of a body corporate; or
- (ab) affairs of a registered scheme; or
- (b) a matter referred to in any of paragraphs 31(1)(g) to (m), inclusive; or
- (c) a matter referred to in paragraph 32A(c) or (d).

Note: Failure to comply with a requirement made under this section is an offence (see section 63).

34 ASIC may authorise persons to require production of books

- (1) ASIC may by writing authorise a member or staff member to make a requirement of a kind that this Division empowers ASIC to make.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (2) An authorisation under this section may be of general application or may be limited by reference to either or both of the following:
 - (a) the persons of whom requirements may be made;
 - (b) the books production of which may be required.
- (3) Where an authorisation of a person is in force under this section, the person may make a requirement in accordance with the authorisation as if, in sections 30, 31, 32A and 33:
 - (a) a reference to ASIC were a reference to the person; and
 - (b) a reference to specified books were a reference to books that the person specifies, whether in the requirement or not and whether orally or in writing, to the person of whom the requirement is made; and
 - (c) a reference to production to a specified person were a reference to production to the first-mentioned person.

Section 35

35 Application for warrant to seize books not produced

- (1) Where a member or staff member has reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises in Australia, books:
 - (a) whose production has been required under this Division; and
 - (b) that have not been produced in compliance with that requirement;he or she may:
 - (c) lay before a magistrate an information on oath setting out those grounds; and
 - (d) apply for the issue of a warrant to search the premises for those books.
- (2) On an application under this section, the magistrate may require further information to be given, either orally or by affidavit, in connection with the application.

36 Grant of warrant

- (1) This section applies where, on an application under section 35, the magistrate is satisfied that there are reasonable grounds to suspect that there are, or may be within the next 3 days, on particular premises, particular books:
 - (a) whose production has been required under this Division; and
 - (b) that have not been produced in compliance with that requirement.
- (2) The magistrate may issue a warrant authorising a member of the Australian Federal Police, whether or not named in the warrant, together with any person so named, with such assistance, and by such force, as is necessary and reasonable:
 - (a) to enter on or into the premises; and
 - (b) to search the premises; and
 - (c) to break open and search anything, whether a fixture or not, in or on the premises; and
 - (d) to take possession of, or secure against interference, books that appear to be any or all of those books.

- (3) If the magistrate issues such a warrant, he or she must set out on the information laid before him or her under subsection 35(2) for the purposes of the application:
- (a) which of the grounds set out in the information; and
 - (b) particulars of any other grounds;
- he or she has relied on to justify the issue of the warrant.
- (4) A warrant under this section must:
- (a) specify the premises and books referred to in subsection (1); and
 - (b) state whether entry is authorised to be made at any time of the day or night or only during specified hours; and
 - (c) state that the warrant ceases to have effect on a specified day that is not more than 7 days after the day of issue of the warrant.

37 Powers where books produced or seized

- (1) This section applies where:
- (a) books are produced to a person under a requirement made under this Division; or
 - (b) under a warrant issued under section 36, a person:
 - (i) takes possession of books; or
 - (ii) secures books against interference; or
 - (c) by virtue of a previous application of subsection (8) of this section, books are delivered into a person's possession.
- (2) If paragraph (1)(a) applies, the person may take possession of any of the books.
- (3) The person may inspect, and may make copies of, or take extracts from, any of the books.
- (4) The person may use, or permit the use of, any of the books for the purposes of a proceeding.
- (5) The person may retain possession of any of the books for so long as is necessary:
- (a) for the purposes of exercising a power conferred by this section (other than this subsection and subsection (7)); or

Section 37

- (b) for any of the purposes referred to in paragraphs 28(a), (b) and (d); or
 - (c) for a decision to be made about whether or not a proceeding to which the books concerned would be relevant should be begun; or
 - (d) for such a proceeding to be begun and carried on.
- (6) No-one is entitled, as against the person, to claim a lien on any of the books, but such a lien is not otherwise prejudiced.
- (7) While the books are in the person's possession, the person:
 - (a) must permit another person to inspect at all reasonable times such (if any) of the books as the other person would be entitled to inspect if they were not in the first-mentioned person's possession; and
 - (b) may permit another person to inspect any of the books.
- (8) Unless subparagraph (1)(b)(ii) applies, the person may deliver any of the books into the possession of ASIC or of a person authorised by it to receive them.
- (9) If paragraph (1)(a) or (b) applies, the person, or a person into whose possession the person delivers any of the books under subsection (8), may require:
 - (a) if paragraph (1)(a) applies—a person who so produced any of the books; or
 - (b) in any case—a person who was a party to the compilation of any of the books;to explain any matter about the compilation of any of the books or to which any of the books relate.
- Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).
- (10) In this section:
 - proceeding** includes:
 - (a) in relation to a contravention of Division 2 of Part 2—a proceeding under a law of the Commonwealth, a State or a Territory; and
 - (b) otherwise—a proceeding under a law of the Commonwealth, or of a State or Territory in this jurisdiction.

38 Powers where books not produced

Where a person fails to produce particular books in compliance with a requirement made by another person under this Division, the other person may require the first-mentioned person to state:

- (a) where the books may be found; and
- (b) who last had possession, custody or control of the books and where that person may be found.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

39 Power to require person to identify property of body corporate

A person who has power under this Division to require another person to produce books relating to affairs of a body corporate may, whether or not that power is exercised, require the other person:

- (a) to identify property of the body; and
- (b) to explain how the body has kept account of that property.

Note: Failure to comply with a requirement made under this section is an offence (see section 63).

39A ASIC may give copy of book relating to registered scheme to another person

- (1) ASIC may, subject to such conditions (if any) as it imposes, give to a person a copy of any book in its possession that relates to a registered scheme.
- (2) If a copy of a book is given to a person under subsection (1) subject to conditions, the person, and any other person who has possession, custody or control of the copy or a copy of it, must comply with the conditions.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Division 4—Requirements to disclose information about financial products

40 When certain powers may be exercised

A power conferred by section 41 may only be exercised:

- (a) for the purposes of the performance or exercise of any of ASIC's functions and powers under the corporations legislation (other than the excluded provisions); or
- (b) for the purposes of ensuring compliance with the corporations legislation (other than the excluded provisions); or
- (c) in relation to:
 - (i) an alleged or suspected contravention of the corporations legislation (other than the excluded provisions); or
 - (ii) an alleged or suspected contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, being a contravention that concerns the management or affairs of a body corporate, or involves fraud or dishonesty and relates to a body corporate or financial products; or
- (d) for the purposes of an investigation under Division 1.

41 Acquisitions and disposals of financial products

- (1) ASIC may require a person who carries on a financial services business to disclose to it, in relation to an acquisition or disposal of financial products:
 - (aa) whether the acquisition or disposal was effected on another person's behalf and, if so:
 - (i) the name of the other person; and
 - (ii) the nature of the instructions given to the person who carries on a financial services business in relation to the dealing; or
 - (a) the name of the person from or through whom the financial products were acquired; or

- (b) the name of the person to or through whom the financial products were disposed;

as the case may be, and the nature of the instructions given to the person who carries on a financial services business in relation to the acquisition or disposal.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (2) ASIC may require a person to disclose to it, in relation to an acquisition or disposal of financial products by the person, whether or not the person acquired or disposed of the financial products as trustee for, or for or on behalf of, another person, and, if so:
- (a) the name of the other person; and
- (b) the nature of any instructions given to the first-mentioned person in relation to the acquisition or disposal.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) ASIC may require a person who operates a financial market to disclose to ASIC, in relation to an acquisition or disposal of financial products on that financial market, the names of the persons who acted in the acquisition or disposal.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (4) ASIC may require an operator of a clearing and settlement facility to disclose to ASIC, in relation to a dealing in financial products, the names of any participants in the clearing and settlement facility who were concerned in any act or omission in relation to the dealing.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (5) Information required to be disclosed under this section need only be disclosed to the extent to which it is known to the person required to make the disclosure.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (5).

- (6) An offence under subsection 63(2) relating to subsection (1), (2), (3) or (4) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

43 Exercise of certain powers of ASIC in relation to financial products

- (1) This section applies where ASIC considers that:
- (a) it may be necessary to exercise, in relation to a financial product issued by a body corporate, a power under section 794D of the Corporations Act; or
 - (b) a contravention of section 991F, or Division 2 of Part 7.10, of the Corporations Act may have been committed in relation to financial products issued by a body corporate; or
 - (c) a contravention of Chapter 6C of the Corporations Act may have been committed in relation to shares in a body corporate; or
 - (d) a contravention of a law of the Commonwealth, or of a State or Territory in this jurisdiction, may have been committed, being a contravention that involves fraud or dishonesty and relates to financial products issued by a body corporate; or
 - (e) unacceptable circumstances within the meaning of Part 6.9 of the Corporations Act have, or may have, occurred:
 - (i) in relation to an acquisition of shares in a body corporate; or
 - (ii) as a result of conduct engaged in by a person in relation to shares in, or the affairs of, a body corporate; or
 - (f) a person has, or may have, contravened section 657F of the Corporations Act.
- (2) ASIC may require a director, secretary or senior manager of the body to disclose to ASIC information of which he or she is aware and that:
- (a) may have affected a dealing that has taken place; or
 - (b) may affect a dealing that may take place;
- in financial products issued by the body.
- Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).
- (3) If ASIC believes on reasonable grounds that a person can give, information about particular matters, being any or all of the following:
- (a) a dealing in financial products issued by the body;

- (b) advice, or an analysis or report, that a person who carries on or has carried on (either alone or together with any other person or persons) a financial services business, or a representative of such a person, has given, issued or published about such financial products;
- (c) the financial position of a business carried on by a person who:
 - (i) is or has been (either alone or together with any other person or persons) a person who carries on or has carried on a financial services business, or a representative of such a person; and
 - (ii) has dealt in, has given advice about, or has issued or published an analysis or report about, such financial products;
- (d) the financial position of a business carried on by a nominee controlled by a person of a kind referred to in paragraph (c) or jointly controlled by 2 or more persons at least one of whom is such a person;
- (e) an audit of, or a report of an auditor about, accounts or records of a person who carries on or has carried on (either alone or together with any other person or persons) a financial services business, or a representative of such a person, being accounts or records relating to dealings in such financial products;

ASIC may require the person to disclose to it the information that the person has about those particular matters.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3A) An offence under subsection 63(2) relating to subsection (2) or (3) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) ASIC must not exercise a power conferred by subsection (2) or (3) except:
 - (a) if paragraph (1)(a) applies—for the purpose of determining whether or not to exercise a power as mentioned in that paragraph; or
 - (b) if paragraph (1)(b), (c) or (d) applies—for the purpose of investigating the possible contravention; or

Section 47

- (c) if paragraph (1)(e) or (f) applies—for the purpose of determining whether or not to make an application under section 657C or 657G of the Corporations Act.

47 Disclosures to take place in private

- (1) A disclosure to ASIC pursuant to a requirement made under this Division must take place in private and ASIC may give directions about who may be present during it, or during a part of it.
- (2) A person must not be present during a disclosure unless he or she:
- (a) is a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection 48(1).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (3) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

48 Lawyer of person making disclosure may attend

- (1) The lawyer of a person making a disclosure to ASIC pursuant to a requirement made under this Division may be present during the disclosure and may, at such times during it as the representative of ASIC presiding at the meeting during which the disclosure is made determines, address the representatives of ASIC about the disclosure.
- (2) If, in the presiding representative's opinion, a person is trying to obstruct the disclosure by exercising rights under subsection (1), the presiding representative may require the person to stop addressing the representatives of ASIC.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) An offence under subsection 63(4) relating to subsection (2) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 5—Proceedings after an investigation

49 ASIC may cause prosecution to be begun

- (1) This section applies where:
- (a) as a result of an investigation; or
 - (b) from a record of an examination;
conducted under this Part, it appears to ASIC that a person:
 - (c) may have committed an offence against the corporations
legislation; and
 - (d) ought to be prosecuted for the offence.
- (2) ASIC may cause a prosecution of the person for the offence to be begun and carried on.
- (3) If:
- (a) ASIC, on reasonable grounds, suspects or believes that a
person can give information relevant to a prosecution for the
offence; or
 - (b) the offence relates to matters being, or connected with,
affairs of a body corporate, or to matters including such
matters;

ASIC may, whether before or after a prosecution for the offence is begun, by writing given to the person, or to an eligible person in relation to the body, as the case may be, require the person or eligible person to give all reasonable assistance in connection with such a prosecution.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3A) An offence under subsection 63(3) relating to subsection (3) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) Subsection (3) does not apply in relation to:
- (a) the person referred to in subsection (1); or
 - (b) a person who is or has been that person's lawyer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4), see subsection 13.3(3) of the *Criminal Code*.

Section 50

- (5) Nothing in this section affects the operation of the *Director of Public Prosecutions Act 1983*.

50 ASIC may cause civil proceeding to be begun

Where, as a result of an investigation or from a record of an examination (being an investigation or examination conducted under this Part), it appears to ASIC to be in the public interest for a person to begin and carry on a proceeding for:

- (a) the recovery of damages for fraud, negligence, default, breach of duty, or other misconduct, committed in connection with a matter to which the investigation or examination related; or
- (b) recovery of property of the person;

ASIC:

- (c) if the person is a company—may cause; or
- (d) otherwise—may, with the person's written consent, cause; such a proceeding to be begun and carried on in the person's name.

Division 6—Hearings

51 Power to hold hearings

ASIC may hold hearings for the purposes of the performance or exercise of any of its functions and powers under the corporations legislation (other than the excluded provisions), other than a function or power conferred on it by Division 1 of this Part or by section 657C or 657G of the Corporations Act.

52 General discretion to hold hearing in public or private

- (1) Subject to sections 53 and 54, ASIC may direct that a hearing take place in public or take place in private.
- (2) In exercising its discretion under subsection (1), ASIC must have regard to:
 - (a) whether evidence that may be given, or a matter that may arise, during the hearing is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public; and
 - (c) whether it is in the public interest that the hearing take place in public; and
 - (d) any other relevant matter.

53 Request by person appearing at hearing that it take place in public

- (1) Subject to section 54, where:
 - (a) the corporations legislation (other than the excluded provisions) requires ASIC to give a person an opportunity to appear at a hearing; and
 - (b) the person requests that the hearing or part of the hearing take place in public;the hearing or part must take place in public.

Section 54

- (2) Despite subsection (1), where ASIC is satisfied, having regard to the matters referred to in subsection 52(2), that it is desirable that a hearing or part of a hearing take place in private, it may direct that the hearing or part take place in private.

54 Certain hearings to take place in private

Where the corporations legislation (other than the excluded provisions and this section) requires a hearing to take place in private, the hearing must take place in private.

55 ASIC may restrict publication of certain material

- (1) Where, at a hearing that is taking place in public or in private, ASIC is satisfied that it is desirable to do so, ASIC may give directions preventing or restricting the publication of evidence given before, or of matters contained in documents lodged with, ASIC.
- (2) In determining whether or not to give a direction under subsection (1), ASIC must have regard to:
- (a) whether evidence that has been or may be given, or a matter that has arisen or may arise, during the hearing is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless ASIC exercises its powers under this section; and
 - (c) whether it is in the public interest that ASIC exercises its powers under this section; and
 - (d) any other relevant matter.

56 Who may be present when hearing takes place in private

- (1) ASIC may give directions about who may be present during a hearing that is to take place in private.
- (2) A direction under subsection (1) does not prevent:

- (a) a person whom the corporations legislation (other than the excluded provisions) requires to be given the opportunity to appear at a hearing; or
 - (b) a person representing under section 59:
 - (i) a person of a kind referred to in paragraph (a) of this subsection; or
 - (ii) a person who, by virtue of such a direction, is entitled to be present at a hearing;
- from being present during the hearing.
- (3) Where ASIC directs that a hearing take place in private, a person must not be present at the hearing unless he or she:
- (a) is a member; or
 - (b) is a staff member approved by ASIC; or
 - (c) is entitled to be present by virtue of:
 - (i) a direction under subsection (1); or
 - (ii) subsection (2).

Penalty: 10 penalty units or imprisonment for 3 months.

- (4) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

57 Involvement of person entitled to appear at hearing

- (1) This section applies where the corporations legislation (other than the excluded provisions) requires ASIC to give a person an opportunity to appear at a hearing and to make submissions and give evidence to it.
- (2) ASIC must appoint a place and time for the hearing and cause written notice of that place and time to be given to the person.
- (3) If the person does not wish to appear at the hearing, the person may, before the day of the hearing, lodge with ASIC any written submissions that the person wishes ASIC to take into account in relation to the matter concerned.

Section 58

58 Power to summon witnesses and take evidence

- (1) A member may, by written summons in the prescribed form given to a person:
- (a) require the person to appear before ASIC at a hearing to give evidence, to produce specified documents, or to do both; and
 - (b) require the person to attend from day to day unless excused, or released from further attendance, by a member.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (2) At a hearing, ASIC may take evidence on oath or affirmation, and for that purpose a member may:
- (a) require a witness at the hearing to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness at the hearing.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

- (4) The member presiding at a hearing:
- (a) may require a witness at the hearing to answer a question put to the witness; and
 - (b) may require a person appearing at the hearing pursuant to a summons issued under this section to produce a document specified in the summons.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 63).

- (4A) An offence under subsection 63(3) relating to subsection (1), (2) or (4) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) ASIC may permit a witness at a hearing to give evidence by tendering, and if ASIC so requires, verifying by oath, a written statement.

59 Proceedings at hearings

- (1) A hearing must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the corporations legislation (other than the excluded provisions) and a proper consideration of the matters before ASIC permit.
- (2) At a hearing, ASIC:
 - (a) is not bound by the rules of evidence; and
 - (b) may, on such conditions as it thinks fit, permit a person to intervene; and
 - (c) must observe the rules of natural justice.
- (3) Subject to subsection (4), Division 4 of Part 4 (other than section 104) applies, so far as practicable, in relation to a hearing as if the hearing were a meeting of ASIC.
- (4) At a hearing before a Division of ASIC, 2 members of the Division form a quorum.
- (5) At a hearing, a natural person may appear in person or be represented by an employee of the person approved by ASIC.
- (6) A body corporate may be represented at a hearing by an officer or employee of the body corporate approved by ASIC.
- (7) An unincorporated association, or a person in the person's capacity as a member of an unincorporated association, may be represented at a hearing by a member, officer or employee of the association approved by ASIC.
- (8) Any person may be represented at a hearing by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.

60 ASIC to take account of evidence and submissions

ASIC must take into account:

- (a) evidence given, or a submission made, to it at a hearing; or
 - (b) a submission lodged with it under section 57;
- in making a decision on a matter to which the evidence or submission relates.

Section 61

61 Reference to Court of question of law arising at hearing

- (1) ASIC may, of its own motion or at a person's request, refer to the Court for decision a question of law arising at a hearing.
- (3) Where a question has been referred under subsection (1), ASIC must not, in relation to a matter to which the hearing relates:
 - (a) give while the reference is pending a decision to which the question is relevant; or
 - (b) proceed in a manner, or make a decision, that is inconsistent with the Court's opinion on the question.
- (4) Where a question is referred under subsection (1):
 - (a) ASIC must send to the Court all documents that were before ASIC in connection with the hearing; and
 - (b) at the end of the proceeding in the Court in relation to the reference, the Court must cause the documents to be returned to ASIC.

62 Protection of members etc.

- (1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to a hearing, the same protection and immunity as a Justice of the High Court.
- (1A) A delegate of a member has, in the performance or exercise of any delegated function or power in relation to a hearing, the same protection and immunity as a Justice of the High Court.
- (2) A barrister, solicitor or other person appearing on a person's behalf at a hearing has the same protection and immunity as a barrister has in appearing for a party in a proceeding in the High Court.
- (3) Subject to this Act, a person who is required by a summons under section 58 to appear at a hearing, or a witness at a hearing, has the same protection as a witness in a proceeding in the High Court.

Division 7—Offences

63 Non-compliance with requirements made under this Part

- (1) A person must not intentionally or recklessly fail to comply with a requirement made under:
- (a) section 19; or
 - (b) subsection 21(3); or
 - (c) section 30, 31, 32A, 33 or 34; or
 - (d) subsection 37(9); or
 - (e) section 38; or
 - (f) section 39.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) A person must not fail to comply with a requirement made under section 41 or 43.

Penalty: 50 penalty units or imprisonment for 12 months, or both.

- (3) A person must not fail to comply with a requirement made under subsection 21(1) or 29(2), paragraph 24(2)(a) or subsection 49(3) or 58(1), (2) or (4).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (4) A person must comply with a requirement made under subsection 23(2) or 48(2).

Penalty: 5 penalty units.

- (5) Subsections (1), (1A), (2) and (3) do not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (6) Paragraph (1)(d) does not apply to the extent that the person has explained the matter to the best of his or her knowledge or belief.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

Section 64

- (7) Paragraph (1)(e) does not apply to the extent that the person has stated the matter to the best of his or her knowledge or belief.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (8) Paragraph (1)(f) does not apply to the extent that the person has, to the extent that the person is capable of doing so, performed the acts referred to in paragraphs 39(a) and (b).

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

64 False information

- (1) A person must not:

(a) in purported compliance with a requirement made under this Part; or

(b) in the course of an examination of the person;

give information, or make a statement, that is false or misleading in a material particular.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (2) A person must not, at a hearing, give evidence that is false or misleading in a material particular.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (3) It is a defence to a prosecution for a contravention of subsection (1) or (2) if it is proved that the defendant, when giving the information or evidence or making the statement, believed on reasonable grounds that it was true and not misleading.

Note: A defendant bears a legal burden in relation to the matter in subsection (3), see section 13.4 of the *Criminal Code*.

65 Obstructing person acting under this Part

- (1) A person must not:

(a) engage in conduct that results in the obstruction or hindering of a person in the exercise of a power under this Part; or

- (b) engage in conduct that results in the obstruction or hindering of a person who is executing a warrant issued under section 36.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

- (1A) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (2) The occupier, or person in charge, of premises that a person enters under a warrant issued under section 36 must not intentionally or recklessly fail to provide to that person all reasonable facilities and assistance for the effective exercise of his or her powers under the warrant.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

66 Contempt of ASIC

- (1) A person must not:

- (a) engage in conduct that results in the obstruction or hindering of ASIC or a member in the performance or exercise of any of ASIC's functions and powers; or
(b) engage in conduct that results in the disruption of a hearing.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) A person must not contravene a direction given under subsection 55(1).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2A) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (2B) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Section 67

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

67 Concealing books relevant to investigation

- (1) Where ASIC is investigating, or is about to investigate, a matter, a person must not:
- (a) in any case—engage in conduct that results in the concealment, destruction, mutilation or alteration of a book relating to that matter; or
 - (b) if a book relating to that matter is in a particular State or Territory—engage in conduct that results in the taking or sending of the book out of that State or Territory or out of Australia.

Penalty: 200 penalty units or imprisonment for 5 years, or both.

- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant intended neither to defeat the purposes of the corporations legislation, nor to delay or obstruct an investigation, or a proposed investigation, by ASIC.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (2), see section 13.4 of the *Criminal Code*.

68 Self-incrimination

- (1) For the purposes of this Part, of Division 3 of Part 10, and of Division 2 of Part 11, it is not a reasonable excuse for a person to refuse or fail:
- (a) to give information; or
 - (b) to sign a record; or
 - (c) to produce a book;
- in accordance with a requirement made of the person, that the information, signing the record or production of the book, as the case may be, might tend to incriminate the person or make the person liable to a penalty.
- (2) Subsection (3) applies where:
- (a) before:
 - (i) making an oral statement giving information; or

- (ii) signing a record;
pursuant to a requirement made under this Part, Division 3 of Part 10 or Division 2 of Part 11, a person (other than a body corporate) claims that the statement, or signing the record, as the case may be, might tend to incriminate the person or make the person liable to a penalty; and
 - (b) the statement, or signing the record, as the case may be, might in fact tend to incriminate the person or make the person so liable.
- (3) The statement, or the fact that the person has signed the record, as the case may be, is not admissible in evidence against the person in:
- (a) a criminal proceeding; or
 - (b) a proceeding for the imposition of a penalty;
other than a proceeding in respect of:
 - (c) in the case of the making of a statement—the falsity of the statement; or
 - (d) in the case of the signing of a record—the falsity of any statement contained in the record.

69 Legal professional privilege

- (1) This section applies where:
 - (a) under this Part, Division 3 of Part 10, or Division 2 of Part 11, a person requires a lawyer:
 - (i) to give information; or
 - (ii) to produce a book; and
 - (b) giving the information would involve disclosing, or the book contains, as the case may be, a privileged communication made by, on behalf of or to the lawyer in his or her capacity as a lawyer.
- (2) The lawyer is entitled to refuse to comply with the requirement unless:
 - (a) if the person to whom, or by or on behalf of whom, the communication was made is a body corporate that is under official management or being wound up—the official manager or liquidator of the body; or

Section 70

- (b) otherwise—the person to whom, or by or on behalf of whom, the communication was made;
consents to the lawyer complying with the requirement.
- (3) If the lawyer so refuses, he or she must, as soon as practicable, give to the person who made the requirement a written notice setting out:
- (a) if the lawyer knows the name and address of the person to whom, or by or on behalf of whom, the communication was made—that name and address; and
 - (b) if subparagraph (1)(a)(i) applies and the communication was made in writing—sufficient particulars to identify the document containing the communication; and
 - (c) if subparagraph (1)(a)(ii) applies—sufficient particulars to identify the book, or the part of the book, containing the communication.

Penalty: 10 penalty units or imprisonment for 3 months, or both.

70 Powers of Court where non-compliance with Part

- (1) This section applies where ASIC is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under this Part (other than Division 8).
- (2) ASIC may by writing certify the failure to the Court.
- (3) If ASIC does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Division 8—ASIC's powers where non-compliance with Part

71 Orders by ASIC

This Division applies where, in ASIC's opinion, information about:

- (a) affairs of a body corporate; or
- (b) financial products;

needs to be found out for the purposes of the exercise of any of ASIC's powers under this Part but cannot be found out because a person has failed to comply with a requirement made under this Part.

72 Orders in relation to securities of a body corporate

- (1) If paragraph 71(a) applies, ASIC may make one or more of the following:
 - (a) an order restraining a specified person from disposing of any interest in specified securities of the body corporate referred to in that paragraph;
 - (b) an order restraining a specified person from acquiring any interest in specified securities of the body;
 - (c) an order restraining the exercise of voting or other rights attached to specified securities of the body;
 - (d) an order directing the holder of securities in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to the securities;
 - (e) an order directing the body not to pay, except in the course of winding up, a sum due from the body in respect of specified securities of the body;
 - (f) an order directing the body not to register the transfer or transmission of specified securities of the body;
 - (g) an order directing the body not to issue to a person who holds shares in the body shares that the body proposed to issue to the person:
 - (i) because the person holds shares in the body; or

Section 73

- (ii) pursuant to an offer or invitation made or issued to the person because the person holds shares in the body.
- (2) An offence under subsection 75(5) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

73 Orders in relation to financial products generally

- (1) If paragraph 71(b) applies, ASIC may make one or more of the following:
- (a) an order restraining a specified person from disposing of any interest in specified financial products;
 - (b) an order restraining a specified person from acquiring any interest in specified financial products;
 - (c) an order restraining the exercise of voting or other rights attached to specified financial products;
 - (d) an order directing the holder of financial products in respect of which an order under this section is in force to give written notice of that order to any person whom the holder knows to be entitled to exercise a right to vote attached to the financial products;
 - (e) an order directing a body corporate not to pay, except in the course of winding up, a sum due from the body in respect of specified financial products;
 - (f) an order directing a body corporate not to register the transfer or transmission of specified financial products;
 - (g) an order directing a body corporate not to issue to a person who holds shares in the body shares that the body proposed to issue to the person:
 - (i) because the person holds such shares; or
 - (ii) pursuant to an offer or invitation made or issued to the person because the person holds such shares;
 - (h) an order requiring a specified person to dispose of specified derivatives, or to dispose of specified derivatives in a specified manner.
- (2) An order under subsection (1) does not prejudice or affect a right of an operator of a financial market or clearing and settlement facility:
-

- (a) to cause or enter into a transaction that causes a derivative to be closed out; or
 - (b) to cause to be registered in a person's name, or to register in a person's name, a derivative that was previously registered in another person's name.
- (3) An offence under subsection 75(5) relating to subsection (1) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

75 Orders under this Division

- (1) ASIC may make an order varying or revoking an order in force under this Division.
- (2) An order under this Division must be made by notice published in the *Gazette*.
- (3) Where an order is made under this Division (other than subsection (1)), ASIC must cause to be given to the person to whom the order is directed:
 - (a) a copy of the order; and
 - (b) a copy of each order varying or revoking it.
- (4) Where an order under this Division relates to financial products, ASIC must cause:
 - (a) a copy of the order; and
 - (b) a copy of each order varying or revoking it;to be given to:
 - (c) in any case—the person who issued or made available, or who will issue or make available, the financial products; or
 - (d) if the financial products are rights or options—the person against whom the right or option is, or would be enforceable.
- (5) A person must comply with an order in force under this Division.

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Division 9—Evidentiary use of certain material

76 Statements made at an examination: proceedings against examinee

- (1) A statement that a person makes at an examination of the person is admissible in evidence against the person in a proceeding unless:
 - (a) because of subsection 68(3), the statement is not admissible in evidence against the person in the proceeding; or
 - (b) the statement is not relevant to the proceeding and the person objects to the admission of evidence of the statement; or
 - (c) the statement is qualified or explained by some other statement made at the examination, evidence of the other statement is not tendered in the proceeding and the person objects to the admission of evidence of the first-mentioned statement; or
 - (d) the statement discloses matter in respect of which the person could claim legal professional privilege in the proceeding if this subsection did not apply in relation to the statement, and the person objects to the admission of evidence of the statement.
- (2) Subsection (1) applies in relation to a proceeding against a person even if it is heard together with a proceeding against another person.
- (3) Where a written record of an examination of a person is signed by the person under subsection 24(2) or authenticated in any other prescribed manner, the record is, in a proceeding, prima facie evidence of the statements it records, but nothing in this Part limits or affects the admissibility in the proceeding of other evidence of statements made at the examination.

77 Statements made at an examination: other proceedings

Where direct evidence by a person (the *absent witness*) of a matter would be admissible in a proceeding, a statement that the absent witness made at an examination of the absent witness and that

tends to establish that matter is admissible in the proceeding as evidence of that matter:

- (a) if it appears to the court or tribunal that:
 - (i) the absent witness is dead or is unfit, because of physical or mental incapacity, to attend as a witness; or
 - (ii) the absent witness is outside the State or Territory in which the proceeding is being heard and it is not reasonably practicable to secure his or her attendance; or
 - (iii) all reasonable steps have been taken to find the absent witness but he or she cannot be found; or
- (b) if it does not so appear to the court or tribunal—unless another party to the proceeding requires the party tendering evidence of the statement to call the absent witness as a witness in the proceeding and the tendering party does not so call the absent witness.

78 Weight of evidence admitted under section 77

- (1) This section applies where evidence of a statement made by a person at an examination of the person is admitted under section 77 in a proceeding.
- (2) In deciding how much weight (if any) to give to the statement as evidence of a matter, regard is to be had to:
 - (a) how long after the matters to which it related the statement was made; and
 - (b) any reason the person may have had for concealing or misrepresenting a material matter; and
 - (c) any other circumstances from which it is reasonable to draw an inference about how accurate the statement is.
- (3) If the person is not called as a witness in the proceeding:
 - (a) evidence that would, if the person had been so called, have been admissible in the proceeding for the purpose of destroying or supporting his or her credibility is so admissible; and
 - (b) evidence is admissible to show that the statement is inconsistent with another statement that the person has made at any time.

Section 79

- (4) However, evidence of a matter is not admissible under this section if, had the person been called as a witness in the proceeding and denied the matter in cross-examination, evidence of the matter would not have been admissible if adduced by the cross-examining party.

79 Objection to admission of statements made at examination

- (1) A party (the *adducing party*) to a proceeding may, not less than 14 days before the first day of the hearing of the proceeding, give to another party to the proceeding written notice that the adducing party:
- (a) will apply to have admitted in evidence in the proceeding specified statements made at an examination; and
 - (b) for that purpose, will apply to have evidence of those statements admitted in the proceeding.
- (2) A notice under subsection (1) must set out, or be accompanied by writing that sets out, the specified statements.
- (3) Within 14 days after a notice is given under subsection (1), the other party may give to the adducing party a written notice:
- (a) stating that the other party objects to specified statements being admitted in evidence in the proceeding; and
 - (b) specifies, in relation to each of those statements, the grounds of objection.
- (4) The period prescribed by subsection (3) may be extended by the court or tribunal or by agreement between the parties concerned.
- (5) On receiving a notice given under subsection (3), the adducing party must give to the court or tribunal a copy of:
- (a) the notice under subsection (1) and any writing that subsection (2) required to accompany that notice; and
 - (b) the notice under subsection (3).
- (6) Where subsection (5) is complied with, the court or tribunal may either:
- (a) determine the objections as a preliminary point before the hearing of the proceeding begins; or
 - (b) defer determination of the objections until the hearing.

- (7) Where a notice has been given in accordance with subsections (1) and (2), the other party is not entitled to object at the hearing of the proceeding to a statement specified in the notice being admitted in evidence in the proceeding, unless:
- (a) the other party has, in accordance with subsection (3), objected to the statement being so admitted; or
 - (b) the court or tribunal gives the other party leave to object to the statement being so admitted.

80 Copies of, or extracts from, certain books

- (1) A copy of, or an extract from, a book relating to:
- (a) affairs of a body corporate; or
 - (b) a matter referred to in any of paragraphs 31(1)(g) to (m), inclusive; or
 - (c) a matter referred to in paragraph 32A(c) or (d);
- is admissible in evidence in a proceeding as if the copy were the original book, or the extract were the relevant part of the original book, as the case may be, whether or not the copy or extract was made under section 37.
- (2) A copy of, or an extract from, a book is not admissible in evidence under subsection (1) unless it is proved that the copy or extract is a true copy of the book, or of the relevant part of the book, as the case may be.
- (3) For the purposes of subsection (2), a person who has compared:
- (a) a copy of a book with the book; or
 - (b) an extract from a book with the relevant part of the book;
- may give evidence, either orally or by an affidavit or statutory declaration, that the copy or extract is a true copy of the book or relevant part, as the case may be.

81 Report under Division 1

Subject to section 82, where a copy of a report under Division 1 purports to be certified by ASIC as a true copy of such a report, the copy is admissible in a proceeding (other than a criminal proceeding) as prima facie evidence of:

Section 82

- (a) ASIC's report of its opinion for the purposes of paragraph 461(1)(h) or subparagraph 583(c)(iii) of the Corporations Act; and
- (b) any facts or matters that the report states ASIC to have found to exist.

82 Exceptions to admissibility of report

- (1) This section applies where a party to a proceeding tenders a copy of a report as evidence against another party.
- (2) The copy is not admissible under section 81 in the proceeding as evidence against the other party unless the court or tribunal is satisfied that:
 - (a) a copy of the report has been given to the other party; and
 - (b) the other party, and the other party's lawyer, have had a reasonable opportunity to examine that copy and to take its contents into account in preparing the other party's case.
- (3) Before or after the copy referred to in subsection (1) is admitted in evidence, the other party may apply to cross-examine, in relation to the report, a specified person who, or 2 or more specified persons each of whom:
 - (a) was concerned in preparing the report or making a finding about a fact or matter that the report states ASIC to have found to exist; or
 - (b) whether or not pursuant to a requirement made under this Part, gave information, or produced a book, on the basis of which, or on the basis of matters including which, such a finding was made.
- (4) The court or tribunal must grant an application made under subsection (3) unless it considers that, in all the circumstances, it is not appropriate to do so.
- (5) If:
 - (a) the court or tribunal grants an application or applications made under subsection (3); and
 - (b) a person to whom the application or any of the applications relate, or 2 or more such persons, is or are unavailable, or

does not or do not attend, to be cross-examined in relation to the report; and

- (c) the court or tribunal is of the opinion that to admit the copy under section 81 in the proceeding as evidence against the other party without the other party having the opportunity so to cross-examine the person or persons would unfairly prejudice the other party;

the court or tribunal must refuse so to admit the copy, or must treat the copy as not having been so admitted, as the case requires.

83 Material otherwise admissible

Nothing in this Division renders evidence inadmissible in a proceeding in circumstances where it would have been admissible in that proceeding if this Division had not been enacted.

Division 10—Miscellaneous

84 Requirement made of a body corporate

Where a provision of this Part empowers a person to make a requirement of a body corporate, the provision also empowers the person to make that requirement of a person who is or has been an officer or employee of the body.

85 Evidence of authority

A person (the *inspector*), other than ASIC, who is about to make, or has made, a requirement of another person under this Part (other than Division 6) must, if the other person requests evidence of the inspector's authority to make the requirement, produce to the other person:

- (a) a current identity card that was issued to the inspector by ASIC and incorporates a photograph of the inspector; and
- (b) if the requirement will be, or was, made under an authorisation by ASIC—a document that was issued by ASIC and sets out the effect of so much of the authorisation as is relevant to making the requirement; and
- (c) otherwise—such evidence (if any) of the inspector's authority to make the requirement as ASIC determines.

86 Giving documents to natural persons

Section 109X of the Corporations Act has effect for the purposes of this Part as if a reference in subsection (2) of that section to leaving a document at an address were a reference to leaving it at that address with a person whom the person leaving the document believes on reasonable grounds:

- (a) to live or work at that address; and
- (b) to have attained the age of 16 years.

87 Place and time for production of books

A provision of this Part that empowers a person to require the production of books at a place and time specified by the person is taken:

- (a) to require the person to specify a place and time that are reasonable in all the circumstances; and
- (b) if it is reasonable in all the circumstances for the person to require the books to be produced forthwith—to empower the person to require the books to be produced forthwith.

88 Application of Crimes Act and Evidence Act

- (1) For the purposes of Part III of the *Crimes Act 1914*, an examination or a hearing is a judicial proceeding.
- (2) Part 2.2, sections 69, 70, 71 and 147 and Division 2 of Part 4.6 of the *Evidence Act 1995* apply to an examination in the same way that they apply to a proceeding to which that Act applies under section 4 of that Act.

89 Allowances and expenses

- (1) A person who, pursuant to a requirement made under section 19, appears for examination is entitled to the prescribed allowances and expenses (if any).
- (2) A person who, pursuant to a summons issued under section 58, appears at a hearing is entitled to be paid:
 - (a) if the summons was issued at another person's request—by that other person; or
 - (b) otherwise—by ASIC;the prescribed allowances and expenses (if any).
- (3) ASIC may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a person incurs in complying with a requirement made under this Part.

Section 90

90 Expenses of investigation under Division 1

Subject to section 91, ASIC must pay the expenses of an investigation.

91 Recovery of expenses of investigation

(1) Where:

- (a) a person is convicted of an offence against a law of the Commonwealth, or of a State or Territory in this jurisdiction, in a prosecution; or
- (b) a judgment is awarded, or a declaration or other order is made, against a person in a proceeding in a court of this jurisdiction; or
- (ba) a person is convicted of an offence against Division 2 of Part 2 in a prosecution; or
- (bb) a judgment is awarded, or a declaration or other order is made, against a person under Division 2 of Part 2 in a proceeding in a court;

begun as a result of an investigation under Division 1, ASIC may make one of the following orders:

- (c) an order that the person pay the whole, or a specified part, of the expenses of the investigation;
 - (d) an order that the person reimburse ASIC to the extent of a specified amount of such of the expenses of the investigation as ASIC has paid;
 - (e) an order that the person pay, or reimburse ASIC in respect of, the whole, or a specified part, of the cost to ASIC of making the investigation, including the remuneration of a member or staff member concerned in the investigation.
- (2) An order under this section must be in writing and must specify when and how the payment or reimbursement is to be made.
- (3) A person must comply with an order under this section that is applicable to the person.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

(3A) Subsection (3) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) ASIC may recover in a court of competent jurisdiction as a debt due to ASIC so much of the amount payable under an order made under this section as is not paid in accordance with the order.
- (5) A report under Division 1 may include recommendations about the making of orders under this section.

92 Compliance with Part

A person is neither liable to a proceeding, nor subject to a liability, merely because the person has complied, or proposes to comply, with a requirement made, or purporting to have been made, under this Part.

93 Effect of Part

- (1) Except as expressly provided, nothing in this Part limits the generality of anything else in this Part.
- (2) The functions and powers that this Part confers are in addition to, and do not derogate from, any other function or power conferred by a law of the Commonwealth, a State or a Territory.

93AA Enforcement of undertakings

- (1) ASIC may accept a written undertaking given by a person in connection with a matter in relation to which ASIC has a function or power under this Act.
- (2) The person may withdraw or vary the undertaking at any time, but only with ASIC's consent.
- (3) If ASIC considers that the person who gave the undertaking has breached any of its terms, ASIC may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;

Section 93AA

- (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the Court considers appropriate.

Part 3A—Enforceable undertakings in relation to registered schemes

93A Undertakings by responsible entity

- (1) ASIC may accept a written undertaking given by the responsible entity of a registered scheme in connection with a matter:
 - (a) concerning the registered scheme; and
 - (b) in relation to which ASIC has a power or function under the corporations legislation (other than the excluded provisions).
- (2) The responsible entity may withdraw or vary the undertaking at any time, but only with ASIC's consent.
- (3) If ASIC considers that the responsible entity has breached any of the terms of the undertaking, ASIC may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the responsible entity has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the responsible entity to comply with that term of the undertaking;
 - (b) an order directing the responsible entity to transfer to scheme property an amount up to the amount of any financial benefit that the responsible entity has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the Court considers appropriate directing the responsible entity to compensate any person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the Court considers appropriate.
- (5) ASIC must keep a record of the full text of the undertaking.
- (6) ASIC must make available to a person who asks for it a copy of the text of the undertaking, but ASIC must delete from the copy information:
 - (a) that the responsible entity has asked it not to release; and

Section 93A

- (b) that ASIC is satisfied:
 - (i) is commercial in confidence; or
 - (ii) should not be disclosed because it would be against the public interest to do so; or
 - (iii) consists of personal details of an individual.
- (7) If ASIC makes available a copy that has information deleted from it, the copy must include a note stating that information has been deleted.

Part 4—ASIC's business

Division 1—General

94 Arrangement of ASIC's business

Subject to section 12, ASIC may give directions about the arrangement of ASIC's business.

95 ASIC to establish offices

- (1) For the purpose of performing its functions and exercising its powers under the corporations legislation, ASIC:
 - (a) must establish a regional office in each State and Territory (other than an external Territory) in this jurisdiction; and
 - (b) may establish a regional office in a State that is not in this jurisdiction; and
 - (c) may establish such other offices as it thinks fit.
- (2) In deciding on the number and location of its offices, ASIC must seek to ensure that:
 - (a) for the purposes of the corporations legislation (other than the excluded provisions)—it serves adequately the needs of business communities in the States and Territories in this jurisdiction; and
 - (b) for the purposes of Division 2 of Part 2—it serves adequately the needs of business communities throughout Australia.

96 Regional Commissioners

For each regional office established under subsection 95(1) there is to be a different Regional Commissioner, employed by ASIC under subsection 120(3), who must manage the office.

Division 2—Divisions of ASIC

97 ASIC may establish Division

- (1) ASIC may direct in writing that a Division of ASIC consisting of at least 2 specified members is to, either generally or as otherwise provided by the direction, perform or exercise specified functions or powers of ASIC.
- (2) A direction under this section that is in force and does not specify the Chairperson as a member of the Division must specify such a member as the Division's chairperson.

98 Effect of direction establishing Division

- (1) Where a direction under section 97 is in force, this section has effect for the purposes of the performance or exercise by the Division, in accordance with the direction, of functions or powers of ASIC.
- (2) ASIC is taken to consist of the Division.
- (3) If the Chairperson is not a member of the Division, the member whom the direction specifies as the Division's chairperson is taken to be the Chairperson.
- (4) A meeting of the Division is taken to be a meeting of ASIC, but 2 members of the Division form a quorum at a meeting of the Division.

99 ASIC may reconstitute Division

Where a direction under section 97 is in force, ASIC may at any time revoke the direction or amend it in relation to the Division's membership or in any other respect.

100 Effect of reconstituting Division

- (1) This section has effect where, as at the time when a direction is amended under section 99 so as to change a Division's

membership, the Division as constituted before the change has, in relation to a particular matter, begun but not yet completed the performance of functions, or the exercise of powers, in accordance with the direction as in force before the amendment.

- (2) The Division as constituted after the change may, in relation to that matter, perform functions, and exercise powers, in accordance with the direction as in force after the amendment.

101 Multiple Divisions

A Division of ASIC may perform functions, or exercise powers, of ASIC even though another such Division is performing such functions, or exercising such powers, at the same time.

Division 3—Delegation by ASIC

102 Delegation

- (1) ASIC may, by writing under its common seal, delegate to a person all or any of its functions and powers.
- (2) ASIC must not, without the Minister's approval, delegate a function or power to a person other than:
 - (a) a member; or
 - (b) a staff member; or
 - (c) a person who, by virtue of the regulations, is a prescribed person in relation to the delegation; or
 - (d) a person appointed by APRA under section 45 of the *Australian Prudential Regulation Authority Act 1998*; or
 - (e) a member of the staff of the Australian Competition and Consumer Commission referred to in subsection 27(1) of the *Trade Practices Act 1974*.
- (2A) ASIC must not delegate a function or power to an APRA staff member within the meaning of the *Australian Prudential Regulation Authority Act 1998*, unless the Chief Executive Officer of APRA has agreed to the delegation in writing.
- (2B) ASIC must not delegate a function or power to:
 - (a) a person referred to in paragraph (2)(e); or
 - (b) a person engaged under section 27A of the *Trade Practices Act 1974*;unless the Chairperson of the Australian Competition and Consumer Commission has agreed to the delegation in writing.
- (3) In subsections (1) and (2):

person includes a body.
- (4) In exercising its power under subsection (1), ASIC must seek to ensure that:
 - (a) the persons who make decisions affecting a particular business community are located as close to that community as practicable; and

- (b) for the purposes of the corporations legislation (other than the excluded provisions)—members of business communities in the States and Territories in this jurisdiction have prompt and convenient access to decision-making and to ASIC's facilities; and
 - (c) for the purposes of Division 2 of Part 2—members of business communities throughout Australia have prompt and convenient access to decision-making and to ASIC's facilities.
- (5) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to ASIC's directions.
- (6) Where a function or power conferred on ASIC by or under a law (including this Act) and delegated under this section is performed or exercised by the delegate, it is, for the purposes of that law and this Act, taken to have been performed or exercised by ASIC.

Division 4—Meetings of ASIC

103 Convening of meetings

- (1) The Chairperson may convene a meeting to be held at a place and time he or she determines.
- (2) The Chairperson must convene such meetings as he or she thinks necessary for the efficient performance of ASIC's functions.
- (3) If so requested in writing by 2 of the members, the Chairperson must convene a meeting.

104 Approved methods of communication

- (1) If all the members who are not absent from office so agree, a meeting may be held by means of a method of communication, or by means of a combination of methods of communication, approved by ASIC for the purposes of that meeting.
- (2) For the purposes of this Part, a member who participates in a meeting held as permitted by subsection (1) is present at the meeting even if he or she is not physically present at the same place as another member participating in the meeting.
- (3) In this section:
meeting includes a part of a meeting.

105 Quorum

At a meeting:

- (a) if ASIC consists of 3 or 4 members—2 members; or
 - (b) in any other case—3 members;
- form a quorum.

106 Who is to preside at meetings

- (1) The Chairperson must preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present at a meeting but the Deputy Chairperson is present, the Deputy Chairperson must preside.
- (3) If neither the Chairperson nor the Deputy Chairperson is present at a meeting, the members present must elect one of their number to preside.

107 Procedure at meetings

- (1) Questions arising at a meeting must be determined by a majority of the votes of the members present at the meeting.
- (2) The member presiding at a meeting has a deliberative vote but not a casting vote.

Part 5—ASIC's members

Division 1—Terms and conditions

108 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.

109 Term of office as Chairperson or Deputy Chairperson

- (1) Subject to this Act, a member appointed as Chairperson or Deputy Chairperson holds office as such until:
 - (a) in any case—the end of his or her current term as a member;
or
 - (b) in any case—he or she otherwise stops being a member; or
 - (c) in the case of a member appointed as Deputy Chairperson—he or she is appointed as Chairperson;whichever happens first.
- (2) A person is not ineligible to be appointed under section 10 merely because he or she has been so appointed before.

110 Resignation

A person may resign as a member, as Chairperson, or as Deputy Chairperson, by writing signed and delivered to the Governor-General.

111 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
 - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his

- or her creditors or assigns remuneration or property for their benefit; or
- (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
 - (c) is a full-time member and is absent from duty, except on leave of absence, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (d) is a part-time member and is absent, except on leave granted in accordance with subsection 113(2), from 3 consecutive meetings of ASIC; or
 - (e) without reasonable excuse, contravenes section 123, subsection 124(2), (4) or (6) or section 125.
- (2) The Governor-General may, with the consent of a full-time member who is:
- (a) an eligible employee; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*;
- retire the member from office on the ground of incapacity.
- (3) In spite of anything contained in this section, a member who:
- (a) is an eligible employee; and
 - (b) has not reached his or her maximum retiring age within the meaning of the *Superannuation Act 1976*;
- is not capable of being retired from office on the ground of invalidity within the meaning of Part IVA of that Act unless the Commonwealth Superannuation Board of Trustees No. 2 has given a certificate under section 54C of that Act.
- (4) In spite of anything contained in this section, a member who:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- is not capable of being retired from office on the ground of invalidity within the meaning of that Act unless the Commonwealth Superannuation Board of Trustees No. 1 has given a certificate under section 13 of that Act.

Section 112

112 Remuneration and allowances etc.

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances, and, subject to subsection (3), provided with such other benefits, as the Minister determines in writing.
- (3) The benefits in respect of which the Minister may make a determination under subsection (2) are such benefits (including benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave and superannuation) as, in the Minister's opinion, are necessary or desirable to assist a member in, or place the member in a position that may facilitate, the performance of his or her functions.
- (4) ASIC may reimburse a member for any loss or expenditure incurred by the member because of, or in the course of, the performance of his or her functions.
- (5) This section has effect subject to the *Remuneration Tribunal Act 1973*.

113 Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may:
 - (a) grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines; and
 - (b) grant a part-time member leave of absence from a meeting of ASIC.

114 Superannuation arrangements

- (1) The Minister may make a written determination about the provision of superannuation benefits for or in relation to a specified full-time member who, when the determination is made, is not an eligible employee or a member of the superannuation scheme established by deed under the *Superannuation Act 1990*.
- (2) The Minister may, by writing, vary or revoke a determination made under subsection (1), even if it has been varied at least once before.
- (3) The Minister must not make a determination under subsection (1), or vary or revoke a determination so made, except in accordance with arrangements approved by the Minister under the *Superannuation Benefits (Supervisory Mechanisms) Act 1990*.
- (4) Superannuation benefits may be provided in accordance with a determination under subsection (1) as that determination is in force when the benefits are provided.

115 Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

Division 2—Acting appointments

116 Acting members

- (1) The Minister may:
 - (a) appoint a person to act as a full-time member during any period when there are less than 8 persons who are members or are acting as members in accordance with this paragraph or paragraph (b); or
 - (b) appoint a person to act as a part-time member during any period when there are less than 8 persons who are members or are acting as members in accordance with this paragraph or paragraph (a) and there are at least 3 persons who are full-time members or are acting as members in accordance with paragraph (a); or
 - (c) appoint a person to act as a full-time member or as a part-time member during any period when a full-time member (other than the Chairperson or the Deputy Chairperson) or a part-time member, as the case may be, is absent from office, is acting as Deputy Chairperson in accordance with section 118 or, in the case of a part-time member, is, for any reason, unable to perform the functions of his or her office.
- (2) Except so far as the contrary intention appears, a reference in this Act to a member of ASIC includes a reference to a person who is acting as a member under subsection (1).

117 Acting Chairperson

The Minister may appoint a member to act as Chairperson:

- (a) during a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairperson is absent from office.

118 Acting Deputy Chairperson

The Minister may appoint a member to act as Deputy Chairperson:

- (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Deputy Chairperson is absent from office or is acting as Chairperson.

119 Limitation on appointments to act during vacancy

A person appointed under section 116, 117 or 118 to act during a vacancy must not continue for more than 12 months to act during the vacancy.

Division 3—Delegation by members

119A Delegation by members

- (1) A member may, in writing, delegate to a person all or any of his or her functions and powers.
- (2) A member must not, without the Minister's approval, delegate a function or power to a person other than:
 - (a) a staff member; or
 - (b) a person who, by virtue of the regulations, is a prescribed person in relation to the delegation.
- (3) In the performance of a function, or the exercise of a power, delegated under this section, the delegate is subject to the member's directions.

Part 6—ASIC's staff

120 Staff

- (1) Subject to this Part, ASIC's staff must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) ASIC and the APS employees assisting ASIC together constitute a Statutory Agency; and
 - (b) the Chairperson of ASIC is the Head of that Statutory Agency.
- (3) In addition to the staff referred to in subsection (1), the Chairperson may, on the Commonwealth's behalf, employ under written agreements such persons as the Chairperson thinks necessary for the performance or exercise of any of its functions and powers.
- (4) The terms and conditions of employment of persons employed under subsection (3) are such as the Chairperson determines from time to time with the Minister's written approval.

121 Consultants etc.

- (1) The Chairperson may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, ASIC in connection with the performance or exercise of any of its functions or powers, persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement of persons engaged under subsection (1) are such as the Chairperson determines from time to time.

122 Staff seconded to ASIC

In addition to the other staff members, officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and

Section 122

of authorities of the Commonwealth, whose services are made available to ASIC in connection with the performance or exercise of any of its functions or powers are to assist ASIC.

Part 7—Preventing conflicts of interest and misuse of information

Division 1—Disclosure of interests

123 Members to disclose certain interests to Minister

- (1) A member must, in accordance with this section, disclose to the Minister:
 - (a) any direct or indirect pecuniary interest that the member has or acquires in:
 - (i) a body corporate carrying on business in Australia; or
 - (ii) a business in Australia; and
 - (b) any direct or indirect pecuniary interest that the member has or acquires in interests (including financial products) regulated by ASIC; and
 - (c) any agreement, understanding or expectation that the member will:
 - (i) resume a previous business relationship (whether or not that relationship existed immediately before the member's appointment); or
 - (ii) enter into a new business relationship; when the member ceases to be a member; and
 - (d) any severance arrangement or ongoing financial arrangement that takes account of an agreement, understanding or expectation that must be disclosed under paragraph (c).
 - (2) For the purpose of paragraph (1)(b), interests are regulated by ASIC if ASIC has a function or power in relation to any aspect of the acquisition, holding, disposal or provision of the interests, or of interests of that kind.
 - (3) In disclosing an indirect pecuniary interest in financial products, the member must identify the particular products.
 - (4) Paragraphs (1)(c) and (d) apply to agreements or understandings entered into, or expectations arising, before or after the member's appointment.
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Section 124

- (5) Paragraph (1)(c) does not require a member to disclose an expectation to enter into a new business relationship unless the member can identify the other party, or one or more other parties, to the relationship. Disclosure is required whether or not the field of business or legal nature of the relationship has been determined.
- (6) A disclosure under this section must be made in writing.

124 Members to disclose certain interests to Chairperson

- (1) This section has effect where a member:
 - (a) is to take part, or is taking part, in determining a matter before ASIC; and
 - (b) has or acquires a direct or indirect pecuniary interest, or a direct or indirect interest of any other kind, that could conflict with the proper performance of the member's functions in relation to determining the matter.
- (2) If the member is not the Chairperson, the member must disclose the interest to the Chairperson.
- (3) If the member is not the Chairperson and the Chairperson becomes aware that the member has the interest, the Chairperson must:
 - (a) if the Chairperson considers that the member should not take part, or not continue to take part, as the case requires, in determining the matter—direct the member accordingly; or
 - (b) in any other case—cause the member's interest to be disclosed to the persons concerned in the matter.
- (4) The member must comply with a direction under paragraph (3)(a).
- (5) If the member is the Chairperson, he or she must cause his or her interest to be disclosed to the persons concerned in the matter.
- (6) Subject to subsection (4), the member must not take part, or continue to take part, as the case requires, in determining the matter unless everyone concerned in it consents to the member so taking part.
- (7) Sections 27F to 27L of the *Commonwealth Authorities and Companies Act 1997* do not apply to members.

125 Notification of interests to ASIC

- (1) This section has effect where a person, in the course of:
- (a) performing functions or services as a staff member (otherwise than as a person appointed or engaged under the *Public Service Act 1999*); or
 - (b) performing a function, or exercising a power, as an ASIC delegate; or
 - (c) performing functions or services by way of assisting an ASIC delegate;

is required to consider a matter in which the person has a direct or indirect pecuniary or other interest that could involve a conflict with the proper performance or exercise by the person of those functions, services or powers.

- (2) The person must forthwith give to ASIC a written notice:
- (a) stating that he or she is required to consider the matter and has an interest in it; and
 - (b) setting out particulars of the interest.
- (3) The person must not intentionally or recklessly fail to do whatever is necessary to avoid the conflict referred to in subsection (1).

Penalty: 50 penalty units or imprisonment for 12 months, or both.

126 Defence

It is a defence to a prosecution of a person for a contravention of section 125 if it is established that when the person was required to consider the matter he or she was not aware of a fact or thing whose existence obliged him or her to comply with that section in relation to the matter.

Division 2—Confidentiality

127 Confidentiality

- (1) ASIC must take all reasonable measures to protect from unauthorised use or disclosure information:
 - (a) given to it in confidence in or in connection with the performance of its functions or the exercise of its powers under the corporations legislation (other than the excluded provisions); or
 - (b) that is protected information.
- (1A) Disclosing summaries of information or statistics derived from information is authorised use and disclosure of the information provided that information relating to any particular person cannot be found out from those summaries or statistics.
- (2) For the purposes of subsection (1), the disclosure of information as required or permitted by a law of the Commonwealth or a prescribed law of a State or internal Territory is taken to be authorised use and disclosure of the information.
- (2A) Disclosing information to one of the following is authorised use and disclosure of the information:
 - (a) the Minister;
 - (b) the Secretary of the Department for the purpose of advising the Minister, or an officer authorised for that purpose;
 - (c) APRA;
 - (d) the Reserve Bank of Australia.
- (2B) Disclosing information to a Royal Commission (within the meaning of the *Royal Commissions Act 1902*) is authorised use and disclosure of the information.
- (2C) The Chairperson may impose conditions to be complied with in relation to information disclosed under subsection (2B).
- (3) For the purposes of subsection (1), the disclosure of information by a person for the purposes of:
 - (a) performing the person's functions as:

- (i) a member, staff member or ASIC delegate; or
 - (ii) a person who is acting as a member or staff member or who is authorised to perform or exercise a function or power of, or on behalf of, ASIC; or
 - (b) the performance of functions or services by the person by way of assisting an ASIC delegate;
- is taken to be authorised use and disclosure of the information.

- (4) Where the Chairperson is satisfied that particular information:
- (a) will enable or assist an agency, being CAMAC, the Panel, the Disciplinary Board, the FRC, the Review Board or any other agency within the meaning of the *Freedom of Information Act 1982*, to perform or exercise any of the agency's functions or powers; or
 - (aa) will enable or assist:
 - (ii) the Australian Financial Institutions Commission; or
 - (iii) the Superannuation Complaints Tribunal;to perform any of its functions or powers; or
 - (ab) will enable or assist an officer of the Commonwealth Attorney-General's Department who is in the office known as the Office of Law Enforcement Co-ordination to perform any of his or her functions or powers; or
 - (b) will enable or assist the government, or an agency, of a State or Territory to perform a function or exercise a power; or
 - (c) will enable or assist a government, or an agency, of a foreign country to perform a function, or exercise a power, conferred by a law in force in that foreign country; or
 - (d) will enable or assist a prescribed professional disciplinary body to perform one of its functions;
- the disclosure of the information to the agency, government or disciplinary body by a person whom the Chairperson authorises for the purpose is taken to be authorised use and disclosure of the information.

(4A) The Chairperson may impose conditions to be complied with in relation to information disclosed under subsection (4).

(4B) The disclosure of information to a body corporate specified in regulations under subsection (4C) (including a body corporate that

Section 127

is a foreign company) is authorised use and disclosure of the information if:

- (a) the Chairperson is satisfied that the information will enable or assist the body corporate to monitor compliance with, enforce, or perform functions or exercise powers under:
 - (i) the Corporations Act; or
 - (iaa) the business law of a State that is not in this jurisdiction; or
 - (ia) the business law of a foreign country; or
 - (ii) the operating rules of the body corporate; and
 - (b) the disclosure is by a person authorised by the Chairperson for the purpose.
- (4C) The regulations may specify a body corporate for the purposes of subsection (4B) if, and only if, the body corporate:
- (a) conducts, or is involved in the supervision of, a financial market; or
 - (b) is a body corporate that holds an Australian CS facility licence.
- (4D) The Chairperson may impose conditions to be complied with by a body corporate and its officers, employees and agents in relation to information disclosed to the body corporate under subsection (4B).
- (4E) A person must not intentionally or recklessly fail to comply with a condition imposed under subsection (4D).
- Penalty: 100 penalty units or imprisonment for 2 years, or both.
- (4EA) If ASIC discloses information to a disciplinary body under paragraph (4)(d), the body or a member of the body:
- (a) must not disclose the information to any other person; and
 - (b) must not use the information for any purpose other than for deciding whether or not to take disciplinary or other action or for taking that action.
- Penalty: Imprisonment for 2 years.
- (4F) If information is disclosed to a body corporate under subsection (4B), the body corporate, or an officer, employee or agent of the body corporate, must not intentionally or recklessly:

- (a) disclose the information to a person who is not an officer, employee or agent of the body corporate; or
- (b) use the information.

Penalty: 100 penalty units or imprisonment for 2 years, or both.

(4FA) Subsection (4F) does not apply to the extent that:

- (a) the person has the written consent of the Chairperson; or
- (b) the information is used for the purpose of monitoring compliance with, enforcing, or performing functions or exercising powers under:
 - (i) the Corporations Act; or
 - (ii) the business law of a State that is not in this jurisdiction; or
 - (iii) the business law of a foreign country; or
 - (iv) the operating rules (if any), of the body corporate.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (5) The Chairperson may delegate all or any of his or her functions and powers under subsection (2C), (4), (4A), (4B), (4D) or (4FA) to a member or staff member.
- (5A) Regulations made for the purpose of this section may specify uses of information and disclosures of information that are authorised uses and authorised disclosures for the purposes of this section.
- (6) Nothing in any of subsections (1A), (2), (2A), (2B), (2C), (3), (4), (4B) and (5) limits:
 - (a) anything else in any of those subsections; or
 - (b) what may otherwise constitute, for the purposes of subsection (1), authorised use or disclosure of information.
- (9) In this section:

Income Tax Assessment Act means the *Income Tax Assessment Act 1936* or the *Income Tax Assessment Act 1997*.

protected information means information disclosed or obtained, or a document given or produced, (whether before or after the commencement of this section), for the purposes of a function in section 12A and relating to the affairs of:

Section 127

- (a) a body or person regulated by ASIC; or
- (b) a body corporate (including a body corporate that has ceased to exist) that has at any time been, or is, related (within the meaning of the Corporations Act) to a body regulated by ASIC; or
- (c) a person who has been, is, or proposes to be, a customer of a body or person regulated by ASIC;

other than information that has already been lawfully made available to the public from other sources.

RSA Act means the *Retirement Savings Accounts Act 1997*.

SIS Act means the *Superannuation Industry (Supervision) Act 1993*.

Part 8—Finance

Division 1—General

133 Payments to ASIC by Commonwealth

- (1) There is to be paid to ASIC such money as is appropriated by the Parliament for the purposes of ASIC.
- (2) The Minister for Finance may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to ASIC.

134 ASIC's money

ASIC's money consists of:

- (a) money paid to ASIC under subsection 133(1); and
- (b) any other money paid to ASIC (including money paid by a State or Territory, but not including money received by ASIC on behalf of a State or Territory in the course of performing functions or exercising powers pursuant to an agreement or arrangement entered into under subsection 11(8)).

135 How ASIC's money to be applied

- (1) ASIC's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations or liabilities that:
 - (i) ASIC; or
 - (ii) the Panel; or
 - (iii) the Disciplinary Board; or
 - (iv) the AASB;incurs or undertakes in connection with performing or exercising any of its functions and powers; or
 - (b) in paying remuneration or allowances payable under this Act (other than remuneration or allowances payable to members of CAMAC); or

Section 137

- (c) in connection with the provision, in accordance with subsection 112(2), of benefits to members; or
 - (d) in connection with the provision, in accordance with subsection 114(4), of superannuation benefits; or
 - (e) in making, in respect of a full-time member who is not an eligible employee, contributions under a superannuation or retirement scheme, however established.
- (2) Nothing in subsection (1) limits the generality of anything else in that subsection.
 - (3) Subsection (1) does not prevent investment of surplus money of ASIC under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
 - (4) This section and subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* have effect subject to a provision that the corporations legislation (other than the excluded provisions) makes about money or property that vests in ASIC under such a law.
 - (5) The Minister may by writing require ASIC to pay to the Commonwealth so much of ASIC's money as:
 - (a) is not immediately required for the purposes of ASIC; and
 - (b) does not exceed a specified amount.
 - (6) ASIC must comply with a requirement under subsection (5) and must realise so much of the property in which money has been invested under subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* as is necessary in order to so comply.

137 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, ASIC must not, without the approval of the Minister:
 - (a) enter into a contract under which ASIC is to pay or receive an amount exceeding \$1 million or, if a higher amount is prescribed, that higher amount; or
 - (b) enter into a lease of land for a period exceeding 10 years.
- (2) In paragraph (1)(a):

contract does not include an agreement entered into under subsection 120(3) or 121(1) or an agreement entered into in the exercise of a power conferred by subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997*.

138 Extra matters to be included in annual report

- (1) A report on ASIC under section 9 of the *Commonwealth Authorities and Companies Act 1997* must:
 - (a) describe the specific goals ASIC has pursued, and the priorities it has followed, during the year, in performing its functions and pursuing the objects referred to in subsection 1(2); and
 - (b) describe what progress ASIC has made during that year towards achieving those goals; and
 - (c) describe any matters that, during that year, have adversely affected ASIC's effectiveness or have hindered ASIC in pursuing any of those goals and objectives; and
 - (d) describe the performance indicators used by ASIC and ASIC's performance against those indicators.
- (2) The report must also set out information about the exercise during the year of ASIC's powers under Part 15 of the *Retirement Savings Accounts Act 1997* and under Part 29 of the *Superannuation Industry (Supervision) Act 1993*.
- (4) In relation to ASIC's functions under subsection 12FA(1), the report must include information about ASIC's monitoring and promotion of market integrity and consumer protection in relation to:
 - (a) the Australian financial system; and
 - (b) the provision of financial services.

139 Liability to taxation

- (1) Subject to subsection (2), ASIC is not subject to taxation under:
 - (a) a law of the Commonwealth (other than a law imposing sales tax, the *Debits Tax Act 1982* or the *Fringe Benefits Tax Act 1986*); or
 - (b) a law of a State or Territory.

Section 139

- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

Division 2—Trust property

140 ASIC may accept property on trust

ASIC may accept gifts, bequests and devises made to ASIC on trust and may act as trustee of money or other property vested in ASIC on trust.

141 Trust money to be paid into bank account

ASIC must ensure that trust money is paid into an account or accounts:

- (a) maintained by ASIC under subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997*; and
- (b) containing only trust money.

142 How trust property to be applied

- (1) Notwithstanding section 135, money or other property that ASIC holds on trust must be applied or dealt with in accordance with ASIC's powers and duties as trustee, and not otherwise.
- (2) Money that ASIC holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise ASIC to invest the money; or
 - (b) a law in force in a State or internal Territory authorises trustees to invest trust funds.

Part 9—The Corporations and Markets Advisory Committee

Division 1—General

146 CAMAC is a body corporate

CAMAC:

- (a) is a body corporate, with perpetual succession; and
- (b) is to have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note 1: CAMAC was (under its previous name of the Companies and Securities Advisory Committee) established by section 145 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to CAMAC. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

147 Membership

- (1) CAMAC consists of the following members, namely, the Chairperson of ASIC and such other members as hold office in accordance with this Part.
- (2) The members (other than the Chairperson of ASIC) are to be appointed by the Minister on a part-time basis.
- (3) The Minister must, by writing, appoint a member (other than the Chairperson of ASIC) as the Convenor of CAMAC.
- (4) The Minister must appoint a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely:
 - (a) business;

- (b) administration of companies;
 - (c) financial markets;
 - (d) financial products and financial services;
 - (e) law;
 - (f) economics;
 - (g) accounting.
- (5) In appointing the members:
- (a) the Minister must have regard to the desirability of the views of business communities in this jurisdiction being adequately represented among the members; and
 - (b) the Minister must ensure so far as practicable that at any time there is at least one member of CAMAC from each State in this jurisdiction and the Northern Territory.
- (6) For the purposes of subsection (5), a member is from a particular State or Territory if he or she is a resident of that State or Territory.

148 Functions

CAMAC's functions are, on its own initiative or when requested by the Minister, to advise the Minister, and to make to the Minister such recommendations as it thinks fit, about any matter connected with:

- (a) a proposal to make corporations legislation, or to make amendments of the corporations legislation (other than the excluded provisions); or
- (b) the operation or administration of the corporations legislation (other than the excluded provisions); or
- (c) law reform in relation to the corporations legislation (other than the excluded provisions); or
- (d) companies or a segment of the financial products and financial services industry; or
- (e) a proposal for improving the efficiency of the financial markets.

149 Term of office as member

Subject to this Act, a person appointed as a member holds office for such term of at least one year and at most 3 years as is specified in the instrument of appointment, but is eligible for re-appointment.

150 Resignation

A person appointed as a member may resign as a member by writing signed by the person and delivered to the Minister.

151 Termination of appointment

The Minister may terminate the appointment of a member:

- (a) because of the physical or mental incapacity of the member;
or
- (b) if the member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit.

152 Remuneration and allowances etc.

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this section:

member does not include the Chairperson of ASIC.

153 Meetings

- (1) Where the Convenor is absent from a meeting, the members who are present at the meeting may appoint one of their number to act as Convenor for the purposes of that meeting.
- (1A) The Chairperson of ASIC may nominate in writing a person to attend a particular meeting, or all meetings, of CAMAC at which the Chairperson is not present.
- (1B) The Chairperson may only nominate a person who is:
 - (a) a member of ASIC; or
 - (b) an SES employee or acting SES employee of ASIC.
- (2) The procedure at a meeting must be determined by the members present.

154 CAMAC to inform itself in any manner

For the purposes of the performance by CAMAC of any of its functions, CAMAC may inform itself in such manner as it sees fit.

155 Publication of advice or recommendations

- (1) The Minister may, after consulting CAMAC, publish any advice or recommendations given to him or her by CAMAC.
- (2) Nothing in subsection (1) affects the power of CAMAC to publish any advice or recommendations that it has given to the Minister.

Division 2—Staff and finance

156 Staff

- (1) Subject to this Part, CAMAC's staff must be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Convenor and the APS employees assisting the Convenor together constitute a Statutory Agency; and
 - (b) the Convenor is the Head of that Statutory Agency.
- (3) In addition to the staff referred to in subsection (1), CAMAC may, on the Commonwealth's behalf, employ under written agreements such persons as CAMAC thinks necessary for the performance or exercise of any of its functions and powers.
- (4) The terms and conditions of employment of persons employed under subsection (3) are such as CAMAC determines from time to time with the Minister's written approval.

157 Consultants etc.

- (1) CAMAC may, on the Commonwealth's behalf, engage, under written agreements, as consultants to, or to perform services for, CAMAC, in connection with the performance or exercise of any of its functions or powers, persons having suitable qualifications and experience.
- (2) The terms and conditions of engagement of persons engaged under subsection (1) are such as CAMAC determines from time to time.

158 Staff seconded to CAMAC

In addition to the other staff of CAMAC:

- (a) officers and employees of Agencies (within the meaning of the *Public Service Act 1999*), and of authorities of the Commonwealth, whose services are made available to CAMAC in connection with the performance or exercise of any of its functions or powers; and

- (b) persons whose services are so made available under arrangements made under section 249; are to assist CAMAC.

159 Payments to CAMAC by Commonwealth

- (1) There is to be paid to CAMAC such money as is appropriated by the Parliament for the purposes of CAMAC.
- (2) The Minister for Finance may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to CAMAC.

160 CAMAC's money

CAMAC's money consists of:

- (a) money paid to CAMAC under subsection 159(1); and
- (b) any other money paid to CAMAC.

161 How CAMAC's money to be applied

- (1) CAMAC's money may be applied only:
 - (a) in paying or discharging expenses, charges, obligations, or liabilities, that CAMAC incurs or undertakes in connection with performing or exercising any of its functions and powers; or
 - (b) in paying remuneration or allowances payable under this Act to members of CAMAC.
- (2) Nothing in subsection (1) limits the generality of anything else in that subsection.
- (3) Subsection (1) does not prevent investment of surplus money of CAMAC under section 18 of the *Commonwealth Authorities and Companies Act 1997*.
- (4) This section has effect subject to a provision that a law of the Commonwealth makes about money or property that vests in CAMAC under such a law.

Section 163

- (5) The Minister may by writing require CAMAC to pay to the Commonwealth so much of CAMAC's money as:
 - (a) is not immediately required for the purposes of CAMAC; and
 - (b) does not exceed a specified amount.
- (6) CAMAC must comply with a requirement under subsection (5) and must realise so much of the property in which money has been invested under subsection 18(3) of the *Commonwealth Authorities and Companies Act 1997* as is necessary in order to so comply.

163 Limitation on contracts and leases

- (1) Except as otherwise provided by the regulations, CAMAC must not, without the approval of the Minister:
 - (a) enter into a contract under which CAMAC is to pay or receive an amount exceeding \$50,000 or, if a higher amount is prescribed, that higher amount; or
 - (b) enter into a lease of land for a period exceeding 10 years.
- (2) In paragraph (1)(a):

contract does not include an agreement entered into under subsection 156(3) or 157(1).

165 Liability to taxation

- (1) Subject to subsection (2), CAMAC is not subject to taxation under:
 - (a) a law of the Commonwealth (other than a law imposing sales tax, the *Debits Tax Act 1982* or the *Fringe Benefits Tax Act 1986*); or
 - (b) a law of a State or Territory.
- (2) The regulations may provide that subsection (1) does not apply in relation to taxation under a specified law.

166 CAMAC may accept property on trust

CAMAC may accept gifts, bequests and devises made to CAMAC on trust and may act as trustee of money or other property vested in CAMAC on trust.

167 Trust money to be paid into bank account

CAMAC must ensure that trust money is paid into an account or accounts:

- (a) maintained by CAMAC under subsection 18(2) of the *Commonwealth Authorities and Companies Act 1997*; and
- (b) containing only trust money.

168 How trust property to be applied

- (1) Notwithstanding section 161, money or other property that CAMAC holds on trust must be applied or dealt with in accordance with CAMAC's powers and duties as trustee, and not otherwise.
- (2) Money that CAMAC holds on trust may be invested in any manner in which:
 - (a) the terms of the trust authorise CAMAC to invest the money;
or
 - (b) a law in force in a State or internal Territory authorises trustees to invest trust funds.

Part 10—The Takeovers Panel

Division 1—General

172 Membership

- (1) The Panel consists of such members, not fewer than 5, as hold office in accordance with this Part.

Note: The Panel was established by section 171 of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act. It was renamed by the *Financial Services Reform Act 2001*.

- (2) The Governor-General is to appoint the members on the nomination of the Minister.
- (3) Each of the members may be appointed as a full-time member or as a part-time member.
- (4) The Minister must nominate a person as a member only if the Minister is satisfied that the person is qualified for appointment by virtue of his or her knowledge of, or experience in, one or more of the following fields, namely:
- (a) business;
 - (b) administration of companies;
 - (c) financial markets;
 - (d) financial products and financial services;
 - (e) law;
 - (f) economics;
 - (g) accounting.
- (4A) Each person who is the Minister for a State in this jurisdiction or the Northern Territory may from time to time give to the Minister the names of persons who, in the opinion of the first-mentioned Minister:
- (a) are qualified for appointment as members of the Panel by virtue of their knowledge of, or experience in, one or more of the following fields, namely:
 - (i) business;

- (ii) administration of companies;
 - (iii) financial markets;
 - (iv) financial products and financial services;
 - (v) law;
 - (vi) economics;
 - (vii) accounting; and
- (b) ought to be considered for appointment as members of the Panel.
- (4B) In nominating persons as members of the Panel, the Minister must ensure so far as practicable that, at any time, at least one member of the Panel is a person whose name has been given to the Minister under subsection (4A).
- (5) The performance of the functions or the exercise of the powers of the Panel is not affected merely because its membership is not as prescribed by subsections (1) and (3), unless a continuous period of 3 months has elapsed since its membership ceased to be as so prescribed.

173 President

The Governor-General is to appoint as President of the Panel a person who is, or is to be, a member.

174 Functions and powers of Panel

The Panel has the functions and powers conferred on it by or under the corporations legislation (other than the excluded provisions).

175 Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for such term of at most 5 years as is specified in the instrument of appointment, but is eligible for re-appointment.

176 Term of office as President

- (1) Subject to this Act, a person appointed as President holds office as such until:

Section 177

- (a) the end of his or her current term as a member; or
 - (b) he or she otherwise stops being a member;
- whichever happens first.
- (2) A person is not ineligible to be appointed under section 173 merely because he or she has been so appointed before.

177 Resignation

A person may resign as a member or President by writing signed and delivered to the Governor-General.

178 Termination of appointment

- (1) The Governor-General may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:
- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or
 - (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
 - (c) is a full-time member and is absent from duty, except on leave granted in accordance with section 180, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (e) without reasonable excuse, contravenes section 185.
- (2) The Governor-General may, with the consent of a full-time member who is an eligible employee, retire the member from office on the ground of incapacity.

179 Remuneration and allowances

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.

- (2) A member must be paid such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

180 Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

181 Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

182 Acting President

- (1) The Minister may appoint a member to act as President:
 - (a) during a vacancy in the office of President, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the President is absent from office.
- (2) A person appointed under subsection (1) to act during a vacancy must not continue for more than 12 months to act during the vacancy.

183 Annual report

- (1) The Panel must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
 - (a) prepare a report describing the operations of the Panel during the year that ended on 30 June in that year; and
 - (b) give to the Minister a copy of the report.

Section 183

- (2) Where a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Conduct of Panel's business

184 Constitution of Panel in relation to particular matters

- (1) The Panel must, for the purposes of the performance or exercise of its functions or powers in relation to a particular matter, be constituted by 3 members in respect of whom a direction is in force under this section in relation to that matter.
- (2) The President may give directions about the members (the *sitting members*) who are to constitute the Panel for the purposes of performing or exercising its functions or powers in relation to particular matters.
- (3) A direction under subsection (2) must:
 - (a) unless the sitting members include the President—designate one of them as President; and
 - (b) in any case—designate one of the sitting members as Deputy President;of the Panel as constituted in relation to the matter concerned.
- (4) Where the President gives a direction as to the sitting members, he or she may:
 - (a) at any time after the giving of the direction and before the commencement of proceedings in relation to the matter; or
 - (b) if one of those persons ceases to be a member, or ceases to be available for the purposes of proceedings in relation to a matter, during the proceedings or after the completion of the proceedings but before the matter to which the proceedings relate is determined—at any time after the person so ceases to be a member or to be available;revoke the direction and give a further direction under subsection (2) as to the additional members.
- (4A) The regulations may make provision in relation to the constitution of the Panel for the purposes of conducting a review under section 657EA or 657EB of the Corporations Act.
- (5) In this section:

Section 185

functions or powers means functions or powers of the Panel under the corporations legislation (other than the excluded provisions).

185 Disclosure of interests by members

- (1) Where a member is, or is to be, a member of the Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter and the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter:
 - (a) the member must disclose the interest to the President and to the parties involved in the matter; and
 - (b) except with the President's consent, the member must not take part in the performance or exercise of the Panel's functions or powers in relation to the matter.
- (1A) The President must not, under paragraph (1)(b), consent to a member taking part in the performance or exercise of the Panel's functions or powers in relation to a matter unless the President believes, on reasonable grounds, that the member's interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter.
- (2) Where the President becomes aware that a member who is, or is to be, a member of the Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter has in relation to that matter such an interest as is mentioned in subsection (1), then:
 - (a) the President must revoke the direction given under subsection 184(2) in relation to the matter unless the President believes, on reasonable grounds, that the member's interest is immaterial or indirect and will not prevent the member from acting impartially in relation to the matter; or
 - (b) if the President is not required to revoke that direction under paragraph (a), the President must cause the member's interest to be disclosed to the parties involved in the matter.
- (3) In this section:

functions or powers means functions or powers of the Panel under the corporations legislation (other than the excluded provisions).

186 Application of Division 2 of Part 7

Division 2 of Part 7 applies in relation to the Panel as if a reference in section 127 to ASIC included a reference to the Panel.

Division 3—Panel proceedings

187 Interpretation

For the purposes of the performance or exercise, in relation to a particular matter, of any of the Panel's functions and powers, this Division has effect as if:

- (a) a reference to the Panel were a reference to the Panel as constituted in relation to that matter; and
- (b) a reference to a member were a reference to a member of the Panel as so constituted; and
- (c) if the President is not a member of the Panel as so constituted—a reference to the President were a reference to the member designated, in a direction in force under subsection 184(2), as the President of the Panel as so constituted; and
- (d) a reference to the Deputy President were a reference to the member designated, in a direction in force under subsection 184(2), as Deputy President of the Panel as so constituted.

188 Power to conduct proceedings

- (1) The Panel may conduct proceedings for the purposes of the performance or exercise of any of its functions and powers.
- (2) The President may convene proceedings to be held at a place and time he or she determines.

190 Panel may restrict publication of certain material

- (1) Where, during Panel proceedings, the Panel is satisfied that it is desirable to do so, the Panel may give directions preventing or restricting the publication of submissions or evidence made or given to, or of matters contained in documents lodged with, the Panel.
- (2) In determining whether or not to give a direction under subsection (1), the Panel must have regard to:

- (a) whether submissions or evidence made or given, or that may be made or given, or a matter that has arisen or may arise, during the proceedings is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Panel exercises its powers under this section; and
 - (c) whether it is in the public interest that the Panel exercises its powers under this section; and
 - (d) any other relevant matter.
- (3) In this section:

Panel proceedings includes a part of Panel proceedings.

192 Power to summon witnesses and take evidence

- (1) A member may, by written summons in the prescribed form given to a person:
- (a) require the person to appear before the Panel at Panel proceedings to give evidence, to produce specified documents, or to do both; and
 - (b) require the person to attend from day to day unless excused, or released from further attendance, by a member.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 198).

- (2) In Panel proceedings, the Panel may take evidence on oath or affirmation, and for that purpose a member may:
- (a) require a witness in the proceedings to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness in the proceedings.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 198).

- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.

Section 193

- (4) The member presiding at Panel proceedings:
- (a) may require a witness in the proceedings to answer a question put to the witness; and
 - (b) may require a person appearing in the proceedings pursuant to a summons issued under this section to produce a document specified in the summons.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 198).

- (5) An offence under section 198 relating to subsection (1), (2) or (4) of this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (6) If:
- (a) a person appears in Panel proceedings pursuant to a summons issued under this section; and
 - (b) the summons was issued at a person's request;
- the person appearing is entitled to be paid the prescribed allowances and expenses (if any) by the person at whose request the summons was issued.

- (7) The Panel may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a person incurs in complying with a requirement made under this section.

193 Quorum

In Panel proceedings, 2 members form a quorum.

194 Legal representation in proceedings before the Panel

A party to Panel proceedings may be legally represented in the proceedings only with the leave of the Panel.

195 Procedure

- (1) Subject to subsections (2) to (4), the Panel may determine the procedural rules to be followed in Panel proceedings.
- (2) Panel proceedings are to be conducted in accordance with (in order of priority):

- (a) the requirements of this Division; and
 - (b) the requirements of the regulations.
- (3) Without limiting paragraph (2)(b), the regulations may deal with:
- (a) making submissions or giving evidence in Panel proceedings; and
 - (b) the right (if any) to appear, or be represented, in Panel proceedings; and
 - (c) the matters that the Panel is to take into account when making a decision in the course of Panel proceedings.
- (4) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations made under it, apply to Panel proceedings.

197 Protection of members etc.

- (1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to Panel proceedings, the same protection and immunity as a Justice of the High Court.
- (3) Subject to this Act, a person who is required by a summons under section 192 to appear in Panel proceedings, or a witness in Panel proceedings, has the same protection as a witness in a proceeding in the High Court.

198 Non-compliance with requirements made under section 192

- (1) A person must not fail to comply with a requirement made under subsection 192(1), (2) or (4).

Penalty: 10 penalty units or imprisonment for 3 months, or both.

- (2) Subsection (1) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

199 False evidence

- (1) A person must not:
-

Section 200

- (a) in a written submission given to the Panel for the purposes of Panel proceedings; or
 - (b) while appearing before the Panel in Panel proceedings; give information or evidence that is false or misleading in a material particular.
- Penalty: 10 penalty units or imprisonment for 3 months, or both.
- (2) It is a defence to a prosecution for a contravention of subsection (1) if it is proved that the defendant, when giving the information or evidence, believed on reasonable grounds that it was true and not misleading.

Note: A defendant bears a legal burden in relation to the matters in subsection (2), see section 13.4 of the *Criminal Code*.

200 Contempt of Panel

- (1) A person must not:
- (a) engage in conduct that results in the obstruction or hindering of the Panel or a member in the performance or exercise of any of the Panel's functions and powers; or
 - (b) engage in conduct that results in the disruption of Panel proceedings.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) A person must not contravene a direction given under subsection 190(1).

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

201 Powers of Court where non-compliance with section 192

- (1) This section applies where the Panel, as constituted for the purposes of particular Panel proceedings, is satisfied that a person has, without reasonable excuse, failed to comply with a requirement made under section 192 in, or in relation to, those proceedings.
- (2) The Panel as so constituted may by writing certify the failure to the Court.
- (3) If the Panel does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

201A Undertakings to the Panel

- (1) In Panel proceedings, the Panel may accept a written undertaking from a person affected, or likely to be affected, by the proceedings about a matter relevant to the proceedings.
- (2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Panel.
- (3) If the Panel considers that the person has breached any of the terms of the undertaking, the Panel may apply to the Court for an order under subsection (4).
- (4) If the Court is satisfied that the person has breached a term of the undertaking, the Court may make all or any of the following orders:
 - (a) an order directing the person to comply with that term of the undertaking;
 - (b) any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (c) any other order that the Court considers appropriate.

Part 11—Companies Auditors and Liquidators Disciplinary Board

Division 1—Constitution of Disciplinary Board

203 Membership of Disciplinary Board

- (1) The Disciplinary Board consists of:
 - (a) a Chairperson; and
 - (b) a Deputy Chairperson; and
 - (c) 3 members that the Minister selects from a panel of 7 persons nominated by the Board of the Institute of Chartered Accountants in Australia; and
 - (d) 3 members that the Minister selects from a panel of 7 persons nominated by the Board of Directors of CPA Australia; and
 - (e) 6 members that the Minister selects who are eligible under subsection (2A) for appointment as a member.
- (1A) The *accounting members* are the members appointed under paragraphs (1)(c) and (d). Of the accounting members, the *ICAA members* are the members appointed under paragraph (1)(c) and the *CPAA members* are the members appointed under paragraph (1)(d). The *business members* are the members appointed under paragraph (1)(e).
- (1B) A person must not be nominated under paragraph (1)(c) or (d) unless the person is resident in Australia.
- (2) A person is not eligible for appointment as Chairperson or Deputy Chairperson unless he or she is enrolled as a barrister, as a solicitor, as a barrister and solicitor or as a legal practitioner of the High Court, of any federal court or of the Supreme Court of a State or Territory and has been so enrolled for a period of at least 5 years.
- (2A) A person is eligible under this subsection for appointment as a business member if:
 - (a) the person is resident in Australia; and

- (b) the Minister is satisfied that the person is suitable for the appointment as a representative of the business community because of the person's qualifications in, knowledge of or experience in one or more of the following fields:
 - (i) business or commerce;
 - (ii) the administration of companies;
 - (iii) financial markets;
 - (iv) financial products and financial services;
 - (v) economics;
 - (vi) law.
- (3) The Chairperson, the Deputy Chairperson and each of the other members are to be appointed by the Minister on a part-time basis.

204 Functions and powers of Disciplinary Board

The Disciplinary Board has the functions and powers conferred on it by or under the corporations legislation (other than the excluded provisions).

205 Term of office

Subject to this Act, the Chairperson, the Deputy Chairperson and each other member holds office for such term of at most 3 years as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

206 Resignation from office

A person may resign his or her office as Chairperson, Deputy Chairperson or member by writing signed and delivered to the Minister.

207 Termination of appointment

- (1) The Minister may terminate the appointment of the Chairperson, the Deputy Chairperson or any other member because of misbehaviour or physical incapacity.
- (2) If the Chairperson, the Deputy Chairperson or any other member:

Section 208

- (a) is absent, without leave of the Disciplinary Board, from 3 consecutive meetings of the Board; or
 - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or
 - (c) is convicted in Australia of an offence punishable by imprisonment for 12 months or longer; or
 - (d) becomes of unsound mind; or
 - (e) fails, without reasonable excuse, to comply with section 211;
- the Minister must terminate his or her appointment.

208 Acting Chairperson

- (1) The Deputy Chairperson is to act as Chairperson:
 - (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); and
 - (b) during all periods when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.

This subsection does not, however, operate to substitute the Deputy Chairperson for the Chairperson as a member of a particular Panel of the Disciplinary Board.

- (2) The Minister may appoint a person who is eligible for appointment as Chairperson to act as Chairperson:
 - (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.
- (3) A person appointed under subsection (2) may only act as the Chairperson during a period if:
 - (a) there is a vacancy in the office of Deputy Chairperson during that period; or
 - (b) the Deputy Chairperson is, for any reason, unable to perform the duties of the office of Chairperson during that period.

- (4) Anything done by, or in relation to, a person purporting to act under subsection (1) or under an appointment under subsection (2) is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

208A Acting Deputy Chairperson

- (1) The Minister may appoint a person who is eligible for appointment as Deputy Chairperson to act as Deputy Chairperson:
- (a) during a vacancy in the office of Deputy Chairperson (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office; or
 - (c) during any period during which the Deputy Chairperson is acting as Chairperson under subsection 208(1).
- (2) Anything done by, or in relation to, a person purporting to act under an appointment under subsection (1) is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

210 Meetings of the Disciplinary Board

- (1A) This section has effect subject to section 210B (meetings of Panel of the Disciplinary Board).
- (1) The Chairperson must convene such meetings of the Disciplinary Board as he or she considers necessary for the performance of its functions.

Section 210A

- (2) The Chairperson must preside at all meetings of the Disciplinary Board.
- (3) At a meeting of the Disciplinary Board, the Chairperson and any 5 other members (of which the Deputy Chairperson may be one) constitute a quorum.
- (4) A question arising at a meeting of the Disciplinary Board must be determined by a majority of votes of the persons present and voting.
- (5) At a meeting, the Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) Subject to this section, the procedures for convening meetings of the Disciplinary Board and for the conduct of business by the Disciplinary Board must be as the Disciplinary Board determines.

210A Panel to be constituted to deal with application

- (1) The Disciplinary Board's functions and powers in relation to the following matters:
 - (a) an application to the Disciplinary Board by ASIC or APRA for a person to be dealt with under section 1292 of the Corporations Act;
 - (b) an application by a person to the Disciplinary Board under section 1295 of the Corporations Act for the termination of the suspension of the person's registration as an auditor or liquidator;
 - (c) determining whether the Disciplinary Board should, of its own motion, terminate the suspension of a person's registration as an auditor or liquidator under section 1295 of the Corporations Act;are to be performed and exercised by a Panel of the Disciplinary Board constituted under subsection (2).
- (2) The Chairperson is to determine, in writing, the members of the Disciplinary Board who are to constitute the Panel of the Disciplinary Board that is to hear the matter.
- (3) Without limiting subsection (2), the Chairperson may determine that a Panel of the Disciplinary Board constituted in a particular

manner is to hear matters of a particular kind, or that satisfy particular criteria, specified in the determination.

- (4) The Panel is to be constituted as either:
- (a) a 5 person Panel consisting of:
 - (i) the Chairperson or Deputy Chairperson; and
 - (ii) 2 accounting members; and
 - (iii) 2 business members; or
 - (b) a 3 person Panel consisting of:
 - (i) the Chairperson or Deputy Chairperson; and
 - (ii) 1 accounting member; and
 - (iii) 1 business member.

In relation to the Panel, the Chairperson or the Deputy Chairperson is the ***Panel Chairperson***.

- (5) If the Chairperson is satisfied that it is practicable, and appropriate, to do so, the Chairperson is to constitute the Panel so that:
- (a) it is a 5 person Panel; and
 - (b) if it is a 5 person Panel, it has 1 ICAA member and 1 CPAA member.
- (6) This subsection applies if:
- (a) a hearing in relation to a particular matter has been commenced or completed by a Panel of the Disciplinary Board; and
 - (b) before the matter to which the proceeding relates has been determined, one of the members constituting the Panel has:
 - (i) ceased to be a member; or
 - (ii) ceased to be available as a member of the Panel.
- (7) If subsection (6) applies:
- (a) the hearing and determination, or the determination, of the proceedings may be completed by the Panel constituted by the remaining member or members of the Panel if the parties to the proceedings agree; and
 - (b) otherwise the matter must be reheard by a new Panel constituted by the Chairperson under subsection (2).
- (8) If a matter is reheard under paragraph (7)(b), the new Panel may, for the purposes of performing or exercising the Disciplinary

Section 210B

Board's functions or powers in relation to that matter, have regard to any record of the proceedings before the Panel as previously constituted for the purposes of hearing that matter.

210B Meetings of Panel of the Disciplinary Board

- (1) The Panel Chairperson of a Panel of the Disciplinary Board must:
 - (a) convene such meetings of the Panel as the Panel Chairperson considers necessary for the performance of the Panel's functions; and
 - (b) preside at all meetings of the Panel.
- (2) At a meeting of a 5 person Panel of the Board, a quorum is constituted by:
 - (a) the Panel Chairperson; and
 - (b) an accounting member; and
 - (c) a business member.This subsection has effect subject to subsection 210A(7).
- (3) At a meeting of a 3 person Panel of the Board, a quorum is constituted by:
 - (a) the Panel Chairperson; and
 - (b) the accounting member.This subsection has effect subject to subsection 210A(7).
- (4) A question arising at a meeting of a Panel of the Disciplinary Board must be determined by a majority of the votes of the members of the Panel present and voting.
- (5) At a meeting of a Panel of the Disciplinary Board, the Panel Chairperson has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (6) Subject to this Part, the procedures for convening meetings of a Panel of the Disciplinary Board and for the conduct of business by a Panel of the Disciplinary Board must be as the Disciplinary Board determines.

211 Disclosure of interests

- (2) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Disciplinary Board or a Panel of the Disciplinary Board must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Disciplinary Board or the Panel.
- (3) A disclosure under subsection (2) must be recorded in the minutes of the meeting of the Disciplinary Board or the Panel and the member must not, unless the Minister or the Disciplinary Board or the Panel otherwise determines:
 - (a) be present during any deliberation of the Disciplinary Board or the Panel with respect to that matter; or
 - (b) take part in any decision of the Disciplinary Board or the Panel with respect to that matter.
- (4) For the purpose of the making of a determination by the Disciplinary Board or the Panel under subsection (3) in relation to a member who has made a disclosure under subsection (2), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates must not:
 - (a) be present during any deliberation of the Disciplinary Board or the Panel for the purpose of making the determination; or
 - (b) take part in the making by the Disciplinary Board or the Panel of the determination.

212 Remuneration and allowances

- (2) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (3) A member must be paid such allowances as the Minister determines in writing.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Section 213

213 Confidentiality

- (1) The Disciplinary Board must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence in or in connection with the performance of its functions or the exercise of its powers under the corporations legislation (other than the excluded provisions).
- (1A) For the purposes of this section, information given to a Panel of the Disciplinary Board is taken to be given to the Disciplinary Board.
- (2) For the purposes of subsection (1), the disclosure of information:
- (a) as required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory; or
 - (aa) to the FRC for the purposes of its performance of its functions under the corporations legislation; or
 - (ab) in order to enable or assist:
 - (i) a professional accounting body; or
 - (ii) another body prescribed by the regulations for the purposes of this paragraph;to perform its disciplinary function in relation to its members; or
 - (b) in order to enable or assist an authority or person in:
 - (i) a State or Territory; or
 - (ii) a country outside Australia and the external Territories;to perform or exercise a function or power that corresponds, or is analogous, to any of the Disciplinary Board's, or ASIC's functions and powers;
- is taken to be authorised disclosure of the information.

214 Annual report

- (1) The Disciplinary Board must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
- (a) prepare a report describing the operations of the Disciplinary Board during the year that ended on 30 June in that year; and
 - (b) give to the Minister a copy of the report.

- (2) Where a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Hearings by Disciplinary Board

215 Definition

In this Division:

hearing means a hearing held by a Panel of the Disciplinary Board under this Division.

216 Hearings

- (1) A Panel of the Disciplinary Board constituted to hear a matter may, at a meeting of the Panel, hold a hearing for the purpose of performing or exercising the Disciplinary Board's functions or powers in relation to that matter.
- (2) Subject to subsection (3), hearings must take place in private.
- (3) If a person (other than ASIC or APRA) who is entitled to be given an opportunity to appear at a hearing requests that the hearing take place in public, the hearing must, subject to any directions of the Panel under subsection (5), take place in public.
- (4) The Panel may give directions as to the persons who may be present at a hearing that is to take place in private.
- (5) Where, at a hearing that is taking place in public at the request of a person, the Panel is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or in order to protect the interests of any other person, the Panel may:
 - (a) direct that a part of the hearing take place in private and give directions as to the persons who may be present; or
 - (b) give directions preventing or restricting the publication of evidence given before the Panel or of matters contained in documents lodged with or produced to the Panel.
- (6) Nothing in a direction given by the Panel under subsection (4) or paragraph (5)(a) prevents the presence at a hearing of:
 - (a) a person representing ASIC or APRA pursuant to subsection 218(3); or

- (b) a person who is entitled to be given an opportunity to appear at the hearing; or
 - (c) a person representing, pursuant to subsection 218(3), a person referred to in paragraph (b); or
 - (d) a person representing, pursuant to subsection 218(3), a person who, by reason of a direction given by the Panel under subsection (4), or paragraph (5)(a), of this section is entitled to be present at the hearing.
- (7) Where the Panel directs that a hearing or part of a hearing take place in private, a person (other than the Panel Chairperson, a member of the Panel or a member of the staff of the Disciplinary Board approved by the Panel) must not be present at the hearing unless he or she is entitled to be present by virtue of the direction or by virtue of subsection (6).

Penalty: 10 penalty units or imprisonment for 3 months.

- (7A) Subsection (7) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) Where the Panel is required to give a person an opportunity to appear at a hearing, the Panel must appoint a day, time and place for the hearing and cause notice in writing of the day, time and place to be given to the person.
- (9) A person who is entitled to be given an opportunity to appear at a hearing and who does not wish to appear at the hearing may, before the day of the hearing, lodge with the Disciplinary Board in writing any submissions that he, she or it wishes the Panel to take into account in relation to the matter.
- (10) The Panel must take into account:
- (a) a submission made to or evidence adduced before the Panel; and
 - (b) a submission lodged with the Disciplinary Board in relation to the matter to which the hearing relates;
- when making any decision on the matter to which the submission or evidence relates.

Section 217

217 Power to summon witnesses and take evidence

- (1) The Panel Chairperson or a member of the Panel may summon a person to appear at a hearing to give evidence and to produce such documents (if any) as are referred to in the summons, being documents relating to the matters that are the subject of the hearing.
- (2) The Panel may, at a hearing, take evidence on oath or affirmation and for that purpose the Panel Chairperson may:
 - (a) require a person appearing at the hearing to give evidence to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a person so appearing at the hearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of subsection (2) is an oath or affirmation that the evidence he or she will give will be true.

218 Proceedings at hearings

- (1) At a hearing:
 - (a) the proceedings must be conducted with as little formality and technicality, and with as much expedition, as the requirements of the corporations legislation (other than the excluded provisions) and a proper consideration of the matters before the Panel permit; and
 - (b) the Panel is not bound by the rules of evidence; and
 - (c) the Panel may, on such conditions as it thinks fit, permit a person to intervene in the proceedings.
- (2) The Panel must observe the rules of natural justice at and in connection with a hearing.
- (3) At a hearing:
 - (a) ASIC or APRA may be represented by:
 - (i) a staff member, or a member or acting member, of ASIC or APRA; or
 - (ii) a person authorised by ASIC or APRA for the purpose; and

- (b) a natural person may appear in person or may be represented by an employee of the person approved by the Panel; and
 - (c) a body corporate (other than ASIC or APRA) may be represented by an employee, or by a director or other officer, of the body corporate approved by the Panel; and
 - (d) an unincorporated association of persons or a member of an unincorporated association of persons may be represented by a member, officer or employee of the association approved by the Panel; and
 - (e) any person may be represented by a barrister or solicitor of the Supreme Court of a State or Territory or of the High Court.
- (4) A person who attends at a hearing pursuant to a summons issued under subsection 217(1) is entitled to be paid:
- (a) in a case where the summons was issued at another person's request—by that other person; or
 - (b) in any other case—by the Disciplinary Board;
- such allowances and expenses as are provided for by the regulations.
- (5) The Panel may permit a person appearing as a witness at a hearing to give evidence by tendering, and, if the Panel thinks fit, verifying by oath, a written statement.

219 Failure of witnesses to attend and answer questions

- (1) A person served, as prescribed, with a summons to appear as a witness at a hearing must not:
- (a) fail to attend as required by the summons; or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by the Panel Chairperson.
- (2) A person appearing as a witness at a hearing must not:
- (a) when required pursuant to subsection 217(2) to either take an oath or make an affirmation—refuse or fail to comply with the requirement; or
 - (b) refuse or fail to answer a question that he or she is required to answer by the Panel Chairperson; or

Section 219

- (c) refuse or fail to produce a document that he or she was required to produce by a summons under subsection 217(1) served on him or her as prescribed.
- (2A) Subsections (1) and (2) do not apply to the extent that the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.
- (3) A person must not, at a hearing, give evidence that is false or misleading.
- (4) A person must not contravene subsection (1), (2) or (3).
- Penalty: 10 penalty units or imprisonment for 3 months.
- (5) A person who contravenes subsection (3) is not guilty of an offence against subsection (4) if it is proved that he or she, when giving the evidence, believed on reasonable grounds that it was true and not misleading.
- (6) Where the Panel is satisfied that:
- (a) a person served, as prescribed, with a summons to appear as a witness at a hearing has, without reasonable excuse, failed to attend as required by paragraph (1)(a) or (b); or
 - (b) a person appearing as a witness at a hearing has, without reasonable excuse:
 - (i) when required pursuant to subsection 217(2) either to take an oath or make an affirmation; or
 - (ii) when required by the Panel Chairperson to answer a question; or
 - (iii) when required to produce a document by a summons under subsection 217(1) served on him or her as prescribed;refused or failed to comply with the requirement;
- the Panel Chairperson may, by instrument in writing, certify the failure to attend or the refusal or failure to comply with the requirement, as the case may be, to the Court.
- (7) Where a certificate is given under subsection (6), the Court may inquire into the case and, if it is satisfied that the person to whom the certificate relates has, without reasonable excuse, failed to

attend or refused or failed to comply with a requirement as mentioned in the certificate:

- (a) may order the person to attend or to comply with the requirement at a hearing to be held at a time and place specified in the order; or
- (b) may punish the person in the same manner as if he or she had been guilty of contempt of the Court and, if it thinks fit, also make an order under paragraph (a).

220 Contempt of Disciplinary Board

- (1) A person must not:
 - (a) engage in conduct that results in the obstruction or hindering of a Panel of the Disciplinary Board, or a member of the Panel, in the performance or exercise of any of the Disciplinary Board's functions or powers; or
 - (b) engage in conduct that results in the disruption of a hearing.

Penalty: 10 penalty units or imprisonment for 3 months.

- (2) A person must not contravene a direction given under paragraph 216(5)(b).

Penalty: 10 penalty units or imprisonment for 3 months.

- (2A) Subsection (2) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2B) Subsection (2) does not apply to the extent that the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

- (3) An offence constituted by a contravention of subsection (1) or (2) is punishable on summary conviction.

221 Protection of members etc.

- (1) The Panel Chairperson or a member of the Panel has, in the performance of his or her functions or the exercise of his or her powers as the Panel Chairperson or a member of the Panel in

Section 222

relation to a hearing, the same protection and immunity as a Justice of the High Court.

- (2) A barrister, solicitor or other person appearing on behalf of a person at a hearing has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) Subject to this Act, a person summoned to attend or appearing as a witness at a hearing has the same protection as a witness in proceedings in the High Court.

222 Hearings taken to be judicial proceedings

A hearing is, for the purposes of Part III of the *Crimes Act 1914*, taken to be a judicial proceeding.

223 Costs

- (1) Where:
 - (a) the Panel holds a hearing in relation to a person in accordance with subsection 1294(1) of the Corporations Act; and
 - (b) the Panel cancels or suspends the registration of the person as an auditor, as a liquidator or as a liquidator of a specified body corporate, or deals with the person:
 - (i) by admonishing or reprimanding the person; or
 - (ii) by requiring the person to give an undertaking to engage in, or to refrain from engaging in, specified conduct;

the Panel may require the person to pay an amount specified by the Panel, being all or part of:

 - (c) the costs of and incidental to the hearing; or
 - (d) the costs of ASIC or APRA in relation to the hearing; or
 - (e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).
- (2) Where:
 - (a) the Panel holds a hearing in relation to a person in accordance with subsection 1294(1) of the Corporations Act; and

- (b) the Panel refuses to make an order cancelling or suspending the registration of the person as an auditor, as a liquidator or as a liquidator of a specified body corporate, as the case requires, and does not deal with the person in any of the ways mentioned in subparagraphs (1)(b)(i) and (ii);

the Panel may require ASIC or APRA to pay an amount specified by the Panel, being all or part of:

- (c) the costs of and incidental to the hearing; or
(d) the costs of the person in relation to the hearing; or
(e) the costs mentioned in paragraph (c) and the costs mentioned in paragraph (d).

(3) Where:

- (a) under subsection (1), the Panel requires a person to pay all or part of the costs of and incidental to a hearing held by the Panel in relation to the person (whether or not the Panel also requires the person to pay all or part of ASIC's costs in relation to the hearing); or
(b) under subsection (2), the Panel requires ASIC or APRA to pay all or part of the costs of and incidental to a hearing held by the Panel in relation to a person (whether or not the Panel also requires ASIC or APRA to pay all or part of the costs of the person in relation to the hearing);

the amount of the costs of and incidental to the hearing so required to be paid by the first-mentioned person or by ASIC or APRA, as the case may be, may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.

- (4) Where, under subsection (1), the Panel requires a person to pay all or part of ASIC's costs or APRA's costs in relation to a hearing held by the Panel in relation to the person (whether or not the Panel also requires the person to pay all or part of the costs of and incidental to the hearing), the amount of ASIC's costs or APRA's costs so required to be paid by the person may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.
- (5) Where, under subsection (2), the Panel requires ASIC or APRA to pay all or part of the costs of a person in relation to a hearing held by the Panel in relation to the person (whether or not the Panel also requires ASIC or APRA to pay all or part of the costs of and

Part 11 Companies Auditors and Liquidators Disciplinary Board

Division 2 Hearings by Disciplinary Board

Section 223

incidental to the hearing), the amount of the costs of the person so required to be paid by ASIC or APRA may be recovered in a court of competent jurisdiction as a debt due to the person.

Part 12—The Australian financial reporting system

224 Main objects of this Part

The main objects of this Part are:

- (a) to facilitate the development of accounting standards that require the provision of financial information that:
 - (i) allows users to make and evaluate decisions about allocating scarce resources; and
 - (ii) assists directors to discharge their obligations in relation to financial reporting; and
 - (iii) is relevant to assessing performance, financial position, financing and investment; and
 - (iv) is relevant and reliable; and
 - (v) facilitates comparability; and
 - (vi) is readily understandable; and
- (aa) to facilitate the development of auditing and assurance standards and related guidance materials that:
 - (i) provide Australian auditors with relevant and comprehensive guidance in forming an opinion about, and reporting on, whether financial reports comply with the requirements of the Corporations Act; and
 - (ii) require the preparation of auditors' reports that are reliable and readily understandable by the users of the financial reports to which they relate; and
- (b) to facilitate the Australian economy by:
 - (i) reducing the cost of capital; and
 - (ii) enabling Australian entities to compete effectively overseas; and
 - (iii) having accounting and auditing standards that are clearly stated and easy to understand; and
- (c) to maintain investor confidence in the Australian economy (including its capital markets).

Division 1—The financial reporting system

225 Functions and powers of the Financial Reporting Council

Functions generally

- (1) The FRC functions are:
- (a) to provide broad oversight of the processes for setting accounting standards in Australia; and
 - (b) to provide broad oversight of the processes for setting auditing standards in Australia; and
 - (c) to monitor the effectiveness of auditor independence requirements in Australia; and
 - (d) to give the Minister reports and advice about the matters referred to in paragraphs (a), (b) and (c); and
 - (e) the functions specified in subsections (2) (specific accounting standards functions), (2A) (specific auditing standards functions) and (2B) (specific auditor independence functions); and
 - (f) to establish appropriate consultative mechanisms; and
 - (g) to advance and promote the main objects of this Part; and
 - (h) any other functions that the Minister confers on the FRC by written notice to the FRC Chair.

Note: The FRC was established by subsection 225(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Specific accounting standards functions

- (2) The FRC functions include:
- (a) appointing the members of the AASB (other than the Chair); and
 - (b) approving and monitoring the AASB's:
 - (i) priorities; and
 - (ii) business plans; and
 - (iii) budgets; and
 - (iv) staffing arrangements (including level, structure and composition of staffing); and

- (c) determining the AASB's broad strategic direction; and
- (d) giving the AASB directions, advice or feedback on matters of general policy and on the AASB's procedures; and
- (e) monitoring the development of international accounting standards and the accounting standards that apply in major international financial centres; and
- (f) furthering the development of a single set of accounting standards for world-wide use with appropriate regard to international developments; and
- (g) promoting the continued adoption of international best practice accounting standards in the Australian accounting standard setting processes if doing so would be in the best interests of both the private and public sectors in the Australian economy; and
- (h) monitoring:
 - (i) the operation of accounting standards to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and
 - (ii) the effectiveness of the consultative arrangements used by the AASB; and
- (i) seeking contributions towards the costs of the Australian accounting standard setting processes; and
- (j) monitoring and periodically reviewing the level of funding, and the funding arrangements, for the AASB.

Specific auditing standards functions

- (2A) The FRC functions include:
- (a) appointing the members of the AUASB (other than the Chair); and
 - (b) approving and monitoring the AUASB's:
 - (i) priorities; and
 - (ii) business plans; and
 - (iii) budgets; and
 - (iv) staffing arrangements (including level, structure and composition of staffing); and
 - (c) determining the AUASB's broad strategic direction; and

Section 225

- (d) giving the AUASB directions, advice or feedback on matters of general policy and on the AUASB's procedures; and
- (e) monitoring the development of international auditing standards and the auditing standards that apply in major international financial centres; and
- (f) furthering the development of a single set of auditing standards for world-wide use with appropriate regard to international developments; and
- (g) promoting the continued adoption of international best practice auditing standards in the Australian auditing standard setting processes if doing so would be in the best interests of both the private and public sectors in the Australian economy; and
- (h) monitoring:
 - (i) the operation of auditing standards to assess their continued relevance and their effectiveness in achieving their objectives in respect of both the private and public sectors of the Australian economy; and
 - (ii) the effectiveness of the consultative arrangements used by the AUASB; and
- (i) seeking contributions towards the costs of the Australian auditing standard setting processes; and
- (j) monitoring and periodically reviewing the level of funding, and the funding arrangements, for the AUASB.

Specific auditor independence functions

- (2B) The FRC functions include:
- (a) monitoring and assessing the nature and overall adequacy of:
 - (i) the systems and processes used by Australian auditors to ensure compliance with auditor independence requirements; and
 - (ii) the systems and processes used by professional accounting bodies for planning and performing quality assurance reviews of audit work undertaken by Australian auditors to the extent to which those reviews relate to auditor independence requirements; and
 - (iii) the action that Australian auditors who have been subject to such quality assurance reviews have taken in

- response to the reports prepared as a result of those reviews; and
- (iv) the action taken by professional accounting bodies to ensure that Australian auditors who have been subject to such quality assurance reviews respond appropriately to the reports prepared as a result of those reviews; and
 - (v) the investigation and disciplinary procedures of professional accounting bodies as those procedures apply to Australian auditors; and
- (b) monitoring the overall compliance by companies, registered schemes and disclosing entities with the audit-related disclosure requirements of the Corporations Act and the accounting standards; and
 - (c) giving the Minister reports and advice about the matters referred to in paragraphs (a) and (b); and
 - (d) giving professional accounting bodies reports and advice about the matters referred to in subparagraphs (a)(ii), (iii), (iv) and (v); and
 - (e) monitoring international developments in auditor independence, assessing the adequacy of the Australian auditor independence requirements provided for in:
 - (i) the Corporations Act; and
 - (ii) codes of professional conduct;in the light of those developments and giving the Minister, and professional accounting bodies, reports and advice on any additional measures needed to enhance the independence of Australian auditors; and
 - (f) promoting, and monitoring the adequacy of, the teaching of professional and business ethics by, or on behalf of, professional accounting bodies to the extent to which the teaching of those subjects relates to auditor independence.

Powers

- (3) As well as any other powers conferred by this Act, the FRC has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (4) Without limiting subsection (3), the FRC may establish committees and advisory groups.

Section 225A

Restriction on powers

- (5) The FRC does not have power to direct the AASB in relation to the development, or making, of a particular standard.
- (6) The FRC does not have power to veto a standard made, formulated or recommended by the AASB.
- (7) The FRC does not have power to direct the AUASB in relation to the development, or making, of a particular auditing standard.
- (8) The FRC does not have power to veto a standard made, formulated or recommended by the AUASB.

225A Financial Reporting Council's information gathering powers

- (1) The Chair of the FRC, acting on behalf of the FRC, may give a professional accounting body a written notice requiring the body to give the FRC:
 - (a) a copy of:
 - (i) a code of professional conduct of the body; or
 - (ii) a proposed code of professional conduct of the body; or
 - (iii) a proposed amendment of a code of professional conduct of the body; or
 - (b) information about the body's planning or performance of quality assurance reviews; or
 - (c) details of the body's investigation or disciplinary procedures.
- (2) The notice may require the body to give the FRC information under paragraph (1)(b) or (c) only to the extent to which the information relates to audit work done by Australian auditors.
- (3) A professional accounting body has qualified privilege in respect of a disclosure made by the body in response to a notice given to the body under subsection (1).
- (4) A person has qualified privilege in respect of a disclosure made by the person, on behalf of a professional accounting body, in response to a notice given to the professional body under subsection (1).

- (5) The Chair of the FRC, acting on behalf of the FRC, may give an Australian auditor a written notice requiring the auditor to give the FRC information about, or documents or copies of documents that relate to, one or more of the following:
- (a) one or more audits conducted by the auditor or in which the auditor participated;
 - (b) the measures the auditor adopted, or the procedures the auditor put in place, to ensure that the auditor was, and continues to be, independent of entities it audits;
 - (c) any other matter prescribed by the regulations for the purposes of this paragraph.

Without limiting this, the documents may be audit working papers.

Note: A person responding to a notice under this subsection has qualified privilege in respect of the response (see section 1289 of the Corporations Act).

- (6) Without limiting subsection (5), the notice:
- (a) may require the Australian auditor to give the FRC information or a document even if doing so would involve a breach of an obligation of confidentiality that the auditor owes an audited body; and
 - (b) may require that a copy of a document to be given to the FRC must be certified by a particular person or a person holding a particular office or position.
- (7) The notice under subsection (1) or (5) must specify:
- (a) the information or documents the professional accounting body or Australian auditor must give; and
 - (b) the period within which the body or auditor must give the information or documents.
- The period specified under paragraph (b) must be not less than 28 days after the day on which the notice is given.
- (8) The Chair of the FRC, acting on behalf of the FRC, may, by written notice to the professional accounting body or Australian auditor, extend the period within which the body or auditor must give the information or documents.
- (9) A person commits an offence if:
- (a) the Chair of the FRC gives the person notice under subsection (1) or (5); and

Section 226

(b) the person does not comply with the notice.

Penalty: 10 penalty units.

(10) An offence against subsection (9) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

(11) A person commits an offence if:

- (a) the Chair of the FRC gives a firm a notice under subsection (5); and
- (b) the person is a member of the firm when the notice is given; and
- (c) the notice is not complied with.

Penalty: 10 penalty units.

(12) An offence against subsection (11) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

(13) A member of a firm does not commit an offence at a particular time because of a contravention of subsection (11) if the member either:

- (a) does not know at that time that the Chair of the FRC has given the firm the notice under subsection (5); or
- (b) knows that the Chair of the FRC has given the firm the notice under subsection (5) at that time but takes all reasonable steps to ensure that the notice is complied with as soon as possible after the member becomes aware of those circumstances.

Note: A defendant bears an evidential burden in relation to the matters in this subsection, see subsection 13.3(3) of the *Criminal Code*.

226 The Australian Accounting Standards Board

(2) The AASB:

- (a) is a body corporate with perpetual succession; and
- (b) must have a common seal; and
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

Note 1: The AASB was established by subsection 226(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

Note 2: The *Commonwealth Authorities and Companies Act 1997* applies to the AASB. This Act makes provision for reporting obligations (annual report, interim reports and estimates), accounting records, audit, banking, investment of funds and duties of officers.

- (3) All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of the common seal of the AASB appearing on a document; and
 - (b) presume that the document was duly sealed.

227 AASB's functions and powers

Functions

- (1) The functions of the AASB are:
- (a) to develop a conceptual framework, not having the force of an accounting standard, for the purpose of evaluating proposed accounting standards and international standards; and
 - (b) to make accounting standards under section 334 of the Corporations Act for the purposes of the corporations legislation (other than the excluded provisions); and
 - (c) to formulate accounting standards for other purposes; and
 - (d) to participate in and contribute to the development of a single set of accounting standards for world-wide use; and
 - (e) to advance and promote the main objects of this Part.

Note 1: The standards made under paragraph (b) are given legal effect by the Corporations Act. The standards formulated under paragraph (c) do not have legal effect under the Corporations Act itself but may be applied or adopted by some other authority.

Note 2: See section 224 and sections 228 to 233 for the framework within which the AASB is to formulate and make accounting standards.

- (2) In carrying out its functions under paragraphs (1)(a) and (d), the AASB must have regard to the interests of Australian corporations which raise or propose to raise capital in major international financial centres.

Section 227A

Powers

- (3) The AASB has power to:
- (a) engage staff and consultants; and
 - (b) establish committees, advisory panels and consultative groups; and
 - (c) receive money contributed towards its operating costs; and
 - (d) do anything else that is necessary for, or reasonably incidental to, the performance of its functions.

Manner of making and formulating standards

- (4) Without limiting paragraph (1)(b) or (c), the AASB may make or formulate an accounting standard by issuing the text of an international accounting standard. The text of the international accounting standard may be modified to the extent necessary to take account of the Australian legal or institutional environment and, in particular, to ensure that any disclosure and transparency provisions in the standard are appropriate to the Australian legal or institutional environment.

Manner of participating in the development of international standards

- (5) Without limiting paragraph (1)(d), the AASB may distribute the text of a draft international accounting standard (whether or not modified to take account of the Australian legal or institutional environment) for the purposes of consultation.

227A The Auditing and Assurance Standards Board

- (1) The Auditing and Assurance Standards Board is established.
- (2) The Auditing and Assurance Standards Board:
- (a) is a body corporate with perpetual succession; and
 - (b) must have a common seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the Auditing and Assurance Standards Board. This Act makes

provision for reporting obligations (annual report, interim reports and estimates), accounting records, audit, banking, investment of funds and duties of officers.

- (3) All courts, judges and persons acting judicially must:
- (a) take judicial notice of the imprint of the common seal of the Auditing and Assurance Standards Board appearing on a document; and
 - (b) presume that the document was duly sealed.

227B AUASB's functions and powers

Functions

- (1) The functions of the AUASB are:
- (a) to make auditing standards under section 336 of the Corporations Act for the purposes of the corporations legislation; and
 - (b) to formulate auditing and assurance standards for other purposes; and
 - (c) to formulate guidance on auditing and assurance matters; and
 - (d) to participate in and contribute to the development of a single set of auditing standards for world-wide use; and
 - (e) to advance and promote the main objects of this Part.

Note 1: The standards made under paragraph (a) are given legal effect by the Corporations Act. The standards formulated under paragraph (b) do not have legal effect under the Corporations Act itself but may be applied or adopted by some other authority.

Note 2: See section 224 and sections 234A to 234D for the framework within which the AUASB is to formulate and make auditing standards.

Powers

- (2) The AUASB has power to:
- (a) engage staff and consultants; and
 - (b) establish committees, advisory panels and consultative groups; and
 - (c) receive money contributed towards its operating costs; and
 - (d) do anything else that is necessary for, or reasonably incidental to, the performance of its functions.

Section 227B

Manner of making and formulating standards

- (3) Without limiting paragraph (1)(a) or (b), the AUASB may make or formulate an auditing standard by issuing the text of an international auditing standard.
- (4) The text of the international auditing standard may be modified to the extent necessary to take account of the Australian legal or institutional environment.

Manner of participating in the development of international standards

- (5) Without limiting paragraph (1)(d), the AUASB may distribute the text of a draft international auditing standard (whether or not modified to take account of the Australian legal or institutional environment) for the purposes of consultation.

Division 2—Accounting standards

228 Purposive interpretation of standards

Objects of this Part

- (1) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.

Note: Section 224 states the main objects of this Part.

Purposes or objects of particular standard

- (2) In interpreting an accounting standard made or formulated by the AASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.

229 Generic and specific standards

- (1) Accounting standards made or formulated by the AASB may:
 - (a) be of general or limited application (including a limitation to specified bodies or undertakings); and
 - (b) differ according to differences in time, place or circumstance.
- (2) In making and formulating accounting standards, the AASB:
 - (a) must have regard to the suitability of a proposed standard for different types of entities; and
 - (b) may apply different accounting requirements to different types of entities; and
 - (c) must ensure that there are appropriate accounting standards for each type of entity that must comply with accounting standards.

Section 230

230 Comparative amounts

The accounting standards for the preparation of financial reports for a period may require the inclusion in those reports of comparative amounts for earlier periods.

231 Cost/benefit analysis

- (1) The AASB must carry out a cost/benefit analysis of the impact of a proposed accounting standard before making or formulating the standard. This does not apply where the standard is being made or formulated by issuing the text of an international standard (whether or not modified to take account of the Australian legal or institutional environment).

Note: Subsection 227(3) allows the AASB to make or formulate a standard by issuing the text of an international standard. Under subsection (2) of this section, the AASB will have done a cost/benefit analysis of the international standard used in that way.

- (2) The AASB must carry out a cost/benefit analysis of the impact of a proposed international accounting standard before:
 - (a) providing comments on a draft of the standard; or
 - (b) proposing the standard for adoption as an international standard.
- (3) The AASB has to comply with subsections (1) and (2) only to the extent to which it is reasonably practicable to do so in the circumstances.
- (4) The Minister may direct the AASB to give the Minister details of a cost/benefit analysis carried out under this section. The AASB must comply with the direction.

232 FRC views

In performing its functions, the AASB must:

- (a) follow the broad strategic direction determined by the FRC under paragraph 225(2)(c); and
- (b) follow the general policy directions given by the FRC under paragraph 225(2)(d); and

- (c) take into account the advice and feedback on matters of general policy given by the FRC under paragraph 225(2)(d).

233 International accounting standards

The Minister may give the AASB a direction about the role of international accounting standards in the Australian accounting standard setting system. Before giving a direction under this section, the Minister must receive and consider a report from the FRC about the desirability of giving the direction. The AASB must comply with the direction.

234 Validity of accounting standards

A failure to comply with this Division in relation to the making of an accounting standard does not affect the validity of the standard.

Division 2A—Auditing standards

234A Purposive interpretation of standards

Objects of this Part

- (1) In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote the objects of this Part is to be preferred to a construction that would not promote those objects.

Note: Section 224 states the main objects of this Part.

Purposes or objects of particular standard

- (2) In interpreting an auditing standard made or formulated by the AUASB, a construction that would promote a purpose or object of the standard (to the extent to which it is not inconsistent with the objects of this Part) is to be preferred to a construction that would not promote that purpose or object. This is so even if the purpose or object is not expressly stated in the standard.

234B Generic and specific standards

Auditing standards made or formulated by the AUASB may:

- (a) be of general or limited application (including a limitation to different types of audit and specified industries, bodies or undertakings); and
- (b) differ according to differences in time, place or circumstance.

234C FRC views

In performing its functions, the AUASB must:

- (a) follow the broad strategic direction determined by the FRC under paragraph 225(2A)(c); and
- (b) follow the general policy directions given by the FRC under paragraph 225(2A)(d); and
- (c) take into account the advice and feedback on matters of general policy given by the FRC under paragraph 225(2A)(d).

234D International auditing standards

- (1) The Minister may give the AUASB a direction about the role of international auditing standards in the Australian auditing standard setting system.
- (2) Before giving a direction under this section, the Minister must receive and consider a report from the FRC about the desirability of giving the direction.
- (3) The AUASB must comply with the direction.

234E Validity of auditing standards

A failure to comply with this Division in relation to the making of an auditing standard does not affect the validity of the standard.

Division 3—Administrative provisions

Subdivision A—The Financial Reporting Council

235A Membership of FRC

- (1) The members of the FRC are appointed by the Minister in writing. The Minister may appoint a person by specifying an organisation or body that is to choose the person who is appointed.
- (2) The members hold office on the terms and conditions that are determined by the Minister.
- (3) The Minister must appoint one of the members to be Chair of the FRC. The appointment must be in writing. The FRC may appoint one of its members to be Deputy Chair of the FRC.

235B Annual report

- (1) As soon as practicable after 30 June in each year, and in any event before 31 October, the FRC must give the Minister a report on:
 - (a) the operations of:
 - (i) the FRC and its committees and advisory groups; and
 - (ii) the AASB and its committees, advisory panels and consultative groups; and
 - (iii) the AUASB and its committees, advisory panels and consultative groups; and
 - (b) the achievement of the objects set out in section 224; during the year that ended on 30 June in that year.
- (2) The report must include details of any change to the AASB's priorities or business plan that was made as a result of action taken by the FRC.
- (2A) The report must include details of any change to the AUASB's priorities or business plan that was made as a result of action taken by the FRC.
- (3) The Minister may grant an extension of time in special circumstances.

- (4) The Minister must table the report in each House of the Parliament as soon as practicable.

235BA Report on auditor independence functions

- (1) As soon as practicable after 30 June in each year, and in any event before 31 October, the FRC must give the Minister a report on:
- (a) the performance by the FRC, during the year that ended on 30 June in that year, of its functions under subsection 225(2B) (the auditor independence functions); and
 - (b) the findings and conclusions that the FRC reached in performing those functions; and
 - (c) the actions (if any) that were taken by the FRC in respect of those findings and conclusions.

The report may be given to the Minister separately or included in the report given to the Minister under section 235B.

- (2) The Minister may grant an extension of time in special circumstances.
- (3) The Minister must table the report in each House of the Parliament as soon as practicable.

235C Procedure

The FRC may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

Subdivision B—The Australian Accounting Standards Board

236A Procedures

- (1) Meetings of the AASB are to be chaired by:
- (a) the Chair; or
 - (b) the Deputy Chair if the Chair is absent; or
 - (c) a member chosen by the members present if both the Chair and the Deputy Chair are absent.
- (2) If a meeting of the AASB, or a part of one of its meetings, concerns the contents of accounting standards or international

Section 236B

accounting standards, the meeting or that part of it must be held in public.

- (3) The AASB must:
 - (a) comply with any directions about its procedures that the FRC gives under paragraph 225(2)(d); and
 - (b) take into account the advice and feedback about its procedures that the FRC gives under paragraph 225(2)(d).
- (4) Otherwise, the AASB may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

236B Appointment of members of the AASB

Appointment of Chair

- (1) The Minister appoints the Chair of the AASB.

Appointment of other members

- (2) The FRC appoints the other members of the AASB. The AASB may appoint one of its members to be Deputy Chair of the AASB.

Qualification for appointment

- (3) A person must not be appointed as a member of the AASB unless their knowledge of, or experience in, business, accounting, law or government qualifies them for the appointment.

Appointment document

- (4) An appointment under subsection (1) or (2) is to be made in writing.

Period of appointment

- (5) The appointment document must specify the period of the appointment (not exceeding 5 years). A member holds office for the period specified in the appointment document and is eligible for re-appointment.

Terms and conditions of appointment

- (6) The Chair holds office on the terms and conditions that are determined by the Minister. The other members hold office on the terms and conditions determined by the FRC.

236C Resignation and termination of appointment

Resignation

- (1) A member of the AASB may resign their appointment by giving a written resignation to:
- (a) if the member is the Chair of the AASB—the Minister; or
 - (b) in any other case—the Chair of the FRC.

Termination of Chair's appointment

- (2) The Chair is not to be removed from office except as provided by subsection (3) or (4).
- (3) The Minister may terminate the appointment of the Chair of the AASB for:
- (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of their appointment.
- (4) The Minister must terminate the appointment of the Chair of the AASB if the Chair:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

Termination of ordinary member's appointment

- (5) A member of the AASB (other than the Chair) is not to be removed from office except as provided by subsection (6) or (7).

Section 236D

- (6) The FRC may terminate the appointment of a member of the AASB (other than the Chair) for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of the member's appointment.
- (7) The FRC must terminate the appointment of a member of the AASB (other than the Chair) if the member:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

236D Acting appointments

- (1) The Minister may appoint a person to act as Chair of the AASB:
 - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (2) The AASB may appoint one of its members to act as Deputy Chair of the AASB:
 - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - or
 - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (3) The FRC may appoint a person to act as a member of the AASB (other than the Chair):
 - (a) during a vacancy in the office of member (whether or not an appointment has previously been made to the office); or

- (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (4) Anything done by or in relation to a person purporting to act under an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

Subdivision BA—The Auditing and Assurance Standards Board

236E Procedures

- (1) Meetings of the AUASB are to be chaired by:
 - (a) the Chair; or
 - (b) the Deputy Chair if the Chair is absent; or
 - (c) a member chosen by the members present if both the Chair and the Deputy Chair are absent.
- (2) If a meeting of the AUASB, or a part of one of its meetings, concerns the contents of auditing standards or international auditing standards, the meeting or that part of it must be held in public.
- (3) The AUASB must:
 - (a) comply with any directions about its procedures that the FRC gives under paragraph 225(2A)(d); and
 - (b) take into account the advice and feedback about its procedures that the FRC gives under paragraph 225(2A)(d).
- (4) Otherwise, the AUASB may determine its own procedural rules (including rules as to notice of meetings, quorum and voting).

Section 236F

236F Appointment of members of the AUASB

Appointment of Chair

- (1) The Minister appoints the Chair of the AUASB.

Appointment of other members

- (2) The FRC appoints the other members of the AUASB.
- (3) The AUASB may appoint one of its members to be Deputy Chair of the Board.

Qualification for appointment

- (4) A person must not be appointed as a member of the AUASB unless their knowledge of, or experience in, business, accounting, auditing, law or government qualifies them for the appointment.

Appointment document

- (5) An appointment under subsection (1) or (2) is to be made in writing.

Period of appointment

- (6) The appointment document must specify the period of the appointment (not exceeding 5 years).
- (7) A member holds office for the period specified in the appointment document and is eligible for re-appointment.

Terms and conditions of appointment

- (8) The Chair holds office on the terms and conditions that are determined by the Minister.
- (9) The other members hold office on the terms and conditions determined by the FRC.

236G Resignation and termination of appointment

Resignation

- (1) A member of the AUASB may resign their appointment by giving a written resignation to:
 - (a) if the member is the Chair of the AUASB—the Minister; or
 - (b) in any other case—the Chair of the FRC.

Termination of Chair's appointment

- (2) The Chair is not to be removed from office except as provided by subsection (3) or (4).
- (3) The Minister may terminate the appointment of the Chair of the AUASB for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of their appointment.
- (4) The Minister must terminate the appointment of the Chair of the AUASB if the Chair:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

Termination of ordinary member's appointment

- (5) A member of the AUASB (other than the Chair) is not to be removed from office except as provided by subsection (6) or (7).
- (6) The FRC may terminate the appointment of a member of the AUASB (other than the Chair) for:
 - (a) misbehaviour or physical or mental incapacity; or
 - (b) breach of the terms and conditions of the member's appointment.

Section 236H

- (7) The FRC must terminate the appointment of a member of the AUASB (other than the Chair) if the member:
- (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with their creditors; or
 - (d) makes an assignment of their remuneration or property for the benefit of their creditors; or
 - (e) contravenes section 237.

236H Acting appointments

- (1) The Minister may appoint a person to act as Chair of the AUASB:
- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (2) The AUASB may appoint one of its members to act as Deputy Chair of the AUASB:
- (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (3) The FRC may appoint a person to act as a member of the AUASB (other than the Chair):
- (a) during a vacancy in the office of the member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the member is absent from duty or from Australia, or is for any reason unable to perform the duties of the office.
- (4) Anything done by, or in relation to, a person purporting to act under an appointment is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect in connection with the appointment; or

- (c) the appointment had ceased to have effect; or
- (d) the occasion to act had not arisen or had ceased.

Subdivision C—Confidentiality

237 Confidentiality

- (1) The FRC, the AASB and the AUASB must take all reasonable measures to protect from unauthorised use or disclosure information given to it in confidence.
- (2) For the purposes of subsection (1), the disclosure of information is taken to be authorised if the disclosure:
 - (a) is required or permitted by a law of the Commonwealth or a prescribed law of a State or Territory; or
 - (b) is made in order to enable an authority or person in a country outside Australia and the external Territories to perform or exercise a function or power that corresponds, or is analogous, to any of the FRC's, the AASB's or the AUASB's functions or powers; or
 - (c) is made to bodies that set international accounting standards or international auditing standards; or
 - (d) is made to ASIC for the purposes of its performance of its functions under the corporations legislation (other than the excluded provisions); or
 - (e) is made to the Disciplinary Board for the purposes of its performance of its functions under the corporations legislation; or
 - (ea) is made to APRA for the purposes of its performance of its functions; or
 - (f) is made to a professional accounting body for the purposes of its performance of its functions.

Subdivision D—Financial matters

238 Application of money

- (1) The money of the AASB must be applied only:

Section 238

- (a) in payment or discharge of the costs, expenses and other obligations incurred by the AASB in the performance of its functions or the exercise of its powers under this Act; and
 - (b) in paying or discharging, or reimbursing someone for, the costs, expenses and other obligations incurred in connection with the performance by the FRC of its functions and the exercise by the FRC of its powers; and
 - (c) in meeting the administrative expenses of the committees and advisory groups the FRC establishes; and
 - (d) in payment of any remuneration and allowances payable to any person appointed to the FRC or the AASB under this Part; and
 - (e) in making payments to the AUASB.
- (2) The money of the AUASB must be applied only:
- (a) in payment or discharge of the costs, expenses and other obligations incurred by the AUASB in the performance of its functions or the exercise of its powers under this Act; and
 - (b) in paying or discharging, or reimbursing someone for, the costs, expenses and other obligations incurred in connection with the performance by the FRC of its functions and the exercise by the FRC of its powers; and
 - (c) in meeting the administrative expenses of the committees and advisory groups the FRC establishes; and
 - (d) in payment of any remuneration and allowances payable to any person appointed to the FRC or the AUASB under this Part; and
 - (e) in making payments to the AASB.

Part 13—Financial Reporting Panel

Division 1—General

239AA Financial Reporting Panel

A Financial Reporting Panel is established.

239AB Membership

- (1) The Financial Reporting Panel consists of such members, not fewer than 5, as hold office in accordance with this Part.
- (2) The Minister is to appoint the members of the Financial Reporting Panel.
- (3) Each of the members may be appointed as a full-time member or as a part-time member.
- (4) The Minister must not appoint a person as a member unless the Minister is satisfied that the person is qualified for appointment because of his or her knowledge of, or experience in, one or more of the following fields:
 - (a) accounting;
 - (b) auditing;
 - (c) business;
 - (d) the administration of companies;
 - (e) law.
- (5) The performance of the functions or the exercise of the powers of the Financial Reporting Panel is not affected merely because its membership is not as prescribed by subsection (1), unless a continuous period of 3 months has elapsed since its membership ceased to be as so prescribed.

239AC Chairperson

The Minister is to appoint as Chairperson of the Financial Reporting Panel a person who is, or is to be, a member.

Section 239AD

239AD Functions and powers of Financial Reporting Panel

The Financial Reporting Panel has the functions and powers conferred on it by or under the Corporations legislation.

239AE Term of office as member

- (1) Subject to this Act, a person appointed as a member holds office for the term specified in the instrument of appointment, but is eligible for re-appointment.
- (2) The term specified must not exceed 5 years.

239AF Term of office as Chairperson

- (1) Subject to this Act, a person appointed as Chairperson holds office as such until:
 - (a) the end of his or her current term as a member; or
 - (b) he or she otherwise stops being a member;whichever happens first.
- (2) A person is not ineligible to be appointed under section 239AC merely because he or she has been so appointed before.

239AG Resignation

A person may resign as a member or Chairperson by writing signed and delivered to the Minister.

239AH Termination of appointment

The Minister may terminate a member's appointment because of misbehaviour, or the physical or mental incapacity, of the member or if the member:

- (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or assigns remuneration or property for their benefit; or

- (b) is a full-time member and engages without the Minister's consent in paid employment outside the duties of the member's office; or
- (c) is a full-time member and is absent from duty, except on leave granted in accordance with section 239AJ, for 14 consecutive days, or for 28 days in any period of 12 months; or
- (d) without reasonable excuse, contravenes section 239BB.

239AI Remuneration and allowances

- (1) A member must be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, a member must be paid such remuneration as the Minister determines in writing.
- (2) A member must be paid such allowances as the Minister determines in writing.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

239AJ Leave of absence

- (1) A full-time member has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant a full-time member leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

239AK Other terms and conditions

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as the Minister determines in writing.

239AL Acting Chairperson

- (1) The Minister may appoint a member to act as Chairperson:

Section 239AM

- (a) during a vacancy in the office of Chairperson (whether or not an appointment has previously been made to the office); or
 - (b) during all periods when the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the functions of the office.
- (2) Anything done by, or in relation to, a person purporting to act under an appointment under subsection (1) is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

239AM Annual report

- (1) The Financial Reporting Panel must, as soon as practicable after 30 June, and in any event before 31 October, in each year:
 - (a) prepare a report describing the operations of the Panel during the year that ended on 30 June in that year; and
 - (b) give to the Minister a copy of the report.
- (2) If a copy of a report is given to the Minister under subsection (1), he or she must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after he or she receives the first-mentioned copy.

Division 2—Conduct of Financial Reporting Panel's business

239BA Constitution of Financial Reporting Panel in relation to particular matters

- (1) The Financial Reporting Panel must, for the purposes of the performance or exercise of its functions or powers in relation to a particular matter, be constituted by 3 members in respect of whom a direction is in force under this section in relation to that matter.
- (2) The Chairperson may give directions about the members (the *sitting members*) who are to constitute the Financial Reporting Panel for the purposes of performing or exercising its functions or powers in relation to particular matters.
- (3) A direction under subsection (2) must:
 - (a) unless the sitting members include the Chairperson—designate one of them as Chairperson; and
 - (b) in any case—designate one of the sitting members as Deputy Chairperson;of the Financial Reporting Panel as constituted in relation to the matter concerned.
- (4) If the Chairperson gives a direction as to the sitting members, he or she may:
 - (a) revoke the direction and give a new direction under subsection (2) as to the sitting members; or
 - (b) vary the direction to replace one or more of the sitting members;at any time after the giving of the direction and before the commencement of proceedings in relation to the matter.
- (5) If:
 - (a) the Chairperson gives a direction as to the sitting members; and
 - (b) one of those persons:
 - (i) ceases to be a member; or

Section 239BB

(ii) ceases to be available for the purposes of proceedings in relation to a matter;

during the proceedings or after the completion of the proceedings but before the report on the matter to which the proceedings relate is finalised;

the Chairperson may vary the direction to replace that person at any time after the person so ceases to be a member or to be available.

239BB Disclosure of interests by members

(1) If:

(a) a member is, or is to be, a member of the Financial Reporting Panel as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter; and

(b) the member has or acquires any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that matter;

the member:

(c) must disclose the interest to the Chairperson and to the parties involved in the matter; and

(d) except with the Chairperson's consent, must not take part in the performance or exercise of the Financial Reporting Panel's functions or powers in relation to the matter.

(2) The Chairperson must not, under paragraph (1)(d), consent to a member taking part in the performance or exercise of the Financial Reporting Panel's functions or powers in relation to a matter unless the Chairperson believes, on reasonable grounds, that the member's interest:

(a) is immaterial or indirect; and

(b) will not prevent the member from acting impartially in relation to the matter.

(3) If the Chairperson becomes aware that a member who is, or is to be, a member of the Financial Reporting Panel (as constituted for the purposes of the performance or exercise of its functions or powers in relation to a particular matter) has, in relation to that matter, an interest of the kind referred to in subsection (1):

- (a) the Chairperson must revoke the direction given under subsection 239BA(2) in relation to the matter unless the Chairperson believes, on reasonable grounds, that the member's interest:
 - (i) is immaterial or indirect; and
 - (ii) will not prevent the member from acting impartially in relation to the matter; or
- (b) if the Chairperson is not required to revoke that direction under paragraph (a), the Chairperson must cause the member's interest to be disclosed to the parties involved in the matter.

239BC Application of Division 2 of Part 7

Division 2 of Part 7 applies in relation to the Financial Reporting Panel as if a reference in section 127 to ASIC included a reference to the Financial Reporting Panel.

Division 3—Financial Reporting Panel proceedings

239CA Interpretation

- (1) For the purposes of the performance or exercise, in relation to a particular matter, of any of the Financial Reporting Panel's functions and powers, this Division has effect as if:
 - (a) a reference to the Financial Reporting Panel were a reference to the Financial Reporting Panel as constituted in relation to that matter; and
 - (b) a reference to a member were a reference to a member of the Financial Reporting Panel as so constituted; and
 - (c) if the Chairperson is not a member of the Financial Reporting Panel as so constituted—a reference to the Chairperson were a reference to the member designated, in a direction in force under subsection 239BA(2), as the Chairperson of the Financial Reporting Panel as so constituted; and
 - (d) a reference to the Deputy Chairperson were a reference to the member designated, in a direction in force under subsection 239BA(2), as Deputy Chairperson of the Financial Reporting Panel as so constituted.
- (2) A reference in this Division to Financial Reporting Panel proceedings includes a reference to a part of the Financial Reporting Panel proceedings.

239CB Power to conduct proceedings

- (1) The Financial Reporting Panel may conduct proceedings for the purposes of the performance or exercise of any of its functions and powers.
- (2) The Chairperson may convene proceedings to be held at a place and time he or she determines.

239CC Financial Reporting Panel proceedings

Proceedings in private

- (1) Subject to subsection (2), the Financial Reporting Panel's proceedings must take place in private.

Proceedings in public

- (2) The proceedings must take place in public if the lodging entity requests the Panel, in writing, that the proceedings take place in public. This subsection has effect subject to any directions under subsection (3).

Part of proceedings in private or publication restrictions

- (3) The Financial Reporting Panel may give directions under subsection (4) if:
 - (a) the proceedings are taking place in public at the request of the lodging entity under subsection (2); and
 - (b) the Financial Reporting Panel is satisfied that it is desirable to do so:
 - (i) because of the confidential nature of any evidence or matter; or
 - (ii) in order to protect the interests of any other person.
- (4) The Financial Reporting Panel may:
 - (a) direct that a part of the proceedings take place in private; and
 - (b) give directions as to the persons who may be present at that part of the proceedings if it is to take place in private.

A reference in this section to proceedings that take place in private includes a reference to that part of the proceedings that takes place in private because of a direction under paragraph (a).

Who may be present at proceedings taking place in private

- (5) The Financial Reporting Panel may give directions as to the persons who may be present at proceedings that take place in private.
- (6) A person must not be present at proceedings that take place in private unless the person is:

Section 239CD

- (a) the Chairperson; or
- (b) a member of the Financial Reporting Panel; or
- (c) a person representing the lodging entity; or
- (d) another person who is entitled to be given an opportunity to appear at the proceedings; or
- (e) a person representing ASIC; or
- (f) a member of the staff of the Financial Reporting Panel approved by the Panel; or
- (g) entitled to be present because of a direction under subsection (4).

Penalty: 10 penalty units.

- (7) An offence against subsection (6) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

ASIC and person entitled to appear

- (8) Nothing in a direction given by the Financial Reporting Panel under paragraph (3)(a) or subsection (6) prevents the presence at the proceedings of:
- (a) a person representing ASIC; or
 - (b) a person who is entitled to be given an opportunity to appear at the proceedings.

Note: Although ASIC is entitled to have a representative at the proceedings, it is not entitled to be legally represented (see section 239CG).

- (9) The Financial Reporting Panel may revoke or vary a direction given under subsection (4).

239CD Financial Reporting Panel may restrict publication of certain material

- (1) If, during Financial Reporting Panel proceedings, the Panel is satisfied that it is desirable to do so, the Panel may give directions preventing or restricting the publication of:
- (a) submissions or evidence made or given to the Panel; or
 - (b) matters contained in documents lodged with the Panel.
- (2) In determining whether or not to give a direction under subsection (1), the Financial Reporting Panel must have regard to:

- (a) whether:
 - (i) submissions or evidence made or given, or that may be made or given; or
 - (ii) a matter that has arisen or may arise;
during the proceedings is of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence against an Australian law; and
 - (b) any unfair prejudice to a person's reputation that would be likely to be caused unless the Panel exercises its powers under this section; and
 - (c) whether it is in the public interest that the Panel exercises its powers under this section; and
 - (d) any other relevant matter.
- (3) A person must not contravene a direction given under subsection (1).
- Penalty: 50 penalty units or imprisonment for 1 year, or both.
- (4) An offence constituted by a contravention of subsection (3) is punishable on summary conviction.
- (5) The Financial Reporting Panel may revoke or vary a direction given under subsection (1).

239CE Power to summon witnesses and take evidence

- (1) A member may, by written summons in the prescribed form given to a person to whom subsection (2) applies:
- (a) require the person to appear before the Financial Reporting Panel at Financial Reporting Panel proceedings to give evidence, to produce specified documents, or to do both; and
 - (b) require the person to attend from day to day unless excused, or released from further attendance, by a member.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

- (2) This subsection applies to:
- (a) a staff member of ASIC; or
 - (b) an officer of the lodging entity; or

Section 239CF

- (c) the auditor, or a professional member of the audit team, for the audit of the relevant financial report; or
 - (d) any other person involved in preparing, or auditing, the relevant financial report for or on behalf of the lodging entity.
- (3) In Financial Reporting Panel proceedings, the Financial Reporting Panel may take evidence on oath or affirmation, and for that purpose a member may:
- (a) require a witness in the proceedings to either take an oath or make an affirmation; and
 - (b) administer an oath or affirmation to a witness in the proceedings.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

- (4) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence the person will give will be true.
- (5) The member presiding at Financial Reporting Panel proceedings:
- (a) may require a witness in the proceedings to answer a question put to the witness; and
 - (b) may require a person appearing in the proceedings pursuant to a summons issued under this section to produce a document specified in the summons.

Note: Failure to comply with a requirement made under this subsection is an offence (see section 239CJ).

- (6) The Financial Reporting Panel may pay such amount as it thinks reasonable on account of the costs and expenses (if any) that a person (other than a staff member of ASIC) incurs in complying with a requirement made under this section.

239CF Quorum

In Financial Reporting Panel proceedings, 2 members form a quorum.

239CG No legal representation in proceedings before the Financial Reporting Panel

- (1) Unless the Financial Reporting Panel otherwise determines, a party to Financial Reporting Panel proceedings is not to be legally represented in the proceedings.
- (2) For the purposes of this section, ASIC is taken to be a party to the proceedings.
- (3) The Financial Reporting Panel may revoke or vary a determination made under subsection (1).

239CH Procedure

- (1) Subject to subsections (2) to (4), the Financial Reporting Panel may determine the procedural rules to be followed in Financial Reporting Panel proceedings.
- (2) Financial Reporting Panel proceedings are to be conducted in accordance with (in order of priority):
 - (a) the requirements of this Division and the Corporations Act; and
 - (b) the requirements of the regulations.
- (3) Without limiting paragraph (2)(b), the regulations may deal with:
 - (a) the people who are entitled to be given the opportunity to appear in Financial Reporting Panel proceedings; and
 - (b) making submissions or giving evidence in Financial Reporting Panel proceedings; and
 - (c) the matters that the Financial Reporting Panel is to take into account when making a decision in the course of Financial Reporting Panel proceedings.
- (4) The rules of procedural fairness, to the extent that they are not inconsistent with the provisions of this Act or the regulations made under it, apply to Financial Reporting Panel proceedings.

Section 239CI

239CI Protection of members etc.

- (1) A member has, in the performance or exercise of any of his or her functions and powers as a member in relation to Financial Reporting Panel proceedings, the same protection and immunity as a Justice of the High Court.
- (2) Subject to this Act:
 - (a) a person who is required by a summons under section 239CE to appear in Financial Reporting Panel proceedings; or
 - (b) a witness in Financial Reporting Panel proceedings;has the same protection as a witness in a proceeding in the High Court.

239CJ Non-compliance with requirements made under section 239CE

- (1) A person must not fail to comply with a requirement made under subsection 239CE(1), (3) or (5).

Penalty: 10 penalty units.

- (2) An offence against subsection (1) is an offence of strict liability.

Note: For *strict liability* see section 6.1 of the *Criminal Code*.

239CK Contempt of Financial Reporting Panel

- (1) A person must not:
 - (a) engage in conduct that results in the obstruction or hindering of the Financial Reporting Panel or a member in the performance or exercise of any of the Financial Reporting Panel's functions and powers; or
 - (b) engage in conduct that results in the disruption of Financial Reporting Panel proceedings.

Penalty: 50 penalty units or imprisonment for 1 year, or both.

- (2) An offence constituted by a contravention of subsection (1) is punishable on summary conviction.

239CL Powers of Court where non-compliance with section 239CE

- (1) This section applies if the Financial Reporting Panel, as constituted for the purposes of particular Financial Reporting Panel proceedings, is satisfied that a person has failed to comply with a requirement made under section 239CE in, or in relation to, those proceedings.
- (2) A member of the Financial Reporting Panel as so constituted may by writing certify the failure to the Court.
- (3) If a member of the Financial Reporting Panel does so, the Court may inquire into the case and may order the person to comply with the requirement as specified in the order.

Part 14—The Parliamentary Joint Committee on Corporations and Financial Services

241 Membership

- (2) The Parliamentary Committee consists of 10 members, of whom:
- (a) 5 are to be senators appointed by the Senate; and
 - (b) 5 are to be members of the House of Representatives appointed by that House.

Note: The Parliamentary Committee was established by subsection 241(1) of the *Australian Securities and Investments Commission Act 1989* and is continued in existence by section 261 of this Act.

- (3) The appointment of members by a House must be in accordance with that House's practice relating to the appointment of members of that House to serve on joint select committees of both Houses.
- (4) A person is not eligible for appointment as a member if he or she is:
- (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy-President and Chairman of Committees of the Senate; or
 - (e) the Chairman of Committees of the House of Representatives.
- (5) A member ceases to hold office:
- (a) when the House of Representatives expires or is dissolved; or
 - (b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or
 - (c) if he or she ceases to be a member of the House by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.
- (6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate.

- (7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.
- (8) A House may appoint one of its members to fill a vacancy among the members of the Parliamentary Committee appointed by that House.

242 Powers and proceedings

Subject to this Act, all matters relating to the Parliamentary Committee's powers and proceedings must be determined by resolution of both Houses.

243 Duties

The Parliamentary Committee's duties are:

- (a) to inquire into, and report to both Houses on:
 - (i) activities of ASIC or the Panel, or matters connected with such activities, to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; or
 - (ii) the operation of the corporations legislation (other than the excluded provisions), or of any other law of the Commonwealth, of a State or Territory or of a foreign country that appears to the Parliamentary Committee to affect significantly the operation of the corporations legislation (other than the excluded provisions); and
- (b) to examine each annual report that is prepared by a body established by this Act and of which a copy has been laid before a House, and to report to both Houses on matters that appear in, or arise out of, that annual report and to which, in the Parliamentary Committee's opinion, the Parliament's attention should be directed; and
- (c) to inquire into any question in connection with its duties that is referred to it by a House, and to report to that House on that question.

Part 15—Miscellaneous

243B Offences committed partly in and partly out of the jurisdiction

Where:

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

the person is guilty of that offence.

243D Financial transaction reports

Neither subsection 16(5A) nor (5AA) of the *Financial Transactions Reports Act 1988* prohibits a cash dealer from communicating or disclosing a fact or information referred to in either of those subsections:

- (a) to ASIC; or
- (b) to a market licensee; or
- (c) to a CS facility licensee; or
- (d) to an operator of a market exempted under section 791C of the Corporations Act; or
- (e) to an operator of a clearing and settlement facility exempted under section 820C of the Corporations Act; or
- (f) in accordance with conditions imposed on an Australian market licence under section 796A of the Corporations Act; or
- (g) in accordance with conditions imposed on a CS facility licence under section 825A of the Corporations Act; or
- (h) in accordance with conditions on an exemption made under section 791C of the Corporations Act from the requirement to hold an Australian market licence; or
- (i) in accordance with conditions on an exemption made under section 820C of the Corporations Act from the requirement to hold an Australian CS facility licence; or

- (j) as prescribed by regulations made for the purposes of this paragraph.

244 Review by Administrative Appeals Tribunal of certain decisions

- (1) In this section:

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

- (2) Applications may be made to the Administrative Appeals Tribunal for review of a decision by ASIC:
 - (a) to make an order under section 72 or 73; or
 - (b) to make an order under subsection 75(1) varying an order in force under Division 8 of Part 3; or
 - (c) to refuse to vary or revoke an order in force under Division 8 of Part 3.

244A Notice of reviewable decision and review rights

- (1) This section applies if ASIC makes a decision to which subsection 244(2) applies.
- (2) Subject to subsection (3), ASIC must take such steps as are reasonable in the circumstances to give to each person whose interests are affected by the decision notice, in writing or otherwise:
 - (a) of the making of the decision; and
 - (b) of the person's right to have the decision reviewed by the Administrative Appeals Tribunal.
- (3) Subsection (2) does not require ASIC to give notice to a person affected by the decision, or to the persons in a class of persons affected by the decision, if ASIC determines that giving notice to the person or persons is not warranted, having regard to:
 - (a) the cost of giving notice to the person or persons; and
 - (b) the way in which the interests of the person or persons are affected by the decision.
- (4) A failure to comply with this section does not affect the validity of the decision.

Section 245

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

245 Validity of certain actions

Nothing done by or in relation to a person who has been appointed to, or appointed to act in, an office under this Act is invalid on the ground that:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

246 Liability for damages

- (1) None of the following:
- (aa) the Minister;
 - (a) ASIC;
 - (b) CAMAC;
 - (c) a member of ASIC;
 - (d) a member of CAMAC;
 - (e) a member of the Panel;
 - (f) a person appointed for the purposes of this Act or a prescribed law of the Commonwealth, a State or a Territory;
 - (g) a staff member or a person who is, or is a member of, an ASIC delegate or is authorised to perform or exercise a function or power of, or on behalf of, ASIC;
 - (h) a member of the staff referred to in subsection 156(1), a person employed under subsection 156(3), a person engaged under subsection 157(1) or any of the officers, employees and persons who under section 158 are to assist CAMAC;
 - (i) a person engaged as a member of staff, or a consultant, of the AASB under paragraph 227(3)(a);

- (j) a person engaged as a member of staff, or a consultant, of the AUASB under paragraph 227B(2)(a);
- (k) an officer or employee of an Agency (within the meaning of the *Public Service Act 1999*), or of an authority of the Commonwealth, whose services are made available to the FRC or the Disciplinary Board in connection with the performance or exercise of any of its functions or powers;
- (l) a person engaged by an Agency (within the meaning of the *Public Service Act 1999*), or of an authority of the Commonwealth, to provide services to the FRC in connection with the performance or exercise of any of its functions or powers;

is liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power, conferred or expressed to be conferred by or under the corporations legislation, or a prescribed law of the Commonwealth, a State or a Territory.

- (2) Without limiting paragraph (1)(f), the following are taken to be persons appointed for the purposes of this Act:
 - (a) a member of the Disciplinary Board;
 - (b) a member of the FRC or of a committee or advisory group established by the FRC;
 - (c) a member of the AASB or of a committee, advisory panel or consultative group established by the AASB;
 - (d) a member of the AUASB or of a committee, advisory panel or consultative group established by the AUASB.

247 Duplicate seals

- (1) As well as ASIC's common seal, there are to be such duplicates of that seal as ASIC directs.
- (2) A document to which a duplicate seal of ASIC is affixed is taken to have ASIC's common seal affixed to it.

Section 248

248 Judicial notice of ASIC's seal and members' signatures

- (1) A court must take judicial notice of ASIC's common seal affixed to a document and, unless the contrary is established, must presume that it was duly affixed.
- (2) A court must take judicial notice of:
 - (a) the official signature of a person who holds or has held, or is acting or has acted in, the office of member, Chairperson or Deputy Chairperson; and
 - (b) the fact that the person holds or has held, or is acting or has acted in, that office;if a signature purporting to be the person's signature appears on an official document.
- (3) In this section:
 - (a) *court* includes a tribunal; and
 - (b) a reference, in relation to a tribunal, to taking judicial notice is a reference to taking the same notice as would be taken by a court.

251 The regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations providing for allowances and expenses for the purposes of section 89 or subsection 192(6) or 218(4) may provide for those allowances and expenses by reference to a scale of expenses for witnesses who attend before a court specified in the regulations, being a federal court, or the Supreme Court of a State or Territory.

Part 16—Transition from the old ASIC legislation

Division 1—Preliminary

253 Object of Part

- (1) The object of this Part is to provide for a smooth transition from the regime provided for in the old ASIC legislation of the States in this jurisdiction and the Northern Territory to the regime provided for in the new ASIC legislation, so that individuals, bodies corporate and other bodies are, to the greatest extent possible, put in the same position immediately after the commencement as they would have been if:
 - (a) that old ASIC legislation had, from time to time when it was in force, been valid Commonwealth legislation applying throughout the States in this jurisdiction and the Northern Territory; and
 - (b) the new ASIC legislation (to the extent it contains provisions that correspond to provisions of the old ASIC legislation as in force immediately before the commencement) were a continuation of that old ASIC legislation as so applying.

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

- (2) The object of this Part is also to provide for a smooth transition from the regime provided for in the old ASIC legislation of the Commonwealth to the regime provided for in the new ASIC legislation as if the new ASIC legislation (to the extent it contains provisions that correspond to provisions of the old ASIC legislation as in force immediately before the commencement) were a continuation of that old ASIC legislation as so applying.
- (3) In resolving any ambiguity as to the meaning of any of the other provisions of this Part, an interpretation that is consistent with the object of this Part is to be preferred to an interpretation that is not consistent with that object.

Section 254

254 Definitions

(1) In this Part:

carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory means a provision of that legislation that:

- (a) was in force immediately before the commencement; and
- (b) corresponds to a provision of the new ASIC legislation.

commencement means the commencement of this Act.

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

instrument means:

- (a) any instrument of a legislative character (including an Act or regulations) or of an administrative character; or
- (b) any other document.

liability includes a duty or obligation.

made includes issued, given or published.

new ASIC legislation means:

- (a) this Act; and
- (b) the new ASIC Regulations (as amended and in force from time to time) and any other regulations made under this Act; and
- (c) the laws of the Commonwealth referred to in subparagraphs (a)(ii) and (b)(iii) of the definition of **old ASIC legislation**, being those laws as they apply after the commencement; and
- (d) the preserved instruments.

new ASIC Regulations means the regulations that, because of section 264, have effect as if they were made under section 251 of this Act.

old application Act for a State or the Northern Territory means:

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

- (b) in the case of Victoria—the *Corporations (Victoria) Act 1990* of Victoria as in force from time to time before the commencement; or
- (c) in the case of Queensland—the *Corporations (Queensland) Act 1990* of Queensland as in force from time to time before the commencement; or
- (d) in the case of Western Australia—the *Corporations (Western Australia) Act 1990* of Western Australia as in force from time to time before the commencement; or
- (e) in the case of South Australia—the *Corporations (South Australia) Act 1990* of South Australia as in force from time to time before the commencement; or
- (f) in the case of Tasmania—the *Corporations (Tasmania) Act 1990* of Tasmania as in force from time to time before the commencement; or
- (g) in the case of the Northern Territory—the *Corporations (Northern Territory) Act 1990* of the Northern Territory as in force from time to time before the commencement.

old ASIC Act means the *Australian Securities and Investments Commission Act 1989* as in force from time to time before the commencement.

old ASIC Law of a State in this jurisdiction or the Northern Territory means the ASIC Law or ASC Law of the State or Territory (within the meaning of the application Act of the State or Territory as in force from time to time before the commencement).

old ASIC legislation means:

- (a) when used in relation to the Commonwealth—the following:
 - (i) the old ASIC Act and old ASIC Regulations, and any instruments made under that Act or those Regulations (including provisions as they had effect as the ASIC Law or ASIC Regulations of the Australian Capital Territory);
 - (ii) the laws of the Commonwealth as applying of their own force in relation to the old ASIC Act and old ASIC Regulations of the Commonwealth from time to time before the commencement, and any instruments made under those laws as so applying; and

Section 254

- (b) when used in relation to a State in this jurisdiction or the Northern Territory—the following:
 - (i) the old ASIC Law and old ASIC Regulations of the State or Territory, and any instruments made under that Law or those Regulations; and
 - (ii) the old application Act for the State or Territory, and any instruments made under that Act; and
 - (iii) the laws of the Commonwealth as they applied in relation to the old ASIC Law and the old ASIC Regulations of the State or Territory from time to time before the commencement as laws of, or for the government of, that State or Territory because of Part 8 or Division 6 of Part 11 of the old Application Act for that State or Territory, and any instruments made under those laws as so applying.

old ASIC Regulations means:

- (a) when used in relation to the Commonwealth—the regulations made under section 251 or 252 of the old ASIC Act as in force from time to time before the commencement (including regulations as they had effect as the ASIC Regulations of the Australian Capital Territory); and
- (b) when used in relation to a State in this jurisdiction or the Northern Territory—the ASIC Regulations or ASC Regulations of that State or Territory (within the meaning of the old application Act for the State or Territory) as in force from time to time before the commencement.

old corporations legislation has the meaning given by subsection 1371(1) of the *Corporations Act 2001*.

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

pre-commencement right or liability has the meaning given by subsection 276(1) or 277(1).

preserved instrument means an instrument that, because of section 275, has effect after the commencement as if it were made under a provision of the new ASIC legislation.

right includes an interest or status.

substituted right or liability has the meaning given by subsection 276(2) or 277(3).

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

- (2) Subject to subsection (4), for the purposes of this Part, a provision or part (the *old provision or part*) of the old ASIC legislation of the Commonwealth, a State or the Northern Territory *corresponds* to a provision or part (the *new provision or part*) of the new ASIC legislation (and vice versa) if:
- (a) the old provision or part and the new provision or part are substantially the same, unless the regulations specify that the 2 provisions or parts do not correspond; or
 - (b) the regulations specify that the 2 provisions or parts correspond.

Note: The range of provisions of the new ASIC legislation that may be corresponding provisions for the purposes of this Part is affected by sections 277 and 284, which take certain provisions of the old ASIC legislation to be included in the new ASIC legislation.

- (3) For the purposes of paragraph (2)(a), differences of all or any of the following kinds are not sufficient to mean that 2 provisions or parts are not substantially the same:
- (a) differences in the numbering of the provisions or parts;
 - (b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);
 - (c) the fact that one of the provisions refers to a corresponding previous law, or a relevant previous law, and the other does not;
 - (d) other differences that are attributable to the fact that the new ASIC legislation applies as a Commonwealth law throughout Australia;
 - (e) other differences of a kind prescribed by the regulations for the purposes of this paragraph.

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

Section 255

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

255 Relationship of Part with State validation Acts

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

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

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

- (3) If:

- (a) a person would have had a right or liability under a provision (the *old provision*) of the old ASIC legislation of a State if the circumstances that made the authority's or officer's action an invalid administrative action (within the meaning of the State validation Act) of that State had not made the action invalid; and
- (b) the effect of that State validation Act in relation to that action is to declare that the person has, and is taken always to have had, the same rights and liabilities as they would have had under the old provision if the invalid administrative action had been taken, or purportedly taken, at the relevant time by a duly authorised State authority or officer of the State (within the meaning of that Act);

this Part applies as if:

- (c) a reference to a right or liability arising under the old ASIC legislation included a reference to the right or liability that the person is declared to have by the State validation Act; and
- (d) that right or liability arose under the old provision.
- (4) In this section:

State validation Act means an Act of a State in this jurisdiction under which certain administrative actions (within the meaning of that Act) taken, or purportedly taken, at or before the commencement by Commonwealth authorities or officers of the Commonwealth (within the meaning of that Act) pursuant to functions or powers (the **relevant functions or powers**) conferred, or purportedly conferred, by or under laws that include the old application Act for that State have, and are deemed always to have had, the same force and effect for all purposes as they would have had if:

- (a) they had been taken, or purportedly taken by a State authority or officer of the State (within the meaning of that Act); and
- (b) the relevant functions or powers had been duly conferred on those authorities or officers.

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

If:

- (a) a law of a State or Territory in this jurisdiction had effect before the commencement:
 - (i) to take or deem something to have happened or to be the case, or to have a particular effect, under or for the purposes of the old ASIC legislation (or a provision of that legislation) of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ii) to give something an effect for the purposes of the old ASIC legislation (or a provision of that legislation) that it would not otherwise have had; and
- (b) that effect was continuing immediately before the commencement;

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

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

If, apart from this section, a provision of this Part (the **transitional provision**) would, because the Commonwealth, each State in this

Section 258

jurisdiction and the Northern Territory had its own old ASIC legislation (containing parallel provisions) before the commencement, operate so that:

- (a) a particular thing done before the commencement would be taken to be done, or have effect, 2 or more times by, under, or for the purposes of, a provision of the new ASIC legislation; or
- (b) a right or liability would be created 2 or more times in respect of a particular event, circumstance or thing that happened before the commencement; or
- (c) a particular result or effect would be produced 2 or more times for the purposes of the new ASIC legislation in relation to the same matter;

the transitional provision is taken to operate so that:

- (d) if paragraph (a) applies—the thing is taken to be done or have effect only once by, under, or for the purposes of the provision of, the new ASIC legislation; or
- (e) if paragraph (b) applies—the right or liability is created only once in respect of the event, circumstance or thing; or
- (f) if paragraph (c) applies—the result or effect is produced only once in relation to the matter.

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

- (1) If, because of this Part, an offence can be prosecuted after the commencement in respect of conduct that occurred before the commencement, the amount of a penalty unit in respect of that offence is \$100.
- (2) This section has effect despite section 4AA of the *Crimes Act 1914*.

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

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

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

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

Part 16 Transition from the old ASIC legislation

Division 2 Carrying over bodies established etc. or persons appointed under the old ASIC Act

Section 260

Division 2—Carrying over bodies established etc. or persons appointed under the old ASIC Act

260 Division has effect subject to Division 7 regulations

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

261 Carrying over bodies established under the old ASIC Act

A body that was established under the old ASIC Act continues in existence as if it had been established under this Act.

262 Carrying over the Chairman and Deputy Chairman of the Financial Reporting Council

- (1) A member of the FRC who was Chairman of the FRC immediately before the commencement continues as if he or she had been appointed as Chair of the FRC under this Act.
- (2) A member of the FRC who was Deputy Chairman of the FRC immediately before the commencement continues as if he or she had been appointed as Deputy Chair of the FRC under this Act.

Division 3—Carrying over the old ASIC Regulations

263 Division has effect subject to Division 7 regulations

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

264 Old ASIC Regulations continue to have effect

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

- (a) they were regulations in force under section 251 of this Act;
and
- (b) they were made for the purposes of the corresponding provisions of this Act.

Division 4—Court proceedings and orders

265 Division has effect subject to Division 7 regulations

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

266 Definitions

(1) In this Division:

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

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

- (a) a proceeding to enforce the order; or
- (b) any other proceeding in respect of a breach of the order.

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

- (a) a proceeding in respect of a matter arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to a decision made under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory;
- (b) a proceeding in respect of a matter arising under Division 2 of Part 2 of the old ASIC Act;
- (c) a proceeding for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth (within the meaning of section 75 of the Constitution) in relation to a matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied;
- (ca) a proceeding in relation to a matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied:

- (i) in which the Commonwealth was seeking an injunction or a declaration; or
- (ii) to which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, was a party;
- (cb) any other proceeding in relation to a matter to which a provision of the old ASIC legislation of a State in this jurisdiction applied that was in the exercise of federal jurisdiction;
- (cc) any other proceeding in relation to a matter to which a provision of the old ASIC legislation of the Northern Territory applied that would be covered by paragraph (cb) if the Northern Territory had been a State;
- (cd) any other proceeding under the old ASIC legislation of the Commonwealth that was in the exercise of federal jurisdiction;
- (d) a proceeding in the court's accrued federal jurisdiction in relation to a matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied.

interlocutory application means an application that:

- (a) is made during the course of a proceeding; and
- (b) is for an order that is incidental to the principal object of that proceeding, including, for example:
 - (i) an order about the conduct of that proceeding; or
 - (ii) an order assisting a party to that proceeding to present their case in that proceeding; or
 - (iii) an order protecting or otherwise dealing with property that is the subject matter of that proceeding;but not including an order making a final determination of existing rights or liabilities.

interlocutory order means:

- (a) an order made in relation to an interlocutory application; or
- (b) an order or direction about the conduct of a proceeding.

interlocutory proceeding means a proceeding:

- (a) dealing only with; or
- (b) to the extent it deals with;

Section 267

an interlocutory application.

primary proceeding means a proceeding other than an interlocutory proceeding.

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

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

267 Treatment of court proceedings under or related to the old ASIC legislation—proceedings other than federal ASIC proceedings

- (1) This section applies to a proceeding, other than a federal ASIC proceeding, in relation to which the following paragraphs are satisfied:
- (a) the proceeding was started in a court before the commencement; and
 - (b) the proceeding was:
 - (i) under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; and
 - (c) the proceeding was not an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court; and
 - (d) the proceeding had not been concluded or terminated before the commencement; and
 - (e) either:
 - (i) if the proceeding is a primary proceeding—no final determination of any of the existing rights or liabilities at issue in the proceeding had been made before the commencement; or

- (ii) if the proceeding is an interlocutory proceeding—this section applies to the primary proceeding to which the interlocutory proceeding relates.
- (2) In this section:
- (a) the proceeding to which this section applies is called the *old proceeding*; and
 - (b) the provision of the old ASIC legislation referred to in whichever of subparagraphs (1)(b)(i) and (ii) applies is called the *relevant old provision*.
- (3) A proceeding (the *new proceeding*) equivalent to the old proceeding is, on the commencement, taken to have been brought in the same court, exercising federal jurisdiction:
- (a) if subparagraph (1)(b)(i) applies—under the provision of the new ASIC legislation that corresponds to the relevant old provision; or
 - (b) if subparagraph (1)(b)(ii) applies—as, or connected with, a prosecution for an offence against the provision of the new ASIC legislation that corresponds to the relevant old provision.
- To the extent that the old proceeding, before the commencement, related to pre-commencement rights or liabilities, the new proceeding relates to the substituted rights and liabilities in relation to those pre-commencement rights and liabilities.
- Note 1: See sections 276 and 277 for the creation of the substituted rights and liabilities.
- Note 2: In all cases, there will be a provision of the new ASIC legislation that corresponds to the relevant old provision, either because:
- (a) the new ASIC legislation actually contains a provision that corresponds to the relevant old provision; or
 - (b) the new ASIC legislation, because of section 277 or 284, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.
- (4) The following provisions apply in relation to the new proceeding:
- (a) the parties to the new proceeding are the same as the parties to the old proceeding;
 - (b) subject to subsections (5) and (6), and to any order to the contrary made by the court, the court must deal with the

Section 268

continued proceeding as if the steps that had been taken for the purposes of the old proceeding before the commencement had been taken for the purposes of the new proceeding.

(5) If:

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

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

(6) The court may make orders doing all or any of the following:

- (a) cancelling or varying rights or liabilities that a person has because of subsection (5);
- (b) substituting other rights or liabilities for rights or liabilities a person has because of subsection (5);
- (c) adding rights or liabilities to the rights or liabilities a person has because of subsection (5);
- (d) enforcing, or otherwise dealing with conduct contrary to, a right or liability a person has because of subsection (5) in the same way as it could enforce, or deal with, the right, liability or conduct if the right or liability had arisen under or because of an order made by the court in the exercise of federal jurisdiction under the new ASIC legislation.

268 Treatment of court proceedings under or related to the old ASIC legislation—federal ASIC proceedings

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

- (a) the proceeding was started in a court before the commencement; and
- (b) the proceeding was a federal ASIC proceeding that related to a matter to which a provision of the old ASIC legislation of

the Commonwealth, a State in this jurisdiction or the Northern Territory applied; and

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

(2) In this section:

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

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

(3) Subject to subsection (4):

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

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

Note 1: See sections 276 and 277 for the creation of substituted rights and liabilities.

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

- (a) the new ASIC legislation actually contains a provision that corresponds to the relevant old provision; or
- (b) the new ASIC legislation, because of section 277 or 284, is taken to include the relevant old provision (whether with or without modifications), in which case the provision so taken to be included will be the corresponding provision.

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

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

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

Section 268A

268A Appeals etc. in relation to some former federal corporations proceedings

- (1) This section applies to a proceeding in relation to which all of the following paragraphs are satisfied:
 - (a) the proceeding was started in a court before the commencement;
 - (b) the proceeding was a federal ASIC proceeding that related to matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied;
 - (c) the proceeding had been concluded or terminated before the commencement.
- (2) A decision or order made in the proceeding may be appealed against, or otherwise reviewed, as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.
- (3) An order made in the proceeding may be enforced as if it had been made in a proceeding that related to a matter to which a provision of this Act applied.

268B Effect of decisions and orders made in federal corporations proceedings before commencement

- (1) For the avoidance of doubt, if:
 - (a) a proceeding was started in a court before the commencement; and
 - (b) the proceeding was a federal ASIC proceeding that related to matter to which a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory applied; and
 - (c) a decision was made or an order given in the proceeding before the commencement;the decision or order continues to have effect after the commencement despite the provision of the old ASIC legislation ceasing to have effect.

- (2) This section does not limit the operation of section 268 in relation to the decision or order.

269 References to proceedings and orders in the new ASIC legislation

- (1) Subject to subsection (5), a reference in the new ASIC legislation to the taking of a proceeding, or a step in a proceeding, in a court under or in relation to a part or provision of the new ASIC legislation includes a reference to the taking of a proceeding, or the equivalent step in a proceeding:
- (a) before the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State or the Northern Territory; or
 - (b) after the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, as that legislation continues to have effect after the commencement.
- (2) Subject to subsections (3), (4) and (5), a reference in the new ASIC legislation to an order made by a court under or in relation to a part or provision of the new ASIC legislation includes a reference to an order made:
- (a) before the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State or the Northern Territory; or
 - (b) after the commencement under or in relation to the corresponding part or provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory, as that legislation continues to have effect after the commencement.
- (3) Nothing in subsection (2) is taken to produce a result that would:
- (a) make a person liable, under the new ASIC legislation, to any penalty (whether civil or criminal) provided for in an order referred to in paragraph (2)(a) or (b); or
 - (b) enable an enforcement proceeding, or an appeal or review proceeding, in relation to such an order to be taken in a court under the new ASIC legislation; or

Section 269

- (c) enable proceedings by way of appeal, or other review, of such an order to be taken in a court under the new ASIC legislation.
- (4) If, after the commencement, an order referred to in paragraph (2)(a) or (b) is varied or set aside on appeal or review, subsection (2) applies, or is taken to have applied, from the time from which the variation or setting aside takes or took effect, as if:
 - (a) if the order is varied—the order had been made as so varied;
or
 - (b) if the order is set aside—the order had not been made.
- (5) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new ASIC legislation.

Division 5—Functions and powers of ASIC

270 Division has effect subject to Division 7 regulations

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

271 Non-federal proceedings etc.

- (1) ASIC has the functions and powers in relation to a non-federal proceeding that are expressed to be conferred on it by or under a law of the Commonwealth or the Northern Territory.
- (2) ASIC also has the functions and powers in relation to a non-federal proceeding that are expressed to be conferred on it by or under a law of a State in this jurisdiction. However, ASIC:
 - (a) is not subject to any directions in the performance of such functions or the exercise of such powers; and
 - (b) is not under a duty to perform such functions or exercise such powers.
- (3) If a Minister of a State or Territory appoints a person to bring or continue a non-federal proceeding in the State or Territory, ASIC may give the person any information and documents that ASIC has in relation to the proceeding.
- (4) In this section:

appeal or review proceeding has the same meaning as in section 266.

enforcement proceeding has the same meaning as in section 266.

non-federal proceeding means:

- (a) a proceeding in relation to which paragraphs 267(1)(a), (b) and (d) are satisfied but paragraph 267(1)(e) is not satisfied; or
- (aa) a proceeding in relation to which paragraphs 1383(1)(a), (b) and (d) of the *Corporations Act 2001* are satisfied but paragraph 1383(1)(e) of that Act is not satisfied;

Section 272

- (b) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made before the commencement in relation to a proceeding that was:
 - (i) under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (ia) under a provision of the old corporations legislation of a State or Territory in this jurisdiction; or
 - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
 - (iii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation of a State or Territory in this jurisdiction; or
- (c) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made after the commencement in relation to a proceeding referred to in paragraph (a) or (aa).

272 NCSC's functions and powers

- (1) ASIC has the functions and powers expressed to be conferred on the NCSC by or under any Act, as in force immediately before the commencement, that was a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* as in force immediately before the commencement.
- (2) ASIC also has the functions and powers expressed to be conferred on the NCSC by or under any law, as in force immediately before the commencement, of a State or the Northern Territory that corresponds to an Act that was a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* as in force immediately before the commencement. However, ASIC:
 - (a) is not subject to any directions in the performance of such functions or the exercise of such powers; and
 - (b) is not under a duty to perform such functions or exercise such powers.

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

273 Provisions in this Division have effect subject to the other Divisions

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

- (2) Nothing in this Division applies to:
 - (a) an order made by a court before the commencement; or
 - (b) a right or liability under an order made by a court before the commencement; or
 - (c) a right to:
 - (i) appeal to a court against an order made by a court before the commencement; or
 - (ii) apply to a court for review of such an order; or
 - (iii) bring an appeal or review proceeding, or an enforcement proceeding, within the meaning of section 266, in respect of such an order; or
 - (d) a proceeding taken (including an appeal, review or enforcement proceeding) in a court before the commencement, or a step in such a proceeding.

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

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

Section 274

274 Provisions of this Division may have an overlapping effect

The provisions of this Division deal at a broad level with concepts and matters in a way that is intended to achieve the object of this Part as set out in section 253. Some of the provisions of this Division will (depending on the situation) have an effect that overlaps or interacts to some extent with the effect of other provisions of this Division. This is intended, and the provisions of this Division should be not be regarded as dealing with mutually exclusive situations.

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

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

has effect (and may be dealt with) after the commencement, for the purposes of the new ASIC legislation, as if it were done by, under, or for the purposes of, the corresponding provision of the new ASIC legislation.

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

- (2) Examples of things done include:
- (a) the making of an instrument or order (but not including the making of an order by a court); and
 - (b) the making of an application or claim (but not including the making of an application or claim to a court); and
 - (c) the granting of an application or claim (but not including the granting of an application or claim by a court); and
 - (d) the making of an appointment or delegation; and

- (e) the commencement of a procedure or the taking of a step in a procedure (including an investigation, but not including the commencement of a proceeding in a court); and
 - (f) the making of an agreement; and
 - (g) requiring a person to do, or not to do, something (but not including a requirement contained in an order made by a court); and
 - (h) the giving of a notice or document.
- (3) The examples in subsection (2) are not intended to limit the generality of the language of subsection (1).
- (4) Subject to subsection (5), for the purposes of this section, a thing done by, under, or for the purposes of, a carried over provision of the old ASIC legislation of the Commonwealth, a State or the Northern Territory had an *ongoing significance* immediately before the commencement for the purposes of that legislation if:
- (a) if the thing done was the making of an instrument or order—the instrument or order was still in force immediately before the commencement; or
 - (b) if the thing done was the making of an application or claim—the application or claim had not been decided, and had not otherwise ceased to have effect, before the commencement; or
 - (c) if the thing done was the granting of an application or claim—the thing granted had not been revoked, and had not otherwise ceased to have effect, before the commencement; or
 - (d) if the thing done was the making of an appointment or delegation—the appointment or delegation had not been revoked, and had not otherwise ceased to have effect, before the commencement; or
 - (e) if the thing done was the commencement of a procedure or the taking of a step in a procedure—the procedure was still in progress immediately before the commencement or was otherwise still having an effect; or
 - (f) if the thing done was the making of an agreement—the agreement was still in force immediately before the commencement; or

Part 16 Transition from the old ASIC legislation

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

Section 276

- (g) if the thing done was requiring a person to do, or not to do something—the requirement was still in force immediately before the commencement; or
 - (h) if the thing done was the giving of a notice or document, or the doing of some other thing—the notice or document (or the giving of the notice or document), or the thing (or the doing of the thing), had an ongoing effect or significance immediately before the commencement for the purposes of the old ASIC legislation of the Commonwealth, the State or the Northern Territory.
- (5) The regulations may provide that a specified thing done by, under, or for the purposes of, a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory did, or did not, have an ongoing significance immediately before the commencement for the purposes of that legislation.

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

- (1) This section applies in relation to a right or liability (the *pre-commencement right or liability*), whether civil or criminal, that:
- (a) was acquired, accrued or incurred under a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; and
 - (b) was in existence immediately before the commencement.
- However, this section does not apply to a right or liability under an order made by a court before the commencement.
- (2) On the commencement, the person acquires, accrues or incurs a right or liability (the *substituted right or liability*), equivalent to the pre-commencement liability, under the corresponding provision of the new ASIC legislation (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: If a time limit applied in relation to the pre-commencement right or liability under the old ASIC legislation, that same time limit (calculated from the same starting point) will apply under the new

ASIC legislation to the substituted right or liability—see subsection 278(3).

- (3) A procedure, proceeding or remedy in respect of the right or liability may be instituted after the commencement under the new ASIC legislation (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 267 and 268.

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

- (1) This section applies to a right or liability (the *pre-commencement right or liability*), whether civil or criminal, that:
- (a) was acquired, accrued or incurred under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory that was no longer in force immediately before the commencement; and
 - (b) was in existence immediately before the commencement.
- However, this section does not apply to a right or liability under an order made by a court before the commencement.
- (2) For the purposes of subsections (3) and (4), the new ASIC legislation is taken to include:
- (a) the provision of the old ASIC legislation (with such modifications (if any) as are necessary) under which the right or liability was acquired, accrued or incurred; and
 - (b) the other provisions of the old ASIC legislation (with such modifications (if any) as are necessary) that applied in relation to the right or liability.
- (3) On the commencement, the person acquires, accrues or incurs a right or liability (the *substituted right or liability*), equivalent to the pre-commencement right or liability, under the provision taken to be included in the new ASIC legislation by paragraph (2)(a) (as if that provision applied to the conduct or circumstances that gave rise to the pre-commencement right or liability).

Part 16 Transition from the old ASIC legislation

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

Section 278

Note: If a time limit applied in relation to the pre-commencement right or liability under the old ASIC legislation, that same time limit (calculated from the same starting point) will apply under the new ASIC legislation to the substituted right or liability—see subsection 278(3).

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

Note: For pre-commencement proceedings in respect of substituted rights and liabilities, see sections 267 and 268.

278 Old ASIC legislation time limits continue to run

- (1) An old ASIC legislation time limit (see subsection (4)):
- (a) the starting point of which:
 - (i) was known or had been determined before the commencement (whether that starting point occurred or would occur before, on or after the commencement); or
 - (ii) would have become known, or have been determined, after the commencement if the old ASIC legislation had continued to apply (whether that starting point would have occurred before, on or after the commencement); and
 - (b) that had not ended at or before the commencement;
- continues to run, or starts or started to run, as if that same time limit (starting from the same starting point) were applicable under the new ASIC legislation.
- (2) If:
- (a) under the old ASIC legislation, a process, a status of a person or body, or an instrument, commenced from a particular time before the commencement; and
 - (b) that process, status or instrument is continued after the commencement for the purposes of the new ASIC legislation by a provision of this Part;
- that process, status or instrument as so continued is still taken to have commenced from the time referred to in paragraph (a).

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

(4) In this section:

old ASIC legislation time limit includes:

- (a) a period for the doing of a thing specified or determined under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; or
- (b) a period specified or determined under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory as the duration of a particular instrument or status.

279 Preservation of significance etc. of events or circumstances

(1) An event, circumstance or other thing:

- (a) that occurred or arose before the commencement under or as mentioned in a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; and
- (b) that had a particular significance, status or effect for the purposes of a carried over provision of that legislation (including because of an interpretative provision);

has that same significance after the commencement for the purposes of the provision of the new ASIC legislation that corresponds to that carried over provision.

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

- (a) the carried over provision creates an obligation in respect of the event, circumstance or thing (whenever it arose); or
- (b) the carried over provision provides for the event, circumstance or thing to be dealt with in a particular way; or

Part 16 Transition from the old ASIC legislation

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

Section 280

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

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

- (1) Subject to this section, a reference in the new ASIC legislation to an event, circumstance or thing of a particular kind that happens or arises, or that has happened or arisen, is taken to include a reference to an event, circumstance or thing of that kind that happened or arose at a time before the commencement, unless the contrary intention appears. The fact that the provision uses only the present tense in referring to an event, circumstance or thing is not, of itself, to be regarded as an expression of a contrary intention.
- (2) Nothing in subsection (1) is taken to produce a result that a right or liability exists under a provision of the new ASIC legislation that relates solely to events, circumstances or things that occurred before the commencement.

Note: Instead, an equivalent right or liability will be created by section 276 or 277.

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

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

- (1) Subject to subsection (4), a reference in the new ASIC legislation to:
 - (a) an Act, or to regulations or another instrument that is part of the new ASIC legislation; or
 - (b) a provision or group of provisions of such an Act, regulations or other instrument;

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

- (2) Subject to subsection (4), a reference in the new ASIC legislation to:
- (a) an Act, or to regulations or some other instrument that is part of the new corporations legislation; or
 - (b) a provision or group of provisions of such an Act, regulations or other instrument;

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

- (3) In subsection (2):
- (a) *new corporations legislation* and *old corporations legislation* have the same meanings as they have in Part 10.1 of the Corporations Act; and
 - (b) the question whether a provision or part of the old corporations legislation corresponds to a provision of part of the new corporations legislation is to be determined in the same way as it is determined for the purposes of Part 10.1 of the Corporations Act.
- (4) The regulations may provide that subsection (1) or (2) does not apply in relation to a particular reference or class of references in the new ASIC legislation.

282 Carrying over references to corresponding previous laws or relevant previous laws

- (1) If a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern

Part 16 Transition from the old ASIC legislation

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

Section 283

Territory contained a reference (whether in its own terms or by operation of another provision) to:

- (a) a corresponding previous law (as defined for the purposes of that provision or provisions including that provision), or a thing done by, under, or for the purposes of, such a law; or
- (b) a relevant previous law (as defined for the purposes of that provision or provisions including that provision), or a thing done by, under, or for the purposes of, such a law;

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

- (2) The following references in the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory are covered by subsection (1) in the same way as they would be if they used the “corresponding previous law” form of words:
 - (a) the reference in section 15 to a “previous law corresponding to”;
 - (b) any other references prescribed by the regulations for the purposes of this subsection.

283 References to ASIC legislation in instruments

- (1) Subject to subsection (2), a reference in, or taken immediately before the commencement to be in, an instrument, other than:
 - (a) an Act of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island; or
 - (b) an instrument made under such an Act;to:
 - (c) an Act, or to regulations or some other instrument, that is part of the old ASIC legislation (whether the reference is in general terms or in relation to the Commonwealth, or a particular State or Territory in this jurisdiction); or
 - (d) to a provision or group of provisions of such an Act, regulations or other instrument;

is taken, after the commencement, to include a reference to the corresponding part, provision or provisions of the new ASIC

legislation (unless there is no such corresponding part, provision or provisions).

Note: In this Part, *instrument* means an instrument of a legislative or administrative character (see the definition in section 254), or any other document.

- (2) The regulations may do either or both of the following:
- (a) provide that subsection (1) does not apply in relation to prescribed references in prescribed instruments;
 - (b) provide that subsection (1) has effect in relation to prescribed references in prescribed instruments as if, in that subsection, the words “to be” were substituted for the words “to include”.

284 Old transitional provisions continue to have their effect

- (1) Subject to subsection (3), this Act has the same effect, after the commencement, as it would have if:
- (a) the transitional provisions (see subsections (6) and (7)) of the old ASIC Act, the old ASIC Law of the States in this jurisdiction and the old ASIC Law of the Northern Territory (as in force from time to time before the commencement) had been part of this Act; and
 - (b) those transitional provisions produced the same results or effects (to the greatest extent possible) for the purposes of this Act as they produced for the purposes of that Act and those Laws.
- (2) Without limiting subsection (1) (but subject to subsection (3)), if a transitional provision of the old ASIC Act, the old ASIC Law of the States in this jurisdiction or the old ASIC Law of the Northern Territory could, if it had continued in force after the commencement, have operated to give rise to rights and liabilities (including civil or criminal liabilities) in relation to acts or omissions occurring after the commencement, this Act is taken to include that transitional provision (with such modifications (if any) as are necessary).

Note: In relation to acts or omissions that occurred before the commencement, equivalent rights or liabilities are created by sections 276 and 277.

Part 16 Transition from the old ASIC legislation

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

Section 284

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

Note: In creating offences, the regulations are subject to the limitation imposed by section 258.

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

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

Note: Instead, an equivalent right or liability will be created by section 276 or 277.

- (6) Subject to subsection (7), for the purposes of this section, a **transitional provision** is any of the following provisions of the old ASIC Act, the old ASIC Law of the States in this jurisdiction and the old ASIC Law of the Northern Territory:

- (a) section 12AB;
- (b) subsection 12GL(2);
- (c) section 12IA;
- (d) subsection 13(3);
- (e) subsection 13(5);
- (f) section 14A;
- (g) subsection 51(2);
- (h) subsection 68(4);

- (i) subsection 68(5);
 - (j) section 122A;
 - (k) section 127A;
 - (l) subsection 246(2);
 - (m) Part 16;
 - (n) Part 17;
 - (o) Part 18.
- (7) The regulations may provide that certain provisions are to be taken to be included in, or omitted from, the list in subsection (6). The list then has effect as if the provisions were so included in it or omitted from it.

Division 7—Regulations dealing with transitional matters

285 Regulations may deal with transitional matters

- (1) The regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the old ASIC legislation of the Commonwealth, a State in this jurisdiction and the Northern Territory to the application of provisions of the new ASIC legislation. The regulations have effect despite anything else in this Part, other than section 258.
- (2) Without limiting subsection (1), the regulations may provide for a matter to be dealt with, wholly or partly, in any of the following ways:
 - (a) by applying (with or without modifications) to the matter:
 - (i) provisions of the old ASIC legislation, as in force immediately before the commencement or at some earlier time; or
 - (ii) provisions of the new ASIC legislation; or
 - (iii) a combination of provisions referred to in subparagraphs (i) and (ii);
 - (b) by otherwise specifying rules for dealing with the matter;
 - (c) by specifying a particular consequence of the matter, or of an outcome of the matter, for the purposes of the new ASIC legislation.
- (3) The regulations may provide that certain provisions of this Part are taken to be modified as set out in the regulations. The provisions then have effect as if they were so modified.
- (4) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations for the purposes of this section may be expressed to take effect from a date before the regulations are notified in the *Gazette*.
- (5) In this section:

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

Part 17—Transitional provisions relating to the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004

285A Definitions

In this Part:

amending Act means the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004*.

old Act means this Act as in force immediately before the commencement of the amending Act.

Schedule 1 commencement means the day on which Schedule 1 to the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* commences.

286 Application of new subsection 225A(5)

Subsection 225A(5) applies to audits conducted in relation to financial reports for financial years that end on or after 1 July 2004.

287 Application of Part 8 of Schedule 1 to the amending Act

- (1) The person holding office as the Chairperson of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(a) of the old Act immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(a) of this Act as amended by Part 8 of Schedule 1 to the amending Act.
- (2) The person holding office as a member of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(b) of

Section 288

the old Act immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(c) of this Act as amended by Part 8 of Schedule 1 to the amending Act.

- (3) The person holding office as a member of the Companies Auditors and Liquidators Disciplinary Board under paragraph 203(1)(c) of the old Act immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the remainder of the term of the person's appointment as if the person had been appointed under paragraph 203(1)(d) of this Act as amended by Part 8 of Schedule 1 to the amending Act.
- (4) Despite the repeal of section 209 of the old Act by item 146 of Schedule 1 to the amending Act:
 - (a) a person holding office as a deputy of a member under that section immediately before the Schedule 1 commencement continues to hold office on and after the Schedule 1 commencement for the purposes of a hearing in relation to an application made to the Companies Auditors and Liquidators Disciplinary Board before the Schedule 1 commencement; and
 - (b) continues on and after the Schedule 1 commencement to be entitled to attend meetings of the Board at which the member is not present and, while so attending, to be taken to be a member of the Board.
- (5) The amendments made by items 148 and 156 to 175 of Schedule 1 to the amending Act apply to applications made to the Companies Auditors and Liquidators Disciplinary Board on or after the Schedule 1 commencement (regardless of when the circumstances to which the application relates occurred).

288 Application of Schedule 3 to the amending Act

The amendments made to this Act by Schedule 3 to the amending Act apply to causes of action that arise on or after the day on which that Schedule commences.

Table of Acts**Notes to the *Australian Securities and Investments Commission Act 2001*****Note 1**

The *Australian Securities and Investments Commission Act 2001* as shown in this compilation comprises Act No. 51, 2001 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Australian Securities and Investments Commission Act 2001</i>	51, 2001	28 June 2001	15 July 2001: (see s. 2 and <i>Gazette</i> 2001, No. S285)	
<i>Corporations (Repeals, Consequential and Transitional) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 2 (items 1–11): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (a)	Ss. 4–14
<i>General Insurance Reform Act 2001</i>	119, 2001	19 Sept 2001	Schedules 1 and 3: 1 July 2002 Remainder: Royal Assent	—
<i>Financial Services Reform Act 2001</i>	122, 2001	27 Sept 2001	Ss. 1, 2 and Schedule 3 (items 1–27): Royal Assent Remainder: 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42)	—
<i>Financial Services Reform (Consequential Provisions) Act 2001</i>	123, 2001	27 Sept 2001	Schedule 1 (items 8–215): 11 Mar 2002 (see <i>Gazette</i> 2001, No. GN42) (b)	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001</i>	146, 2001	1 Oct 2001	S. 4 and Schedule 5 (item 1): 15 Dec 2001 (c) Schedule 5 (item 2): (c)	S. 4
<i>Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001</i>	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)
<i>Royal Commissions and Other Legislation Amendment Act 2001</i>	166, 2001	1 Oct 2001	1 Oct 2001	—
<i>Corporations Legislation Amendment Act 2003</i>	24, 2003	11 Apr 2003	Schedule 5 (items 1, 2): Royal Assent	—
<i>Crimes Legislation Enhancement Act 2003</i>	41, 2003	3 June 2003	Schedule 2 (items 1B, 1C): 1 Jan 2003	—
<i>Financial Sector Legislation Amendment Act (No. 1) 2003</i>	116, 2003	27 Nov 2003	Schedule 1 (items 1–3): 28 Nov 2003 Schedule 1 (item 4): (d)	—
<i>Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003</i>	140, 2003	17 Dec 2003	Schedule 1 (item 12): (e)	—
<i>Financial Services Reform Amendment Act 2003</i>	141, 2003	17 Dec 2003	Schedule 3 (items 1A–1E): 18 Dec 2003	—
<i>Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004</i>	103, 2004	30 June 2004	Schedule 1 (items 1–36, 130–175): 1 July 2004 Schedule 2 (items 10, 11): 1 Jan 2005 Schedule 3 (items 1, 2): 26 July 2004 (see <i>Gazette</i> 2004, No. GN28) Schedule 9 (items 1–6): (f) Schedule 11 (items 1, 2): (f) Schedule 12 (item 1): Royal Assent	—
<i>Treasury Legislation Amendment (Professional Standards) Act 2004</i>	118, 2004	13 July 2004	13 July 2004	—

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 96, 496): Royal Assent	S. 4 and Sch. 1 (item 496)

Act Notes

- (a) The *Australian Securities and Investments Commission Act 2001* was amended by Schedule 2 (items 1–11) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(2) of which provides as follows:
- (2) Schedules 1 and 2 commence, or are taken to have commenced, at the same time as the *Corporations Act 2001*.
- (b) The *Australian Securities and Investments Commission Act 2001* was amended by Schedule 1 (items 8–215) only of the *Financial Services Reform (Consequential Provisions) Act 2001*, subsections 2(1) and (6) of which provide as follows:
- (1) In this section:
FSR commencement means the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
- (6) Subject to subsections (7) to (17), the other items of Schedule 1 commence on the FSR commencement.
- (c) The *Australian Securities and Investments Commission Act 2001* was amended by Schedule 5 (items 1 and 2) only of the *Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day mentioned in subsection 2.2(2) of the *Criminal Code*.
- (3) Items 2 and 3 of Schedule 5 commence immediately after the commencement of item 1 of Schedule 1 to the *Financial Services Reform Act 2001*.
Item 1 of Schedule 1 commenced on 11 March 2002 (see *Gazette* 2001, No. GN42).
- (d) Subsection 2(1) (item 3) of the *Financial Sector Legislation Amendment Act (No. 1) 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 1, item 4	Immediately after the commencement of the <i>Australian Securities and Investments Commission Act 2001</i> .	15 July 2001

- (e) Subsection 2(1) (item 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

Act Notes

(f) Subsection 2(1) (items 11 and 13) of the *Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004* provide as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
11. Schedules 8 and 9	Immediately after the commencement of the provisions covered by table item 9.	1 July 2004
13. Schedule 11	Immediately after the commencement of the provisions covered by table item 2.	1 July 2004

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 122, 2001
Part 1	
Division 1	
S. 1	am. No. 122, 2001; No. 103, 2004
Division 3	
S. 4	am. No. 122, 2001
S. 4AA	ad. No. 146, 2001 rep. No. 146, 2001
S. 4A	ad. No. 123, 2001
Division 4	
S. 5	am. Nos. 122 and 123, 2001; No. 103, 2004
S. 5A	rs. No. 140, 2003
Part 2	
Division 1	
S. 9	am. No. 122, 2001
S. 12A	am. No. 122, 2001
Division 2	
Subdivision A	
S. 12AA	rep. No. 123, 2001
S. 12AD	am. No. 123, 2001
S. 12AE	am. No. 141, 2003
Subdivision B	
S. 12BA	am. Nos. 122 and 123, 2001
S. 12BAA	ad. No. 122, 2001
S. 12BAB	ad. No. 122, 2001 am. No. 141, 2003
S. 12BB	am. No. 123, 2001
S. 12BC	am. No. 123, 2001
Subdivision C	
S. 12CA	am. No. 123, 2001
S. 12CB	am. No. 123, 2001
S. 12CC	ad. No. 123, 2001
Subdivision D	
S. 12DA	am. Nos. 122 and 123, 2001
S. 12DB	am. Nos. 122 and 123, 2001
Note to s. 12DB(1)	ad. No. 123, 2001
Heading to s. 12DC	am. No. 122, 2001
S. 12DC	am. Nos. 122 and 123, 2001
S. 12DD	am. Nos. 122 and 123, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 12DD(1).....	ad. No. 123, 2001
S. 12DE	rs. No. 123, 2001
S. 12DF	am. No. 123, 2001
S. 12DG.....	am. No. 123, 2001
Note to s. 12DG(1).....	ad. No. 123, 2001
Note to s. 12DG(2).....	ad. No. 123, 2001
Note to s. 12DG(3).....	ad. No. 123, 2001
S. 12DH.....	am. No. 123, 2001
S. 12DI	rs. No. 123, 2001
S. 12DJ.....	rs. No. 123, 2001
Heading to s. 12DK.....	am. No. 122, 2001
S. 12DK	am. Nos. 122 and 123, 2001
Note to s. 12DK(1).....	ad. No. 123, 2001
Note to s. 12DK(2).....	ad. No. 123, 2001
Note to s. 12DK(3).....	ad. No. 123, 2001
Heading to s. 12DL.....	am. No. 123, 2001
S. 12DL	am. No. 123, 2001
Note to s. 12DL(2)	ad. No. 123, 2001
S. 12DM	am. No. 123, 2001
Note to s. 12DM(1)	ad. No. 123, 2001
S. 12DN.....	am. No. 123, 2001
Subdivision E	
S. 12EA	am. No. 123, 2001
S. 12EB	am. No. 123, 2001
S. 12EC	am. No. 123, 2001
S. 12ED	am. No. 123, 2001; No. 118, 2004
Subdiv. F of Div. 2 of Part 2	rep. No. 122, 2001
S. 12FA	rep. No. 122, 2001
Subdivision G	
S. 12GB.....	am. No. 123, 2001
S. 12GCA	ad. No. 123, 2001
S. 12GE.....	rep. No. 123, 2001
S. 12GF	am. No. 123, 2001; Nos. 103 and 118, 2004
S. 12GG	am. No. 123, 2001
S. 12GH.....	am. No. 123, 2001
S. 12GI	am. No. 123, 2001
Note to s. 12GI(1)	ad. No. 123, 2001
Note to s. 12GI(4)	ad. No. 123, 2001
S. 12GJ	am. No. 123, 2001
S. 12GK.....	am. No. 123, 2001
S. 12GLA.....	ad. No. 123, 2001
S. 12GLB.....	ad. No. 123, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 12GM	am. No. 123, 2001; No. 116, 2003; No. 118, 2004
S. 12GN.....	am. No. 123, 2001
S. 12GNA	ad. No. 118, 2004
S. 12GO	rs. No. 123, 2001
Subdivision GA	
Subdiv. GA of Div. 2 of..... Part 2	ad. No. 103, 2004
Ss. 12GP–12GW	ad. No. 103, 2004
Subdivision H	
S. 12HB.....	am. No. 123, 2001
S. 12HC.....	am. No. 123, 2001
Part 3	
Division 1	
S. 13.....	am. No. 122, 2001
S. 14.....	am. No. 122, 2001
S. 18.....	am. No. 41, 2003
Division 2	
Note to s. 19(2).....	ad. No. 123, 2001
S. 21.....	am. No. 123, 2001
Note to s. 21(1).....	ad. No. 123, 2001
Note to s. 21(3).....	ad. No. 123, 2001
S. 22.....	am. No. 123, 2001
S. 23.....	am. No. 123, 2001
Note to s. 23(2).....	ad. No. 123, 2001
S. 24.....	am. No. 123, 2001
Note to s. 24(2).....	ad. No. 123, 2001
S. 25.....	am. No. 123, 2001
S. 26.....	am. No. 123, 2001
Division 3	
S. 28.....	am. No. 122, 2001
S. 29.....	am. No. 123, 2001
Note to s. 30(1).....	ad. No. 123, 2001
Note to s. 30(2).....	ad. No. 123, 2001
Heading to s. 31	am. No. 122, 2001
S. 31	am. No. 122, 2001
Note to s. 31(1).....	ad. No. 123, 2001
S. 32.....	rep. No. 122, 2001
Note to s. 32A.....	ad. No. 123, 2001
S. 33.....	am. No. 122, 2001
Note to s. 33.....	ad. No. 123, 2001
S. 34.....	am. No. 122, 2001
Note to s. 34(1).....	ad. No. 123, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
S. 37.....	am. No. 123, 2001
Note to s. 37(9).....	ad. No. 123, 2001
S. 38.....	am. No. 123, 2001
Note to s. 38.....	ad. No. 123, 2001
S. 39.....	am. No. 123, 2001
Note to s. 39.....	ad. No. 123, 2001
Division 4	
Heading to Div. 4 of Part 3.....	rs. No. 122, 2001
S. 40.....	am. No. 122, 2001
Heading to s. 41.....	am. No. 122, 2001
S. 41.....	am. Nos. 122 and 123, 2001
Note to s. 41(1).....	ad. No. 123, 2001
Note to s. 41(2).....	ad. No. 123, 2001
Note to s. 41(3).....	ad. No. 123, 2001
Note to s. 41(4).....	ad. No. 123, 2001
Heading to s. 43.....	am. No. 122, 2001
S. 43.....	am. Nos. 122 and 123, 2001; No. 103, 2004
Note to s. 43(2).....	ad. No. 123, 2001
Note to s. 43(3).....	ad. No. 123, 2001
S. 44.....	rep. No. 122, 2001
S. 46.....	rep. No. 122, 2001
S. 47.....	am. No. 123, 2001
S. 48.....	am. No. 123, 2001
Note to s. 48(2).....	ad. No. 123, 2001
Division 5	
S. 49.....	am. No. 123, 2001
Note to s. 49(3).....	ad. No. 123, 2001
Note to s. 49(4).....	ad. No. 123, 2001
Division 6	
S. 56.....	am. No. 123, 2001
S. 58.....	am. No. 123, 2001
Note to s. 58(1).....	ad. No. 123, 2001
Note to s. 58(2).....	ad. No. 123, 2001
Note to s. 58(4).....	ad. No. 123, 2001
S. 59.....	am. No. 103, 2004
Division 7	
S. 63.....	am. Nos. 122 and 123, 2001
Note to s. 64(3).....	ad. No. 123, 2001
S. 65.....	am. No. 123, 2001
S. 66.....	am. No. 123, 2001
S. 67.....	am. No. 123, 2001
Note to s. 67(2).....	ad. No. 123, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 8	
S. 71.....	am. No. 122, 2001
S. 72.....	am. No. 123, 2001
Heading to s. 73	am. No. 122, 2001
S. 73.....	am. Nos. 122 and 123, 2001
S. 74.....	rep. No. 122, 2001
S. 75.....	am. No. 122, 2001
Division 9	
S. 80.....	am. No. 122, 2001
Division 10	
S. 84.....	am. No. 103, 2004
S. 91.....	am. No. 123, 2001
Part 4	
Division 1	
S. 95.....	am. No. 122, 2001
Part 5	
Division 1	
S. 108	am. No. 159, 2001
S. 111.....	am. No. 122, 2001
Part 6	
S. 122	rs. No. 55, 2001
Part 7	
Division 1	
S. 123.....	am. No. 122, 2001
S. 125.....	am. No. 123, 2001
Division 2	
S. 127	am. Nos. 122, 123 and 166, 2001; Nos. 41, 116 and 141, 2003; No. 103, 2004
Div. 3 of Part 7.....	rep. No. 122, 2001
S. 128.....	rep. No. 122, 2001
S. 129.....	rep. No. 122, 2001
S. 130.....	rep. No. 122, 2001
S. 131.....	rep. No. 122, 2001
S. 132.....	rep. No. 122, 2001
Part 8	
Division 1	
S. 135.....	am. No. 122, 2001; No. 8, 2005
S. 137.....	am. No. 24, 2003
S. 138.....	am. No. 122, 2001
Part 9	
Heading to Part 9.....	rs. No. 122, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 1	
Heading to s. 146.....	am. No. 122, 2001
S. 146.....	am. No. 122, 2001
Notes 1, 2 to s. 146	am. No. 122, 2001
S. 147.....	am. No. 122, 2001
S. 148.....	am. No. 122, 2001
S. 153.....	am. No. 24, 2003
Heading to s. 154.....	am. No. 122, 2001
S. 154.....	am. No. 122, 2001
S. 155.....	am. No. 122, 2001
Division 2	
S. 156.....	am. No. 122, 2001
S. 157.....	am. No. 122, 2001
Heading to s. 158.....	am. No. 122, 2001
S. 158.....	am. No. 122, 2001
Heading to s. 159.....	am. No. 122, 2001
S. 159.....	am. No. 122, 2001
Heading to s. 160.....	am. No. 122, 2001
S. 160.....	am. No. 122, 2001
Heading to s. 161.....	am. No. 122, 2001
S. 161.....	am. No. 122, 2001; No. 8, 2005
S. 163.....	am. No. 122, 2001
S. 165.....	am. No. 122, 2001
Heading to s. 166.....	am. No. 122, 2001
S. 166.....	am. No. 122, 2001
S. 167.....	am. No. 122, 2001
S. 168.....	am. No. 122, 2001
Part 10	
Heading to Part 10.....	rs. No. 122, 2001
Division 1	
S. 172.....	am. No. 122, 2001
Note to s. 172(1)	am. No. 122, 2001
S. 175	am. No. 159, 2001
S. 178.....	am. No. 122, 2001
Division 2	
S. 186.....	rs. No. 122, 2001
Division 3	
S. 192.....	am. No. 123, 2001
Note to s. 192(1).....	ad. No. 123, 2001
Note to s. 192(2).....	ad. No. 123, 2001
Note to s. 192(4).....	ad. No. 123, 2001
S. 198.....	am. No. 123, 2001

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Note to s. 199(2).....	ad. No. 123, 2001
S. 200.....	am. No. 123, 2001
Part 11	
Division 1	
S. 203.....	am. No. 116, 2003; No. 103, 2004
Ss. 205–207.....	am. No. 103, 2004
S. 208.....	rs. No. 103, 2004
S. 208A.....	ad. No. 103, 2004
S. 209.....	rep. No. 103, 2004
Heading to s. 210.....	am. No. 103, 2004
S. 210.....	am. No. 103, 2004
Ss. 210A, 210B.....	ad. No. 103, 2004
Ss. 211–213.....	am. No. 103, 2004
Division 2	
S. 215.....	am. No. 103, 2004
S. 216.....	am. Nos. 119 and 123, 2001; No. 103, 2004
S. 217.....	am. No. 103, 2004
S. 218.....	am. No. 119, 2001; No. 103, 2004
S. 219.....	am. No. 123, 2001; No. 103, 2004
S. 220.....	am. No. 123, 2001; No. 103, 2004
S. 221.....	am. No. 103, 2004
S. 223.....	am. No. 119, 2001; No. 103, 2004
Part 12	
Heading to Part 12.....	rs. No. 103, 2004
S. 224.....	am. No. 103, 2004
Division 1	
Heading to Div. 1 of Part 12.....	rs. No. 103, 2004
S. 225.....	am. No. 103, 2004
S. 225A.....	ad. No. 103, 2004
S. 227.....	am. No. 103, 2004
Ss. 227A, 227B.....	ad. No. 103, 2004
Division 2	
S. 232.....	am. No. 103, 2004
Division 2A	
Div. 2A of Part 12.....	ad. No. 103, 2004
Ss. 234A–234E.....	ad. No. 103, 2004
Division 3	
Subdivision A	
S. 235B.....	am. No. 103, 2004
S. 235BA.....	ad. No. 103, 2004

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision B	
Heading to s. 236A	rs. No. 103, 2004
S. 236A.....	am. No. 103, 2004
Subdivision BA	
Subdiv. BA of Div. 3 of Part 12	ad. No. 103, 2004
Ss. 236E–236H	ad. No. 103, 2004
Subdivision C	
S. 237.....	am. No. 103, 2004
Subdivision D	
S. 238.....	am. No. 103, 2004
Part 13	
Part 13.....	ad. No. 103, 2004
Division 1	
Ss. 239AA–239AM	ad. No. 103, 2004
Division 2	
Ss. 239BA–239BC.....	ad. No. 103, 2004
Division 3	
Ss. 239CA–239CL	ad. No. 103, 2004
Part 14	
Heading to Part 14.....	rs. No. 122, 2001
Part 15	
S. 243D	am. No. 122, 2001
S. 244.....	am. No. 122, 2001
S. 246.....	am. No. 122, 2001; No. 103, 2004
Part 16	
Division 1	
S. 254.....	am. No. 55, 2001; No. 116, 2003
S. 255.....	am. No. 55, 2001
Division 4	
S. 266	am. No. 55, 2001
S. 268A.....	ad. No. 55, 2001
S. 268B.....	ad. No. 55, 2001
Division 5	
S. 271.....	am. No. 55, 2001
S. 272.....	am. No. 55, 2001
Part 17	
Part 17.....	ad. No. 103, 2004
S. 285A.....	ad. No. 103, 2004
Ss. 286–288	ad. No. 103, 2004

Note 2

Note 2

Sections 12DK(2)(b)(i), (ii) and 12HB(1)(a)—Schedule 1 (items 57 and 126) of the *Financial Services Reform (Consequential Provisions) Act 2001* (No. 123, 2001) provide as follows:

Schedule 1

57 Subparagraphs 12DK(2)(b)(i) and (ii)

Omit “her or she”, substitute “the targeted person”.

126 Paragraph 12HB(1)(a)

Omit “section 12GE”, substitute “section 12GLA or 12GLB”.

The proposed amendments were misdescribed and are not incorporated in this compilation.

Table A

Table A

Application, saving or transitional provisions

Treasury Legislation Amendment (Application of Criminal Code) Act (No. 2) 2001 (No. 146, 2001)

4 Application of amendments

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001 (No. 159, 2001)

Schedule 1

97 Application of amendments

The amendments made by this Schedule do not apply to an appointment if the term of the appointment began before the commencement of this item.

Financial Framework Legislation Amendment Act 2005 (No. 8, 2005)

4 Saving of matters in Part 2 of Schedule 1

- (1) If:
 - (a) a decision or action is taken or another thing is made, given or done; and
 - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;

Table A

then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

(2) In this section:

Part 2 Act means an Act that is amended by an item in Part 2 of Schedule 1.

Schedule 1

496 Saving provision—Finance Minister’s determinations

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.