



# **Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024**

**No. 87, 2024**

**An Act to amend the law relating to corporations,  
and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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# Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024

No. 87, 2024

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## An Act to amend the law relating to corporations, and for related purposes

[Assented to 17 September 2024]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.

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No. 87, 2024

*Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 September 2024
2. Schedule 1, Parts 1 to 3	The seventh day after this Act receives the Royal Assent.	24 September 2024
3. Schedule 1, item 56	The seventh day after this Act receives the Royal Assent. However, the provision does not commence at all if item 7 of Schedule 5 to the <i>Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024</i> commences on or before that day.	Never commenced
4. Schedule 1, items 57 and 58	Immediately after the commencement of item 7 of Schedule 5 to the <i>Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024</i> . However, the provisions do not commence at all if: (a) that event occurs on or before the seventh day after this Act receives the Royal Assent; or (b) that event does not occur.	Never commenced
5. Schedule 1, item 59	The later of: (a) the start of the seventh day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 7 of Schedule 5 to the <i>Treasury</i>	24 September 2024 (paragraph (a) applies)



<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
	<p><i>Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Act 2024.</i></p> <p>However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur on or before the seventh day after this Act receives the Royal Assent.</p>	
6. Schedule 1, item 60	<p>The seventh day after this Act receives the Royal Assent.</p> <p>However, the provision does not commence at all if item 17 of Schedule 1 to the <i>Treasury Laws Amendment (Reserve Bank Reforms) Act 2024</i> commences on or before that day.</p>	24 September 2024
7. Schedule 1, item 61	<p>The later of:</p> <p>(a) the start of the seventh day after this Act receives the Royal Assent; and</p> <p>(b) immediately after the commencement of item 19 of Schedule 1 to the <i>Treasury Laws Amendment (Reserve Bank Reforms) Act 2024</i>.</p> <p>However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
8. Schedule 1, item 62	<p>The seventh day after this Act receives the Royal Assent.</p> <p>However, the provision does not commence at all if item 19 of Schedule 1 to the <i>Treasury Laws Amendment (Reserve Bank Reforms) Act 2024</i> commences on or before that day.</p>	24 September 2024
9. Schedule 2, Parts 1 to 10	The seventh day after this Act receives the Royal Assent.	24 September 2024
10. Schedule 2, Part 11	The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.	17 March 2025

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
11. Schedule 2, Parts 12 and 13	The seventh day after this Act receives the Royal Assent.	24 September 2024
12. Schedule 2, Part 14	The later of: (a) immediately after the commencement of the provisions covered by table item 9; and (b) the commencement of item 11 of Schedule 1 to the <i>Treasury Laws Amendment (Reserve Bank Reforms) Act 2024</i> .  However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.	
13. Schedule 3	The seventh day after this Act receives the Royal Assent.	24 September 2024
14. Schedules 4 and 5	The day after this Act receives the Royal Assent.	18 September 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

# **Schedule 1—Financial market infrastructure: resolution authority**

## **Part 1—Crisis resolution**

### *Corporations Act 2001*

#### **1 Section 9**

Insert:

*essential service* means:

- (a) electricity; or
- (b) gas; or
- (c) water; or
- (d) a carriage service (within the meaning of the *Telecommunications Act 1997*).

*external administrator*:

- (a) other than in Chapter 5 and Part 7.3B—has the same meaning as in Schedule 2; and
- (b) in Part 7.3B:
  - (i) subject to subparagraph (ii)—means an external administrator (within the meaning of Schedule 2 to this Act), a receiver, manager, managing controller, receiver and manager or other controller; and
  - (ii) does not include a statutory manager (within the meaning of this Act) or a Banking Act statutory manager (within the meaning of the *Banking Act 1959*).

#### **2 Section 9 (after paragraph (h) of the definition of *property*)**

Insert:

- (ha) in Part 7.3B (crisis resolution for CS facility licensees)—has a meaning affected by subsection 833A(4); and

#### **3 Section 9**

Insert:

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**statutory management** has the meaning given by subsections 832C(3) and (4).

**statutory manager** of a body corporate means:

- (a) if the Reserve Bank is in control of the body corporate's business under Part 7.3B—the Reserve Bank; and
- (b) each person appointed by the Reserve Bank to take control of a body corporate's business under Part 7.3B.

Note: See section 836B for when there are 2 or more statutory managers of a body corporate.

#### **4 Subsection 198G(9) (definition of *external administrator*)**

Repeal the definition.

#### **5 At the end of subsection 459P(1)**

Add:

Note: The Reserve Bank may also apply under this section to the Court for an order if a condition in section 831A is satisfied in relation to a CS facility licensee: see section 849AA.

#### **6 Subparagraph 588FL(1)(a)(v)**

Omit "and".

#### **7 At the end of paragraph 588FL(1)(a)**

Add:

- (vi) section 842A, or Subdivision C of Division 9 of Part 7.3B, begins to apply to a body corporate; and

#### **8 Subsection 600F(2) (definition of *essential service*)**

Repeal the definition.

#### **9 After section 794A**

Insert:

#### **794AA ASIC's directions power—crisis resolution**

- (1) If the Reserve Bank, under subsection 849AB(1), requests ASIC to give a direction to a market licensee under this subsection to do, or

to refrain from doing, specified things, ASIC may give the licensee a written direction to do, or to refrain from doing, those things.

- (2) Without limiting subsection (1), the specified things may include:
- (a) suspending dealings in a specified financial product or class of financial products; or
  - (b) taking:
    - (i) any actions; or
    - (ii) one or more specified actions;relating to dealings in a specified financial product or class of financial products.

Example: Under paragraph (b), a direction could require the licensee to take actions to:

- (a) limit the kinds of dealings that are allowed in a financial product or class of financial products; or
  - (b) require participants in a market to act in a specified manner in relation to dealings in a financial product or class of financial products.
- (3) The direction must specify a reasonable time by which, or a reasonable period during which, it is to be complied with.
- (4) The licensee must comply with the direction.

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

- (5) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

## **794AB Matters relating to ASIC directions—crisis resolution**

### *Variation or revocation*

- (1) If the Reserve Bank, under subsection 849AB(1), requests ASIC to vary a direction given to a market licensee under subsection 794AA(1), ASIC may vary the direction by giving written notice to the licensee.
- (2) ASIC may revoke a direction given to a market licensee under subsection 794AA(1) by giving written notice to the licensee.

*Notifying other affected persons*

- (3) As soon as practicable after:
- (a) directing a market licensee under subsection 794AA(1) to do a thing mentioned in subsection 794AA(2); or
  - (b) varying or revoking such a direction;
- ASIC must give written notice of the direction, variation or revocation to the operator of each clearing and settlement facility with which the market licensee has clearing and settlement arrangements for transactions effected through the market.

*Directions are not legislative instruments*

- (4) A direction given under subsection 794AA(1), a variation under subsection (1) of this section, or a revocation under subsection (2) of this section is not a legislative instrument.

**10 After subsection 798G(5)**

Insert:

*Crisis resolution*

- (5A) Despite subsection (3), ASIC may make a market integrity rule without the consent of the Minister if the Reserve Bank, under subsection 849AB(1), requests ASIC to make the rule.
- (5B) However, if ASIC does so, ASIC must provide the Minister, on the following day, with a copy of the request.
- (5C) The Minister may, if the Minister considers it appropriate after being given the copy of the request, direct ASIC to vary or revoke the rule.
- (5D) ASIC must comply with the direction given under subsection (5C) immediately.

**11 At the end of subsection 798G(6)**

Add:

- ; (c) a direction given under subsection (5C).

## **12 Before section 798K**

Insert:

### **798JB ASIC's directions power—crisis resolution**

- (1) If the Reserve Bank, under subsection 849AB(1), requests ASIC to:
  - (a) give a direction to an entity under this subsection to suspend dealings in a financial product or class of financial products;  
or
  - (b) give some other direction to an entity under this subsection in relation to dealings in a financial product or class of financial products;

ASIC may give the direction, in writing, to the entity.

Note: ASIC may also, at the request of the Reserve Bank, give directions to entities that are market licensees under section 794AA. A failure to comply with a direction under that section is an offence: see subsection 1311(1).

- (2) The entity must comply with the direction.
- (3) If the entity fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the entity comply with the direction.

### **798JC Matters relating to ASIC directions—crisis resolution**

#### *Variation or revocation*

- (1) If the Reserve Bank, under subsection 849AB(1), requests ASIC to vary a direction given to an entity under subsection 798JB(1), ASIC may vary the direction by giving written notice to the entity.
- (2) ASIC may revoke a direction given to an entity under subsection 798JB(1) by giving written notice to the entity.

#### *Directions are not legislative instruments*

- (3) A direction given under subsection 798JB(1), a variation under subsection (1) of this section, or a revocation under subsection (2) of this section is not a legislative instrument.

### 13 At the end of section 824B

Add:

*Grant to receiving body*

- (3) If:
- (a) the Minister consents under paragraph 837A(1)(b) or 837B(1)(b) to a transfer in relation to a CS facility licensee; and
  - (b) the Reserve Bank issues a certificate under subsection 838A(1) that the transfer is to take effect;
- the Minister may grant an Australian CS facility licence to a body corporate that, as a result of the transfer, becomes, or will become, the successor in law of the CS facility licensee.
- (4) A licence granted to a body corporate under subsection (3) is taken to be:
- (a) unless paragraph (b) of this subsection applies—a licence granted under subsection (1); or
  - (b) if the licence states that it is to be taken to have been granted under subsection (2)—a licence granted under subsection (2) authorising the body corporate to operate a specified clearing and settlement facility in this jurisdiction.

### 14 Before Part 7.4

Insert:

## Part 7.3B—Crisis resolution for CS facility licensees

### Division 1—Preliminary

#### 830A Simplified outline of this Part

<p>The Reserve Bank may take actions under this Part that are appropriate to manage or respond to a CS facility licensee in crisis.</p>
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A CS facility licensee is in crisis if certain conditions are met in relation to the licensee (see section 831A). These conditions relate to acts or events that are likely to pose a threat to:

- (a) the stability of the financial system in Australia; or
- (b) the continuity of clearing and settlement facility services that are critical to the functioning of the financial system in Australia.

Some of the conditions relate to related bodies corporate of the CS facility licensee.

The actions the Reserve Bank may take include:

- (a) placing the licensee, or a related body corporate that is incorporated in Australia, under statutory management; and
- (b) compulsorily transferring all or part of the shares of, or business of, the licensee, or a related body corporate that is incorporated in Australia, to another body corporate; and
- (c) directing the licensee, or a related body corporate that is incorporated in Australia, to do or refrain from doing an act or thing.

If a body corporate is under statutory management or subject to a transfer or direction, a moratorium applies to the body corporate.

The Reserve Bank, on request, may exercise some of its functions and powers under this Part to assist foreign regulators to manage or respond to an overseas clearing and settlement facility licensee in crisis.

### **830B Object of this Part**

The object of this Part is to provide for the effective management and resolution of threats posed to:

- (a) the stability of the financial system in Australia; or
- (b) the continuity of clearing and settlement facility services that are critical to the functioning of the financial system in Australia;

that arise from, or in relation to, CS facility licensees.

## Division 2—Crisis resolution for CS facility licensees

### 831A Reserve Bank may exercise crisis resolution powers if certain conditions are satisfied

- (1) The Reserve Bank may take action in accordance with this Part in relation to a CS facility licensee if any of the following conditions are satisfied in relation to the licensee:
  - (a) the licensee requests the Reserve Bank to take action and the Reserve Bank reasonably believes that an event relating to the licensee is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
    - (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (b) the licensee contravenes a direction issued under Part 7.3 by the Reserve Bank and the Reserve Bank reasonably believes that the contravention is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
    - (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (c) the licensee notifies the Reserve Bank that:
    - (i) the licensee has ceased, intends to cease or is likely to cease providing one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia; or
    - (ii) in the absence of external support, the licensee is likely to be unable to continue to provide one or more clearing and settlement facility services in a way that causes or promotes stability in the Australian financial system; or
    - (iii) in the absence of external support, the licensee is likely to be unable to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;

- (d) the Reserve Bank reasonably believes that, in the absence of external support, the licensee is likely to be unable to:
    - (i) continue to provide one or more clearing and settlement facility services in a way that causes or promotes stability in the Australian financial system; or
    - (ii) continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (e) the licensee notifies the Reserve Bank that:
    - (i) the licensee's financial viability is at risk or is likely to be at risk; or
    - (ii) in the absence of external support, the licensee's financial viability is likely to be at risk;
  - (f) the Reserve Bank reasonably believes that, in the absence of external support, the licensee's financial viability is likely to be at risk;
  - (g) an external administrator of the licensee has been appointed;
  - (h) the licensee notifies the Reserve Bank that it is considering appointing an external administrator of the licensee;
  - (i) the Reserve Bank reasonably believes that a person is seeking to have an external administrator of the licensee appointed;
  - (j) an external administrator of a related body corporate of the licensee has been appointed, or a similar appointment has been made under a foreign law, and the Reserve Bank reasonably believes that the appointment is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
    - (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (k) a related body corporate of the licensee, that is incorporated in Australia, notifies the Reserve Bank that it is considering appointing an external administrator of itself and the Reserve Bank reasonably believes that the appointment is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
-

- (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (l) the Reserve Bank reasonably believes that a person is seeking to have an external administrator of a related body corporate of the licensee appointed, or a person is seeking to make a similar appointment under a foreign law, and the Reserve Bank reasonably believes that the appointment is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
    - (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;
  - (m) the licensee, or a related body corporate of the licensee that is incorporated in Australia, is doing or not doing any act or thing, and the Reserve Bank reasonably believes this is likely to pose a threat to:
    - (i) the stability of the financial system in Australia; or
    - (ii) the ability of the licensee to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia.
- (2) A reference in subsection (1) to taking action in accordance with this Part does not include a reference to taking action under Subdivision C of Division 9 (temporary suspension of termination rights).

Note: The Reserve Bank may take action under that Subdivision if the Reserve Bank intends to take action under Division 3 or 4: see subsection 849BA(2).

*Overseas clearing and settlement facilities*

- (3) Subsection (1) of this section does not apply in relation to a CS facility licensee whose licence was granted under subsection 824B(2) (overseas clearing and settlement facilities).
  - (4) This section does not limit Division 8 (cross-border crisis resolution).
-

Note: Under Division 8, the Reserve Bank may take certain actions in accordance with this Part in relation to a CS facility licensee mentioned in subsection (3) of this section to assist a foreign authority to manage or respond to an event relating to the licensee.

## **Division 3—Statutory management**

### **Subdivision A—Statutory management of body corporate in relation to CS facility licensee in crisis**

#### **832A Statutory manager takes control of body corporate**

- (1) The Reserve Bank may take either or both of the actions in subsection (2), if the Reserve Bank reasonably believes that the action is appropriate to manage or respond to a condition in section 831A being satisfied in relation to a CS facility licensee.
- (2) The actions are:
  - (a) taking control of the business of the licensee as statutory manager of the licensee; and
  - (b) appointing one or more persons to take control of the business of the licensee, as statutory manager of the licensee.

Note: Section 836B deals with when there are 2 or more statutory managers of a body corporate (for example, when the Reserve Bank decides that both itself and another person are to take control as statutory manager).

- (3) The Reserve Bank may take either or both of the actions in subsection (4), if:
  - (a) a statutory manager has taken control of the business of a CS facility licensee, or the Reserve Bank intends that a statutory manager will take control of the business of a CS facility licensee; and
  - (b) the Reserve Bank reasonably believes that the action is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee.
- (4) The actions are:
  - (a) taking control of the business of a related body corporate of the licensee, that is incorporated in Australia, as statutory manager of the related body corporate; and

- (b) appointing one or more persons to take control of the business of a related body corporate of the licensee, that is incorporated in Australia, as statutory manager of the related body corporate.

Note: Section 836B deals with when there are 2 or more statutory managers of a body corporate (for example, when the Reserve Bank decides that both itself and another person are to take control as statutory manager).

- (5) If the Reserve Bank decides to take an action under subsection (1) or (3), the Reserve Bank must give the following, in writing, notice that a statutory manager will take, or is taking, control of the body corporate's business:
  - (a) the body corporate;
  - (b) if the body is under external administration—the external administrator.

Note: The appointment of the external administrator is terminated when a statutory manager takes control of the body corporate's business: see section 836A.

*Limits on individual exercise of powers*

- (6) At the time a statutory manager (other than the Reserve Bank) is appointed, the Reserve Bank may give the statutory manager a notice, in writing, specifying any limits or conditions on the manager performing functions or exercising powers individually.
- (7) A notice under subsection (6) must also be given to each other statutory manager of the body corporate (other than the Reserve Bank) at that time.

*Instruments are not legislative instruments*

- (8) An instrument made under this section is not a legislative instrument.

## **832B Termination of appointment of statutory manager**

*Termination of control by Reserve Bank*

- (1) The Reserve Bank may, in writing, decide to cease to be in control of the business of a body corporate as a statutory manager.
-

Note: The Reserve Bank may also decide under section 832A to appoint another statutory manager to take control of the body corporate's business.

- (2) The Reserve Bank must notify the body corporate in writing of the decision.
- (3) If:
- (a) the Reserve Bank has taken control of the business of a related body corporate of a CS facility licensee under paragraph 832A(4)(a) for the purpose of managing or responding to a condition in section 831A being satisfied in relation to the licensee; and
  - (b) the licensee ceases being under statutory management;
- the Reserve Bank must decide under subsection (1) of this section to cease to be in control of the business of the related body corporate.

*Termination of appointments of statutory managers*

- (4) The Reserve Bank may, in writing, terminate the appointment of a statutory manager.

Note: The Reserve Bank may also decide under section 832A to take control of the body corporate's business or appoint another statutory manager to do so.

- (5) The Reserve Bank must notify the body corporate and statutory manager in writing of the termination.
- (6) If:
- (a) the Reserve Bank appoints a statutory manager of a related body corporate of a CS facility licensee under paragraph 832A(4)(b) for the purpose of managing or responding to a condition in section 831A being satisfied in relation to the licensee; and
  - (b) the licensee ceases being under statutory management;
- the Reserve Bank must, under subsection (4) of this section, terminate the appointment of the statutory manager of the related body corporate.

*Instruments are not legislative instruments*

- (7) An instrument made under this section is not a legislative instrument.

**832C When a statutory manager is in control**

- (1) A statutory manager takes control of a body corporate's business:
- (a) at the time specified in the notice given under subsection 832A(5) as the time when the statutory manager takes control of the business (which must not be earlier than when the notice is given); or
  - (b) if the notice given under that subsection does not specify a time as the time when the statutory manager takes control of the business—at the time the notice is given.
- (2) A statutory manager ceases to be in control of a body corporate's business:
- (a) if the statutory manager is the Reserve Bank and the Reserve Bank decides under subsection 832B(1) to cease to be in control of the body corporate's business:
    - (i) at the time specified in the notice given under subsection 832B(2) as the time when Reserve Bank ceases to be in control of the business (which must not be earlier than when the notice is given); or
    - (ii) if the notice given under subsection 832B(2) does not specify a time as the time when the Reserve Bank ceases to be in control of the business—at the time the notice is given; or
  - (b) if the Reserve Bank terminates the appointment of the statutory manager under subsection 832B(4):
    - (i) at the time specified in the notice given to the body corporate under subsection 832B(5) as the time when the termination takes effect (which must not be earlier than when the notice is given); or
    - (ii) if the notice given to the body corporate under subsection 832B(5) does not specify a time as the time when the termination takes effect—at the time the notice is given.



- (3) While a statutory manager is in control of a body corporate's business, the body corporate is under **statutory management**.
- (4) To avoid doubt, a body corporate does not cease to be under **statutory management** when a statutory manager of the body corporate is replaced with another statutory manager.
- (5) The *Public Governance, Performance and Accountability Act 2013* does not apply to a body corporate under statutory management.

## **Subdivision B—Powers of statutory manager**

### **833A Role of the statutory manager**

- (1) While a statutory manager of a body corporate is in control of the business of the body corporate the statutory manager:
  - (a) has control of the body corporate's business, property and affairs; and
  - (b) may carry on that business and manage that property and those affairs; and
  - (c) at the direction of or with the written consent of the Reserve Bank:
    - (i) may terminate or dispose of all or part of that business; and
    - (ii) may dispose of any of that property; and
  - (d) may perform any function, and exercise any power, that the body corporate or any of its officers could perform or exercise under the operating rules or procedures of a licensed CS facility of which the body corporate is the licensee; and
  - (e) may perform any other function, and exercise any other power, that the body corporate or any of its officers could perform or exercise if a statutory manager were not in control of the body corporate's business.

Note: An expert report on fair value may be required before taking action: see section 849CB.
- (2) Nothing in subsection (1) limits the generality of anything else in it.

*Limitations*

- (3) This section does not permit the statutory manager to:
- (a) alter the body corporate's constitution or other arrangements for governance other than in accordance with section 833C; or
  - (b) recapitalise other than in accordance with section 833D; or
  - (c) effect a transfer of all or part of the shares in the body corporate or a total or partial transfer of the business of the body corporate, other than in accordance with Division 4 (compulsory transfers).

*Meaning of property*

- (4) In this Part, **property** of a body corporate includes any PPSA retention of title property of the body corporate.

Note: See also:

- (a) the definition of **property** in section 9; and
- (b) section 51F (meaning of **PPSA retention of title property**).

**833B Powers to remove director etc.**

Without limiting section 833A, the statutory manager of a body corporate has power to do any of the following:

- (a) remove from office a director of the body corporate;
- (b) appoint a person as such a director, whether to fill a vacancy or not;
- (c) execute a document, bring or defend proceedings, or do anything else, in the body corporate's name and on its behalf;
- (d) whatever else is necessary for the purposes of this Part.

**833C Power to alter body corporate's constitution etc.**

- (1) The statutory manager of a body corporate may alter the body corporate's constitution or other arrangements for governance if the alteration is reasonably necessary for enabling or facilitating:
- (a) the performance of the statutory manager's functions and duties under this Part in relation to the body corporate; or
  - (b) the exercise of the statutory manager's other powers under this Part in relation to the body corporate.

*This section does not permit transfers of shares or business*

- (2) This section does not permit the statutory manager to effect a transfer of all or part of the shares in the body corporate or a total or partial transfer of the business of the body corporate, other than in accordance with Division 4 (compulsory transfers).

*Exercise of powers despite other laws etc.*

- (3) A statutory manager may do an act under subsection (1) despite all of the following:
- (a) this Act;
  - (b) the body corporate's constitution;
  - (c) any arrangement to which the body corporate is party;
  - (d) any listing rules of a financial market in whose official list the body corporate is included.

### **833D Powers to facilitate recapitalisation**

- (1) A statutory manager of a body corporate may do one or more of the following acts on terms determined by the statutory manager, at the direction of or with the written consent of the Reserve Bank:
- (a) increase the body corporate's level of share capital to a level specified in the determination;
  - (b) issue one or more classes of shares, or one or more specified classes of rights to acquire shares, in the body corporate, being a class or classes specified in the determination;
  - (c) issue capital instruments;
  - (d) acquire, cancel or sell:
    - (i) shares in the body corporate; or
    - (ii) rights to acquire shares in the body corporate;
  - (e) reduce the body corporate's share capital;
  - (f) vary or cancel rights or restrictions attached to shares in a class of shares in the body corporate.

Note: An expert report on fair value may be required before taking action: see section 849CB.

*Notice to members*

- (2) As soon as practicable after the statutory manager does an act under subsection (1), the statutory manager must give a written notice:
- (a) to the persons who were members of the body just before the act; and
  - (b) that:
    - (i) identifies the act; and
    - (ii) explains the effect of the act on the members' interests.
- (3) A contravention of subsection (2) does not affect the validity of anything done under subsection (1).

*This section does not permit transfers of shares or business*

- (4) This section does not permit the statutory manager to effect a transfer of all or part of the shares in the body corporate, or a total or partial transfer of the business of the body corporate, other than in accordance with Division 4 (compulsory transfers).

*Exercise of powers despite other laws etc.*

- (5) A statutory manager may do an act under subsection (1) despite all of the following:
- (a) this Act;
  - (b) the body corporate's constitution;
  - (c) any operating rules or procedures of a licensed CS facility of which the body corporate is the licensee;
  - (d) any arrangement to which the body corporate is party;
  - (e) any listing rules of a financial market in whose official list the body corporate is included.

**833E Statutory manager may request information etc. to be given**

- (1) A statutory manager of a body corporate may, in writing, request a person to whom subsection (2) applies to:
- (a) attend on the statutory manager; or
  - (b) give the statutory manager any information relating to the body corporate's business, assets and other property, affairs

and financial circumstances that the statutory manager reasonably believes would assist the statutory manager in performing the statutory manager's functions, or exercising the statutory manager's powers; or

- (c) allow the statutory manager to inspect and take copies of the body corporate's books;

at the times and in the manner reasonably required by the statutory manager.

- (2) This subsection applies to a person who:
- (a) is an officer of the body corporate; or
  - (b) was an officer of the body corporate:
    - (i) at any time when the body corporate was under statutory management; or
    - (ii) any time occurring during the 3 years ending when the body corporate began to be under statutory management.
- (3) A request to give information may include a request to produce books, accounts or documents.

*Offence*

- (4) A person must comply with a request under subsection (1).

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

*Information may be given to the Reserve Bank*

- (5) A statutory manager may give the Reserve Bank any information that the statutory manager receives under this Part.

Note: The secrecy provision in section 79A of the *Reserve Bank Act 1959* applies to information and documents obtained by the Reserve Bank under this section (either as statutory manager under subsection (1) of this section or from a statutory manager under this subsection).

**833F Statutory manager acts as body corporate's agent**

When performing a function, or exercising a power, as the statutory manager of a body corporate, the statutory manager is taken to be acting as the body corporate's agent.

## Subdivision C—Effect of statutory manager assuming control

### 834A Exercise of directors' powers while body corporate under statutory management

#### *Powers of directors while body corporate under statutory management*

- (1) While a body corporate is under statutory management, a director of the body must not perform or exercise a function or power of a director.

#### *Offence*

- (2) A person commits an offence if:
- (a) the person is a director of a body corporate; and
  - (b) the body corporate is under statutory management; and
  - (c) the person purports to perform or exercise a function or power of a director.

#### *Exceptions*

- (3) Subsections (1) and (2) do not apply to the extent that the director of the body corporate is acting with the written approval of the statutory manager of the body corporate or the Reserve Bank.

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

#### *Reserve Bank may revoke or vary the approval*

- (4) If a statutory manager (other than the Reserve Bank) gives written approval for the purposes of subsection (3), the statutory manager must immediately notify the Reserve Bank in writing.
- (5) The Reserve Bank may decide to revoke or vary the approval. The Reserve Bank's decision takes effect from the time the director is notified of the decision in writing.

*Functions and powers of statutory manager prevail in case of conflict*

- (6) If:
- (a) subsection (3) applies; and
  - (b) there is a conflict between:
    - (i) a function or power of the statutory manager of the body corporate; and
    - (ii) a function or power of the director in relation to the body corporate;
- the statutory manager's function or power prevails.

*Effect of this section*

- (7) This section does not remove a director of a body corporate from office.
- (8) Nothing in this section affects a secured creditor's right to realise or otherwise deal with a security interest.

**834B Effect of things done during statutory management of body corporate**

A payment made, transaction entered into, or any other act or thing done, in good faith, by the statutory manager of a body corporate under statutory management or with the written consent of the statutory manager or the Reserve Bank:

- (a) is valid and effectual for the purposes of this Act; and
- (b) is not liable to be set aside in a winding up of the body corporate.

**834C Effect of statutory management on body corporate's members**

*Transfer of shares*

- (1) A transfer of shares in a body corporate that is made during the statutory management of the body corporate is void except if:
- (a) both:
    - (i) the statutory manager or the Reserve Bank gives written consent to the transfer; and

- (ii) that consent is unconditional; or
- (b) all of the following subparagraphs apply:
  - (i) the statutory manager or the Reserve Bank gives written consent to the transfer;
  - (ii) that consent is subject to one or more specified conditions;
  - (iii) those conditions have been satisfied; or
- (c) the transfer is done to give effect to an action under section 833D (recapitalisation actions) by the statutory manager; or
- (d) the transfer is done to give effect to a transfer under Division 4 (compulsory transfers).

*Alteration in the status of members*

- (2) An alteration in the status of members of a body corporate that is made during the statutory management of the body corporate is void except if:
  - (a) both:
    - (i) the statutory manager or the Reserve Bank gives written consent to the alteration; and
    - (ii) that consent is unconditional; or
  - (b) all of the following subparagraphs apply:
    - (i) the statutory manager or the Reserve Bank gives written consent to the alteration;
    - (ii) that consent is subject to one or more specified conditions;
    - (iii) those conditions have been satisfied; or
  - (c) the alteration is done to give effect to an action under section 833D (recapitalisation actions) by the statutory manager; or
  - (d) the alteration is done to give effect to a transfer under Division 4 (compulsory transfers).
- (3) As soon as practicable after an alteration in the status of members of a body corporate is made during the statutory management of the body corporate, the statutory manager must give a written notice:
  - (a) to the persons who were members of the body just before the alteration; and



- (b) that:
  - (i) identifies the alteration; and
  - (ii) explains the effect of the alteration on the members' interests.
- (4) A contravention of subsection (3) does not affect the validity of the alteration.

## **Subdivision D—Additional duties of statutory manager**

### **835A Reporting to Reserve Bank**

#### *Duty to report to the Reserve Bank on request*

- (1) If requested by the Reserve Bank, a statutory manager of a body corporate (other than the Reserve Bank) must give the Reserve Bank a written report showing how the control of the body corporate's business is being carried out.
- (2) The report must be given to the Reserve Bank within a reasonable time after the request.

#### *Duty to report to the Reserve Bank on termination of appointment*

- (3) If the Reserve Bank terminates the appointment of a statutory manager of a body corporate, the statutory manager of the body corporate must give to the Reserve Bank a written report showing how the control of the body corporate's business was carried out over the period the statutory manager was in control.
- (4) The report must be given to the Reserve Bank within a reasonable time after the termination.

### **835B Reserve Bank's directions power—directions to statutory manager**

#### *Duty to follow directions by the Reserve Bank*

- (1) The Reserve Bank:
  - (a) may give a statutory manager of a body corporate a direction relating to the control of the body corporate's business; and

- (b) may vary such a direction.
- (2) A statutory manager who is given a direction, or a varied direction, under subsection (1) must:
  - (a) comply with the direction; or
  - (b) immediately:
    - (i) request the Reserve Bank to vary the direction; and
    - (ii) provide the Reserve Bank with information relating to the control of the body corporate's business that is relevant to its request.
- (3) If the Reserve Bank refuses to vary the direction, the statutory manager must comply with the direction.

### **835C Consent to take action that may affect financial system stability in Australia**

If a statutory manager of a body corporate (other than the Reserve Bank) has reasonable grounds to believe that an action that the statutory manager proposes to take is an action that is likely to pose a threat to:

- (a) the stability of the financial system in Australia; or
- (b) the continuity of one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia;

the statutory manager must, before taking the action:

- (c) notify the Reserve Bank in writing as soon as practicable; and
- (d) obtain the Reserve Bank's written consent.

## **Subdivision E—Other matters**

### **836A Effect on external administration**

#### *Termination of existing external administrator*

- (1) The appointment of an external administrator of a body corporate is terminated when a statutory manager takes control of the body corporate's business.

- (2) Failure to give an external administrator notice under section 832A does not affect the operation of this section.

*External administrator may only be appointed with approval during statutory management*

- (3) While a body corporate is under statutory management, an external administrator of the body corporate must not be appointed unless the Reserve Bank approves the appointment in writing.

*Invalid acts*

- (4) If:
- (a) a person who ceased to be the external administrator of a body corporate under subsection (1); or
  - (b) a purported external administrator of the body corporate appointed in contravention of subsection (3);
- purports to act in relation to the body corporate's business, those acts are invalid and of no effect.

### **836B Appointment of 2 or more statutory managers of body corporate**

If there are 2 or more statutory managers of a body corporate:

- (a) the functions and powers of a statutory manager of the body corporate may be performed or exercised by any one of them, or by any 2 or more of them together, subject to any limits or conditions specified in notices given under subsection 832A(6); and
- (b) a reference in this Act to a statutory manager, or to the statutory manager, of the body corporate is a reference to whichever one or more of those statutory managers the case requires.

### **836C Costs of statutory management**

- (1) The Reserve Bank's costs (including costs in the nature of remuneration and expenses) of:
- (a) being in control of a body corporate's business as statutory manager; or

- (b) having a statutory manager in control of a body corporate's business;  
are payable from the body corporate's funds and are a debt due to the Reserve Bank.
- (2) Despite anything contained in this Act or any other law relating to the winding up of companies, debts due to the Reserve Bank by a body corporate under subsection (1) have priority in a winding-up of the body corporate over all other unsecured debts.

### 836D Annual general meeting need not be held

Despite sections 250N and 601BR, a body corporate need not hold an annual general meeting within a particular period if, at the end of that period, the body corporate is under statutory management.

### 836E Dealing with property subject to circulating security interests

#### *Scope*

- (1) This section applies if a security interest in property (the **secured property**) of a body corporate under statutory management:
  - (a) was a circulating security interest when the interest arose; but
  - (b) has stopped being a circulating security interest because:
    - (i) in the case of a PPSA security interest—the property has stopped being a circulating asset (within the meaning of the *Personal Property Securities Act 2009*); or
    - (ii) in the case of a security interest that was a floating charge when it arose—the floating charge has since become a fixed or specific charge.

Note 1: A circulating security interest can be either a PPSA security interest to which a circulating asset has attached or a floating charge: see the definition of **circulating security interest** in section 9.

Note 2: For the meaning of **circulating asset**, see section 340 of the *Personal Property Securities Act 2009*.

#### *Security interest in circulating asset*

- (2) Subject to section 836F in the case of a PPSA security interest, the statutory manager may deal with any of the secured property in any
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way the body corporate could deal with the secured property immediately before it stopped being a circulating asset.

*Floating charge*

- (3) Subject to section 836F, if the secured interest was a floating charge when it arose, the statutory manager may deal with any of the secured property as if the security interest were still a floating charge.

Note: Section 836F deals with the disposal of encumbered property by a statutory manager.

**836F When statutory manager may dispose of encumbered property**

- (1) The statutory manager of a body corporate under statutory management must not dispose of:
- (a) property of the body corporate that is subject to a security interest; or
  - (b) property (other than PPSA retention of title property) that is used or occupied by, or is in the possession of, the body corporate but of which someone else is the owner or lessor.

Note: PPSA retention of title property is subject to a PPSA security interest, and so is covered by paragraph (a) of this subsection: see the definition of *PPSA retention of title property* in section 51F.

- (2) Subsection (1) does not prevent a disposal:
- (a) in the ordinary course of the body corporate's business; or
  - (b) with the written consent of the secured party, owner or lessor, as the case may be; or
  - (c) at the direction of or with the written consent of the Reserve Bank.
- (3) If:
- (a) a body corporate is under statutory management; and
  - (b) property of the body corporate is subject to a security interest; and
  - (c) the statutory manager disposes of the property; the disposal extinguishes the security interest.
- (4) For the purposes of paragraph (2)(a), if:

- (a) property is used or occupied by, or is in the possession of, a body corporate; and
  - (b) another person is the owner of the property; and
  - (c) either:
    - (i) the property is PPSA retention of title property; or
    - (ii) the property is subject to a retention of title clause under a contract; and
  - (d) the owner demands the return of the property;
- a disposal of the property that occurs after the demand is made does not mean that the disposal is not in the ordinary course of the body corporate's business.

### **836G Proceeds of sale of property**

*Property subject to a possessory security interest*

- (1) If:
  - (a) a body corporate is under statutory management; and
  - (b) property of the body corporate is subject to a possessory security interest; and
  - (c) the statutory manager of the body corporate disposes of the property by way of sale;then:
  - (d) if the net proceeds of sale equals or exceeds the total of the debts secured by:
    - (i) the possessory security interest; and
    - (ii) any other security interest in the property, where the debt secured by the security interest has a priority that is equal to or higher than the priority of the debt secured by the possessory security interest;the statutory manager of the body corporate must:
    - (iii) set aside so much of the net proceeds as equals the total of those debts; and
    - (iv) apply the amount so set aside in paying those debts; or
  - (e) if the net proceeds of sale fall short of the total of the debts secured by:
    - (i) the possessory security interest; and

- (ii) any other security interest in the property, where the debt secured by the security interest has a priority that is equal to or higher than the priority of the debt secured by the possessory security interest;

then:

- (iii) the statutory manager must set aside the net proceeds; and
- (iv) the statutory manager must apply the amount so set aside in paying those debts in order of priority, on the basis that if the amount is insufficient to fully pay debts of the same priority, they must be paid proportionately; and
- (v) if any of those debts is not fully paid—so much of the debt as remains unpaid may be recovered from the body corporate as an unsecured debt.

*PPSA retention of title property*

- (2) If the statutory manager of a body corporate disposes of PPSA retention of title property of the body corporate by way of sale, then the statutory manager must apply the net proceeds of the sale in the same way as a secured party is required, under section 140 of the *Personal Property Securities Act 2009*, to apply an amount, personal property or proceeds of collateral received by the secured party as a result of enforcing a security interest in the property.

Note: PPSA retention of title property does not include property that is subject to a retention of title clause: see the definitions of **PPSA retention of title property** and **retention of title clause** in section 9. Subsection (3) of this section deals with property that is subject to a retention of title clause.

*Property subject to a retention of title clause*

- (3) If:
  - (a) a body corporate is under statutory management; and
  - (b) property is used or occupied by, or is in the possession of, the body; and
  - (c) another person is the owner of the property; and
  - (d) the property is subject to a retention of title clause under a contract (the **original contract**); and

(e) the statutory manager disposes of the property by way of sale;

then:

- (f) if the net proceeds of sale equals or exceeds the total of:
- (i) so much of the purchase price, or other amount, under the original contract as remains unpaid; and
  - (ii) if there are one or more securities over the property—the debts secured by the securities;

the statutory manager must:

- (iii) set aside so much of the net proceeds as equals that total; and
  - (iv) apply the amount so set aside in paying that total; or
- (g) if the net proceeds of sale fall short of the total of:
- (i) so much of the purchase price, or other amount, under the original contract as remains unpaid; and
  - (ii) if there are one or more securities over the property—the debts secured by the securities;

then:

- (iii) the statutory manager must set aside the net proceeds; and
- (iv) the statutory manager must apply the amount so set aside in paying those debts in order of priority, on the basis that if the amount is insufficient to fully pay debts of the same priority, they must be paid proportionately; and
- (v) if any of those debts is not fully paid—so much of the debt as remains unpaid may be recovered from the body as an unsecured debt.

Note: Property that is subject to a retention of title clause does not include PPSA retention of title property: see the definitions of ***PPSA retention of title property*** and ***retention of title clause*** in section 9. Subsection (2) of this section deals with PPSA retention of title property.

## **836H Supply of essential services**

(1) If:

- (a) a statutory manager of a body corporate requests, or authorises someone else to request, a person or authority (the
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- supplier*) to supply an essential service to the body corporate in Australia; and
- (b) the body corporate owes an amount to the supplier in respect of supply of the essential service before the effective day;
- the supplier must not:
- (c) refuse to comply with the request for the reason only that the amount is owing; or
- (d) make it a condition of the supply of the essential service pursuant to the request that the amount is to be paid.
- (2) If any conduct (including a refusal or failure to act) amounts or would amount to a contravention of paragraph (1)(c) or (d) in relation to a particular body corporate that is under statutory management, each of the following is taken, for the purposes of section 1324, to be a person whose interests are affected by the conduct:
- (a) the statutory manager;
- (b) the Reserve Bank.
- Note: Section 1324 provides for injunctions to enforce paragraphs (1)(c) and (d) of this section.
- (3) However, the statutory manager may apply for an injunction under section 1324 in respect of the conduct only if the statutory manager applies jointly with the Reserve Bank.
- (4) Subsection (3) of this section does not, by implication, limit the class of persons whose interests are affected by the conduct.
- (5) In this section:

*effective day*, in relation to a body corporate that is under statutory management, is the day the body corporate began to be under statutory management.

### **836J Statutory manager has qualified privilege**

A person who is or has been the statutory manager of a body corporate has qualified privilege in respect of a statement that the person has made, whether orally or in writing, in the course of performing or exercising any of the person's functions and powers as statutory manager of the body corporate.

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### 836K Protection of persons dealing with statutory manager

- (1) Sections 128 and 129 apply in relation to a body corporate under statutory management as if:
  - (a) a reference in those sections to the company, or to an officer of the company, included a reference to the statutory manager of the body corporate; and
  - (b) a reference in those sections to an assumption referred to in section 129 included a reference to an assumption that the statutory manager is:
    - (i) acting within the statutory manager's functions and powers as statutory manager; and
    - (ii) in particular, is complying with this Act.
- (2) The effect that sections 128 and 129 have because of subsection (1) of this section is additional to, and does not prejudice, the effect that sections 128 and 129 otherwise have in relation to a body corporate under statutory management.

## Division 4—Compulsory transfer of business or shares

### Subdivision A—Compulsory transfer of business or shares of body corporate in relation to CS facility licensee in crisis

#### 837A Compulsory transfer of shares in body corporate

*Transfer of all or part of the shares in a CS facility licensee*

- (1) The Reserve Bank may, in writing, make a determination that there is to be a transfer of all or part of the shares in a CS facility licensee (the **target body**) to another body corporate (the **receiving body**) if:
  - (a) the Reserve Bank reasonably believes that the transfer is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee; and
  - (b) the Minister consents to the transfer in writing; and
  - (c) the Reserve Bank is satisfied that the board of the receiving body consents to the transfer.

Note: An expert report on fair value may be required before taking action:  
see section 849CB.

*Transfer of all or part of the shares in a related body corporate*

- (2) The Reserve Bank may, in writing, make a determination that there is to be a transfer of all or part of the shares in a body corporate (the **target body**) to another body corporate (the **receiving body**) if:
- (a) the Reserve Bank has made, or intends to make, a determination under subsection (1) that there is to be a transfer of shares in a CS facility licensee to another body corporate; and
  - (b) the Reserve Bank reasonably believes that the transfer to the receiving body is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee; and
  - (c) the target body is, or before the transfer of shares from the licensee referred to in paragraph (a) of this subsection was, a related body corporate of the licensee; and
  - (d) the target body is incorporated in Australia; and
  - (e) the Minister consents to the transfer in writing; and
  - (f) the Reserve Bank is satisfied that the board of the receiving body consents to the transfer.

Note: An expert report on fair value may be required before taking action:  
see section 849CB.

*Determination*

- (3) A determination made under subsection (1) or (2) must include:
- (a) particulars of the transfer, including:
    - (i) the names of the target body and the receiving body; and
    - (ii) whether it will be a transfer of all or part of the shares; and
    - (iii) if it will be a transfer of part of the shares—an indication of the shares that are to be transferred; and
  - (b) a statement of the reasons why the determination has been made.

- (4) A determination made under subsection (1) or (2) is not a legislative instrument.

*Notice*

- (5) The Reserve Bank must give a copy of a determination made under subsection (1) or (2) to the target body and the receiving body.

**837B Compulsory transfer of business of body corporate**

*Total or partial transfer of business of CS facility licensee*

- (1) The Reserve Bank may, in writing, make a determination that there is to be a total or partial transfer of business of a CS facility licensee from the licensee (the **target body**) to another body corporate (the **receiving body**) if:
- (a) the Reserve Bank reasonably believes that the transfer is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee; and
  - (b) the Minister consents to the transfer in writing; and
  - (c) the Reserve Bank is satisfied that the board of the receiving body consents to the transfer.

Note: An expert report on fair value may be required before taking action: see section 849CB.

*Total or partial transfer of business of related body corporate*

- (2) The Reserve Bank may, in writing, make a determination that there is to be a total or partial transfer of business from a body corporate (the **target body**) to another body corporate (the **receiving body**) if:
- (a) the Reserve Bank has made, or intends to make, a determination under subsection (1) that there is to be a total or partial transfer of business from a CS facility licensee to another body corporate; and
  - (b) the Reserve Bank reasonably believes that the transfer to the receiving body is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee; and

- (c) the target body is, or before the transfer of business from the licensee referred to in paragraph (a) of this subsection was, a related body corporate of the licensee; and
- (d) the target body is incorporated in Australia; and
- (e) the Minister consents to the transfer in writing; and
- (f) the Reserve Bank is satisfied that the board of the receiving body consents to the transfer.

Note: An expert report on fair value may be required before taking action: see section 849CB.

#### *Determination*

- (3) A determination made under subsection (1) or (2) must include:
  - (a) particulars of the transfer, including:
    - (i) the names of the target body and the receiving body; and
    - (ii) whether it will be a total or a partial transfer; and
    - (iii) if it will be a partial transfer—an indication of the part of the target body's business that is to be transferred; and
  - (b) a statement of the reasons why the determination has been made.
- (4) A determination made under subsection (1) or (2) is not a legislative instrument.

#### *Notice*

- (5) The Reserve Bank must give a copy of a determination made under subsection (1) or (2) to the target body and the receiving body.

### **837C When consent of receiving body is in force**

- (1) The consent of the board of a receiving body referred to in paragraph 837A(1)(c) or (2)(f) or 837B(1)(c) or (2)(f) remains in force until it is withdrawn by the board with the written agreement of the Reserve Bank.

- (2) The Reserve Bank may agree to the consent being withdrawn if the Reserve Bank reasonably believes that it is appropriate to allow the consent to be withdrawn, having regard to any of the following:
- (a) circumstances that have arisen since the consent was given;
  - (b) circumstances that were in existence at or before the time when the consent was given but that were not known to the receiving body's board when it gave its consent;
  - (c) any other relevant matter.

### **837D Agreement about how transfer is to be effected**

- (1) If a determination is made under section 837A or 837B that there is to be a transfer, the target body or the receiving body, or both of those bodies, may provide the Reserve Bank with a written statement specifying, or specifying a mechanism for determining, things that are to happen, or that are taken to be the case, in relation to:
- (a) if the determination is made under section 837A—some or all of the shares that are to be transferred; or
  - (b) if the determination is made under section 837B—some or all of the assets and liabilities that are to be transferred.
- (2) The Reserve Bank may, in writing, approve the statement before issuing the certificate of transfer if the Reserve Bank is satisfied that:
- (a) the statement has been agreed to by the target body and the receiving body; and
  - (b) the matters specified in the statement are appropriate.

### **837E Determination may impose conditions**

- (1) A determination made under section 837A or 837B that there is to be a transfer may impose conditions of either or both of the following kinds:
- (a) conditions to be complied with by the target body or the receiving body before a certificate of transfer is issued in relation to the transfer;
  - (b) conditions to be complied with by the target body or the receiving body after a certificate of transfer has been issued or has come into force in relation to the transfer.

- (2) The Reserve Bank may, in writing, vary or revoke any condition of a determination if the Reserve Bank is satisfied that the variation or revocation is appropriate. Each body to which the condition applies must be given notice of the revocation or variation in writing.
- (3) The target body or the receiving body may apply in writing to the Reserve Bank to have a condition of a determination that applies to it varied or revoked.
- (4) The Reserve Bank may, by notice in writing given to the body that made the application, approve the variation or revocation if the Reserve Bank is satisfied that the variation or revocation is appropriate. A variation or revocation that is approved by the Reserve Bank has effect accordingly.
- (5) If:
- (a) a condition is imposed on a body corporate under subsection (1) in relation to a transfer; and
  - (b) a certificate issued under section 838A that transfer is to take effect is not in force; and
  - (c) the Reserve Bank has not determined under section 837F that the transfer is not to take effect;
- the body corporate must comply with the condition.
- Note: Failure to comply with this subsection is an offence: see subsection 1311(1).
- (6) A body corporate does not commit an offence against this Act merely because the body is complying with a condition imposed under subsection (1).

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

### **837F Determination that transfer is not to take effect**

- (1) If:
- (a) the Reserve Bank has made a determination under section 837A or 837B that there is to be a transfer; and
  - (b) the Reserve Bank has not issued a certificate under section 838A that the transfer is to take effect; and
  - (c) either:

- (i) the consent of the board of the receiving body to the transfer has been withdrawn; or
  - (ii) the Reserve Bank decides under subsection (2) of this section that that the transfer should not go ahead;
- the Reserve Bank must, in writing, issue a certificate stating that the transfer is not to take effect.
- (2) The Reserve Bank may decide that the transfer should not go ahead if the Reserve Bank no longer reasonably believes that the transfer is appropriate to manage or respond to the condition in section 831A being satisfied in relation to a CS facility licensee, including because the condition is not satisfied in relation to the licensee.
  - (3) The certificate is not a legislative instrument.

*Notice*

- (4) The Reserve Bank must give a copy of the certificate to the target body and the receiving body.

## **Subdivision B—Transfer process**

### **838A Certificate of transfer**

- (1) If:
  - (a) the Reserve Bank has made a determination under section 837A or 837B that there is to be a transfer; and
  - (b) the Reserve Bank reasonably believes that the transfer should go ahead; and
  - (c) the consent of the board of the receiving body to the transfer remains in force;the Reserve Bank must, in writing, issue a certificate stating that the transfer is to take effect.
- (2) The certificate of transfer must:
  - (a) include the names of:
    - (i) the target body; and
    - (ii) the receiving body; and
  - (b) if the determination is made under section 837A:



- (i) state whether the transfer is a transfer of all or part of the shares; and
    - (ii) if the transfer is of part of the shares—include a list of the shares that are being transferred to the receiving body; and
  - (c) if the determination is made under section 837B:
    - (i) state whether the transfer is a total or a partial transfer; and
    - (ii) if the transfer is a partial transfer—include, or have attached to it, a list of the assets and liabilities that are being transferred to the receiving body; and
  - (d) state when the certificate is to come into force (either by specifying a date as the date it comes into force, or by specifying that the date it comes into force is a date worked out in accordance with provisions of the certificate).
- (3) The certificate comes into force in accordance with the statement included in the certificate as required by paragraph (2)(d).
- (4) The certificate is not a legislative instrument.

*Specification of things that are to happen on transfer etc.*

- (5) The certificate may include provisions specifying, or specifying a mechanism for determining, other things that are to happen, or that are taken to be the case, in relation to:
- (a) if the determination is made under section 837A—some or all of the shares that are to be transferred; or
  - (b) if the determination is made under section 837B—some or all of the assets and liabilities that are to be transferred.

Note: For example, if the target body is the trustee of a trust, the certificate may specify how the trust is to be transferred.

*Notice*

- (6) The Reserve Bank must:
- (a) give a copy of the certificate to the target body and the receiving body; and
  - (b) publish the notice of the issue of the certificate on its website.

### 838B Time and effect of transfer of shares

- (1) When a certificate issued under section 838A for a transfer of shares comes into force, the shares in the target body that are to be transferred, wherever those shares are located, become shares held by the receiving body without any transfer, conveyance or assignment.
- (2) Those shares become shares held by the receiving body free from any trust, liability or other encumbrance.

*Certificate provisions for things to happen on transfer etc. are taken to have happened etc.*

- (3) If the certificate includes provisions of a kind referred to in paragraph 838A(5)(a), then:
  - (a) if the provisions specify that particular things are to happen or are taken to be the case—those things are, by force of this subsection, taken to happen, or to be the case, in accordance with those provisions; and
  - (b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with the mechanism are, by force of this subsection, taken to happen, or to be the case, as determined in accordance with that mechanism.

*Agreed provisions for things to happen on transfer etc. are taken to have happened etc.*

- (4) If the Reserve Bank has approved a statement under subsection 837D(2) in relation to the transfer, then:
  - (a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this subsection, taken to happen, or to be the case, in accordance with the statement; and
  - (b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this subsection, taken to happen, or to be the case, as determined in accordance with that mechanism.

### **838C Time and effect of transfer of business**

- (1) When a certificate issued under section 838A for a transfer of business comes into force, the receiving body becomes the successor in law of the target body, to the extent of the transfer. In particular:
- (a) if the transfer is a total transfer—all the assets and liabilities of the target body, wherever those assets and liabilities are located, become assets and liabilities of the receiving body (in the same capacity as they were assets and liabilities of the target body) without any transfer, conveyance or assignment; and
  - (b) if the transfer is a partial transfer—all the assets and liabilities included in the list referred to in subparagraph 838A(2)(c)(ii), wherever those assets and liabilities are located, become assets and liabilities of the receiving body (in the same capacity as they were assets and liabilities of the target body) without any transfer, conveyance or assignment; and
  - (c) to the extent of the transfer, the duties, obligations, immunities, rights and privileges applying to the target body apply to the receiving body.

*Certificate provisions for things to happen on transfer etc. are taken to have happened etc.*

- (2) If the certificate includes provisions of a kind referred to in paragraph 838A(5)(b), then:
- (a) if the provisions specify that particular things are to happen or are taken to be the case—those things are, by force of this subsection, taken to happen, or to be the case, in accordance with those provisions; and
  - (b) if the provisions specify a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with the mechanism are, by force of this subsection, taken to happen, or to be the case, as determined in accordance with that mechanism.

*Agreed provisions for things to happen on transfer etc. are taken to have happened etc.*

- (3) If the Reserve Bank has approved a statement under subsection 837D(2) in relation to the transfer, then:
- (a) if the statement specifies that particular things are to happen or are taken to be the case—those things are, by force of this subsection, taken to happen, or to be the case, in accordance with the statement; and
  - (b) if the statement specifies a mechanism for determining things that are to happen or are taken to be the case—things determined in accordance with that mechanism are, by force of this subsection, taken to happen, or to be the case, as determined in accordance with that mechanism.

## **Subdivision C—Other matters**

### **839A Partial transfer of netting contracts void**

- (1) This section applies if:
- (a) a certificate issued under section 838A for a partial transfer of business comes into force; and
  - (b) just before the partial transfer, the target body is a party to:
    - (i) a close-out netting contract (within the meaning of the *Payment Systems and Netting Act 1998*); or
    - (ii) a security given over financial property (within the meaning of that Act), in respect of an obligation of the target body under a close-out netting contract; or
    - (iii) a market netting contract (within the meaning of that Act); or
    - (iv) a security given over property, in respect of an obligation of the target body under a market netting contract; or
    - (v) an approved netting arrangement (within the meaning of that Act); and
  - (c) the partial transfer covers some (but not all) of the following assets and liabilities:
    - (i) the assets and liabilities the body has, under the close-out netting contract, market netting contract or

- approved netting arrangement, with respect to another party to the contract or arrangement (the *counterparty*);
- (ii) those assets that are property over which security is given in respect of an obligation of the target body under the close-out netting contract or the market netting contract.

Note: The *Payment Systems and Netting Act 1998* affects what the assets and liabilities of a party to a close-out netting contract, market netting contract or approved netting arrangement are taken to include.

- (2) The partial transfer is void:
- (a) to the extent of the assets or liabilities the target body has, just before the partial transfer, under the close-out netting contract, market netting contract or approved netting arrangement, with respect to the counterparty; and
- (b) if security is given over financial property (within the meaning of the *Payment Systems and Netting Act 1998*) in respect of an obligation of the target body under a close-out netting contract—to the extent that the assets are financial property in the possession or control of one of the following persons just before the partial transfer:
- (i) the counterparty;
- (ii) another person (who is not the target body) on behalf of the counterparty, under the terms of an arrangement evidenced in writing; and
- (c) if security is given over property in respect of an obligation of the target body under a market netting contract—to the extent that the assets are that property.

### **839B Reserve Bank may provide information to receiving body**

The Reserve Bank may, in connection with a determination or a possible determination under section 837A or 837B that there is to be a transfer, provide information (including personal information or confidential commercial information) to the receiving body, or to the possible or proposed receiving body, about:

- (a) if the determination is, or would be, made under section 837A:
- (i) some or all of the shares that are to be, or that may be, transferred; and

- (ii) the business of the target body; or
- (b) if the determination is, or would be, made under section 837B—some or all of the business that is to be, or that may be, transferred.

Note: Subsection 79A(7A) of the *Reserve Bank Act 1959* allows conditions to be imposed on a body who is provided information under this section to be complied with by the body in relation to that information.

### 839C Certificates in relation to land and interests in land

If:

- (a) a body corporate (the *receiving body*) becomes, under this Division, the owner of land, or of an interest in land, that is situated in a State or Territory; and
- (b) there is lodged with the Registrar of Titles or other appropriate officer of the State or Territory in which the land is situated a certificate that:
  - (i) is issued by the Reserve Bank; and
  - (ii) identifies the land or interest; and
  - (iii) states that the receiving body has, under this Division, become the owner of that land or interest;

the officer with whom the certificate is lodged may:

- (c) register the matter in the same manner as dealings in land or interests in land of that kind are registered; and
- (d) deal with, and give effect to, the certificate.

### 839D Certificates in relation to other assets

(1) If:

- (a) an asset (other than land or an interest in land) becomes, under this Division, an asset of a body corporate (the *receiving body*); and
- (b) there is lodged with the person or authority who has, under a law of the Commonwealth, a State or a Territory, responsibility for keeping a register in respect of assets of that kind a certificate that:
  - (i) is issued by the Reserve Bank; and
  - (ii) identifies the asset; and

- (iii) states that the asset has, under this Division, become an asset of the receiving body;
- that person or authority may:
- (c) register the matter in the same manner as transactions in relation to assets of that kind are registered; and
  - (d) deal with, and give effect to, the certificate.
- (2) This section does not affect the operation of:
- (a) other provisions of this Act; or
  - (b) if the regulations prescribe provisions of one or more other Acts—those provisions of those Acts.

### **839E Documents purporting to be certificates**

A document purporting to be a certificate given under this Division is, unless the contrary is established, taken to be such a certificate and to have been properly given.

### **839F Construction of references in instruments to target body**

If a certificate issued under section 838A for a transfer comes into force, a reference in an instrument of any kind to the target body in relation to:

- (a) an asset or liability of the target body transferred under this Division; or
  - (b) a share in the target body transferred under this Division;
- is taken to be a reference to the receiving body.

### **839G Income or other distribution received by target body**

The target body must promptly account to the receiving body for any income or other distribution received by the target body after a certificate of transfer comes into force, if the income or distribution arises from assets transferred to the receiving body under this Division.

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

### 839H Access to books

The target body must, at the request of the receiving body, give the receiving body access to all books in its possession that relate to assets or liabilities transferred under this Division.

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

### 839J Relationship of Division with other laws etc.

- (1) Subject to subsection (3), this Division has effect despite anything in:
  - (a) any other law of the Commonwealth or of a State or Territory; or
  - (b) any contract, deed, undertaking, agreement or other instrument.
- (2) Without limiting subsection (1), and subject to subsection (3), nothing done by or under this Division:
  - (a) places a body corporate or other person in breach of contract or confidence or otherwise makes any of them guilty of a civil wrong; or
  - (b) places a body corporate or other person in breach of:
    - (i) any law of the Commonwealth or of a State or Territory; or
    - (ii) any contractual provision prohibiting, restricting or regulating the assignment or transfer of any asset or liability or the disclosure of any information; or
  - (c) releases any surety, wholly or partly, from all or any of the surety's obligations.
- (3) Nothing in this Division limits the operation of:
  - (a) any of the provisions of the *Privacy Act 1988*; or
  - (b) any of the provisions of the *Competition and Consumer Act 2010*; or
  - (c) any of the provisions of the *Fair Work Act 2009*, the *Fair Work (Registered Organisations) Act 2009*, or the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*.



**839K Reserve Bank's rules may make special provision in relation to compulsory transfer**

*Compulsory transfer of shares*

- (1) The Reserve Bank may, by legislative instrument, make rules in relation to any of the following matters in relation to a transfer of shares, or proposed transfer of shares, under this Division:
  - (a) the payment to a holder of shares in a target body under this Division of a purchase price for those shares;
  - (b) the resolution of disputes involving a holder of shares in a target body under this Division (including the resolution of such disputes by the Federal Court);
  - (c) the publication, by the Reserve Bank, the target body and the receiving body, of information relating to a transfer of shares, or proposed transfer of shares, under this Division;
  - (d) the freeing of shares in a target body from any trust, liability or other encumbrance when they become shares held by a receiving body;
  - (e) any matter incidental to:
    - (i) a transfer of shares, or proposed transfer of shares, under this Division; or
    - (ii) any of the other matters mentioned in this subsection.

*Compulsory transfer of business*

- (2) The Reserve Bank may, by legislative instrument, make rules in relation to any of the following matters in relation to a transfer of business, or proposed transfer of business, under this Division:
  - (a) the payment to a target body under this Division of a purchase price for a business;
  - (b) the resolution of disputes involving a target body under this Division (including the resolution of such disputes by the Federal Court);
  - (c) the publication, by the Reserve Bank, a target body and a receiving body, of information relating to a transfer of business, or proposed transfer of business, under this Division;

- (d) the freeing of assets of a target body from any trust, liability or other encumbrance when they become assets of a receiving body;
- (e) any matter incidental to:
  - (i) a transfer of business, or proposed transfer of business, under this Division; or
  - (ii) any of the other matters mentioned in this subsection.

*Failure to comply with rules*

- (3) A person must comply with the provisions of rules made under this section that apply to the person.

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

## **Division 5—Directions**

### **Subdivision A—Directions to manage or respond to crisis**

#### **840A Reserve Bank’s directions power—manage or respond to crisis**

- (1) The Reserve Bank may, in writing, give a body corporate a direction to do, or refrain from doing, specified acts or things, if:
  - (a) the body corporate:
    - (i) is a CS facility licensee; or
    - (ii) is a related body corporate of a CS facility licensee and is incorporated in Australia; or
    - (iii) was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part and is incorporated in Australia; and
  - (b) the Reserve Bank reasonably believes that the direction is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the licensee.

Note: An expert report on fair value may be required before giving the direction: see section 849CB.

- (2) The direction may deal with the time by which, or period during which, it is to be complied with.
- (3) The body corporate must comply with the direction.

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

- (4) If the body corporate fails to comply with the direction, the Reserve Bank may apply to the Court for, and the Court may make, an order that the body corporate comply with the direction.

*Compliance despite other laws etc.*

- (5) The body corporate may do, or refrain from doing, an act or thing to comply with the direction despite all of the following:
- (a) this Act;
  - (b) the body corporate's constitution;
  - (c) any operating rules or procedures of a licensed CS facility of which the body corporate is the licensee;
  - (d) any arrangement to which the body corporate is party;
  - (e) any listing rules of a financial market in whose official list the body corporate is included.
- (6) Paragraph (5)(c) does not apply in relation to a direction under subsection (1) to amend the operating rules of a licensed CS facility of which the body corporate is the licensee.

#### **840B Matters relating to Reserve Bank directions—manage or respond to crisis**

*Variation or revocation*

- (1) The Reserve Bank may, in writing, vary a direction given to a person under subsection 840A(1) if the Reserve Bank reasonably believes that the direction, as varied, would be appropriate to manage or respond to a condition in section 831A being satisfied in relation to the relevant CS facility licensee.
- (2) The Reserve Bank may revoke a direction given to a person under subsection 840A(1) if the Reserve Bank no longer reasonably believes that the direction is appropriate to manage or respond to a condition in section 831A being satisfied in relation to the relevant CS facility licensee, including because the condition is not satisfied.
- (3) The variation or revocation must be given to the person in writing.

*Directions are not legislative instruments*

- (4) A direction given under subsection 840A(1), a variation under subsection (1) of this section or a revocation under subsection (2) of this section is not a legislative instrument.

**840C Directions to manage or respond to crisis—relationship with other provisions**

If a direction under subsection 840A(1) directs a CS facility licensee to change any of the facility's operating rules or procedures, neither of the following provisions apply in relation to the change:

- (a) subsection 822D(2) (about change ceasing to have effect if ASIC not notified);
- (b) section 822E (about disallowance).

Note: The licensee would still need to notify ASIC of the change: see subsection 822D(1).

**Subdivision B—Directions to give information to assist crisis management**

**841A Reserve Bank's directions power—information to assist crisis management**

- (1) The Reserve Bank may, in writing, direct a person to give the Reserve Bank specified information, specified documents, or documents containing specified information, relating to the business of a body corporate if:
- (a) the body corporate:
    - (i) is a CS facility licensee; or
    - (ii) is a related body corporate of a CS facility licensee that is incorporated in Australia; or
    - (iii) was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part and is incorporated in Australia; and
  - (b) the Reserve Bank reasonably believes that the information or documents would assist the Reserve Bank to manage or

respond to a condition in section 831A being satisfied in relation to the licensee; and

- (c) the Reserve Bank reasonably believes that the person can give the Reserve Bank the information or documents.

Note: The secrecy provision in section 79A of the *Reserve Bank Act 1959* applies to information and documents obtained by the Reserve Bank under this section.

- (2) The direction:

- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and
- (b) may specify the form and manner in which the information or documents must be given.

- (3) The person must comply with the direction.

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

- (4) If the person fails to comply with the direction, the Reserve Bank may apply to the Court for, and the Court may make, an order that the person comply with the direction.

#### **841B Matters relating to Reserve Bank directions—information to assist crisis management**

##### *Variation or revocation*

- (1) The Reserve Bank may vary a direction given to a person under subsection 841A(1) if paragraphs 841A(1)(b) and (c) would apply in relation to the direction as varied.
- (2) The Reserve Bank may revoke a direction given to a person under subsection 841A(1) if the Reserve Bank:
  - (a) no longer reasonably believes that the specified information, the specified documents or documents containing the specified information would assist the Reserve Bank to manage or respond to a condition in section 831A being satisfied in relation to the relevant CS facility licensee, including because the condition is not satisfied; or
  - (b) no longer reasonably believes that the person can give the Reserve Bank the specified information, the specified

documents or documents containing the specified information.

- (3) The variation or revocation must be given to the person in writing.

*Directions are not legislative instruments*

- (4) A direction given under subsection 841A(1), a variation under subsection (1) of this section or a revocation under subsection (2) of this section is not a legislative instrument.

## **Division 6—Moratorium on action during statutory management or compulsory transfer**

### **Subdivision A—Circumstances to which moratorium is relevant**

#### **842A Circumstances to which moratorium is relevant**

- (1) For the purposes of this Division, this section begins to apply to a body corporate if:
- (a) the body corporate begins to be under statutory management;  
or
  - (b) the Reserve Bank makes a determination under section 837A that there is to be a transfer of shares in the body corporate;  
or
  - (c) the Reserve Bank makes a determination under section 837B that there is to be a transfer of business of the body corporate;  
or
  - (d) the Reserve Bank gives a direction to the body corporate under subsection 840A(1).
- (2) This section ceases to apply to a body corporate at the earliest time, occurring after this section begins to apply to the body corporate, at which:
- (a) the body corporate is not under statutory management; and
  - (b) for each determination (if any) the Reserve Bank has made under section 837A that there is to be a transfer of shares in the body corporate, or under section 837B that there is to be a transfer of business of the body corporate:

- (i) a certificate issued under section 838A that the transfer is to take effect is in force; or
  - (ii) a determination made under section 837F that the transfer is not to take effect is in force; and
  - (c) no direction (if any) given to the body corporate under subsection 840A(1) remains in force.
- (3) To avoid doubt, subsection (2) does not prevent this section from subsequently beginning to apply to the body corporate again under subsection (1).

### **Subdivision B—Stay on enforcement rights triggered by statutory management or compulsory transfer**

#### **843A Stay on enforcing rights merely because the body corporate is under statutory management or subject to a transfer determination**

##### *Stay on enforcing rights*

- (1) A right cannot be enforced against a body corporate for:
- (a) the reason that:
    - (i) the body corporate has come or is under statutory management; or
    - (ii) the Reserve Bank makes or has made a determination under section 837A that there is to be a transfer of shares in the body corporate; or
    - (iii) the Reserve Bank makes or has made a determination under section 837B that there is to be a transfer of business of the body corporate; or
    - (iv) the Reserve Bank gives or has given a direction to the body corporate under subsection 840A(1); or
  - (b) the reason of the body corporate's financial position; or
  - (c) a reason that, in substance, is contrary to this subsection or subsection (2) of this section;

if the right arises for that reason by express provision (however described) of an arrangement.

Note: This result is subject to sections 843B and 843C.

Example: A right to terminate a contract will not be enforceable to the extent that those rights are triggered by the body corporate coming under statutory management.

- (2) A right cannot be enforced against a body corporate for a reason that:
- (a) is prescribed by the regulations for the purposes of this paragraph; and
  - (b) relates to:
    - (i) section 842A applying, or possibly applying, to the body corporate in the future; or
    - (ii) the body corporate's financial position;
- if the right arises for that reason by express provision (however described) of an arrangement.

Note: This result is subject to sections 843B and 843C.

- (3) However, subsection (2) does not apply at a time if section 842A does not later apply to the body corporate.

*Period of the stay*

- (4) The right cannot be enforced as described in subsection (1) during the period (the ***stay period***):
- (a) starting when section 842A begins to apply to the body corporate; and
  - (b) ending at the latest of the following times:
    - (i) when section 842A ceases to apply to the body corporate;
    - (ii) if one or more orders are made under subsection (6) of this section for the body corporate as the result of an application made before section 842A ceases to apply to the body corporate—when the last made of those orders ceases to be in force.
- (5) The right cannot be enforced as described in subsection (2) of this section during a period (the ***stay period***) ending at the latest of the following times:
- (a) when section 842A ceases to apply to the body corporate;
  - (b) if one or more orders are made under subsection (6) of this section for the body corporate as the result of an application



made before section 842A ceases to apply to the body corporate—when the last made of those orders ceases to be in force.

- (6) The Court:
- (a) may order an extension of the period otherwise applying under subsection (4) or (5) of this section for the body corporate if the Court is satisfied that the extension is appropriate having regard to the interests of justice; and
  - (b) before deciding an application for an order under paragraph (a) of this subsection, may grant an interim order, but must not require the applicant to give an undertaking as to damages as a condition for doing so.

*Enforcing rights after the stay for reasons relating to earlier circumstances*

- (7) The right is unenforceable against the body corporate indefinitely after the end of the stay period to the extent that a reason for seeking to enforce the right:
- (a) is the body corporate's financial position before the end of the stay period; or
  - (b) is any of the following:
    - (i) the body corporate having come or been under statutory management before the end of the stay period;
    - (ii) the Reserve Bank having made, before the end of the stay period, a determination under section 837A that there is to be a transfer of shares in the body corporate;
    - (iii) the Reserve Bank having made, before the end of the stay period, a determination under section 837B that there is to be a transfer of business of the body corporate; or
    - (iv) the Reserve Bank having given, before the end of the stay period, a direction to the body corporate under subsection 840A(1); or
  - (c) is a reason, prescribed by the regulations for the purposes of this paragraph, relating to circumstances in existence before the end of the stay period; or
  - (d) is a reason referred to in paragraph (1)(c) of this section or subsection (2).

Note: This result is subject to section 843B.

### **843B Exceptions**

- (1) Subsection 843A(1), (2) or (7) does not apply to enforcing a right against a body corporate if the right is:
  - (a) a right under an arrangement entered into after the body corporate comes under statutory management; or
  - (b) a right contained in a kind of arrangement:
    - (i) prescribed by the regulations for the purposes of this subparagraph; or
    - (ii) declared under paragraph (2)(a) of this section; or
  - (c) a right of a kind:
    - (i) prescribed by the regulations for the purposes of this subparagraph; or
    - (ii) declared under paragraph (2)(b); or
  - (d) a right of a kind declared under paragraph (2)(c), and the circumstances specified in that declaration exist.
- (2) For the purposes of subsection (1), the Minister may, by legislative instrument:
  - (a) declare kinds of arrangements referred to in a specified law of the Commonwealth; or
  - (b) declare kinds of rights to which subsection 843A(1), (2) or (7) does not apply; or
  - (c) declare kinds of rights to which subsection 843A(1), (2) or (7) does not apply in specified circumstances.
- (3) Subsection 843A(1), (2) or (7) does not apply to enforcing a right to the extent that the Reserve Bank consents in writing to the enforcement of the right.
- (4) Subsection 843A(7) does not apply to enforcing a right against a body corporate to the extent that a liquidator of the body corporate, appointed after the end of the stay period, consents in writing to the enforcement of the right.

**843C Stay on body corporate's right to new advance of money or credit**

- (1) If:
- (a) one or more rights of an entity cannot be enforced against a body corporate for a period because of subsection 843A(1) or (2); and
  - (b) the body corporate has a right under an arrangement against the entity for a new advance of money or credit;
- that right of the body corporate cannot be enforced during the same period.
- (2) Subsection (1) of this section does not apply to a right of a body corporate if:
- (a) the body corporate is a related body corporate of the entity mentioned in paragraph (1)(a); and
  - (b) exercising the right:
    - (i) constitutes, or constitutes part of, default management; or
    - (ii) constitutes recovery action; or
    - (iii) constitutes a funding call on the entity.

**843D Self-executing provisions**

- (1) The object of subsection (2) is to ensure that a self-executing provision:
- (a) cannot start to apply against a body corporate for certain reasons; and
  - (b) can be the subject of a Court order providing that the provision can only start to apply against a body corporate with the leave of the Court, and in accordance with such terms (if any) as the Court imposes.
- (2) Sections 843A to 843C apply in relation to a self-executing provision in a corresponding way to the way those sections apply in relation to a right. For this purpose, assume those sections apply with such modifications as are necessary, including any prescribed by the regulations for the purposes of this subsection.

Note 1: This subsection achieves the object in subsection (1) by extending the application of all of the outcomes, exceptions and powers in sections 843A to 843C.

Note 2: These modifications include, for example, treating:

- (a) a reference that a right cannot be enforced (however described) as including a reference that a self-executing provision cannot start to apply; and
- (b) the words “if the right arises for that reason by express provision (however described) of an arrangement” as being omitted from subsections 843A(1) and (2); and
- (c) a reference that one or more rights are enforceable as including a reference that one or more self-executing provisions can start to apply.

(3) In this section:

***self-executing provision*** means a provision of an arrangement that can start to apply automatically:

- (a) for one or more reasons; and
- (b) without any party to the arrangement making a decision that the provision should start to apply.

#### **843E When other laws prevail—certain other Commonwealth Acts**

If there is any inconsistency between sections 843A to 843D and one of the following Acts, that Act prevails to the extent of the inconsistency:

- (a) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- (b) the *Autonomous Sanctions Act 2011*;
- (c) the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*;
- (d) the *Payment Systems and Netting Act 1998*.

#### **843F Circumstances where a transaction by statutory manager not voidable under section 588FE**

A transaction of a body corporate is not voidable under section 588FE merely because:

- (a) the transaction was entered into at a time when section 842A applied to the body corporate; and
- (b) the transaction is:

- (i) an uncommercial transaction of the body corporate; or
- (ii) an unfair preference given by the body corporate to a creditor of the body corporate; or
- (iii) an insolvent transaction of the body corporate; or
- (iv) a creditor-defeating disposition by the body corporate.

## **Subdivision C—Protection of body corporate’s property**

### **844A Winding up body corporate**

- (1) While section 842A applies to a body corporate, it cannot be wound up voluntarily.
- (2) The Court is to adjourn the hearing of an application for an order to wind up a body corporate while section 842A applies to the body corporate.
- (3) The Court is not to appoint a provisional liquidator of a body corporate while section 842A applies to the body corporate.

### **844B Restrictions on exercise of third party property rights**

#### *General rule*

- (1) Subject to subsection (2) of this section, while section 842A applies to a body corporate, the restrictions set out in the following table apply in relation to the exercise of the rights of a person (the **third party**) in:
  - (a) property of the body; or
  - (b) other property used or occupied by, or in the possession of, the body, as set out in the table.

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#### **Restrictions on exercise of third party rights**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
	<b>If the third party is ...</b>	<b>then ...</b>
1	(a) a secured party in relation to property of the body corporate; and (b) is not otherwise covered by this	the third party cannot enforce the security interest.

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**Schedule 1** Financial market infrastructure: resolution authority  
**Part 1** Crisis resolution

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**Restrictions on exercise of third party rights**

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Item	Column 1 If the third party is ...	Column 2 then ...
	table	
2	a secured party in relation to a possessory security interest in the property of the body corporate	the third party cannot sell the property, or otherwise enforce the security interest.
3	a lessor of property used or occupied by, or in the possession of, the body corporate, including a secured party (a <i>PPSA secured party</i> ) in relation to a PPSA security interest in goods arising out of a lease of the goods	the following restrictions apply: (a) distress for rent must not be carried out against the property; (b) the third party cannot take possession of the property or otherwise recover it; (c) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.
4	an owner (other than a lessor) of property used or occupied by, or in the possession of, the body corporate, including a secured party (a <i>PPSA secured party</i> ) in relation to a PPSA security interest in the property	the following restrictions apply: (a) the third party cannot take possession of the property or otherwise recover it; (b) if the third party is a PPSA secured party—the third party cannot otherwise enforce the security interest.

Note: The property of the body includes any PPSA retention of title property of the body corporate.

*Exceptions*

- (2) The restrictions set out in the table in subsection (1) do not apply in relation to the exercise of a third party's rights in property if the rights are:
- (a) exercised:
    - (i) with the Reserve Bank's written consent; or
    - (ii) if the body corporate to which section 842A applies is under statutory management—with the statutory manager's written consent; or
    - (iii) with the leave of the Court; or

- (b) contained in a kind of arrangement prescribed by the regulations for the purposes of this paragraph.

*Possessory security interests—continued possession*

- (3) If:
  - (a) a body corporate's property is subject to a possessory security interest; and
  - (b) the property is in the lawful possession of the secured party; the secured party may continue to possess the property while section 842A applies to the body corporate.

*Payment Systems and Netting Act 1998 prevails over this section*

- (4) If there is any inconsistency between:
  - (a) subsections (1) and (3) of this section; and
  - (b) the *Payment Systems and Netting Act 1998*; that Act prevails to the extent of the inconsistency.

**844C Stay of proceedings**

- (1) While section 842A applies to a body corporate, a proceeding in a court against the body or in relation to any of its property cannot be begun or proceeded with, except:
  - (a) with the Reserve Bank's written consent; or
  - (b) with the leave of the Court and in accordance with such terms (if any) as the Court imposes.
- (2) Subsection (1) does not apply to:
  - (a) a criminal proceeding; or
  - (b) a prescribed proceeding.
- (3) If a person applies for the leave of the Court under paragraph (1)(b), the person must, in writing, notify the Reserve Bank.
- (4) The Reserve Bank is entitled to be heard on the application to the Court.

**844D Reserve Bank and statutory manager not liable in damages for refusing consent**

The Reserve Bank or a statutory manager of a body corporate is not liable to an action or other proceeding for damages in respect of a refusal to give an approval or consent for the purposes of this Subdivision.

**844E Suspension of enforcement process**

- (1) While section 842A applies to a body corporate, no enforcement process in relation to property of the body corporate can be begun or proceeded with, except:
  - (a) with the leave of the Court; and
  - (b) in accordance with such terms (if any) as the Court imposes.
- (2) If a person applies for the leave of the Court under subsection (1), the person must, in writing, notify the Reserve Bank.
- (3) The Reserve Bank is entitled to be heard on the application to the Court.

**844F Duties of court officer in relation to property of a body corporate**

- (1) This section applies if an officer of a court (in this section called the *court officer*), being:
  - (a) a sheriff; or
  - (b) the registrar or other appropriate officer of the court;receives written notice of the fact that section 842A applies to a body corporate.
- (2) While section 842A applies to a body corporate, the court officer cannot:
  - (a) take action to sell property of the body corporate under a process of execution; or
  - (b) pay to a person (other than the statutory manager (if any)):
    - (i) proceeds of selling property of the body corporate (at any time) under a process of execution; or



- (ii) money of the body corporate seized (at any time) under a process of execution; or
  - (iii) money paid (at any time) to avoid seizure or sale of property of the body corporate under a process of execution; or
  - (c) take action in relation to the attachment of a debt due to the body corporate; or
  - (d) pay to a person (other than the statutory manager (if any)) money received because of the attachment of such a debt.
- (3) If the body corporate is under statutory management, the court officer must:
- (a) deliver to the statutory manager any property of the body corporate that is in the court officer's possession under a process of execution (whenever begun); and
  - (b) pay to the statutory manager all proceeds or money of a kind referred to in paragraph (2)(b) or (d) that:
    - (i) are in the court officer's possession; or
    - (ii) have been paid into the court and have not since been paid out.
- (4) The costs of the execution or attachment are a first charge on property delivered under paragraph (3)(a) or proceeds or money paid under paragraph (3)(b).
- (5) In order to give effect to a charge under subsection (4) on proceeds or money, the court officer may retain, on behalf of the person entitled to the charge, so much of the proceeds or money as the court officer thinks necessary.
- (6) The Court may, if it is satisfied that it is appropriate to do so, permit the court officer to take action, or to make a payment, that subsection (2) would otherwise prevent.
- (7) A person who buys property in good faith under a sale under a process of execution gets a good title to the property as against the body corporate and the statutory manager (if any), despite anything else in this section.

## Subdivision D—General power to make orders

### 845A General power to make orders

- (1) The Court may make such orders as it thinks appropriate about how this Division is to operate in relation to a particular body corporate.
- (2) An order may be made subject to conditions.
- (3) An order may be made on the application of:
  - (a) the body corporate; or
  - (b) a creditor of the body corporate; or
  - (c) a statutory manager of the body corporate; or
  - (d) the Reserve Bank; or
  - (e) any other interested person.

## Division 7—Funding for crisis resolution

### 846A Authorising arrangements for the purposes of crisis resolution

#### *Authorising the making of arrangements*

- (1) If one or more conditions in section 831A are satisfied in relation to a CS facility licensee, the Minister may, by legislative instrument and with the Finance Minister's written approval, authorise the making of arrangements by the Commonwealth, for the purposes of:
  - (a) protecting the stability of the financial system in Australia; or
  - (b) if the licensee is incorporated in Australia—ensuring the continuity of one or more clearing and settlement facility services provided by the licensee that are critical to the functioning of the financial system in Australia.

#### *Limit on total amounts payable under authorised contracts etc.*

- (2) The authorisation must specify the amount (if any) the Commonwealth may pay under the authorised arrangements.

- (3) The total of all the amounts specified under subsection (2) in authorisations (taking account of any amendments of those authorisations) in relation to the condition or conditions being satisfied must not exceed \$5,000,000,000.

Note: See also section 71 of the *Public Governance, Performance and Accountability Act 2013* (approval of proposed expenditure by a Minister).

*Amending specification of amount*

- (4) The Minister may, by legislative instrument and with the Finance Minister's written approval, amend an authorisation made under this section, but only to change the specification of an amount under subsection (2), within the limit set out in subsection (3).

*Authorisation cannot be revoked*

- (5) The Minister cannot revoke an authorisation made under this section.

*Authorisation or amendment not disallowable*

- (6) Section 42 (disallowance) of the *Legislation Act 2003* does not apply to an authorisation or amendment made under this section.

*When authorisation or amendment commences*

- (7) An authorisation or amendment made under this section commences at the time it is made.
- (8) Section 12 of the *Legislation Act 2003* does not apply to an authorisation or amendment made under this section.

## **846B Appropriation of Consolidated Revenue Fund**

The Consolidated Revenue Fund is appropriated for the purposes of making a payment under an arrangement authorised under section 846A.

## Division 8—Cross-border crisis resolution

### 847A Reserve Bank may recognise crisis resolution of foreign operator of a clearing and settlement facility

- (1) Subject to subsection (6), the Reserve Bank may take action in accordance with this Part in relation to a CS facility licensee whose licence was granted under subsection 824B(2) (overseas clearing and settlement facilities) if an instrument made under subsection (2) of this section is in force in relation to the licensee.

#### *Recognition of requests*

- (2) For the purposes of subsection (1), the Reserve Bank may, by notifiable instrument, recognise a request by an authority that is responsible for regulating the operation of a clearing and settlement facility by a CS facility licensee in a foreign jurisdiction, if:
- (a) the Reserve Bank reasonably believes that the authority:
    - (i) is exercising; or
    - (ii) intends to exercise; or
    - (iii) is considering exercising;powers to manage or respond to an event relating to the licensee that is likely to pose a threat to the stability of the financial system in the foreign jurisdiction; and
  - (b) the request is for the Reserve Bank to exercise powers under this Part to assist the authority to manage or respond to the event.
- (3) The Reserve Bank may, by notifiable instrument, revoke an instrument made under subsection (2) recognising a request by an authority in relation to a CS facility licensee if:
- (a) the authority terminates or withdraws the request; or
  - (b) the Reserve Bank no longer reasonably believes that the authority:
    - (i) is exercising; or
    - (ii) intends to exercise; or
    - (iii) is considering exercising;

powers to manage or respond to an event relating to the licensee that is likely to pose a threat to the stability of the financial system in the foreign jurisdiction.

- (4) Subsection (3) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to an instrument in force under subsection (2) of this section.

*Responding to requests*

- (5) Subject to subsection (6), if the condition in subsection (1) is satisfied in relation to a CS facility licensee (the ***overseas licensee***), this Part applies in relation to the overseas licensee as if:
- (a) a reference in this Part to managing or responding to a condition in section 831A being satisfied in relation to a CS facility licensee were a reference to responding to the request mentioned in subsection (2) of this section in relation to the overseas licensee; and
  - (b) a reference in this Part to a condition in section 831A not being satisfied in relation to a CS facility licensee were a reference to the instrument made under subsection (2) of this section in relation to the overseas licensee having been revoked.

*Excluded provisions*

- (6) A reference in this section to this Part does not include a reference to:
- (a) Division 3 (statutory management); or
  - (b) section 837A (compulsory transfer of shares); or
  - (c) Division 7 (funding for crisis resolution); or
  - (d) section 849AA (winding up).

## Division 9—Other matters

### Subdivision A—Secrecy determinations

#### 848A Determinations that information is covered by secrecy provision

- (1) The Reserve Bank may determine, in writing, that specified information is covered by this subsection if:
  - (a) the information is:
    - (i) information that reveals the fact that a specified direction given to a body corporate under subsection 840A(1) was given; or
    - (ii) information that is, or is contained in a specified document, given to a body corporate covered by subsection (2) of this section by the Reserve Bank in the exercise of a power or the performance of a function under this Part; and
  - (b) the Reserve Bank reasonably believes that the determination is appropriate to manage or respond to a condition in section 831A being satisfied in relation to a CS facility licensee.
- (2) A body corporate is covered by this section if it is incorporated in Australia and it:
  - (a) is a CS facility licensee; or
  - (b) is a related body corporate of a CS facility licensee; or
  - (c) was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part; or
  - (d) is a body corporate to which information has been provided under section 839B in relation to a transfer.
- (3) As soon as practicable after making the determination, the Reserve Bank must give the body corporate to which the determination relates a copy of the determination.
- (4) As soon as practicable after the Reserve Bank gives the body corporate a copy of the determination under subsection (3), the body corporate must:

- (a) take reasonable steps to discover who is covered by paragraphs 848C(2)(a) and (b) in relation to the information specified in the determination; and
- (b) if it is practicable to do so—give a copy of the determination to each person who the body corporate believes to be so covered.

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

*Reserve Bank must consider other determinations*

- (5) If the Reserve Bank makes a determination under subsection (1) of this section, the Reserve Bank must consider whether to also make a determination under section 848E (determination allowing disclosure by specified persons).

*Determination not a legislative instrument*

- (6) An instrument made under subsection (1) is not a legislative instrument.

**848B Variation or revocation of determinations**

- (1) The Reserve Bank may, in writing, vary a determination made under subsection 848A(1) if paragraphs 848A(1)(a) and (b) would apply in relation to the direction as varied.
- (2) The Reserve Bank may, in writing, revoke a determination made under subsection 848A(1).
- (3) As soon as practicable after making the variation or revocation, the Reserve Bank must give the body corporate to which the determination relates a copy of the variation or revocation.
- (4) As soon as practicable after the Reserve Bank gives the body corporate a copy of the variation or revocation under subsection (3), the body corporate must:
  - (a) if it is practical to do so—give a copy of the variation or revocation to each person to whom the body corporate gave:
    - (i) a copy of the determination under paragraph 848A(4)(b); or

- (ii) a copy of an earlier variation of the determination (if any) under this paragraph; or
  - (iii) a copy of the determination as previously varied (if applicable) under paragraph (b) of this subsection; and
- (b) in the case of a variation that results in additional information being specified in the determination:
- (i) take reasonable steps to discover who is covered by paragraphs 848C(2)(a) and (b) in relation to the additional information (and is not covered by paragraph (a) of this subsection); and
  - (ii) if it is practicable to do so—give a copy of the determination, as varied, to each person who the body corporate believes to be so covered.

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

- (5) A variation or revocation under this section is not a legislative instrument.

### **848C Prohibition on disclosing information covered by secrecy provision**

#### *Offence*

- (1) A person must not disclose information if:
- (a) the information is covered by a determination made under subsection 848A(1); and
  - (b) the person is, or has been, covered by subsection (2) of this section in relation to the information.

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

- (2) A person is covered by this subsection in relation to the information if the person is:
- (a) the body corporate to which the determination made under subsection 848A(1) relates; or
  - (b) at or after the time when the Reserve Bank gave the direction or information:
    - (i) an officer; or



- (ii) an employee; or
- (iii) a contractor; or
- (iv) a statutory manager (other than the Reserve Bank);  
of the body corporate to which the determination relates; or
- (c) any other person who, because of their employment, or in the  
course of that employment, has acquired the information  
covered by the determination.

*Exception*

- (3) Subsection (1) does not apply if:
  - (a) the disclosure is authorised by section 848D, 848E, 848F,  
848G, 848H, 848J or 848K; or
  - (b) the disclosure is required by an order or direction of a court  
or tribunal.

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

*Civil penalty*

- (4) A person contravenes this subsection if the person contravenes  
subsection (1).

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

**848D Disclosure of publicly available information**

A person covered by subsection 848C(2) in relation to information  
may disclose the information, to the extent that the information has  
already been lawfully made available to the public.

**848E Disclosure allowed by the Reserve Bank**

- (1) A person covered by subsection 848C(2) in relation to information  
may disclose the information if:
  - (a) a determination made under subsection (2) or (4) of this  
section allows the disclosure by the person; and
  - (b) if the Reserve Bank has included conditions in the  
determination—those conditions are satisfied.

*Determinations relating to specified persons*

- (2) The Reserve Bank may, in writing, make a determination allowing:
- (a) a specified person covered by subsection 848C(2) in relation to specified information; or
  - (b) a specified person covered by subsection 848C(2) in relation to information that is in a specified class of information;
- to disclose the specified information, the information that is in the specified class of information, or a specified part of such information.
- (3) The Reserve Bank must give a copy of the determination, as soon as practicable after making it, to:
- (a) the body corporate to which the determination made under subsection 848A(1) relates; and
  - (b) the person specified, or each person specified, in the determination.

*Determinations relating to specified classes of persons*

- (4) The Reserve Bank may, in writing, make a determination allowing:
- (a) a specified class of persons covered by subsection 848C(2) in relation to specified information; or
  - (b) a specified class of persons covered by subsection 848C(2) in relation to information that is in a specified class of information;
- to disclose the specified information, the information that is in the specified class of information, or a specified part of such information.
- (5) The Reserve Bank must, as soon as practicable after making the determination under subsection (4):
- (a) give a copy of the determination to the body corporate to which the determination made under subsection 848A(1) relates; and
  - (b) take reasonable steps to discover who is in the class of persons specified in the determination; and
  - (c) if it is practicable to do so—give a copy of the determination to each person who the Reserve Bank believes to be in that class.

*Conditions in determinations*

- (6) The Reserve Bank may include conditions in a determination made under subsection (2) or (4) that relate to any of the following:
- (a) the kind of entities to which the disclosure may be made;
  - (b) the way in which the disclosure is to be made;
  - (c) any other matter that the Reserve Bank considers appropriate.

*Determination not a legislative instrument*

- (7) A determination made under subsection (2) or (4) is not a legislative instrument.

**848F Disclosure for the purpose of seeking review or legal advice**

- (1) A person covered by subsection 848C(2) in relation to information referred to in subparagraph 848A(1)(a)(i) may disclose the information if the disclosure is made for the purposes of seeking review of:
- (a) the direction; or
  - (b) a decision made in relation to the direction.
- (2) A person covered by subsection 848C(2) in relation to any information may disclose the information if:
- (a) the disclosure is to the person's lawyer; and
  - (b) the purpose of the person making the disclosure is for the lawyer to provide legal advice, or another legal service, in relation to the direction.

**848G Disclosure under the Reserve Bank Act**

- (1) A person covered by subsection 848C(2) in relation to information may disclose the information if:
- (a) the person is:
    - (i) an officer (within the meaning of subsection 79A(1) of the *Reserve Bank Act 1959*); or
    - (ii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who acquired the information because of, or in the course of, the Commonwealth officer's employment (other than employment with the body

- corporate to which the relevant determination made under subsection 848A(1) of this Act relates); and
- (b) the information is protected information (within the meaning of subsection 79A(1) of the *Reserve Bank Act 1959*); and
  - (c) the disclosure is not prohibited under subsection 79A(2) of the *Reserve Bank Act 1959*.
- (2) For the purposes of subsection (1) of this section:
- (a) treat a reference in the definition of **protected information** in subsection 79A(1) of the *Reserve Bank Act 1959* to information disclosed or obtained in the course of, or for the purposes of, the performance or exercise of the functions or powers of the Reserve Bank under this Part as including a reference to information referred to in paragraph 848A(1)(a) of this Act; and
  - (b) subparagraph (e)(i) of the definition of **officer** in subsection 79A(1) of the *Reserve Bank Act 1959* applies, in relation to information that is protected information only because of paragraph (a) of this subsection, as if the reference in paragraph (e) of that definition to employment or engagement were a reference to employment or engagement:
    - (i) with the Reserve Bank; or
    - (ii) for the purposes of assisting the Reserve Bank in the performance or exercise of its functions or powers; and
  - (c) treat a reference in subsection 79A(2) of the *Reserve Bank Act 1959* to a person who is or has been an officer as including a reference to a person to whom subparagraph (1)(a)(ii) of this section applies.
- (3) Disclosure of information is not an offence under subsection 79A(2) of the *Reserve Bank Act 1959* if the disclosure is authorised by section 848D, 848E, 848F, 848H, 848J or 848K of this Act.

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

### **848H Disclosure under the ASIC Act**

A person covered by subsection 848C(2) in relation to information may disclose the information if:

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- (a) the person is:
  - (i) a member of ASIC; or
  - (ii) an ASIC staff member; or
  - (iii) a Commonwealth officer (within the meaning of the *Crimes Act 1914*) who acquired the information because of, or in the course of, the Commonwealth officer's employment as a Commonwealth officer (other than employment with the body corporate to which the relevant determination made under subsection 848A(1) of this Act relates); and
- (b) the information is protected information (within the meaning of subsection 127(9) of the ASIC Act); and
- (c) the disclosure is authorised use and disclosure of the information for the purposes of subsection 127(1) of that Act.

Note: A disclosure of information permitted by section 848D, 848E, 848F, 848G, 848J or 848K of this Act is authorised use and disclosure because of subsection 127(2) of the ASIC Act.

#### **848J Disclosure in circumstances determined by the Minister**

- (1) A person covered by subsection 848C(2) in relation to information may disclose the information if the disclosure is made in circumstances (if any) determined under subsection (2) of this section.
- (2) The Minister may, by legislative instrument, determine circumstances for the purpose of subsection (1).

#### **848K Disclosure for same purpose**

A person covered by subsection 848C(2) (the *relevant person*) in relation to information may disclose the information if:

- (a) another person covered by subsection 848C(2) in relation to the information disclosed the information to the relevant person for a particular purpose in accordance with section 848E, 848F, 848G, 848H or 848J, or in accordance with a previous operation of this section; and
- (b) the disclosure by the relevant person is for the same purpose.

### **848L Exceptions operate independently**

Sections 848D, 848E, 848F, 848G, 848H, 848J and 848K do not limit each other.

### **Subdivision B—Other powers of Reserve Bank**

#### **849AA Reserve Bank may apply for body corporate to be wound up**

- (1) The Reserve Bank may apply under section 459P to the Court for an order that a body corporate be wound up in insolvency if:
  - (a) a condition in section 831A is satisfied in relation to a CS facility licensee; and
  - (b) the body corporate:
    - (i) is the CS facility licensee; or
    - (ii) is a related body corporate of the CS facility licensee and is incorporated in Australia; or
    - (iii) was a related body corporate of the CS facility licensee before a transfer of business or shares under this Part and is incorporated in Australia; and
  - (c) the Reserve Bank considers that the body corporate is insolvent and could not be restored to solvency within a reasonable period.
- (2) If the Reserve Bank makes an application under section 459P, the Reserve Bank must inform ASIC of the application as soon as possible.

#### **849AB Reserve Bank may request ASIC to make rules or give directions**

##### *Rules*

- (1) If the Reserve Bank reasonably believes that:
  - (a) making a market integrity rule or CS facility rule (including a rule amending or revoking another market integrity rule or CS facility rule); or
  - (b) giving or varying a direction under subsection 794AA(1), 794AB(1), 798JB(1) or 798JC(1);

is appropriate to manage or respond to a condition in section 831A being satisfied in relation to a CS facility licensee, the Reserve Bank may, by written notice, request ASIC to make the rule or give or vary the direction.

- (2) A request for ASIC to give or vary a direction must include a statement setting out the Reserve Bank's reasons for the request.

### **Subdivision C—Temporary suspension of termination rights**

#### **849BA Application of this Subdivision**

- (1) This Subdivision applies to a body corporate if:
- (a) the body corporate:
    - (i) is a CS facility licensee; or
    - (ii) is a related body corporate of a CS facility licensee and is incorporated in Australia; and
  - (b) a declaration under subsection (2) is in force in relation to the licensee.
- (2) For the purposes of paragraph (1)(b), the Reserve Bank may, by notifiable instrument, declare that this Subdivision applies in relation to a CS facility licensee if the Reserve Bank intends:
- (a) to take either or both of the actions in subsection 832A(2) in relation to the CS facility licensee; or
  - (b) to make a determination under section 837A that there is to be a transfer of shares in the CS facility licensee; or
  - (c) to make a determination under section 837B that there is to be a transfer of business of the CS facility licensee; or
  - (d) to give a direction to the CS facility licensee under subsection 840A(1).
- (3) The Reserve Bank must revoke a declaration made under subsection (2) in relation to a CS facility licensee if:
- (a) the licensee begins to be under statutory management; or
  - (b) the Reserve Bank makes the determination mentioned in paragraph (2)(b) or (c); or
  - (c) the Reserve Bank gives the direction mentioned in paragraph (2)(d); or

(d) the Reserve Bank ceases intending to do the things mentioned paragraphs (2)(a) to (d).

Note: If paragraph (a), (b) or (c) of this subsection applies, Division 6 (moratorium on action during statutory management or compulsory transfer) will apply in relation to the CS facility licensee.

(4) Subsection (3) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* in relation to a declaration in force under subsection (2) of this section.

### **849BB Stay on exercising termination rights**

#### *Stay on exercising termination rights*

(1) Subject to subsections (2) and (4), a right to terminate:

- (a) an arrangement; or
- (b) an obligation under an arrangement;

that arises:

- (c) by express provision (however described) of an arrangement; or
- (d) because of anything done in accordance with a direction given under section 823F;

cannot be exercised if a body corporate to which this Subdivision applies is a party to the arrangement.

#### *Rights not subject to the stay*

(2) Subsection (1) does not apply to the right if it is:

- (a) a right that is exercisable only in particular circumstances (other than circumstances relating to the manner in which the right is exercised, such as a requirement relating to giving notice about exercising the right); or
- (b) a right:
  - (i) under an arrangement entered into after this Subdivision begins to apply to the body corporate; or
  - (ii) that arises because of anything done in accordance with a direction given, after this Subdivision begins to apply to the body corporate, under section 823F; or
- (c) a right contained in a kind of arrangement:



- (i) prescribed by the regulations for the purposes of this subparagraph; or
  - (ii) declared under paragraph (3)(a) of this section; or
  - (d) a right of a kind:
    - (i) prescribed by the regulations for the purposes of this subparagraph; or
    - (ii) declared under paragraph (3)(b); or
  - (e) a right of a kind declared under paragraph (3)(c), and the circumstances specified in that declaration exist.
- (3) For the purposes of subsection (2), the Minister may, by legislative instrument:
- (a) declare kinds of arrangements referred to in a specified law of the Commonwealth; or
  - (b) declare kinds of rights to which subsection (1) does not apply; or
  - (c) declare kinds of rights to which subsection (1) does not apply in specified circumstances.
- (4) Subsection (1) does not apply to the exercise of a right if, before the exercise of the right:
- (a) the Reserve Bank; or
  - (b) if a liquidator of the body corporate is appointed after this Subdivision ceases to apply to the body corporate—the liquidator;
- consents in writing to the exercise of the right.

### **849BC Self-executing provisions**

- (1) The object of subsection (2) is to ensure that a self-executing provision:
- (a) cannot start to apply for certain reasons; and
  - (b) can be the subject of a Court order providing that the provision can only start to apply with the leave of the Court, and in accordance with such terms (if any) as the Court imposes.

(2) Section 849BB applies in relation to a self-executing provision in a corresponding way to the way that section applies in relation to a right to terminate:

- (a) an arrangement; or
- (b) an obligation under an arrangement.

For this purpose, assume that section applies with such modifications as are necessary, including any prescribed by the regulations for the purposes of this subsection.

Note 1: This subsection achieves the object in subsection (1) by extending the application of all of the outcomes, exceptions and powers in section 849BB.

Note 2: These modifications include, for example, treating:

- (a) a reference that a right cannot be exercised as including a reference that a self-executing provision cannot start to apply; and
- (b) a reference that one or more rights are exercisable as including a reference that one or more self-executing provisions can start to apply.

(3) In this section:

***self-executing provision*** means a provision of an arrangement that:

- (a) can start to apply automatically:
  - (i) for one or more reasons; and
  - (ii) without any party to the arrangement making a decision that the provision should start to apply; and
- (b) terminates:
  - (i) an arrangement; or
  - (ii) an obligation under an arrangement.

### **849BD When other laws prevail—certain other Commonwealth Acts**

If there is any inconsistency between sections 849BB and 849BC and one of the following Acts, that Act prevails to the extent of the inconsistency:

- (a) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*;
- (b) the *Autonomous Sanctions Act 2011*;

- (c) the *International Interests in Mobile Equipment (Cape Town Convention) Act 2013*;
- (d) the *Payment Systems and Netting Act 1998*.

**849BE Circumstances where a transaction by statutory manager not voidable under section 588FE**

A transaction of a body corporate is not voidable under section 588FE merely because:

- (a) the transaction was entered into at a time when this Subdivision applied to the body corporate; and
- (b) the transaction is:
  - (i) an uncommercial transaction of the body corporate; or
  - (ii) an unfair preference given by the body corporate to a creditor of the body corporate; or
  - (iii) an insolvent transaction of the body corporate; or
  - (iv) a creditor-defeating disposition by the body corporate.

**849BF General power to make orders**

- (1) The Court may make such orders as it thinks appropriate about how this Subdivision is to operate in relation to a particular body corporate.
- (2) An order may be made subject to conditions.
- (3) An order may be made on the application of:
  - (a) the body corporate; or
  - (b) a creditor of the body corporate; or
  - (c) a statutory manager of the body corporate; or
  - (d) the Reserve Bank; or
  - (e) any other interested person.

## Subdivision D—Other matters

### 849CA Reserve Bank may object to exercise of certain powers by ASIC during crisis resolution

- (1) ASIC must not take action mentioned in subsection (2) in relation to a body corporate to which subsection (3) applies unless the Reserve Bank has, by written notice given to ASIC, informed ASIC that the Reserve Bank does not object to the action.
- (2) For the purposes of subsection (1), the actions are the following:
  - (a) making market integrity rules or CS facility rules that the body corporate must comply with, other than a rule the Reserve Bank requests ASIC to make under subsection 849AB(1);
  - (b) giving a direction under section 794A, 794D, 794E, 798J, 823A or 823D to the body corporate;
  - (c) varying a direction mentioned in paragraph (b) of this subsection;
  - (d) an action prescribed by the regulations for the purposes of this paragraph in relation to the body corporate.
- (3) This subsection applies in relation to a body corporate if:
  - (a) the body corporate is under statutory management; or
  - (b) all of the following subparagraphs apply:
    - (i) the Reserve Bank has made a determination under section 837A that there is to be a transfer of shares in the body corporate;
    - (ii) a certificate issued under section 838A that the transfer is to take effect has not come into force;
    - (iii) the Reserve Bank has not determined under section 837F that the transfer is not to take effect; or
  - (c) all of the following subparagraphs apply:
    - (i) the Reserve Bank has made a determination under section 837B that there is to be a transfer of business of the body corporate;
    - (ii) a certificate issued under section 838A that the transfer is to take effect has not come into force;

- (iii) the Reserve Bank has not determined under section 837F that the transfer is not to take effect; or
- (d) a direction given to the body corporate by the Reserve Bank under subsection 840A(1) is in force; or
- (e) the body corporate is:
  - (i) a related body corporate of a CS facility licensee to which paragraph (a), (b), (c) or (d) of this subsection applies; or
  - (ii) a market licensee that has clearing and settlement arrangements with a CS facility licensee to which paragraph (a), (b), (c) or (d) applies for the clearing and settlement of transactions through a clearing and settlement facility operated by the CS facility licensee.

*Ministerial consideration of action*

- (4) If:
  - (a) ASIC has asked the Reserve Bank whether the Reserve Bank, for the purposes of subsection (1), does not object to an action; and
  - (b) the Reserve Bank has not, by written notice given to ASIC, informed ASIC that the Reserve Bank does not object to the action;ASIC may refer the matter to the Minister.
- (5) The Minister may, after being referred the matter, direct the Reserve Bank to inform ASIC, by written notice given to ASIC, that the Reserve Bank does not object to the action.
- (6) The Reserve Bank must comply with the direction given under subsection (5) immediately.

*Actions begun before crisis resolution*

- (7) To avoid doubt, subsection (1) does not affect the validity or application of anything done by ASIC before subsection (3) began to apply in relation to the body corporate.

**849CB Expert report for acquisition or disposal of assets**

- (1) This section applies if:
-

- (a) a statutory manager of a body corporate proposes to:
  - (i) take action under subsection 833D(1) (recapitalisation actions); or
  - (ii) otherwise take action on behalf of the body corporate to dispose of a business of the body corporate; or
  - (iii) otherwise take action on behalf of the body corporate to acquire or dispose of an asset (excluding an action to be taken in the ordinary course of the body corporate's business); or
- (b) the Reserve Bank proposes to make:
  - (i) a determination under section 837A that there is to be a transfer of shares in the body corporate; or
  - (ii) a determination under section 837B that there is to be a transfer of business of the body corporate; or
- (c) the Reserve Bank proposes to direct a body corporate under subsection 840A(1):
  - (i) to recapitalise; or
  - (ii) to take other action to dispose of a business of the body corporate; or
  - (iii) to take other action to acquire or dispose of an asset (excluding an action to be taken in the ordinary course of the body corporate's business);or to vary a direction under subsection 840B(1) such that, following the variation, the direction will include a direction of the kind mentioned in subparagraph (i), (ii) or (iii) of this paragraph.

Note: For example, a report may be required for some actions taken under section 833A.

*Expert report*

- (2) Before determining terms for an action referred to in subsection (1), the statutory manager or Reserve Bank (as the case may be) must obtain, and consider, a report from an expert on:
  - (a) if the action is an action referred to in paragraph (1)(a) or (c)—the fair value of the business or asset concerned; or
  - (b) if the action is an action referred to in paragraph (1)(b)—the fair value of the business, part of the business or shares to be transferred.

- (3) The expert must not be an associate of:
- (a) the body corporate; or
  - (b) if the action is to be taken by a statutory manager (other than the Reserve Bank)—the statutory manager.

*Publication*

- (4) The Reserve Bank may publish details of, or relating to, the report.

*Exemption from obtaining expert report*

- (5) Despite subsection (2), the Reserve Bank need not obtain the report if the Reserve Bank reasonably believes that obtaining the report is likely to pose a threat to:
- (a) the stability of the financial system in Australia; or
  - (b) the continuity of one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia.

*Contravention does not invalidate act*

- (6) A contravention of subsection (2) does not affect the validity of anything referred to in subsection (1).

**849CC Exercise of Reserve Bank powers under this Part not grounds for denial of obligations**

- (1) Subject to subsection (5), this section applies if a body corporate (the *protected body corporate*) is party to an arrangement, whether the proper law of the arrangement is:
- (a) Australian law; or
  - (b) foreign law, including the law of part of a foreign country.
- (2) None of the matters mentioned in subsection (3) allows the arrangement, or a party to the arrangement (other than the protected body corporate), to do any of the following:
- (a) deny any obligation under the arrangement;
  - (b) accelerate any debt under the arrangement;
  - (c) terminate or close out:
    - (i) the arrangement; or

- (ii) any transaction relating to the arrangement;
  - (d) enforce any security under the arrangement.
- (3) The matters are as follows:
  - (a) the protected body corporate being subject to the exercise of a power under this Part by the Reserve Bank;
  - (b) a body corporate to which subsection (4) applies being subject to the exercise of a power under this Part by the Reserve Bank;
  - (c) if section 842A applies to a body corporate to which subsection (4) of this section applies—the financial position of:
    - (i) that body corporate; or
    - (ii) any other body corporate to which that subsection applies.
- (4) For the purposes of paragraph (3)(b) or (c), this subsection applies to:
  - (a) a related body corporate of the protected body corporate; or
  - (b) a body corporate that was a related body corporate of the protected body corporate before a transfer of business or shares under this Part.

*Payment Systems and Netting Act 1998 prevails over this section*

- (5) If there is any inconsistency between:
  - (a) subsections (1) to (4) of this section; and
  - (b) the *Payment Systems and Netting Act 1998*;that Act prevails to the extent of the inconsistency.

*Arrangements to which this section does not apply*

- (6) This section does not apply to a kind of arrangement prescribed by the regulations for the purposes of this subsection.

### **849CD Protection from liability for acts or omissions in good faith**

- (1) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:



- (a) the person does the thing, or omits to do the thing, for the purpose of any of the following:
    - (i) complying with a direction or determination given under this Part by the Reserve Bank;
    - (ii) taking a measure, or an action, specified in such a direction or determination;
    - (iii) doing, or refraining from doing, anything in accordance with such a direction or determination; and
  - (b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and
  - (c) the person is any of the following:
    - (i) an officer or senior manager of the body corporate, or of a related body corporate or of a body corporate that was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part;
    - (ii) an employee or agent of the body corporate, or of a related body corporate or of a body corporate that was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part;
    - (iii) the body corporate, a related body corporate or a body corporate that was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part;
    - (iv) a person engaged to provide services (including advice) to the body corporate, a related body corporate, or a body corporate that was a related body corporate of a CS facility licensee before a transfer of business or shares under this Part.
- (2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

*Statutory managers*

- (3) An action, suit or proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be

done, in good faith by the person as the statutory manager of a body corporate.

*Directors*

- (4) An action, suit or proceeding (whether criminal or civil) does not lie against a director of a body corporate in relation to anything done, or omitted to be done, in good faith by the director, to the extent that the director is acting with the written approval of the statutory manager of the body corporate or the Reserve Bank under subsection 834A(3).
- (5) An action, suit or proceeding (whether criminal or civil) for a contravention of:
- (a) a duty owed under Part 2D.1; or
  - (b) a duty at common law or in equity that is equivalent to a duty owed under that Part;
- does not lie against a director of a body corporate in relation to anything done, or omitted to be done, in good faith by the director while the body corporate is under statutory management.

**849CE Compensation for acquisition of property**

- (1) If:
- (a) apart from this section, the operation of this Part would result in an acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;
- the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that:

- (a) is commenced under this section; and
  - (b) arises out of the same event or transaction.
- (4) To avoid doubt, this section applies in relation to the operation of this Part instead of section 1350.
- (5) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**15 Section 1042E**

Before “794D(2)”, insert “794AA(1),”.

**16 Section 1042E**

Omit “or” (last occurring), substitute “,”.

**17 Section 1042E**

After “798J(2)”, insert “or 798JB(1)”.

**18 In the appropriate position in section 1317C**

Insert:

- (gcad) a decision by ASIC:
  - (i) to give a direction under subsection 794AA(1); or
  - (ii) to vary a direction under subsection 794AB(1); or
  - (iii) to revoke a direction under subsection 794AB(2); or

**19 After paragraph 1317C(gcb)**

Insert:

- (gcba) a decision by ASIC:
  - (i) to give a direction under subsection 798JB(1); or
  - (ii) to vary a direction under subsection 798JC(1); or
  - (iii) to revoke a direction under subsection 798JC(2); or

**20 In the appropriate position in section 1317C**

Insert:

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(gccf) a decision by the Minister to grant a CS facility license under subsection 824B(3); or

**21 After paragraph 1317C(gce)**

Insert:

(gcf) a decision under Part 7.3B; or

**22 In the appropriate position in subsection 1317E(3)**

Insert:

subsection 848C(4) disclosure of information covered by secrecy provision financial services

**23 In the appropriate position in Schedule 3**

Insert:

Subsection 794AA(4)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 833E(4)	Imprisonment for 12 months or 60 penalty units, or both
Subsection 834A(2)	30 penalty units
Subsection 837E(5)	200 penalty units
Section 839G	1 year imprisonment
Section 839H	1 year imprisonment
Subsection 839K(3)	30 penalty units
Subsection 840A(3)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 841A(3)	Imprisonment for 12 months or 60 penalty units, or both
Subsection 848A(4)	Imprisonment for 2 years

Financial market infrastructure: resolution authority **Schedule 1**  
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Subsection 848B(4)	Imprisonment for 2 years
Subsection 848C(1)	Imprisonment for 2 years

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## Part 2—Crisis prevention

### *Corporations Act 2001*

#### 24 Section 9

Insert:

**recapitalises:** a body corporate **recapitalises** if the body corporate:

- (a) increases the body corporate's level of share capital; or
- (b) issues one or more classes of shares, or one or more classes of rights to acquire shares, in the body corporate; or
- (c) issues capital instruments; or
- (d) acquires, cancels or sells:
  - (i) shares in the body corporate; or
  - (ii) rights to acquire shares in the body corporate; or
- (e) reduces the body corporate's share capital; or
- (f) varies or cancels rights or restrictions attached to shares in a class of shares in the body corporate.

#### 25 At the end of section 821B

Add:

*Changes already notified to Reserve Bank*

- (7) A CS facility licensee is not required to notify ASIC of a matter under subsection (1), (2), (3) or (4) if the licensee has already notified the Reserve Bank of that matter under section 821BA.

#### 26 Section 821BA

Repeal the section, substitute:

##### **821BA Obligation to notify Reserve Bank of certain matters**

A CS facility licensee must give written notice to the Reserve Bank, immediately after becoming aware that:

- (a) the licensee has failed to comply with one or more standards in force under section 827D or 827DA, or is likely to fail to comply with such standards; or
- (b) the licensee may no longer be able to meet, or has breached, its obligation under paragraph 821A(1)(ab); or
- (c) the licensee has ceased, intends to cease or is likely to cease providing one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia; or
- (d) in the absence of external support, the licensee is likely to be unable to continue to provide one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia; or
- (e) the licensee's financial viability is at risk or is likely to be at risk; or
- (f) in the absence of external support, the licensee's financial viability is likely to be at risk; or
- (g) an event treated, under the facility's operating rules, as a default event occurs, or is likely to occur, in relation to a participant in the CS facility.

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

## **27 Subsection 821C(3)**

After "this Part", insert "or Part 7.3B".

## **28 After Subdivision A of Division 2 of Part 7.3**

Insert:

### **Subdivision AA—Obligations on licensees and certain related bodies and persons**

#### **821H Notification of recapitalisation or restructuring**

- (1) A body corporate that:
  - (a) is a CS facility licensee; or
  - (b) is a related body corporate of a CS facility licensee and is incorporated in Australia;

must give written notice to the Reserve Bank immediately after:

- (c) the body corporate forms an intention to enter into a transaction to recapitalise; or
- (d) the board of the body corporate agrees to a plan to restructure the body corporate.

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

- (2) Subsection (1) does not apply if the transaction or restructure is minor or insignificant.

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

*Invalid acts*

- (3) Subject to subsection (6), if a body corporate:
- (a) is incorporated in Australia; and
  - (b) purports to do either of the following acts:
    - (i) enter into a transaction to which paragraph (1)(c) applies;
    - (ii) an act that is part of implementing a plan to which paragraph (1)(d) applies; and
  - (c) contravenes subsection (1) in relation to that transaction or plan;
- the act is invalid and of no effect.
- (4) The body corporate may apply in writing to the Reserve Bank to have the contravention disregarded.
- (5) The Reserve Bank may, by notice in writing given to the body corporate that made the application, agree to the contravention being disregarded for the purposes of subsection (3) if the Reserve Bank is satisfied that it would be appropriate for the contravention to be disregarded.
- (6) For the purposes of subsection (3), the contravention must be disregarded if the Reserve Bank so agrees under subsection (5).

**821J Notice of any other material changes in circumstances**

- (1) A body corporate that:
-



- (a) is a CS facility licensee; or
- (b) is a related body corporate of a CS facility licensee and is incorporated in Australia;

must give written notice to the Reserve Bank immediately after becoming aware of a material change in circumstances of the body corporate that:

- (c) relate to:
  - (i) risk management; or
  - (ii) the licensee's ability to continue to provide one or more clearing and settlement facility services; and
- (d) are circumstances to which subsection (2) applies.

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

- (2) For the purposes of paragraph (1)(d), this subsection applies to circumstances that affect any of the following:
  - (a) the solvency of the body corporate;
  - (b) voting power in the body corporate (but see subsections (3) and (4));
  - (c) the structure of the body corporate;
  - (d) the structure of the group (if any) consisting of:
    - (i) the body corporate; and
    - (ii) each related body corporate of the body corporate;
  - (e) the provision of one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia.

*Change in voting power in listed related body corporate*

- (3) Subsection (4) applies to a body corporate that is:
  - (a) a related body corporate of a CS facility licensee; and
  - (b) a listed entity.
- (4) For the purpose of this section, a change in voting power in the body corporate is a material change in circumstances of the body corporate if, and only if:
  - (a) before the change, a particular person held:
    - (i) no voting power in the body corporate; or

- (ii) less than 20% of the voting power in the body corporate; and
- (b) after the change, the person holds at least 20% of that voting power.

*Changes already notified to Reserve Bank*

- (5) A body corporate is not required to notify the Reserve Bank of a material change in circumstances of the body corporate under subsection (1) if the body corporate has already notified the Reserve Bank of that change under another provision of this Part.

**821K Notification of appointment of external administrator**

- (1) If a person is considering appointing an external administrator of a body corporate that:
  - (a) is a CS facility licensee; or
  - (b) is a related body corporate of a CS facility licensee and is incorporated in Australia;

the person must give written notice to the Reserve Bank. The notice must be given at least 7 days before an external administrator of the body corporate is appointed.

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

- (2) An offence based on subsection (1) is an offence of strict liability.

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

- (3) An external administrator of the body corporate must not be appointed before that time, unless the Reserve Bank approves the appointment.

*Invalid acts*

- (4) If:
  - (a) the body corporate is incorporated in Australia; and
  - (b) a purported external administrator of the body corporate, appointed in contravention of subsection (3), purports to act in relation to the body corporate's business;those acts are invalid and of no effect.

*Safe harbour*

- (5) Subsection 588G(2) does not apply in relation to a person and a debt incurred by a body corporate if the debt is incurred:
- (a) at a time while this section prevents the appointment of an external administrator; and
  - (b) in the ordinary course of the body corporate's business, or with the written consent of the Reserve Bank or by order of the Court.

**821L Notification from liquidator and request for information about winding up**

*Notification of applications relating to winding up*

- (1) A liquidator, or a provisional liquidator, of a body corporate that:
- (a) is a CS facility licensee; or
  - (b) is a related body corporate of a CS facility licensee and is incorporated in Australia;
- must give written notice to the Reserve Bank, at least 7 days before making an application to the Court in relation to a matter arising under the winding-up of the body corporate.
- (2) The notice must include details of the proposed application.
- (3) The Reserve Bank is entitled to be heard on the application to the Court.

*Information request*

- (4) The Reserve Bank may request the liquidator or provisional liquidator to give, within a reasonable time specified in the request, specified information in writing about:
- (a) the application; or
  - (b) other matters relating to the winding-up, or proposed winding up, of the body corporate; or
  - (c) the affairs of the body corporate.
- (5) The liquidator or provisional liquidator must comply with the request.

## **29 Section 823CA (heading)**

Repeal the heading, substitute:

## **823CA Reserve Bank assessment of compliance**

### **30 Subsection 823CA(1)**

Repeal the subsection, substitute:

- (1) The Reserve Bank may do an assessment of:
  - (a) how well a CS facility licensee is complying with standards determined under section 827D or 827DA; or
  - (b) how well a related body corporate of a CS facility licensee is complying with standards determined under section 827DA.

In doing the assessment, the Reserve Bank may take account of any information and reports that it thinks appropriate, including information and reports from an overseas regulatory authority.

### **31 At the end of Division 4 of Part 7.3**

Add:

## **827DA Reserve Bank may determine resolvability standards for CS facility licensees and certain related bodies corporate**

- (1) The Reserve Bank may, by legislative instrument, determine standards for the purposes of ensuring that:
  - (a) CS facility licensees; and
  - (b) related bodies corporate of CS facility licensees, being related bodies corporate that are incorporated in Australia;conduct their affairs in a way that would assist the Reserve Bank to manage or respond to a condition in section 831A being satisfied in relation to a CS facility licensee.
- (2) The standards are to be complied with by:
  - (a) both:
    - (i) all CS facility licensees; and
    - (ii) all related bodies corporate of those licensees, being related bodies corporate that are incorporated in Australia; or

- (b) a specified class of those bodies corporate in the case of a standard that is expressed to apply only in relation to that class.
- (3) Before the Reserve Bank determines a standard, it must consult with:
- (a) the bodies corporate that will be required to comply with the standard; and
  - (b) ASIC.
- (4) A standard may impose different requirements to be complied with in different situations or in respect of different activities.
- (5) A standard:
- (a) comes into force:
    - (i) unless subparagraph (ii) applies—on the day on which the determination of the standard is made; or
    - (ii) if that determination specifies a later day as the day on which the standard comes into force—on the day so specified; and
  - (b) continues in force until it is revoked.
- (6) The Reserve Bank may, by legislative instrument, vary a standard. Before it does so, it must consult with:
- (a) the CS facility licensees that will be required to comply with the standard if it is varied as proposed; and
  - (b) ASIC.
- (7) The Reserve Bank may, by legislative instrument, revoke a standard. Before it does so, it must consult with ASIC.

*Inconsistency with other rules*

- (8) If there is an inconsistency between the standards made under this section and any of the following:
- (a) the standards made under section 827D;
  - (b) the derivative transaction rules;
  - (c) the derivative trade repository rules;
  - (d) the CS services rules;
  - (e) the CS facility rules;

the standards made under this section prevail to the extent of the inconsistency.

*Overseas clearing and settlement facilities*

- (9) A reference in this section to a CS facility licensee does not include a reference to a CS facility licensee if the licensee's only Australian CS facility licence, or all of the licensee's Australian CS facility licences, are granted under subsection 824B(2) (overseas clearing and settlement facilities).

**827DB Resolution planning**

- (1) The Reserve Bank may make a plan for the event that a condition in section 831A is satisfied in relation to a CS facility licensee.
- (2) If the Reserve Bank makes a plan under subsection (1), the Reserve Bank may review, vary or revoke the plan.
- (3) In making, reviewing, varying or revoking a plan under this section, the Reserve Bank may take account of any information that the Reserve Bank considers appropriate in making the plan.
- (4) A plan made under this section is not a legislative instrument.

**32 After paragraph 1317B(1)(b)**

Insert:

- (ba) the Reserve Bank; or

**33 Before paragraph 1317C(gcd)**

Insert:

- (gccj) a decision of the Reserve Bank to determine standards under section 827DA, or to vary or revoke such a standard; or

**34 In the appropriate position in Schedule 3**

Insert:

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Subsection 821H(1)	2 years imprisonment
Subsection 821J(1)	2 years imprisonment
Subsection 821K(1)	60 penalty units

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## **Part 3—Amendments of other Acts**

### *Australian Securities and Investments Commission Act 2001*

#### **35 After paragraph 127(2A)(d)**

Insert:

(daa) a statutory manager of a body corporate;

### *Banking Act 1959*

#### **36 Subsection 15BD(2) (definition of essential service)**

Omit “section 600F of”.

### *Insurance Act 1973*

#### **37 Subsection 62PD(2) (definition of essential service)**

Omit “section 600F of”.

#### **38 Subsection 62ZOV(2) (definition of essential service)**

Omit “section 600F of”.

### *Life Insurance Act 1995*

#### **39 Subsection 161D(2) (definition of essential service)**

Omit “section 600F of”.

#### **40 Subsection 179AV(2) (definition of essential service)**

Omit “section 600F of”.

### *Payment Systems and Netting Act 1998*

#### **41 Section 5 (after paragraph (d) of the definition of external administration)**

Insert:

(daa) a statutory manager takes control of the person's business under the *Corporations Act 2001*; or

**42 Section 5 (paragraph (d) of the definition of *specified provisions*)**

Omit “and Division 2 of Part 5.7B”, substitute “, Division 2 of Part 5.7B and sections 823V, 843A to 843D, 844B, 849BB and 849CC”.

**43 Paragraphs 15C(1)(c) and 15D(1)(c)**

After “(d),”, insert “(daa),”.

***Personal Property Securities Act 2009***

**44 After subparagraph 267(1)(a)(iiib)**

Insert:

(iiic) Division 6, or Subdivision C of Division 9, of Part 7.3B of the *Corporations Act 2001* begins to apply to a body corporate;

**45 After subparagraph 267(1)(b)(iia)**

Insert:

(iib) in the case of a body corporate to which subparagraph (a)(iiic) applies—when the body corporate begins to be under statutory management under Part 7.3B of the *Corporations Act 2001*;

***Reserve Bank Act 1959***

**46 Subsection 5(1) (paragraph (c) of the definition of *payments system policy*)**

Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

**47 Subsection 79A(1) (at the end of the definition of *officer*)**

Add:

Example: Paragraph (e): a person who, in the course of the person's engagement as a statutory manager of a body corporate under Part 7.3B of the



*Corporations Act 2001*, has acquired protected information or has had access to protected documents.

**48 Subsection 79A(1) (definition of *protected document*)**

After “Part 7.3”, insert “, 7.3B”.

**49 Subsection 79A(1) (definition of *protected information*)**

After “Part 7.3”, insert “, 7.3B”.

**50 Subsection 79A(2)**

After “Part 7.3”, insert “, 7.3B”.

**51 After paragraph 79A(4)(b)**

Insert:

(ba) a statutory manager of a body corporate under Part 7.3B of the *Corporations Act 2001*; or

**52 Subsection 79A(4)**

Omit “or bank”, substitute “, bank or statutory manager”.

**53 Subsection 79A(6A)**

After “Part 7.3”, insert “, 7.3B”.

**54 Paragraphs 79A(6B)(a) and (b)**

After “Part 7.3”, insert “, 7.3B”.

**55 Subsection 79A(8)**

After “Part 7.3”, insert “, 7.3B”.

## **Part 4—Amendments contingent on other Acts**

### ***Corporations Act 2001***

**56 Section 9 (definition of *restructuring*)**

After “meaning”, insert “(except in section 821H)”.

**57 Section 9 (definition of *restructuring*)**

Omit “(except in paragraph 588GA(2)(e))”.

**58 Section 9 (definition of *restructuring*)**

Before “section 821H”, insert “paragraph 588GA(2)(e) or”.

**59 Section 9 (definition of *restructuring*)**

After “paragraph 588GA(2)(e)”, insert “or section 821H”.

### ***Reserve Bank Act 1959***

**60 Subsection 10(2)**

Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

**61 Paragraph 10B(1)(d)**

Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

**62 Paragraph 10B(3)(c)**

Omit “Part 7.3”, substitute “Parts 7.3 and 7.3B”.

## **Schedule 2—Financial market infrastructure: new and enhanced regulatory powers**

### **Part 1—Who may be granted an Australian CS facility licence?**

#### **Division 1—Main amendments**

##### *Corporations Act 2001*

#### **1 After paragraph 821A(1)(e)**

Insert:

- (ea) if the licence was granted under subsection 824B(1) (domestic clearing and settlement facilities)—be registered under Chapter 2A; and

#### **1A Subsection 821A(2)**

Omit “paragraph (1)(aa), (a), (c), (d), (e), (f), (g) or (h)”, substitute “a paragraph of subsection (1) other than paragraph (b)”.

#### **2 Subsection 824B(1)**

Omit “The Minister may grant an applicant an Australian CS facility licence if the Minister”, substitute “ASIC may grant an applicant an Australian CS facility licence if ASIC”.

#### **3 Subsection 824B(1)**

Omit “This subsection has effect subject to subsections (3) and (4).”.

#### **4 Subsection 824B(1) (note)**

Omit “The Minister”, substitute “ASIC”.

#### **5 Subsection 824B(2)**

Omit “the Minister”, substitute “ASIC”.

#### **6 Subsection 824B(2)**

Omit “The Minister” (first occurring), substitute “ASIC”.

**7 Subsection 824B(2)**

Omit “This subsection has effect subject to subsections (3) and (4).”.

**8 Subsection 824B(2) (note)**

Omit “The Minister”, substitute “ASIC”.

**9 Subsections 824B(3) and (4)**

Repeal the subsections.

**Division 2—Related amendments**

*Corporations Act 2001*

**10 Subsection 795B(1)**

Omit “subsections (3) and (4)”, substitute “subsection (3)”.

**11 Subsection 795B(2)**

Omit “subsections (3) and (4)”, substitute “subsection (3)”.

**12 Subsection 795B(4)**

Repeal the subsection.

## **Part 2—Dealing with licences that are not being used etc.**

### ***Corporations Act 2001***

#### **13 Paragraph 797B(a)**

Repeal the paragraph, substitute:

- (a) the licensee ceases to carry on the business of operating the financial market to which the licence relates; or
- (aa) both of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) during the last 12 months, there has been no acceptance of any offers made through the market to acquire or dispose of financial products; or
- (ab) all of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) the licence is subject to a condition specifying that the licensee is authorised to engage in specified conduct or activity that constitutes operating the market;
  - (iii) during the last 12 months, the licensee has not engaged in any such specified conduct or activity; or

#### **14 After paragraph 797B(c)**

Insert:

- (ca) an application has been made under section 601AA to deregister the licensee as a company; or
- (cb) ASIC has decided under section 601AB to deregister the licensee as a company; or

#### **15 Subparagraph 797B(d)(ii)**

Repeal the subparagraph, substitute:

- (ii) there is a change to the regulatory regime applying in relation to the financial market to which the licence relates in that country and, because of that change,

- ASIC is no longer satisfied of the matters in paragraph 795B(2)(c); or
- (iii) the cooperation (including information sharing) between ASIC and the authority or authorities responsible for supervising the operation of that market in that country has materially deteriorated or is otherwise inadequate; or

### **16 Paragraph 826B(a)**

Repeal the paragraph, substitute:

- (a) the licensee ceases to carry on the business of operating the facility to which the licence relates; or
- (aa) both of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) during the last 12 months, the licensee has not provided the facility's services; or
- (ab) all of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) the licence is subject to a condition specifying that the licensee is authorised to engage in specified conduct or activity that constitutes operating the facility;
  - (iii) during the last 12 months, the licensee has not engaged in any such specified conduct or activity; or

### **17 After paragraph 826B(c)**

Insert:

- (ca) in the case of a licence granted under subsection 824B(2) (overseas clearing and settlement facilities)—the licensee ceases to be registered under Division 2 of Part 5B.2; or
- (cb) an application has been made under section 601AA to deregister the licensee as a company; or
- (cc) ASIC has decided under section 601AB to deregister the licensee as a company; or

### **18 Subparagraph 826B(d)(ii)**

Repeal the subparagraph, substitute:

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- (ii) there is a change to the regulatory regime applying in relation to the facility to which the licence relates in that country and, because of that change, ASIC is no longer satisfied of the matters in paragraph 824B(2)(c); or
- (iii) the cooperation (including information sharing) between ASIC or the Reserve Bank and the authority or authorities responsible for supervising the operation of that facility in that country has materially deteriorated or is otherwise inadequate; or

### **19 Paragraph 905H(a)**

Repeal the paragraph, substitute:

- (a) the licensee ceases to carry on the business of operating the repository to which the licence relates; or
- (aa) both of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) during the last 12 months, the licensee has not provided the repository's services to which the licence relates; or
- (ab) all of the following subparagraphs apply:
  - (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) the licence is subject to a condition specifying that the licensee is authorised to engage in specified conduct or activity that constitutes operating that repository;
  - (iii) during the last 12 months, the licensee has not engaged in any such specified conduct or activity; or

### **20 After paragraph 905H(c)**

Insert:

- (ca) an application has been made under section 601AA to deregister the licensee as a company; or
- (cb) ASIC has decided under section 601AB to deregister the licensee as a company; or

### **21 After paragraph 908BI(1)(a)**

Insert:

- (aa) both of the following subparagraphs apply:
-

- (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) during the last 12 months, the licensee has not administered the financial benchmark specified in the licence; or
- (ab) all of the following subparagraphs apply:
- (i) it has been at least 12 months since ASIC granted the licence;
  - (ii) the licence is subject to a condition specifying that the licensee is authorised to engage in specified conduct or activity that constitutes administering that financial benchmark;
  - (iii) during the last 12 months, the licensee has not engaged in any such specified conduct or activity; or

**22 After paragraph 908BI(1)(c)**

Insert:

- (ca) an application has been made under section 601AA to deregister the licensee as a company; or
- (cb) ASIC has decided under section 601AB to deregister the licensee as a company; or



## **Part 3—Declared financial markets and widely held market bodies**

### **Division 1—Main amendments about declared financial markets**

#### ***Corporations Act 2001***

#### **23 Section 9**

Insert:

*declared financial market* has the meaning given by subsection 9D(1).

#### **24 Section 9 (definition of *prescribed financial market*)**

Repeal the definition.

#### **25 At the end of Division 1 of Part 1.2**

Add:

#### **9D Meaning of *declared financial market***

- (1) A *declared financial market* is a financial market declared under subsection (2).
- (2) ASIC may, by legislative instrument, declare a specified financial market for the purposes of subsection (1).
- (3) ASIC must not make a declaration under subsection (2) unless the Minister has approved it in writing.

#### **26 After paragraph 1317C(b)**

Insert:

- (c) a decision by ASIC under subsection 9D(2) to declare a financial market; or

#### **27 Amendments of listed provisions**

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**Schedule 2** Financial market infrastructure: new and enhanced regulatory powers  
**Part 3** Declared financial markets and widely held market bodies

<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit (wherever occurring)</b>	<b>Substitute</b>
1	Section 9 (definition of <i>listed</i> )	prescribed financial market	declared financial market
2	Section 9 (definition of <i>listed corporation</i> )	prescribed financial market	declared financial market
3	Section 9 (definition of <i>market traded option</i> )	prescribed financial market	declared financial market
4	Section 9 (definition of <i>on-market</i> )	prescribed financial market	declared financial market
5	Section 9 (definition of <i>on-market buy-back</i> )	prescribed financial market	declared financial market
6	Section 9 (definition of <i>public company</i> )	prescribed financial market	declared financial market
7	Section 9 (definition of <i>quoted security</i> )	prescribed financial market	declared financial market
8	Section 9 (paragraph (a) of the definition of <i>relevant financial market</i> )	prescribed financial market	declared financial market
9	Section 9 (paragraph (b) of the definition of <i>relevant financial market</i> )	prescribed financial markets	declared financial markets
10	Section 111AE	prescribed financial market	declared financial market
11	Paragraph 167AC(b)	prescribed financial market	declared financial market
12	Paragraph 167AH(2)(b)	prescribed financial market	declared financial market
13	Subsection 170(3B)	prescribed financial market	declared financial market
14	Subparagraph 250V(1)(b)(ii)	prescribed financial market	declared financial market
15	Section 253F	prescribed financial market	declared financial market
16	Section 257B	prescribed financial market	declared financial market

Financial market infrastructure: new and enhanced regulatory powers **Schedule 2**  
Declared financial markets and widely held market bodies **Part 3**

<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit (wherever occurring)</b>	<b>Substitute</b>
17	Subsection 300(12)	prescribed financial market	declared financial market
18	Paragraph 609(9B)(a)	prescribed financial market	declared financial market
19	Subsection 609(9C)	prescribed financial market	declared financial market
20	Subsection 609A(1)	prescribed financial market	declared financial market
21	Subsection 609A(2)	prescribed financial market	declared financial market
22	Subparagraph 609B(2)(a)(i)	prescribed financial market	declared financial market
23	Section 611 (table item 14)	prescribed financial market	declared financial market
24	Subsection 621(2)	prescribed financial market	declared financial market
25	Subsection 633(1)	prescribed financial market	declared financial market
26	Paragraph 647(3)(b)	prescribed financial market	declared financial market
27	Subsection 671B(5)	prescribed financial market	declared financial market
28	Paragraph 708AA(2)(c)	prescribed financial market	declared financial market
29	Paragraph 708A(5)(b)	prescribed financial market	declared financial market
30	Paragraph 713(5)(a)	prescribed financial market	declared financial market
31	Section 713A	prescribed financial market	declared financial market
32	Subsection 727(3A)	prescribed financial market	declared financial market
33	Paragraph 1012DAA(2)(c)	prescribed financial market	declared financial market

**Schedule 2** Financial market infrastructure: new and enhanced regulatory powers  
**Part 3** Declared financial markets and widely held market bodies

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<b>Further amendments</b>			
<b>Item</b>	<b>Provision</b>	<b>Omit (wherever occurring)</b>	<b>Substitute</b>
34	Paragraph 1012DA(5)(b)	prescribed financial market	declared financial market
35	Section 1222N	prescribed financial market	declared financial market
36	Subsection 1228H(3)	prescribed financial market	declared financial market
37	Subparagraph 1317DAE(7)(a)(i)	prescribed financial market	declared financial market
38	Subclause 29(8) of Schedule 4 (definition of <i>unlisted company</i> )	prescribed financial market	declared financial market
39	Paragraph 32(1)(h) of Schedule 4	prescribed financial market	declared financial market

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**Division 2—Other amendments about declared financial markets**

***Bankruptcy Act 1966***

**28 Subsection 5(1) (paragraph (a) of the definition of *private company*)**

Omit “prescribed financial market”, substitute “declared financial market”.

***Personal Property Securities Act 2009***

**29 Section 49**

Omit “prescribed financial market”, substitute “declared financial market”.

## **Division 3—Widely held market bodies**

### ***Corporations Act 2001***

#### **30 Section 9 (definition of *widely held market body*)**

Omit “section 850A”, substitute “subsection 850A(2)”.

#### **31 Section 850A**

Repeal the section, substitute:

#### **850A Scope of Division**

- (1) This Division applies in relation to widely held market bodies.

##### *Meaning of widely held market body*

- (2) A body corporate is a **widely held market body** if the body:

(a) is:

(i) a market licensee or the holding company of such a licensee; or

(ii) a CS facility licensee or the holding company of such a licensee; and

(b) is declared under subsection (3).

- (3) ASIC may, by legislative instrument, declare a specified body corporate for the purposes of paragraph (2)(b) if, having regard to the matters in subsection (4), ASIC is satisfied that:

(a) if the body is a market licensee or the holding company of such a licensee—the financial market to which the licence relates is of national significance; or

(b) if the body is a CS facility licensee or the holding company of such a licensee—the clearing and settlement facility to which the licence relates is of national significance.

- (4) The matters are:

(a) the significance to the national economy of the operation of the market or the facility; and

(b) the size and importance of the market or the facility:

- (i) in the context of the Australian financial products and services industry; and
  - (ii) relative to other financial markets on which similar financial products are dealt, or other clearing and settlement facilities providing similar services, in Australia; and
  - (c) the degree of, or potential for, competition within the market or the facility; and
  - (d) any other matters that ASIC considers relevant.
- (5) ASIC must not make a declaration under subsection (3) unless:
- (a) the Minister has approved it in writing; and
  - (b) if the proposed declaration relates to a body corporate mentioned in subparagraph (2)(a)(ii)—ASIC has consulted the Reserve Bank about it.

**32 Section 851I (heading)**

Omit “in relation to bodies specified in regulations made for paragraph 850A(b)”.

**33 Subsection 851I(1)**

Repeal the subsection (not including the note), substitute:

- (1) If, at the time at which a body corporate becomes a widely held market body:
- (a) a person holds a particular percentage of voting power in the body; and
  - (b) the holding of that particular percentage by the person would (apart from this section) constitute an unacceptable control situation in relation to the body and in relation to the person;
- the person is taken to be granted at that time an approval under section 851B to hold that percentage of voting power in the body.

**34 Subsection 851I(3)**

Repeal the subsection.

**35 After paragraph 1317C(gd)**

Insert:

---

(gdaa) a decision by ASIC under subsection 850A(3) to declare a  
body corporate; or

## **Part 5—Approval for control of certain Australian licensees**

### **Division 1—Controlled Australian financial bodies**

#### *Corporations Act 2001*

#### **40 Section 9**

Insert:

*controlled Australian financial body* has the meaning given by subsection 852DA(2).

*passes the legitimate control test* has the meaning given by section 852DC.

#### **41 Section 9 (at the end of the definition of *unacceptable control situation*)**

Add:

; and (c) in relation to a controlled Australian financial body—has the meaning given by section 852DB.

#### **42 After Division 1 of Part 7.4**

Insert:

### **Division 1A—Limit on control of certain Australian licensees that are not widely held market bodies**

#### **Subdivision A—Scope and interpretation**

#### **852DA Scope of Division**

(1) This Division applies in relation to controlled Australian financial bodies.



*Meaning of controlled Australian financial body*

- (2) A body corporate is a **controlled Australian financial body** if the body is:
- (a) registered under Chapter 2A; and
  - (b) any of the following:
    - (i) a market licensee;
    - (ii) a CS facility licensee;
    - (iii) a derivative trade repository licensee;
    - (iv) a benchmark administrator licensee;
    - (v) the holding company of a licensee mentioned in any of subparagraphs (i) to (iv); and
  - (c) not a widely held market body.

**852DB** *Meaning of unacceptable control situation*

An **unacceptable control situation** exists in relation to a controlled Australian financial body and a particular person if the person's voting power in the body is more than:

- (a) unless paragraph (b) applies—20%; or
- (b) if an approval of a higher percentage is in force under Subdivision C for the body and the person—that higher percentage.

**852DC** *Meaning of passes the legitimate control test*

A person **passes the legitimate control test** for having a particular percentage of voting power in a controlled Australian financial body unless it is reasonable to expect that the person's having of that percentage of voting power in the body would adversely affect:

- (a) if the body is a licensee mentioned in any of subparagraphs 852DA(2)(b)(i) to (iv)—the body's ability to meet one or more of its obligations as such a licensee under this Act; or
- (b) if the body is the holding company of a licensee mentioned in any of subparagraphs 852DA(2)(b)(i) to (iv)—the licensee's ability to meet one or more of its obligations as such a licensee under this Act.

## Subdivision B—20% voting power limit

### 852DD Acquisition of shares

A person contravenes this section if:

- (a) the person acquires, or the person with one or more other persons under an arrangement acquire, shares in a body corporate; and
- (b) the acquisition has the result that:
  - (i) an unacceptable control situation comes into existence in relation to a controlled Australian financial body and a person; or
  - (ii) if an unacceptable control situation already exists in relation to a controlled Australian financial body and a person (the *controller*)—there is an increase in the voting power of the controller in the controlled Australian financial body.

Note 1: The person mentioned in subparagraph (b)(i) or (b)(ii) need not be the person who contravenes this section.

Note 2: A contravention of this section is an offence (see subsection 1311(1)).

### 852DE Remedial orders

- (1) If an unacceptable control situation exists in relation to a controlled Australian financial body and a person, any of the following courts may make such orders as the court considers appropriate for the purpose of ensuring that the unacceptable control situation ceases to exist:
  - (a) the Federal Court;
  - (b) the Federal Circuit and Family Court of Australia (Division 2);
  - (c) a court of a State or Territory that has jurisdiction in relation to the matter.
- (2) However, the court may only make orders under this section on application by:
  - (a) ASIC; or
  - (b) the body; or
  - (c) a person who has any voting power in the body.

- (3) Without limiting subsection (1), the court's orders may include:
- (a) an order directing the disposal of shares; or
  - (b) an order restraining the exercise of any rights attached to shares; or
  - (c) an order prohibiting or deferring the payment of any sums due to a person in respect of shares held by the person; or
  - (d) an order that any exercise of rights attached to shares be disregarded; or
  - (e) an order directing any person to do or refrain from doing a specified act, for the purpose of securing compliance with any other order made under this section; or
  - (f) an order containing such ancillary or consequential provisions as the court thinks just.
- (4) Before making an order under this section, the court may direct that notice of the application:
- (a) be given to such persons as the court thinks fit; or
  - (b) be published in such manner as the court thinks fit.
- (5) The court may, by order:
- (a) rescind, vary or discharge an order made by the court under this section; or
  - (b) suspend the operation of such an order.

### **852DF Injunctions**

- (1) If any conduct (including a refusal or failure to act) amounts or would amount to a contravention of this Division in relation to a particular controlled Australian financial body, the body is taken, for the purposes of section 1324, to be a person whose interests are affected by the conduct.
- (2) Subsection (1) of this section does not limit the class of persons whose interests are affected by the conduct.
- (3) Sections 852DE and 1324 do not limit each other.

### **Subdivision C—Approvals to exceed 20% voting power limit**

#### **852DG Application for approval to exceed 20% voting power limit**

A person may apply for approval to have voting power of more than 20% in a particular controlled Australian financial body by lodging with ASIC an application in the prescribed form that sets out:

- (a) the percentage of voting power (if any) the person currently has in the body; and
- (b) the percentage of voting power the person is seeking approval to have in the body; and
- (c) the period (whether indefinite or not) the person is seeking the approval for; and
- (d) the person's reasons for making the application.

Note 1: For fees in respect of lodging applications, see Part 9.10.

Note 2: For applications to vary an approved percentage, see section 852DM.

#### **852DH Decision on the application**

- (1) ASIC must, by written notice given to the applicant, approve the applicant having a specified percentage of voting power in the body if:

- (a) ASIC is satisfied the specified percentage is the highest percentage (up to that sought by the applicant) of voting power in the body for which the applicant passes the legitimate control test; and
- (b) ASIC believes relevant information in the application, or later provided by the applicant, to be correct.

Otherwise, ASIC must, by written notice given to the applicant, refuse such an approval.

- (2) A notice of approval under subsection (1) must specify that the approval to have the specified percentage of voting power in the body is in force:
  - (a) for a specified period, which may be extended under section 852DK; or
  - (b) indefinitely from a specified day;

but may be varied under section 852DM or revoked under section 852DN.

Note: The notice may also specify that the approval is subject to conditions: see subsection 852DL(1).

- (3) ASIC must give a copy of a notice under subsection (1) to the body.

### **852DJ Duration of approval**

An approval under subsection 852DH(1) is in force as specified under subsection 852DH(2) in the notice of the approval.

### **852DK Extension of approval**

- (1) If:

- (a) a person has an approval under subsection 852DH(1) to have a specified percentage of voting power in a controlled Australian financial body; and
- (b) the approval is in force for a specified period (including an extended period from a previous operation of this section);  
the person may apply to extend that period by lodging with ASIC an application in the prescribed form that sets out:
  - (c) the extended period the person is seeking (which could be an indefinite period); and
  - (d) the person's reasons for making the application.

Note 1: For fees in respect of lodging applications, see Part 9.10.

Note 2: ASIC can vary the period of an approval on its own initiative: see subsection 852DM(4).

- (2) ASIC must, by written notice given to the applicant, extend the period of the applicant's approval to have the specified percentage of voting power in the body if:
- (a) ASIC is satisfied the specified percentage remains the highest percentage (up to that originally sought by the applicant) of voting power in the body for which the applicant passes the legitimate control test; and
  - (b) ASIC believes relevant information in the application, or later provided by the applicant, to be correct.

Otherwise, ASIC must, by written notice given to the applicant, refuse such an extension.

- (3) A notice of extension under subsection (2) must specify that the approval:
- (a) is in force for the extended period, which may be further extended under this section; and
  - (b) may be varied under section 852DM or revoked under section 852DN.
- (4) ASIC must give a copy of a notice under subsection (2) to the body.

### **852DL Conditions of approval**

#### *Conditions of approval*

- (1) An approval under subsection 852DH(1) is subject to such conditions (if any) specified in the notice of approval given under that subsection.

#### *Imposing, varying or revoking conditions after approval*

- (2) ASIC may, by written notice given to a person who holds an approval under subsection 852DH(1) to have a specified percentage of voting power in a controlled Australian financial body:
- (a) impose one or more conditions or further conditions to which the approval is subject; or
  - (b) vary or revoke any condition:
    - (i) imposed under paragraph (a); or
    - (ii) specified in the notice of approval.
- (3) ASIC must give a copy of a notice under subsection (2) to the body.

#### *Power exercisable on own initiative or by application*

- (4) ASIC's power under subsection (2) may be exercised:
- (a) on ASIC's own initiative; or

- (b) on application by the person who holds the approval under subsection 852DH(1).

Note: For fees in respect of lodging applications, see Part 9.10.

*Notice of refusal of application*

- (5) If ASIC refuses to exercise its power under subsection (2) on an application made under paragraph (4)(b), ASIC must give written notice of the refusal to the applicant.

*Breach of condition*

- (6) A person who holds an approval under subsection 852DH(1) must give written notice to ASIC if they become aware that they have breached a condition to which the approval is subject.

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

### **852DM Varying an approval**

- (1) This section applies to a person holding an approval under subsection 852DH(1) to have a specified percentage (the **current approved percentage**) of voting power:

- (a) in a controlled Australian financial body; and  
(b) for a specified period or indefinitely (the **current approved duration**);

including as affected by any variation from a previous operation of this section.

*Application by holder of approval to vary percentage*

- (2) The person may apply to vary the current approved percentage by lodging with ASIC an application in the prescribed form that sets out:

- (a) the percentage of voting power the person currently has in the body; and  
(b) the percentage of voting power the person is seeking approval to have in the body; and  
(c) the person's reasons for making the application.

Note: For fees in respect of lodging applications, see Part 9.10.

- (3) ASIC must, by written notice given to the applicant, approve the applicant having a new specified percentage of voting power in the body for the current approved duration if:
- (a) ASIC is satisfied the new specified percentage is the highest percentage (up to that sought by the applicant and greater than the current approved percentage) of voting power in the body for which the applicant passes the legitimate control test; and
  - (b) ASIC believes relevant information in the application, or later provided by the applicant, to be correct.

Otherwise, ASIC must, by written notice given to the applicant, refuse such a variation.

*ASIC varying percentage or period on own initiative*

- (4) ASIC may, on its own initiative, by written notice given to the person, vary the person's approval as follows, if ASIC is satisfied of the matters in subsection (5):
- (a) vary the current approved percentage to a new specified percentage of voting power in the body for the current approved duration; or
  - (b) vary the current approved duration to a new specified period or an indefinite period (the ***new specified duration***) for the current approved percentage of voting power in the body; or
  - (c) vary both the current approved percentage and the current approved duration to a new specified percentage of voting power in the body for a new specified period or an indefinite period (also the ***new specified duration***).

Note: ASIC could, for example, vary the approval after becoming aware that information contained in the person's application for approval has ceased to be correct: see section 852DQ.

- (5) The matters are that the specified percentage that is to result from the variation is the highest percentage of voting power in the body for which the person passes the legitimate control test.

Note: The specified percentage that is to result from the variation could be the current approved percentage or a new specified percentage. Similarly, the approved duration that is to result from the variation could be the current approved duration or a new specified duration.



*Downwards variations*

- (6) If ASIC varies under subsection (4) either or both of the following:
- (a) the current approved percentage to a lower new specified percentage;
  - (b) the current approved duration to a shorter new specified duration;
- then:
- (c) the variation takes effect on the day specified in the notice of variation; and
  - (d) the specified day must be at least 90 days after the day on which the notice is given under subsection (4).

*Upwards variations*

- (7) If ASIC:
- (a) varies under subsection (3) the current approved percentage; or
  - (b) varies under subsection (4) the current approved percentage or the current approved duration other than as described in subsection (6);
- the variation takes effect on the day the notice of variation is given under subsection (3) or (4) (as applicable).

*Notice to the body*

- (8) ASIC must give a copy of a notice of approval under subsection (3) or a notice under subsection (4) to the body.

**852DN Revoking an approval**

- (1) ASIC may, on its own initiative, by written notice given to a person holding an approval under subsection 852DH(1) to have a specified percentage of voting power in a controlled Australian financial body, revoke the approval if ASIC is satisfied that:
- (a) the person no longer passes the legitimate control test for the specified percentage of voting power in the body; or
  - (b) an unacceptable control situation exists in relation to the body and the person; or

- (c) there has been a contravention of a condition to which the approval is subject; or
- (d) information contained in an application given by the person under this Subdivision was incorrect and the person did not give ASIC the correct information before the application was decided.

Note: The specified percentage is the percentage currently applying after any variations under this Subdivision.

- (2) A revocation under subsection (1) takes effect on the day specified in the notice of revocation. The specified day must be at least 90 days after the day on which the notice is given.
- (3) ASIC must, by written notice given to the person, revoke the approval if the person requests ASIC to do so. A revocation under this subsection takes effect on the day specified in the notice of revocation.
- (4) ASIC must give a copy of a notice of revocation under subsection (1) or (3) to the body.

#### **852DP Further information about applications**

If an application is lodged with ASIC under this Subdivision, ASIC may:

- (a) by written notice given to the applicant, request the applicant to give ASIC, within a period specified in the notice, further information about the application; and
- (b) refuse to consider the application until the applicant gives ASIC the information.

#### **852DQ Applicant must update ASIC with correct information**

If information contained in an application lodged under this Subdivision:

- (a) is incorrect; or
  - (b) ceases to be correct after the application is made;
- the applicant must, as soon as practicable after the applicant becomes aware of that fact, give ASIC the correct information in writing.

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

## **852DR Time limit for ASIC's decision**

### *Time limit*

- (1) ASIC must decide an application lodged under this Subdivision within the 90-day period starting on the day the application was lodged. This subsection has effect subject to subsections (2), (3) and (5).

### *Extending the time limit*

- (2) Before the end of the period mentioned in subsection (1):
  - (a) ASIC may, by written notice given to the applicant, extend the period by up to 30 days; and
  - (b) if ASIC does so, this section has effect as if references to the period mentioned in subsection (1) were references to the period as so extended.

### *Stopping the clock*

- (3) In working out the period mentioned in subsection (1), disregard:
  - (a) the period:
    - (i) starting on the day ASIC gives the applicant a notice under section 852DP requesting information about the application; and
    - (ii) ending on the day the applicant gives ASIC all of the information requested under, or ASIC otherwise disposes of, the notice; and
  - (b) any day on which ASIC believes relevant information currently before ASIC, that was provided by the applicant in relation to the application, is incorrect.

### *Deemed approval*

- (4) If ASIC has not decided the application by the end of the period mentioned in subsection (1):
  - (a) ASIC is taken to have granted whatever was applied for on the day after the end of that period; and

- (b) as soon as practicable afterwards, ASIC must give a notice to that effect to:
  - (i) the applicant; and
  - (ii) the controlled Australian financial body concerned.

*Application of this section*

- (5) This section does not apply in relation to an application lodged under section 852DG or 852DM if an unacceptable control situation exists in relation to the applicant and the controlled Australian financial body concerned at any time before ASIC decides the application.

## **Subdivision D—Other matters**

### **852DS Acquisition of property**

- (1) A court must not make an order under section 852DE if:
  - (a) the order would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the order would be invalid because of paragraph 51(xxxi) of the Constitution.
- (2) To avoid doubt, this section applies in relation to the making of an order under section 852DE instead of section 1350.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

### **852DT Anti-avoidance**

- (1) If:
  - (a) one or more persons enter into, begin to carry out or carry out a scheme; and
  - (b) it would be concluded that the person, or any of the persons, who:

- (i) entered into; or
- (ii) began to carry out; or
- (iii) carried out;

the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of Subdivision B in relation to any person or persons (whether or not mentioned in paragraph (a)); and

- (c) as a result of the scheme or a part of the scheme, a person (the **controller**) increases (including from a starting point of nil) the controller's voting power in a controlled Australian financial body;

ASIC may give the controller a written direction to cease having that voting power within a time specified in the direction.

- (2) A person who is subject to a written direction under subsection (1) must comply with the direction.

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

### **43 In the appropriate position in Schedule 3**

Insert:

Section 852DD	400 penalty units
Subsection 852DL(6)	200 penalty units
Section 852DQ	2 years imprisonment
Subsection 852DT(2)	400 penalty units

## **Division 2—Market licensees and CS facility licensees**

### ***Corporations Act 2001***

#### **44 Paragraphs 792B(5)(b) and 821B(4)(b)**

Omit “15%”, substitute “20%”.

### **Division 3—Involvement with licensees**

#### ***Corporations Act 2001***

**45 Subdivision A of Division 1 of Part 7.4 (heading)**

Omit “15%”, substitute “20%”.

**46 Paragraph 850B(1)(a)**

Omit “15%”, substitute “20%”.

**47 Subdivision B of Division 1 of Part 7.4 (heading)**

Omit “15%”, substitute “20%”.

**48 Section 851A (heading)**

Omit “15%”, substitute “20%”.

**49 Subsections 851A(1) and 851B(1)**

Omit “15%”, substitute “20%”.

**50 Paragraph 853B(b)**

Omit “15%”, substitute “20%”.

## **Part 6—Limits on certain market licences and CS facility licences**

### *Corporations Act 2001*

#### **51 After paragraph 791A(1)(b)**

Insert:

; or (c) the person is exempt from the operation of this Part.

#### **52 After paragraph 791B(c)**

Insert:

(ca) that the person is exempt from the operation of this Part; or

#### **53 Section 791C**

Repeal the section, substitute:

#### **791C Exemptions by ASIC**

##### *Exemption of a particular financial market or person*

(1) ASIC may, in writing, exempt:

- (a) a particular financial market; or
- (b) a particular person;

from all or specified provisions of this Part.

Note: The provisions of this Part include regulations made for the purposes of this Part: see section 761H.

(2) The exemption may apply:

- (a) unconditionally or subject to specified conditions; and
- (b) for a specified period or indefinitely (the *exemption duration*).

(3) ASIC may, at any time, in writing:

- (a) vary an exemption given under subsection (1) to:
  - (i) impose conditions, or additional conditions, on the exemption; or

- (ii) vary or revoke any of the conditions on the exemption;  
or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoke an exemption given under subsection (1).
- (4) However, ASIC may only take action under subsection (3) after giving notice, and an opportunity to make submissions on the proposed action, to:
- (a) if paragraph (1)(a) applies to the exemption—the operator of the financial market covered by the exemption; or
  - (b) if paragraph (1)(b) applies to the exemption—the person covered by the exemption.
- (5) An exemption given under subsection (1), or a variation or revocation made under subsection (3), is not a legislative instrument.
- (6) If the ASIC gives an exemption under subsection (1), or varies or revokes an exemption under subsection (3), ASIC must publish notice of the exemption, variation or revocation on ASIC’s website.

*Exemption of classes of clearing and settlement facilities and persons*

- (7) ASIC may, by legislative instrument, exempt:
- (a) a class of financial markets; or
  - (b) a class of persons;
- from all or specified provisions of this Part.
- Note: The provisions of this Part include regulations made for the purposes of this Part: see section 761H.
- (8) The exemption may apply:
- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the ***exemption duration***).
- (9) ASIC may, at any time, by legislative instrument:
- (a) vary an exemption given under subsection (7) to:



- (i) impose conditions, or additional conditions, on the exemption; or
  - (ii) vary or revoke any of the conditions on the exemption; or
  - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
- (b) revoke an exemption given under subsection (7).
- (10) However, ASIC may only take action under subsection (9) after:
- (a) giving notice, and an opportunity to make submissions on the proposed action, to:
    - (i) if paragraph (7)(a) applies to the exemption—the operator of each financial market known by ASIC to be covered by the exemption; or
    - (ii) if paragraph (7)(b) applies to the exemption—each person known by ASIC to be covered by the exemption; and
  - (b) both:
    - (i) a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each financial market covered by the exemption, or each person covered by the exemption, (as applicable) may make submissions on the proposed action; and
    - (ii) that period has ended.

**54 Section 795C**

Omit “stating”, substitute “that includes”.

**55 After paragraph 820A(1)(b)**

Insert:

; or (c) the person is exempt from the operation of this Part.

**56 After paragraph 820B(c)**

Insert:

or (d) that the person is exempt from the operation of this Part;

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## 57 Section 820C

Repeal the section, substitute:

### 820C Exemptions by ASIC

*Exemption of particular clearing and settlement facility or person*

(1) ASIC may, in writing, exempt:

- (a) a particular clearing and settlement facility; or
- (b) a particular person;

from all or specified provisions of this Part.

Note: The provisions of this Part include regulations and other instruments made for the purposes of this Part: see section 761H.

(2) An exemption given under subsection (1) may apply:

- (a) unconditionally or subject to specified conditions; and
- (b) for a specified period or indefinitely (the *exemption duration*).

(3) ASIC may, at any time, in writing:

- (a) vary an exemption given under subsection (1) to:
  - (i) impose conditions, or additional conditions, on the exemption; or
  - (ii) vary or revoke any of the conditions on the exemption; or
  - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
- (b) revoke an exemption given under subsection (1).

(4) However, ASIC may only take action under subsection (3) after giving notice, and an opportunity to make submissions on the proposed action, to:

- (a) if paragraph (1)(a) applies to the exemption—the operator of the clearing and settlement facility covered by the exemption; or
- (b) if paragraph (1)(b) applies to the exemption—the person covered by the exemption.

- (5) An exemption given under subsection (1), or a variation or revocation made under subsection (3), is not a legislative instrument.
- (6) If ASIC gives an exemption under subsection (1), or varies or revokes an exemption under subsection (3), ASIC must publish notice of the exemption, variation or revocation on ASIC's website.

*Exemption of classes of clearing and settlement facilities and persons*

- (7) ASIC may, by legislative instrument, exempt:
  - (a) a class of clearing and settlement facilities; or
  - (b) a class of persons;from all or specified provisions of this Part.

Note: The provisions of this Part include regulations and other instruments made for the purposes of this Part: see section 761H.
- (8) An exemption given under subsection (7) may apply:
  - (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the ***exemption duration***).
- (9) ASIC may, at any time, by legislative instrument:
  - (a) vary an exemption given under subsection (7) to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoke an exemption given under subsection (7).
- (10) However, ASIC may only take action under subsection (9) after:
  - (a) giving notice, and an opportunity to make submissions on the proposed action, to:

- (i) if paragraph (7)(a) applies—the operator of each clearing and settlement facility known by ASIC to be covered by the exemption; or
  - (ii) if paragraph (7)(b) applies—each person known by ASIC to be covered by the exemption; and
- (b) both:
- (i) a notice has been published on ASIC’s website allowing a reasonable period within which the operator of each clearing and settlement facility covered by the exemption, or each person covered by the exemption, (as applicable) may make submissions on the proposed action; and
  - (ii) that period has ended.

*Provisions of this Part to which this section does not apply*

- (11) Subsection (1) or (7) does not apply to the following provisions of this Part:
- (a) paragraph 821A(1)(aa) or (ab);
  - (b) a standard determined under section 827D or 827DA.

Note: For exemptions from paragraph 821A(1)(aa) or (ab) or a standard determined under section 827D or 827DA, see section 820CA.

**58 Section 824C**

Omit “stating”, substitute “that includes”.

**59 Paragraph 824C(b)**

Omit “the date on which”, substitute “when”.

**60 Subsection 825A(5)**

Repeal the subsection.

**61 At the end of subsection 827A(3)**

Add:

- ; and (e) the arrangements the licensee or applicant has in place relating to its governance and operations, including the adequacy of those arrangements for ensuring:

- (i) the facility's services are provided in a fair and effective way in this jurisdiction; and
- (ii) the integrity of, and public confidence in, the operation of the facility in this jurisdiction; and
- (iii) the overall stability in the Australian financial system.

## Part 7—Rule-making power for CS facility licensees

### *Corporations Act 2001*

#### 62 Section 9

Insert:

*CS facility rules* means rules made under section 826H.

#### 63 After paragraph 793B(2)(a)

Insert:

(aa) the CS facility rules;

#### 64 Before paragraph 822B(2)(a)

Insert:

(aa) the CS facility rules;

#### 65 After Division 3 of Part 7.3

Insert:

### Division 3A—CS facility rules

#### Subdivision A—Power to make CS facility rules

##### 826H CS facility rules

ASIC may, by legislative instrument, make rules (the *CS facility rules*) for the purposes of promoting the provision of fair and effective services by licensed CS facilities.

#### Subdivision B—Compliance with CS facility rules

##### 826J Complying with CS facility rules

- (1) The following entities must comply with the CS facility rules:
- (a) operators of licensed CS facilities;
  - (b) participants in licensed CS facilities;

(c) entities prescribed by the regulations for the purposes of this paragraph.

Note: This subsection is a civil penalty provision: see section 1317E. For relief from liability to a civil penalty relating to this subsection, see section 1317S.

(2) Subsection (1) does not apply in relation to a clearing and settlement facility the operator of which is licensed under subsection 824B(2) (overseas clearing and settlement facilities).

## **826K Inconsistency with other instruments**

### *Inconsistency with other rules*

(1) If there is an inconsistency between the CS facility rules and any of the following rules:

- (a) the CS services rules;
- (b) the derivative transaction rules;
- (c) the derivative trade repository rules;

the CS facility rules prevail to the extent of the inconsistency.

### *Inconsistency with the financial stability standards*

(2) If the Reserve Bank considers there is an inconsistency between a CS facility rule and one or more standards determined under section 827D, the Reserve Bank must refer the matter to the Minister.

Note: If there is an inconsistency between the CS facility rules and standards determined under section 827D, the standards prevail: see subsection 827D(2A).

(3) The Minister may, if the Minister considers it appropriate after being referred the matter, direct ASIC to vary or revoke the CS facility rule.

(4) ASIC must comply with the direction given under subsection (3) immediately.

(5) A direction given under subsection (3) is not a legislative instrument.

### **826L Alternatives to civil proceedings**

- (1) The regulations may provide for a person who is alleged to have contravened subsection 826J(1) (complying with CS facility rules) to be not liable to civil proceedings in relation to that alleged contravention if the person instead does one or more of the following in relation to that alleged contravention:
  - (a) pay a penalty to the Commonwealth;
  - (b) undertake or institute remedial measures (including education programs);
  - (c) accept sanctions other than the payment of a penalty to the Commonwealth;
  - (d) enter into a legally enforceable undertaking.
- (2) The penalty payable under regulations made for the purposes of paragraph (1)(a) in relation to an alleged contravention of a CS facility rule must not exceed:
  - (a) for an individual—3,000 penalty units; and
  - (b) for a body corporate—15,000 penalty units.
- (3) Without limiting regulations that may be made for the purposes of paragraph (1)(d), those regulations may provide for one or more of the following kinds of undertakings:
  - (a) an undertaking to take specified action within a specified period;
  - (b) an undertaking to refrain from taking specified action;
  - (c) an undertaking to pay a specified amount within a specified period to the Commonwealth or to some other specified person.

### **Subdivision C—The process of making CS facility rules**

#### **826M ASIC to consult before making rules**

- (1) ASIC must not make a CS facility rule unless ASIC:
  - (a) has consulted the public about the proposed rule; and
  - (b) has also consulted the following about the proposed rule:
    - (i) the Reserve Bank;



- (ii) any other person or body prescribed by the regulations for the purposes of this subparagraph.

Note: In some situations, consultation is not required: see sections 826P and 826Q.

- (2) Without limiting the ways in which ASIC may comply with the obligation in paragraph (1)(a) to consult the public about a proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:
- (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
  - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a CS facility rule.

### **826N Ministerial consent to rules required**

- (1) ASIC must not make a CS facility rule unless the Minister has consented, in writing, to the making of the rule.

Note: In some situations, consent is not required: see sections 826P and 826Q.

- (2) A consent given under subsection (1) is not a legislative instrument.

### **826P Emergency rules—consultation and consent not required**

- (1) ASIC may, under section 826H, make a CS facility rule without consulting as required by section 826M, and without the consent of the Minister as required by subsection 826N(1), if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:
- (a) the Australian economy; or
  - (b) the efficiency, integrity and stability of the Australian financial system; or
  - (c) the provision of fair and effective services by licensed CS facilities.

- (2) However, if ASIC does so, ASIC must, on the following day, provide the Minister and the Reserve Bank with a written explanation of the need for the rule.
- (3) The Minister may, if the Minister considers it appropriate after being provided with the explanation, direct ASIC to vary or revoke the rule.
- (4) ASIC must comply with the direction given under subsection (3) immediately.
- (5) A direction given under subsection (3) is not a legislative instrument.

**826Q Crisis resolution—consultation and consent not required**

- (1) ASIC may:
  - (a) under section 826H, make a CS facility rule; or
  - (b) under section 826R, vary a CS facility rule;without consulting as required by section 826M, and without the consent of the Minister as required by subsection 826N(1), if the Reserve Bank, under subsection 849AB(1), requests ASIC to make the rule or variation.
- (2) However, if ASIC does so, ASIC must, on the following day, provide the Minister with a copy of the request.
- (3) The Minister may, if the Minister considers it appropriate after being provided with a copy of the request, direct ASIC to vary or revoke the rule.
- (4) ASIC must comply with the direction given under subsection (3) immediately.
- (5) A direction given under subsection (3) is not a legislative instrument.

**826R Variation and revocation of rules**

- (1) ASIC may vary or revoke a CS facility rule in like manner and subject to like conditions (see subsection 33(3) of the *Acts Interpretation Act 1901*).

- (2) However, the requirements of sections 826M and 826N do not apply in relation to a variation or revocation in accordance with a direction by the Minister under subsection 826K(3), 826P(3) or 826Q(3).

### **Subdivision D—Limitations**

#### **826S Regulations may limit how rules may deal with certain matters**

The regulations may prescribe limits on:

- (a) the extent to which, or the way in which, the CS facility rules may deal with matters permitted by Subdivision A; or
- (b) the classes of persons on whom those rules may impose requirements; or
- (c) the extent to which those rules may impose requirements (or certain kinds of requirements) on certain classes of persons.

### **Subdivision E—Exemptions**

#### **826T Provisions covered by this Subdivision**

In this Subdivision, the *provisions covered by this Subdivision* are:

- (a) the following provisions:
  - (i) the provisions of this Division;
  - (ii) the provisions of regulations made for the purposes of the provisions of this Division;
  - (iii) the provisions of the CS facility rules; and
- (b) definitions in this Act, or in the regulations, as they apply to references in provisions referred to in paragraph (a).

#### **826U Exemptions and modifications by regulations**

- (1) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions covered by this Subdivision; or
  - (b) exempt a clearing and settlement facility or class of clearing and settlement facilities from all or specified provisions covered by this Subdivision; or

- (c) declare that provisions covered by this Subdivision apply in relation to:
  - (i) a person or a clearing and settlement facility; or
  - (ii) a class of persons or clearing and settlement facilities; as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) If there is an inconsistency between:
  - (a) an exemption prescribed by regulations made for the purposes of subsection (1); and
  - (b) an exemption by ASIC under section 820C; (including in relation to any conditions specified by ASIC), the regulations prevail to the extent of the inconsistency.

## **66 Subsection 827D(2A)**

Repeal the subsection, substitute:

- (2A) If there is an inconsistency between the standards and any of the following:
  - (a) the CS facility rules;
  - (b) the CS services rules;
  - (c) the derivative transaction rules;
  - (d) the derivative trade repository rules;the standards prevail to the extent of the inconsistency.

## **67 In the appropriate position in section 1317C**

Insert:

- (gccg) a decision by ASIC:
  - (i) under section 826H to make CS facility rules; or
  - (ii) under subsection 826R(1) to vary or revoke CS facility rules; or
- (gcch) a decision by ASIC to do or not do anything under regulations made for the purposes of section 826L (alternatives to civil proceedings); or
- (gccj) a decision by the Minister:
  - (i) under subsection 826N(1) to consent to the making of a CS facility rule; or

(ii) under subsection 826K(3), 826P(3) or 826Q(3) to direct ASIC to vary or revoke a CS facility rule; or

**68 In the appropriate position in subsection 1317E(3)**

Insert:

subsection 826J(1)                      complying with CS facility rules                      uncategorised

## Part 8—Streamlining some of ASIC's existing directions powers

### *Corporations Act 2001*

#### **69 Section 794D**

Repeal the section, substitute:

#### **794D ASIC's directions power—protecting dealings in financial products**

- (1) ASIC may, by written notice given to a market licensee, direct the licensee:
- (a) to suspend dealings in a specified financial product or class of financial products; or
  - (b) to take, or refrain from taking:
    - (i) any actions; or
    - (ii) one or more specified actions;relating to dealings in a specified financial product or class of financial products;
- if ASIC considers the direction is necessary, or in the public interest, to protect people dealing in the financial product or class of financial products.
- Example: Under paragraph (b), a direction could require the licensee to take actions to:
- (a) limit the kinds of dealings that are allowed in the financial product or class of financial products; or
  - (b) require participants in the market to act in a specified manner in relation to dealings in the financial product or class of financial products.
- (2) The direction:
- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and
  - (b) must include the reasons for the direction; and
  - (c) may deal with either or both of the matters in paragraphs (1)(a) and (b).

- (3) The licensee must comply with the direction (even if, under subsection 794DA(1), the licensee has requested ASIC to refer the direction to the Minister).

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

- (4) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

### **794DA Matters relating to ASIC directions—protecting dealings in financial products**

#### *Referrals to the Minister*

- (1) If, at any time after a market licensee receives a direction under subsection 794D(1), the licensee requests in writing that ASIC refer the direction to the Minister, ASIC must do so immediately.
- (2) The Minister may, if the Minister considers it appropriate after being referred the direction, direct ASIC to vary or revoke the direction.
- (3) ASIC must comply with the direction given under subsection (2) immediately.
- (4) A direction given under subsection (2) is not a legislative instrument.

#### *Variations and revocations*

- (5) ASIC may vary or revoke a direction given under subsection 794D(1):
- (a) in like manner; and
  - (b) subject to like conditions, except if a condition is contrary to a direction given under subsection (2) of this section;
- (see subsection 33(3) of the *Acts Interpretation Act 1901*).

#### *Notifying other affected persons*

- (6) As soon as practicable after:

(a) giving a direction under subsection 794D(1) to a market licensee; or

(b) varying or revoking such a direction;

ASIC must give written notice of the direction, variation or revocation to the operator of each clearing and settlement facility with which the market licensee has clearing and settlement arrangements for transactions effected through the market.

*Directions are not legislative instruments*

(7) A direction given under subsection 794D(1) is not a legislative instrument.

## **70 Section 798J**

Repeal the section, substitute:

### **798J ASIC’s directions power—protecting people dealing in financial products**

(1) ASIC may, by written notice given to an entity, direct the entity:

(a) to suspend dealings in a financial product or class of financial products; or

(b) to take, or refrain from taking:

(i) any actions; or

(ii) one or more specified actions;

relating to dealings in a specified financial product or class of financial products;

if ASIC considers the direction is necessary, or in the public interest, to protect people dealing in the financial product or class of financial products.

(2) The direction:

(a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and

(b) must include the reasons for the direction; and

(c) may deal with either or both of the matters in paragraphs (1)(a) and (b).



Note: ASIC may also give directions to entities that are market licensees under section 794D. A failure to comply with a direction under that section is an offence: see subsection 1311(1).

- (3) The entity must comply with the direction (even if, under subsection 798JA(1), the licensee has requested ASIC to refer the direction to the Minister).
- (4) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

### **798JA Matters relating to ASIC directions—protecting people dealing in financial products**

#### *Referrals to the Minister*

- (1) If, at any time after an entity receives a direction under subsection 798J(1), the entity requests in writing that ASIC refer the direction to the Minister, ASIC must do so immediately.
- (2) The Minister may, if the Minister considers it appropriate after being referred the direction, direct ASIC to vary or revoke the direction.
- (3) ASIC must comply with the direction given under subsection (2) immediately.
- (4) A direction given under subsection (2) is not a legislative instrument.

#### *Variations and revocations*

- (5) ASIC may vary or revoke a direction given under subsection 798J(1):
  - (a) in like manner; and
  - (b) subject to like conditions, except if a condition is contrary to a direction given under subsection (2) of this section;(see subsection 33(3) of the *Acts Interpretation Act 1901*).

*Directions are not legislative instruments*

- (6) A direction given under subsection 798J(1) is not a legislative instrument.

**71 Section 823D**

Repeal the section, substitute:

**823D ASIC's directions power—protecting dealings in financial products and ensuring fair and effective provision of services by CS facilities**

- (1) ASIC may, by written notice given to a CS facility licensee, direct the licensee:
- (a) not to provide the licensee's services in relation to any transactions that:
    - (i) the licensee receives notice of after the direction is given; and
    - (ii) relate to a specified financial product or class of financial products; or
  - (b) to take, or refrain from taking:
    - (i) any actions; or
    - (ii) one or more specified actions;relating to dealings with transactions relating to a specified financial product or class of financial products;
- if subsection (2) applies.
- (2) This subsection applies if ASIC considers that:
- (a) the direction is necessary, or in the public interest, to protect people dealing in a financial product or class of financial products; or
  - (b) the licensee has not done all things reasonably practicable to ensure the facility's services are provided in a fair and effective way.
- (3) The direction:
- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and
  - (b) must include the reasons for the direction; and

- (c) may deal with either or both of the matters in paragraphs (1)(a) and (b).
- (4) The licensee must comply with the direction (even if, under subsection 823DA(1), the licensee has requested ASIC to refer the direction to the Minister).
- Note: Failure to comply with this subsection is an offence: see subsection 1311(1).
- (5) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

**823DA Matters relating to ASIC directions—protecting dealings in financial products and ensuring fair and effective provision of services by CS facilities**

*Referrals to the Minister*

- (1) If, at any time after a CS facility licensee receives a direction under subsection 823D(1), the licensee requests in writing that ASIC refer the direction to the Minister, ASIC must do so immediately.
- (2) The Minister may, if the Minister considers it appropriate after being referred the direction, direct ASIC to vary or revoke the direction.
- (3) ASIC must comply with the direction given under subsection (2) immediately.
- (4) A direction given under subsection (2) is not a legislative instrument.

*Variations and revocations*

- (5) ASIC may vary or revoke a direction given under subsection 823D(1):
- (a) in like manner; and
  - (b) subject to like conditions, except if a condition is contrary to a direction given under subsection (2) of this section;
- (see subsection 33(3) of the *Acts Interpretation Act 1901*).

*Notifying other affected persons*

- (6) As soon as practicable after:
- (a) giving a direction under subsection 823D(1) to a CS facility licensee; or
  - (b) varying or revoking such a direction;
- ASIC must give written notice of the direction, variation or revocation to:
- (c) the operator of each financial market with which the facility has arrangements to provide services for transactions effected through the market; and
  - (d) if the direction relates to one or more specified financial products—each issuer of those products; and
  - (e) the Reserve Bank.

*Directions are not legislative instruments*

- (7) A direction given under subsection 823D(1) is not a legislative instrument.

**72 Section 904G**

Repeal the section, substitute:

**904G ASIC’s directions power—licensees not complying with their obligations**

- (1) ASIC may, by written notice given to a derivative trade repository licensee, direct the licensee to:
- (a) take one or more specified actions to promote compliance by the licensee with its obligations as a derivative trade repository licensee; or
  - (b) refrain from taking one or more specified actions to promote compliance by the licensee with those obligations;
- if ASIC considers that the licensee is not complying with those obligations.
- (2) The direction:
- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and

- (b) must include the reasons for the direction; and
  - (c) may deal with either or both of the matters in paragraphs (1)(a) and (b).
- (3) The licensee must comply with the direction (even if, under subsection 904GA(1), the licensee has requested ASIC to refer the direction to the Minister).
- Note: Failure to comply with this subsection is an offence: see subsection 1311(1).
- (4) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.

### **904GA Matters relating to ASIC directions—licensees not complying with their obligations**

#### *Referrals to the Minister*

- (1) If, at any time after a derivative trade repository licensee receives a direction under subsection 904G(1), the licensee requests in writing that ASIC refer the direction to the Minister, ASIC must do so immediately.
- (2) The Minister may, if the Minister considers it appropriate after being referred the direction, direct ASIC to vary or revoke the direction.
- (3) ASIC must comply with the direction given under subsection (2) immediately.
- (4) A direction given under subsection (2) is not a legislative instrument.

#### *Variations and revocations*

- (5) ASIC may vary or revoke a direction given under subsection 904G(1):
  - (a) in like manner; and
  - (b) subject to like conditions, except if a condition is contrary to a direction given under subsection (2) of this section;(see subsection 33(3) of the *Acts Interpretation Act 1901*).

*Notifying other affected persons*

- (6) As soon as practicable after:
- (a) giving a direction under subsection 904G(1) to a derivative trade repository licensee; or
  - (b) varying or revoking such a direction;
- ASIC must give written notice of the direction, variation or revocation to:
- (c) the operator of each financial market with which the licensed derivative trade repository has arrangements to provide services relating to derivative trade data; and
  - (d) the operator of each clearing and settlement facility with which that repository has arrangements to provide services relating to derivative trade data.

*Directions are not legislative instruments*

- (7) A direction given under subsection 904G(1) is not a legislative instrument.

**73 Section 1042E**

Omit “794D(2)”, substitute “794D(1)”.

**74 Section 1042E**

Omit “798J(2)”, substitute “798J(1)”.

**75 Before paragraph 1317C(gca)**

Insert:

- (gcae) a decision by the Minister under subsection 794DA(2) to direct ASIC to vary or revoke a direction given under subsection 794D(1); or

**76 In the appropriate position in section 1317C**

Insert:

- (gccd) a decision by the Minister under subsection 823DA(2) to direct ASIC to vary or revoke a direction given under subsection 823D(1); or

**77 After paragraph 1317C(gdc)**

Insert:

(gdcaa) a decision by the Minister under subsection 904GA(2) to direct ASIC to vary or revoke a direction given under subsection 904G(1); or

**78 Schedule 3 (table item dealing with subsection 823D(5))**

Omit "823D(5)", substitute "823D(4)".

**79 Schedule 3 (table item dealing with subsection 904G(5))**

Omit "904G(5)", substitute "904G(3)".

## **Part 9—Enhancing regulator powers for CS facility licensees**

### **Division 1—Main amendments**

#### *Corporations Act 2001*

##### **80 Paragraph 821A(1)(aa)**

Repeal the paragraph, substitute:

- (aa) comply with standards in force under section 827D or 827DA; and
- (ab) do all other things necessary to reduce systemic risk to the extent that it is reasonably practicable to do so; and

##### **81 Section 821D (heading)**

Omit “ASIC”.

##### **82 Section 821D**

Before “A CS facility licensee”, insert “(1)”.

##### **83 At the end of section 821D**

Add:

- (2) A CS facility licensee must give a person authorised by the Reserve Bank such reasonable access to the facility as the person requests for any of the purposes of this Part or Part 7.3B.

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

##### **84 Subsection 822C(1)**

After “made by”, insert “one or more of the following”.

##### **85 Paragraph 822C(1)(a)**

Omit “; or”, substitute “or the Reserve Bank;”.



## **86 Paragraphs 822C(1)(b) and (c)**

Omit “; or”, substitute “;”.

## **87 After section 823B**

Insert:

### **823BA Reserve Bank’s power to require special report**

- (1) The Reserve Bank may give a CS facility licensee a written notice requiring the licensee to give the Reserve Bank a special report on specified matters.
- (2) The licensee must give the special report to the Reserve Bank within the time required by the notice.

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

### **823BB ASIC’s power to require expert report**

*Expert appointed by ASIC*

- (1) ASIC may, by written notice given to a CS facility licensee and a person (the *expert*), appoint the expert to provide ASIC with an expert report on specified matters relating to the licensee’s compliance with its obligations as a CS facility licensee under this Chapter.
- (2) ASIC may, by written notice given to the licensee, direct the licensee to reimburse ASIC for ASIC’s expenses that:
  - (a) are incurred in appointing and paying the expert to provide the report; and
  - (b) are specified in the notice.
- (3) If, under subsection (2), ASIC directs the licensee to reimburse ASIC for ASIC’s expenses, an amount equal to those expenses:
  - (a) is a debt due and payable to ASIC; and
  - (b) is recoverable by ASIC in:
    - (i) the Federal Court; or
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); or

- (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

*Expert appointed by licensee*

- (4) ASIC may, by written notice given to a CS facility licensee, direct the licensee to appoint a person to provide ASIC with an expert report on specified matters relating to the licensee's compliance with its obligations as a CS facility licensee under this Part.
- (5) The licensee must comply with any direction given under subsection (4) to the licensee.

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

*Qualifications for appointment*

- (6) A person cannot be appointed under subsection (1), or as directed under subsection (4), unless ASIC:
- (a) is satisfied that the person has the necessary skills or experience to provide the expert report; and
  - (b) if subsection (4) applies—has approved the proposed appointment of the person.

*Licensee must assist expert*

- (7) The licensee must give all information, explanation and assistance to a person appointed under subsection (1), or as directed under subsection (4), as the person reasonably requests for the preparation and provision of the expert report.
- (8) If a person requests the licensee to give the person information, explanation or assistance under subsection (7), ASIC may, by written notice given to the licensee, direct the licensee to comply with the request by a specified day.
- (9) The licensee must comply with any direction given under subsection (8) to the licensee.

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

### **823BC Reserve Bank's power to require expert report**

#### *Expert appointed by Reserve Bank*

- (1) The Reserve Bank may, by written notice given to a CS facility licensee and a person (the *expert*), appoint the expert to provide the Reserve Bank with an expert report on specified matters relating to the licensee's compliance with its obligations as a CS facility licensee under this Part.
- (2) The Reserve Bank may, by written notice given to the licensee, direct the licensee to reimburse the Reserve Bank for the Reserve Bank's expenses that:
  - (a) are incurred in appointing and paying the expert to provide the report; and
  - (b) are specified in the notice.
- (3) If, under subsection (2), the Reserve Bank directs the licensee to reimburse the Reserve Bank for the Reserve Bank's expenses, an amount equal to those expenses:
  - (a) is a debt due and payable to the Reserve Bank; and
  - (b) is recoverable by the Reserve Bank in:
    - (i) the Federal Court; or
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); or
    - (iii) a court of a State or Territory that has jurisdiction in relation to the matter.

#### *Expert appointed by licensee*

- (4) The Reserve Bank may, by written notice given to a CS facility licensee, direct the licensee to appoint a person to provide the Reserve Bank with an expert report on specified matters relating to the licensee's compliance with its obligations as a CS facility licensee under this Part.
- (5) The licensee must comply with any direction given under subsection (4) to the licensee.

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

*Qualifications for appointment*

- (6) A person cannot be appointed under subsection (1), or as directed under subsection (4), unless the Reserve Bank:
- (a) is satisfied that the person has the necessary skills or experience to provide the expert report; and
  - (b) if subsection (4) applies—has approved the proposed appointment of the person.

*Licensee must assist expert*

- (7) The licensee must give all information, explanation and assistance to a person appointed under subsection (1), or as directed under subsection (4), as the person reasonably requests for the preparation and provision of the expert report.
- (8) If a person requests the licensee to give the person information, explanation or assistance under subsection (7), the Reserve Bank may, by written notice given to the licensee, direct the licensee to comply with the request by a specified day.
- (9) The licensee must comply with any direction given under subsection (8) to the licensee.

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

**88 Section 823E**

Repeal the section, substitute:

**Subdivision D—Reserve Bank’s directions powers**

**823E Reserve Bank’s directions power—directions to increase compliance or reduce systemic risk**

- (1) The Reserve Bank may, by written notice given to a CS facility licensee, direct the licensee to take:
- (a) specified action that the Reserve Bank reasonably believes will promote compliance by the licensee with its obligations as a CS facility licensee under:
    - (i) paragraph 821A(1)(aa) or (ab); or

- (ii) section 821BA; or
  - (iii) subsection 821C(3);
- if the Reserve Bank reasonably believes that the licensee is not complying or is not likely to comply with those obligations; or
- (b) specified action to comply with all or part of one or more standards in force under section 827D that applies to the licensee, if the Reserve Bank reasonably believes that the licensee is not complying with those standards or parts; or
  - (c) specified action to reduce systemic risk in the provision of the facility's services, if the Reserve Bank reasonably believes that the licensee:
    - (i) has not done; or
    - (ii) is unlikely to do;all things reasonably practicable to reduce systemic risk in the provision of the facility's services.
- (2) The direction must specify a reasonable time by which, or a reasonable period during which, it is to be complied with.
- (3) The licensee must comply with the direction (even if, under subsection (4), the licensee has requested the Reserve Bank to refer the direction to the Minister).

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

*Referrals to the Minister*

- (4) If, at any time after a CS facility licensee receives a direction under subsection (1), the licensee requests in writing that the Reserve Bank refer the direction to the Minister, the Reserve Bank must do so immediately.
- (5) The Minister may, if the Minister considers it appropriate after being referred the direction, direct the Reserve Bank to vary or revoke the direction.
- (6) The Reserve Bank must comply with the direction given under subsection (5).

Note: The Reserve Bank will need to do so immediately: see paragraph 823K(1)(b).

- (7) A direction given under subsection (5) is not a legislative instrument.

**823F Reserve Bank’s directions power—directions to preserve stability in the Australian financial system**

- (1) The Reserve Bank may, by written notice given to a CS facility licensee holding a licence granted under subsection 824B(1) (domestic clearing and settlement facilities), direct the licensee to:
- (a) do, or refrain from doing, anything under either or both of the following instruments (the *operating instruments*):
    - (i) the facility’s operating rules;
    - (ii) the written procedures the facility must have under regulations made for the purposes of subsection 822A(2); or
  - (b) change one or more of those operating instruments; or
  - (c) subject to sections 823M and 823P:
    - (i) increase the licensee’s level of share capital to a specified level; or
    - (ii) issue one or more specified classes of shares, or one or more specified classes of rights to acquire shares, in the licensee; or
    - (iii) issue one or more specified classes of capital instruments that are prescribed by the regulations; or
  - (d) refrain from paying a dividend on any shares; or
  - (e) refrain from repaying any amount paid on shares; or
  - (f) exercise rights under an agreement (including termination rights);

if subsection (2) of this section applies to the licensee.

Note 1: The direction is a *recapitalisation direction* to the extent that it deals with a matter in paragraph (c).

Note 2: The procedures referred to in subparagraph (a)(ii) could relate to matters such as:

- (a) the licensee’s operations; or
- (b) the conduct of participants in the facility; or
- (c) the structure and operation of electronic communications with those participants; or
- (d) default management or recovery.

- (2) This subsection applies to the licensee if:
- (a) the licensee informs the Reserve Bank that the licensee considers that the licensee is likely to become unable to meet one or more of its obligations under paragraphs 821A(1)(aa), (ab) and (d) (its *critical obligations*); or
  - (b) the Reserve Bank reasonably believes that, in the absence of external support:
    - (i) the licensee may become unable to meet one or more of its critical obligations; or
    - (ii) it is likely that the licensee will be unable to operate the facility in Australia consistently with the stability of the Australian financial system; or
  - (c) the licensee becomes unable to meet one or more of its critical obligations; or
  - (d) the Reserve Bank reasonably believes that the licensee is conducting, or is likely to conduct its affairs in a way that may cause or promote instability in the Australian financial system.
- (3) For the purposes of paragraph (2)(b), the regulations may specify that a particular form of support:
- (a) is external support; or
  - (b) is not external support.
- (4) The direction:
- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and
  - (b) may deal with one or more of the matters in the paragraphs or subparagraphs of subsection (1).
- (5) The licensee must comply with the direction.

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

### **823G Reserve Bank's directions power—directions to enhance resolvability**

- (1) The Reserve Bank may, by written notice given to:
- (a) a body corporate that is a CS facility licensee; or
-

- (b) a body corporate that:
  - (i) is a related body corporate of a CS facility licensee; and
  - (ii) is incorporated in Australia;direct the body corporate to take:
  - (c) specified measures to comply with all or part of one or more standards in force under section 827DA that applies to the body corporate, if the Reserve Bank reasonably believes that the body corporate is not complying with those standards or parts; or
  - (d) specified action to manage or resolve an impediment to the effective management of or response to a condition in section 831A being satisfied in relation to the CS facility licensee, if the Reserve Bank reasonably believes that the body corporate:
    - (i) has not done; or
    - (ii) is unlikely to do;all things reasonably practicable to manage or resolve the impediment.
- (2) The direction must specify a reasonable time by which, or a reasonable period during which, it is to be complied with.
- (3) The body corporate must comply with the direction.

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

**823H Reserve Bank’s directions power—directions to give information to assist the Reserve Bank perform its functions**

- (1) The Reserve Bank may, by written notice given to a body corporate to which subsection (2) or (3) applies, direct the body corporate to give:
  - (a) specified information; or
  - (b) documents containing specified information;to the Reserve Bank or a Reserve Bank staff member.
- (2) This subsection applies to a body corporate if:
  - (a) the body corporate is a CS facility licensee; and



- (b) the Reserve Bank reasonably believes that the licensee possesses the information or documents; and
  - (c) the Reserve Bank reasonably believes that the information or documents could assist the Reserve Bank to perform its functions, or exercise its powers, under this Part.
- (3) This subsection applies to a body corporate if:
- (a) the body corporate:
    - (i) is a related body corporate of a CS facility licensee; and
    - (ii) is incorporated in Australia; and
  - (b) the Reserve Bank reasonably believes that the body corporate possesses the information or documents; and
  - (c) the Reserve Bank reasonably believes that the information or documents could assist the Reserve Bank to perform its functions, or exercise its powers:
    - (i) under section 823CA in relation to the body corporate or the licensee; or
    - (ii) under section 827DB (resolution planning) in relation to the licensee.
- (4) The direction:
- (a) must specify a reasonable time by which, or a reasonable period during which, it is to be complied with; and
  - (b) may specify the form and manner in which the information or documents must be given.
- (5) The body corporate must comply with the direction.

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

### **823J Matters relating to all Reserve Bank directions—order for body corporate to comply with direction**

If a body corporate fails to comply with a direction given under this Subdivision to the body corporate, the Reserve Bank may apply to the Court for, and the Court may make, an order that the body corporate comply with the direction.

**823K Matters relating to all Reserve Bank directions—variation or revocation**

- (1) The Reserve Bank:
  - (a) may, by written notice given to a body corporate:
    - (i) vary a direction given under this Subdivision to the body corporate if, at the time of variation, the Reserve Bank reasonably believes the variation is necessary or appropriate; or
    - (ii) revoke such a direction if, at the time of revocation, the Reserve Bank reasonably believes the direction is no longer necessary or appropriate; and
  - (b) for a direction given under subsection 823E(1)—must immediately do so if required under subsection 823E(6).
- (2) A direction given under this Subdivision has effect until the Reserve Bank revokes it under subsection (1).

**Subdivision E—Matters relating to Reserve Bank recapitalisation directions**

**823L Recapitalisation directions—matters relating to compliance**

*Giving members of the licensee notice of share issue etc.*

- (1) As soon as practicable after a CS facility licensee issues shares, rights to acquire shares, or other capital instruments in compliance with a recapitalisation direction, the licensee must give a written notice:
  - (a) to the persons who were members of the licensee just before the issue; and
  - (b) that:
    - (i) identifies the issue; and
    - (ii) explains the effect of the issue of the shares, rights to acquire shares, or other capital instruments on the members' interests.
- (2) If the licensee fails to comply with subsection (1), the Reserve Bank may apply to the Court for, and the Court may make, an order that the licensee comply with that subsection.

*Issue of shares etc. despite other laws etc.*

- (3) A CS facility licensee may issue shares, rights to acquire shares, or other capital instruments in compliance with a recapitalisation direction despite all of the following:
- (a) this Act;
  - (b) the licensee's constitution;
  - (c) the facility's operating instruments referred to in paragraph 823F(1)(a);
  - (d) any arrangement to which the licensee is a party;
  - (e) any listing rules of a financial market in whose official list the licensee is included.

**823M Recapitalisation directions—Reserve Bank must obtain expert's report on the fair value of shares etc.**

- (1) Before giving a recapitalisation direction directing a CS facility licensee to issue one or more specified classes of:
- (a) shares in the licensee; or
  - (b) rights to acquire shares in the licensee;
- the Reserve Bank must:
- (c) obtain a report on the fair value of those shares, or those rights, from an expert who is not an associate of the licensee; and
  - (d) consider the report.

Note: The report may not always be required: see subsection (4).

- (2) The report must set out:
- (a) the amount that is, in the expert's opinion, the fair value for each of those shares or rights; and
  - (b) the reasons for forming the opinion; and
  - (c) any relationship between the expert and:
    - (i) the licensee; or
    - (ii) a person who is an associate of the licensee;including any circumstances in which the expert gives the licensee or person advice, or acts on behalf of the licensee or person, in the proper performance of the functions attaching

- to the expert's professional capacity or business relationship with the licensee or person; and
- (d) any financial or other interest of the expert that could reasonably be regarded as being capable of affecting the expert's ability to give an unbiased opinion in relation to the matter being reported on.
- (3) The Reserve Bank may publish details of, or relating to the report.
- (4) Despite subsection (1), the Reserve Bank need not obtain the report if it is satisfied that doing so would detrimentally affect:
- (a) participants, or proposed participants, in the CS facility; or
  - (b) the continuity of one or more clearing and settlement facility services that are critical to the functioning of the financial system in Australia; or
  - (c) the stability of the financial system in Australia.

**823N Recapitalisation directions—determination of the fair value of shares or rights by an expert**

*Determining the fair value of shares*

- (1) In determining the fair value for each share in a CS facility licensee for the purposes of paragraph 823M(2)(a), the expert must:
- (a) first, assess the value of the licensee as a whole in accordance with the assumptions (if any) notified to the expert under subsection (3) of this section for the valuation of the licensee; and
  - (b) second, allocate that value among the classes of shares in the licensee that:
    - (i) have been issued; or
    - (ii) the Reserve Bank proposes to direct be issued (taking into account the relative financial risk, and voting and distribution rights, of the classes); and
  - (c) third, allocate the value of each class pro rata among the shares in that class that:
    - (i) have been issued; or

- (ii) the Reserve Bank proposes to direct be issued (without allowing a premium or applying a discount for particular shares in that class).

*Determining the fair value of rights*

- (2) In determining the fair value for each right to acquire shares in a CS facility licensee for the purposes of paragraph 823M(2)(a), the expert must act in accordance with the assumptions (if any) notified to the expert under subsection (3) of this section for the valuation of that right.

*Ministerial or Reserve Bank assumptions*

- (3) The Minister or the Reserve Bank may give written notice of the following to the expert:
  - (a) assumptions for the valuation of the CS facility licensee;
  - (b) assumptions for the valuation of rights to acquire shares in the CS facility licensee.
- (4) An entity who gave assumptions under subsection (3) may, by further written notice given to the expert, revoke, but not vary, those assumptions.
- (5) Ministerial assumptions prevail over Reserve Bank assumptions to the extent of any inconsistency.
- (6) A notice given under subsection (3) or (4) is not a legislative instrument.

**823P Recapitalisation directions—working out the fair value of other capital instruments**

- (1) Before giving a recapitalisation direction directing a CS facility licensee to issue one or more specified classes of capital instruments (see subparagraph 823F(1)(c)(iii)), the Reserve Bank must comply with any requirements prescribed by the regulations for ascertaining the fair value of the capital instruments.
- (2) Regulations made for the purposes of this section may specify different requirements for different classes of capital instruments.

**823Q Recapitalisation directions—contravening certain provisions does not affect the validity of the direction etc.**

A contravention of section 823M, 823N or 823P does not affect the validity of a recapitalisation direction or anything done in compliance with the direction.

**823R Recapitalisation directions—exceptions to Part IV of the *Competition and Consumer Act 2010***

For the purposes of subsection 51(1) of the *Competition and Consumer Act 2010*, the following things are specified and specifically authorised:

- (a) the acquisition of shares in a CS facility licensee as a direct result of:
  - (i) the issue of the shares in compliance with a recapitalisation direction given to the licensee; or
  - (ii) the exercise of a right to acquire the shares that was issued in compliance with such a recapitalisation direction;
- (b) the acquisition of other capital instruments as a direct result of the issue of those capital instruments in compliance with a recapitalisation direction given to a CS facility licensee.

**Subdivision F—Other matters relating to Reserve Bank directions**

**823S Directions to preserve stability in the Australian financial system—relationship with other provisions**

If a direction under subsection 823F(1) directs a CS facility licensee to change any of the facility's operating rules or procedures (see subparagraph 823F(1)(a)(ii)), neither of the following provisions apply in relation to the change:

- (a) subsection 822D(2) (about change ceasing to have effect if ASIC not notified);
- (b) section 822E (about disallowance).

Note: The licensee would still need to notify ASIC of the change: see subsection 822D(1).

**823T All Reserve Bank directions—publishing details about directions**

The Reserve Bank may publish details of, or relating to:

- (a) a direction given under Subdivision D; or
- (b) a variation or revocation of such a direction.

**823U All Reserve Bank directions—injunctions**

- (1) The Reserve Bank has the same powers as ASIC to apply for an injunction under section 1324 in relation to a provision of this Part.
- (2) The Reserve Bank may so apply itself or jointly with ASIC.

**Subdivision G—Other matters relating to ASIC or Reserve Bank powers**

**823V Exercise of Reserve Bank powers to give directions under section 823F not grounds for denial of obligations**

- (1) This section applies if a body corporate is party to an agreement, whether the proper law of the agreement is:
  - (a) Australian law; or
  - (b) foreign law, including the law of part of a foreign country.
- (2) None of the matters mentioned in subsection (3) allows the agreement, or a party to the agreement (other than the body corporate), to do any of the following:
  - (a) deny any obligation under the agreement;
  - (b) accelerate any debt under the agreement;
  - (c) terminate or close out the agreement, or any transaction relating to the agreement;
  - (d) enforce any security under the agreement.
- (3) The matters are as follows:
  - (a) the body corporate being subject to the exercise of a power under section 823F by the Reserve Bank;
  - (b) if the body corporate is a member of a group of bodies corporate—another member of the group being subject to the exercise of such a power.

*Payment Systems and Netting Act 1998 prevails over this section*

- (4) If there is any inconsistency between:
- (a) subsections (1) to (3) of this section; and
  - (b) the *Payment Systems and Netting Act 1998*;
- that Act prevails to the extent of the inconsistency.

*Agreements to which this section does not apply*

- (5) This section does not apply to a kind of agreement prescribed by the regulations for the purposes of this subsection.

**823W All ASIC and Reserve Bank directions etc. under this Part—  
failure by officers to take reasonable steps to ensure  
compliance**

- (1) An officer of a CS facility licensee contravenes this subsection if:
- (a) the officer fails to take reasonable steps to ensure that the licensee complies with a direction given under this Part by ASIC, or the Reserve Bank, to the licensee; and
  - (b) it would be reasonable to expect that the officer's duties include ensuring that the licensee complies with that direction.

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

- (2) If an officer of a CS facility licensee contravenes subsection (1), the officer contravenes that subsection in respect of:
- (a) the first day the contravention happens; and
  - (b) each later day (if any) the circumstances that gave rise to the contravention continue (including the day of conviction for any such offence or any later day).

Note: This subsection does not imply that section 4K of the *Crimes Act 1914* does not apply to offences against this Act or the regulations.

- (3) For the purposes of subsection (2), a contravention of subsection (1) by an officer of a CS facility licensee in respect of a direction given to the licensee under subsection 823BB(8) or 823BC(8) is taken to begin on the later of:



- (a) the day by which the licensee was required to comply with the direction; and
- (b) the first day on which paragraph (1)(b) applied in relation to the officer and the direction.

**823X All ASIC and Reserve Bank directions under this Part—  
protection from liability for compliance in good faith**

- (1) An action or other proceeding (whether criminal or civil) does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:
    - (a) the person does the thing, or omits to do the thing, for the purpose of any of the following:
      - (i) complying with a direction given under this Part by ASIC, or the Reserve Bank, to a body corporate;
      - (ii) taking a measure, or an action, specified in such a direction;
      - (iii) doing, or refraining from doing, anything in accordance with such a direction; and
    - (b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and
    - (c) the person is any of the following:
      - (i) an officer or senior manager of the body corporate, or of a related body corporate;
      - (ii) an employee or agent of the body corporate, or of a related body corporate;
      - (iii) the body corporate or a related body corporate;
      - (iv) a person engaged to provide services (including advice) to the body corporate or a related body corporate.
- Note: In a prosecution for an offence, a defendant bears an evidential burden in relation to the matters in this subsection: see subsection 13.3(3) of the *Criminal Code*.
- (2) For the purposes of paragraph (1)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

**89 Subparagraph 1101B(1)(a)(iii)**

Omit “or of the operating rules of a licensed CS facility”.

**90 After paragraph 1101B(1)(a)**

Insert:

- (aa) on the application of ASIC or the Reserve Bank or both, it appears to the Court that a person has contravened a provision of the operating rules of a licensed CS facility; or

**91 In the appropriation position in section 1317C**

Insert:

- (gcce) a decision by the Reserve Bank to give a direction under section 823F (directions to preserve stability in the Australian financial system); or

**92 Schedule 3 (table item dealing with section 821D)**

Repeal the item, substitute:

Subsection 821D(1)	2 years imprisonment
Subsection 821D(2)	2 years imprisonment

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**93 In the appropriate position in Schedule 3**

Insert:

Subsection 823BA(2)	2 years imprisonment
Subsection 823BB(5)	2 years imprisonment
Subsection 823BB(9)	2 years imprisonment
Subsection 823BC(5)	2 years imprisonment
Subsection 823BC(9)	2 years imprisonment

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**94 In the appropriate position in Schedule 3**

Insert:

Subsection 823F(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and
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	(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 823G(3)	1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 823H(5)	(a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and (b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed
Subsection 823W(1)	100 penalty units for each day, or part of a day, in respect of which the offence is committed

## **Division 2—Other amendments**

### ***Australian Securities and Investments Commission Act 2001***

#### **95 After paragraph 246(1)(m)**

Insert:

- (n) an expert appointed:
  - (i) under subsection 823BB(1) of the Corporations Act; or
  - (ii) as directed under subsection 823BB(4) of the Corporations Act;

### ***Corporations Act 2001***

#### **96 Section 9**

Insert:

***recapitalisation direction*** means a direction given under subsection 823F(1), to the extent that the direction deals with a matter in paragraph 823F(1)(c).

***Reserve Bank*** means the Reserve Bank of Australia.

***Reserve Bank staff member*** means ***staff member of the Reserve Bank Service*** (within the meaning of the *Reserve Bank Act 1959*).

**97 Subsection 821C(3)**

Omit “of Australia (the *Reserve Bank*)”.

**98 Subsection 823C(3)**

Omit “of Australia”.

**99 Paragraph 824B(2)(d)**

Omit “of Australia”.

**100 Paragraphs 827A(2)(h) and (3)(d)**

Omit “of Australia”.

**101 Subsection 827D(1)**

Omit “of Australia (the *Reserve Bank*)”.

**102 Paragraph 828B(5)(b)**

Omit “of Australia”.

**103 Subsection 828B(6)**

Omit “of Australia”.

**104 Paragraph 828H(b)**

Omit “of Australia”.

**105 Subparagraph 828J(1)(b)(ii)**

Omit “of Australia”.

**106 Subsection 828L(4)**

Omit “of Australia”.

**107 Section 828Q (heading)**

Omit “of Australia”.

**108 Section 828Q**

Omit “of Australia”.

**109 Subsections 901B(4) and (6)**

Omit “of Australia”.

**110 Subparagraph 901J(1)(b)(ii)**

Omit “of Australia”.

**111 Paragraph 904B(2)(c)**

Omit “of Australia”.

**112 Paragraph 904D(1)(c)**

Omit “of Australia”.

**113 Subsection 908BR(1)**

Omit “of Australia”.

***Reserve Bank Act 1959***

**114 After section 84**

Insert:

**84A Protection from liability—crisis powers etc.**

*Protection from criminal actions or proceedings*

- (1) A criminal action or proceeding does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:
- (a) the person does the thing, or omits to do the thing, for the purpose of:
    - (i) performing or purportedly performing any function; or
    - (ii) exercising or purportedly exercising any power; conferred or expressed to be conferred by or under:
    - (iii) section 823F (directions to preserve stability in the Australian financial system) of the *Corporations Act 2001*; or
    - (iv) Part 7.3B (crisis resolution for CS facility licensees) of that Act; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is covered by subsection (3) of this section.

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

*Protection from civil actions or proceedings*

(2) A civil action or proceeding does not lie against a person in relation to anything done, or omitted to be done, in good faith by the person if:

(a) the person does the thing, or omits to do the thing, for the purpose of:

(i) performing or purportedly performing any function; or

(ii) exercising or purportedly exercising any power;

conferred or expressed to be conferred by or under Part 7.3 (licensing of clearing and settlement facilities) or 7.3B (crisis resolution of CS facility licensees) of the *Corporations Act 2001*; and

(b) it is reasonable for the person to do the thing, or to omit to do the thing, in order to achieve that purpose; and

(c) the person is covered by subsection (3) of this section.

*Persons protected*

(3) This subsection covers the following persons:

(a) the Bank;

(b) the Governor;

(c) the Deputy Governor;

(d) a member of the Reserve Bank Board;

(e) a member of the Payments System Board;

(f) a staff member of the Reserve Bank Service;

(g) an officer or employee of:

(i) an Agency (within the meaning of the *Public Service Act 1999*); or

(ii) an authority of the Commonwealth;

whose services are made available to the Bank in connection with the performance or exercise of any of the Bank's functions or powers.

*Reasonableness*

- (4) For the purposes of paragraph (1)(b) or (2)(b), treat it as reasonable for a person to do a thing, or to omit to do a thing, in order to achieve a purpose unless no reasonable person in that person's position would do the thing, or omit to do the thing, in order to achieve that purpose.

## Part 10—Enhancing ASIC powers for other licensees

### *Corporations Act 2001*

#### 115 After section 794B

Insert:

#### 794BA ASIC’s power to require expert report

##### *Expert appointed by ASIC*

- (1) ASIC may, by written notice given to a market licensee and a person (the *expert*), appoint the expert to provide ASIC with an expert report on specified matters relating to the licensee’s compliance with its obligations as a market licensee under this Chapter.
- (2) ASIC may, by written notice given to the licensee, direct the licensee to reimburse ASIC for ASIC’s expenses that:
  - (a) are incurred in appointing and paying the expert to provide the report; and
  - (b) are specified in the notice.

##### *Expert appointed by licensee*

- (3) ASIC may, by written notice given to a market licensee, direct the licensee to appoint a person to provide ASIC with an expert report on specified matters relating to the licensee’s compliance with its obligations as a market licensee under this Chapter.

##### *Qualifications for appointment*

- (4) However, a person cannot be appointed under subsection (1) or (3) unless ASIC:
  - (a) is satisfied that the person has the necessary skills or experience to provide the expert report; and
  - (b) if subsection (3) applies—has approved the proposed appointment of the person.



*Licensee's obligations*

- (5) The licensee must give all information, explanation and assistance to a person appointed under subsection (1) or (3) as the person reasonably requests for the preparation and provision of the expert report.

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

- (6) If, under subsection (2), ASIC directs the licensee to reimburse ASIC for ASIC's expenses, an amount equal to those expenses:

- (a) is a debt due and payable to ASIC; and  
(b) is recoverable by ASIC in:  
(i) the Federal Court; or  
(ii) the Federal Circuit and Family Court of Australia (Division 2); or  
(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

- (7) The licensee must comply with any direction given under subsection (3) to the licensee.

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

**116 At the end of Division 5 of Part 7.5A**

Add:

**Subdivision C—Power of ASIC to require expert report**

**904L ASIC's power to require expert report**

*Expert appointed by ASIC*

- (1) ASIC may, by written notice given to a derivative trade repository licensee and a person (the *expert*), appoint the expert to provide ASIC with an expert report on specified matters relating to the licensee's compliance with its obligations as a derivative trade repository licensee under this Chapter.

- (2) ASIC may, by written notice given to the licensee, direct the licensee to reimburse ASIC for ASIC's expenses that:
- (a) are incurred in appointing and paying the expert to provide the report; and
  - (b) are specified in the notice.

*Expert appointed by licensee*

- (3) ASIC may, by written notice given to a derivative trade repository licensee, direct the licensee to appoint a person to provide ASIC with an expert report on specified matters relating to the licensee's compliance with its obligations as a derivative trade repository licensee under this Chapter.

*Qualifications for appointment*

- (4) However, a person cannot be appointed under subsection (1) or (3) unless ASIC:
- (a) is satisfied that the person has the necessary skills or experience to provide the expert report; and
  - (b) if subsection (3) applies—has approved the proposed appointment of the person.

*Licensee's obligations*

- (5) The licensee must give all information, explanation and assistance to a person appointed under subsection (1) or (3) as the person reasonably requests for the preparation and provision of the expert report.

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

- (6) If, under subsection (2), ASIC directs the licensee to reimburse ASIC for ASIC's expenses, an amount equal to those expenses:
- (a) is a debt due and payable to ASIC; and
  - (b) is recoverable by ASIC in:
    - (i) the Federal Court; or
    - (ii) the Federal Circuit and Family Court of Australia (Division 2); or

(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

(7) The licensee must comply with any direction given under subsection (3) to the licensee.

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

## **117 After section 908BW**

Insert:

### **908BWA ASIC's power to require expert report**

#### *Expert appointed by ASIC*

- (1) ASIC may, by written notice given to a benchmark administrator licensee and a person (the *expert*), appoint the expert to provide ASIC with an expert report on specified matters relating to the licensee's compliance with its obligations as a benchmark administrator licensee under this Chapter.
- (2) ASIC may, by written notice given to the licensee, direct the licensee to reimburse ASIC for ASIC's expenses that:
  - (a) are incurred in appointing and paying the expert to provide the report; and
  - (b) are specified in the notice.

#### *Expert appointed by licensee*

- (3) ASIC may, by written notice given to a benchmark administrator licensee, direct the licensee to appoint a person to provide ASIC with an expert report on specified matters relating to the licensee's compliance with its obligations as a benchmark administrator licensee under this Chapter.

#### *Qualifications for appointment*

- (4) However, a person cannot be appointed under subsection (1) or (3) unless ASIC:
  - (a) is satisfied that the person has the necessary skills or experience to provide the expert report; and

- (b) if subsection (3) applies—has approved the proposed appointment of the person.

*Licensee's obligations*

- (5) The licensee must give all information, explanation and assistance to a person appointed under subsection (1) or (3) as the person reasonably requests for the preparation and provision of the expert report.

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

- (6) If, under subsection (2), ASIC directs the licensee to reimburse ASIC for ASIC's expenses, an amount equal to those expenses:

(a) is a debt due and payable to ASIC; and

(b) is recoverable by ASIC in:

(i) the Federal Court; or

(ii) the Federal Circuit and Family Court of Australia (Division 2); or

(iii) a court of a State or Territory that has jurisdiction in relation to the matter.

- (7) The licensee must comply with any direction given under subsection (3) to the licensee.

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

**118 In the appropriate position in Schedule 3**

Insert:

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Subsection 794BA(5)	2 years imprisonment
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Subsection 794BA(7)	2 years imprisonment
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**119 In the appropriate position in Schedule 3**

Insert:

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Subsection 904L(5)	2 years imprisonment
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Subsection 904L(7)	2 years imprisonment
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**120 In the appropriate position in Schedule 3**

Insert:

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Subsection 908BWA(5)	2 years imprisonment
Subsection 908BWA(7)	2 years imprisonment

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## Part 11—Fit, proper, capable and competent person standards

### Division 1—Additional obligation for certain licensees

#### *Corporations Act 2001*

#### 121 Section 9

Insert:

*core officer*, of a corporation (other than a CCIV), means a person covered by paragraph 9AD(1)(a) or (b).

#### 122 After paragraph 792A(1)(h)

Insert:

(ha) take:

- (i) all reasonable steps; and
- (ii) if the licence was granted under subsection 795B(1) (domestic markets)—all additional steps (if any) prescribed by the regulations for the purposes of this subparagraph;

to ensure that each core officer of the licensee is:

- (iii) a fit and proper person to perform the functions of a core officer of the licensee; and
- (iv) without limiting subparagraph (iii)—capable of performing those functions, including being competent to perform those functions; and

#### 123 At the end of subsection 792A(1)

Add:

- ; and (j) take all reasonable steps to ensure that no individual against whom an FMI banning order is made does any of the things mentioned in subsection 853N(1) in relation to the licensee in contravention of the order.

**124 Subsection 792A(2)**

Omit “paragraph (1)(a), (c), (d), (e), (f), (g), (h) or (i)”, substitute “a paragraph of subsection (1) other than paragraph (b)”.

**125 After paragraph 821A(1)(g)**

Insert:

(ga) take:

- (i) all reasonable steps; and
- (ii) if the licence was granted under subsection 824B(1) (domestic clearing and settlement facilities)—all additional steps (if any) prescribed by the regulations for the purposes of this subparagraph;  
to ensure that each core officer of the licensee is:
- (iii) a fit and proper person to perform the functions of a core officer of the licensee; and
- (iv) without limiting subparagraph (iii)—capable of performing those functions, including being competent to perform those functions; and

**126 At the end of subsection 821A(1)**

Add:

- ; and (i) take all reasonable steps to ensure that no individual against whom an FMI banning order is made does any of the things mentioned in subsection 853N(1) in relation to the licensee in contravention of the order.

**128 Subsections 853C(2) and (3)**

Repeal the subsections, substitute:

- (2) ASIC may make such a declaration only if ASIC is satisfied that the individual is unfit to be involved in the licensee or applicant.
- (3) In deciding whether an individual is unfit as mentioned in subsection (2), ASIC must take into account such matters as the individual’s fame, character and integrity.

**129 After paragraph 904A(1)(b)**

Insert:

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(ba) take:

- (i) all reasonable steps; and
- (ii) if the licensee is not a foreign body corporate—all additional steps (if any) prescribed by the regulations for the purposes of this subparagraph;

to ensure that each core officer of the licensee is:

- (iii) a fit and proper person to perform the functions of a core officer of the licensee; and
- (iv) without limiting subparagraph (iii)—capable of performing those functions, including being competent to perform those functions; and

### **130 After paragraph 904A(1)(c)**

Insert:

- ; and (d) take all reasonable steps to ensure that no individual against whom an FMI banning order is made does any of the things mentioned in subsection 853N(1) in relation to the licensee in contravention of the order.

### **131 Subsection 904A(2)**

Omit “paragraph (1)(b) or (c)”, substitute “a paragraph of subsection (1) other than paragraph (a)”.

### **132 After paragraph 908BP(b)**

Insert:

(ba) take:

- (i) all reasonable steps; and
- (ii) if the licensee is not a foreign body corporate—all additional steps (if any) prescribed by the regulations for the purposes of this subparagraph;

to ensure that each core officer of the licensee is:

- (iii) a fit and proper person to perform the functions of a core officer of the licensee; and
- (iv) without limiting subparagraph (iii)—capable of performing those functions, including being competent to perform those functions; and



**133 After paragraph 908BP(c)**

Insert:

- ; and (d) take all reasonable steps to ensure that no individual against whom an FMI banning order is made does any of the things mentioned in subsection 853N(1) in relation to the licensee in contravention of the order.

**Division 2—Financial market infrastructure banning orders**

*Corporations Act 2001*

**134 Section 9**

Insert:

***FMI banning order*** (short for financial market infrastructure banning order) means an order made under subsection 853H(1).

***FMI licensee*** means:

- (a) a market licensee; or
- (b) a CS facility licensee; or
- (c) a derivative trade repository licensee; or
- (d) a benchmark administrator licensee.

**135 After Division 2 of Part 7.4**

Insert:

**Division 2A—Financial market infrastructure banning orders**

**Subdivision A—Making financial market infrastructure banning orders**

**853H ASIC's power to make financial market infrastructure banning orders**

- (1) ASIC may, in writing, make one or more orders (***FMI banning orders***) against an individual if:

- (a) the individual becomes an insolvent under administration; or
- (b) the individual is convicted of fraud; or
- (c) ASIC has reason to believe that the individual is not a fit and proper person to:
  - (i) perform one or more functions of a core officer of an FMI licensee; or
  - (ii) control an FMI licensee; or
- (d) without limiting paragraph (c)—ASIC has reason to believe that the individual is not capable of:
  - (i) performing one or more functions of a core officer of an FMI licensee; or
  - (ii) controlling an FMI licensee;  
including because the individual is not competent to perform the functions or control an FMI licensee; or
- (e) the individual has not complied with a financial services law;  
or
- (f) ASIC has reason to believe that the individual is likely to contravene a financial services law; or
- (g) the individual has been involved in the contravention of a financial services law by another person; or
- (h) ASIC has reason to believe that the individual is likely to become involved in the contravention of a financial services law by another person; or
- (i) section 853M applies to the individual in relation to one or more corporations.

*Copy of banning order to be given to the individual*

- (2) ASIC must give a copy of a banning order to the individual against whom it was made.

**853J Individual to be given an opportunity to be heard before ASIC makes financial market infrastructure banning order**

- (1) Despite subsection 853H(1), ASIC may make an FMI banning order against an individual only after giving the individual an opportunity:
    - (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and
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- (b) to make submissions to ASIC on the matter.
- (2) However, ASIC may make an FMI banning order against an individual without giving the individual the opportunities mentioned in subsection (1) if ASIC's grounds for making the order are, or include:
- (a) that the individual is not a fit and proper person under paragraph 853H(1)(c) because the individual is or has been a core officer of an entity that has had a licence suspended or cancelled (see paragraph 853K(2)(a)); or
  - (b) that the individual has been convicted of serious fraud.

### **853K When an individual is not a fit and proper person**

- (1) ASIC must have regard to the matters set out in subsection (2) (subject to Part VIIC of the *Crimes Act 1914*) for the purposes of applying paragraph 853H(1)(c) of this Act to an individual.

Note: Part VIIC of the *Crimes Act 1914* includes provisions that, in certain circumstances, relieve individuals from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them.

- (2) The matters are as follows:
- (a) whether the individual has ever been a core officer of an entity that has held:
    - (i) an Australian market licence; or
    - (ii) an Australian CS facility licence; or
    - (iii) an Australian derivative trade repository licence; or
    - (iv) a benchmark administrator licence; that has been suspended or cancelled;
  - (b) whether any of the following has ever been made against the individual:
    - (i) an FMI banning order;
    - (ii) a banning order, or a disqualification order under Subdivision B of Division 8 of Part 7.6;
    - (iii) a banning order, or a disqualification order, under Part 2-4 of the *National Consumer Credit Protection Act 2009*;

- (c) whether the individual has ever been disqualified under this Act, or any other law of the Commonwealth or of a State or Territory, from managing corporations;
- (d) whether the individual has ever been banned from engaging in a credit activity (within the meaning of the *National Consumer Credit Protection Act 2009*) under a law of a State or Territory;
- (e) whether the individual has ever been linked to a refusal or failure to give effect to a determination made by AFCA;
- (f) whether the individual has ever been an insolvent under administration;
- (g) whether, in the last 10 years, the individual has been convicted of an offence;
- (h) any relevant information given to ASIC by a State or Territory, or an authority of a State or Territory, in relation to the individual;
- (i) any other matter prescribed by the regulations;
- (j) any other matter ASIC considers relevant.

Note: To work out whether an individual has been linked as described in paragraph (e), see section 910C.

### **853L When an individual contravenes a financial services law**

For the purposes of subsection 853H(1), an individual contravenes a financial services law if the individual fails to comply with a duty imposed under that law, even if the provision imposing the duty is not an offence provision or a civil penalty provision.

### **853M When an individual has been a core officer of a corporation unable to pay its debts**

This section applies to an individual in relation to a corporation if, within the last 7 years:

- (a) the individual was a core officer of the corporation when the corporation was an FMI licensee; and
- (b) the corporation was wound up either:
  - (i) while the individual was a core officer of the corporation; or

- (ii) within the 12 months after the individual ceased to be a core officer of the corporation; and
- (c) a liquidator lodged a report under subsection 533(1) (including that subsection as applied by section 526-35 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*) about the corporation's inability to pay its debts.

## **Subdivision B—Matters relating to financial market infrastructure banning orders**

### **853N What a financial market infrastructure banning order prohibits**

- (1) An FMI banning order made against an individual may specify that the individual is prohibited from doing one or more of the following:
  - (a) controlling, whether alone or in concert with one or more other entities, an FMI licensee;
  - (b) performing any functions of a core officer of an FMI licensee;
  - (c) performing specified functions of a core officer of an FMI licensee.
- (2) An FMI banning order may specify that a particular prohibition specified in the order applies against the individual:
  - (a) for a specified period; or
  - (b) permanently.

Note: This subsection applies separately to each prohibition specified in the order.
- (3) A FMI banning order may include a provision allowing the individual against whom it was made, subject to any specified conditions:
  - (a) to do specified acts; or
  - (b) to do specified acts in specified circumstances;that the order would otherwise prohibit them from doing.

**853P Effect of financial market infrastructure banning orders**

- (1) An individual against whom an FMI banning order is made must not engage in conduct in breach of the banning order.

*Fault-based offence*

- (2) An individual commits an offence if the individual contravenes subsection (1).

*Civil liability*

- (3) An individual contravenes this subsection if the individual contravenes subsection (1).

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

**853Q Variation or cancellation of financial market infrastructure banning orders**

- (1) ASIC may vary or cancel an FMI banning order, by giving written notice to the individual against whom the order was made, if ASIC is satisfied that it is appropriate to do so because of a change in any of the circumstances based on which ASIC made the order.

- (2) ASIC may do so:

- (a) on its own initiative; or  
(b) if the individual against whom the order was made lodges with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

Note: For fees in respect of lodging applications, see Part 9.10.

- (3) If ASIC proposes not to vary or cancel an FMI banning order in accordance with an application lodged by an individual under paragraph (2)(b), ASIC must give the individual an opportunity:
- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; and  
(b) to make submissions to ASIC on the matter.

**853R Date of effect and publication of financial market infrastructure banning orders, variation or cancellation**

*Date of effect*

- (1) An FMI banning order, or variation or cancellation of an FMI banning order, takes effect when it is given to the individual against whom the order is made.

*Publication*

- (2) If ASIC makes, varies or cancels an FMI banning order, ASIC must publish a notice on ASIC's website. ASIC must do so:
  - (a) as soon as practicable after the action takes effect; or
  - (b) sooner.
- (3) The notice must state:
  - (a) when the action takes effect; and
  - (b) subject to subsection (4):
    - (i) in the case of the making of an FMI banning order—set out a copy of the FMI banning order; or
    - (ii) in the case of the variation of an FMI banning order—set out a copy of the FMI banning order as varied.
- (4) However, if:
  - (a) the FMI banning order contains a provision of the kind referred to in subsection 853N(3); and
  - (b) ASIC considers that the notice on ASIC's website would be unreasonably long if that provision were included;the notice may instead set out a summary of the provision's effect.

**853S Statements of reasons**

- (1) An FMI banning order given to an individual must be accompanied by a statement of reasons for the order.
- (2) If ASIC varies an FMI banning order made against an individual, ASIC must, on request by the individual, give the individual a statement of reasons for the variation.

**136 In the appropriate position in subsection 1317E(3)**

Insert:

subsection 853P(3)	need to comply with an FMI banning order	uncategorised
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**137 In the appropriate position in Schedule 3**

Insert:

Subsection 853P(2)	5 years imprisonment
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## **Part 12—Arrangements under which certain foreign operators need to be licensed or exempt**

### *Corporations Act 2001*

#### **138 Section 791D**

Repeal the section, substitute:

#### **791D When a financial market is *operated in this jurisdiction***

- (1) A financial market is taken to be *operated in this jurisdiction* if it:
- (a) is operated by a body corporate that is registered under Chapter 2A; or
  - (b) is covered by a declaration in force under subsection (2).

##### *Declarations*

- (2) ASIC may, by written notice given to a body corporate, declare that a financial market operated by the body corporate has a material connection with this jurisdiction.

##### *Referrals to the Minister*

- (3) If, at any time after a body corporate receives a declaration under subsection (2), the body corporate requests in writing that ASIC refer the declaration to the Minister, ASIC must do so immediately.
- (4) The Minister may, if the Minister considers it appropriate after being referred the declaration, direct ASIC to vary or revoke the declaration.
- (5) ASIC must comply with the direction given under subsection (4) immediately.
- (6) A direction given under subsection (4) is not a legislative instrument.

**791E Criteria for declarations that financial markets have a material connection with this jurisdiction**

- (1) When ASIC is deciding under subsection 791D(2) whether to declare that a financial market has a material connection with this jurisdiction:
  - (a) the market must have a connection with this jurisdiction (see subsection (2) of this section); and
  - (b) ASIC must consider, under subsection (3) of this section, whether the connection is material.

*Does the market have a connection with this jurisdiction?*

- (2) The financial market has a connection with this jurisdiction if one or more of the following paragraphs apply to the market:
  - (a) the market has operations located in this jurisdiction;
  - (b) the market provides a market for financial products:
    - (i) denominated in Australian currency; or
    - (ii) issued by a domestic corporation or by the Commonwealth, a State or a Territory;
  - (c) the market provides a market for financial products based on something else (of any nature whatsoever and whether or not deliverable) located or issued in this jurisdiction, including, for example, one or more of the following:
    - (i) an asset;
    - (ii) a rate (including an interest rate or exchange rate);
    - (iii) an index;
    - (iv) a commodity;
  - (d) one or more current or expected participants in the market are resident or based in this jurisdiction;
  - (e) the market targets investors resident or based in this jurisdiction;
  - (f) circumstances determined under paragraph (4)(a) exist in relation to the market.

*If such a connection exists, is it material?*

- (3) The financial market's connection with this jurisdiction is material if ASIC considers that, after applying any principles in force under
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paragraph (4)(c), either or both of the following paragraphs apply to the market:

- (a) the size and extent of current or expected aggregate activity in the market of participants in the market is material to:
  - (i) the risk management activities of those participants; or
  - (ii) the efficient allocation of capital or liquidity to the Australian economy; or
  - (iii) the provision of fair, orderly and transparent financial markets to those participants who are resident or based in this jurisdiction; or
  - (iv) confident and informed decision-making by consumers of financial products or financial services who are resident or based in this jurisdiction;
- (b) circumstances determined under paragraph (4)(b) exist in relation to the market.

*Relevant ASIC determinations*

- (4) ASIC may by legislative instrument:
  - (a) determine circumstances for the purposes of paragraph (2)(f); or
  - (b) determine circumstances for the purposes of paragraph (3)(b); or
  - (c) determine, for each paragraph of subsection (3), principles for working out if that paragraph applies to a financial market.

Note: A single document could cover any or all of the things mentioned in paragraphs (a) to (c).

*ASIC may request related information*

- (5) ASIC may, by written notice given to a body corporate, request the body to give ASIC, within a period specified in the notice, information about a financial market operated by the body.

**791F Ministerial consent to ASIC determination required**

- (1) ASIC must not make a determination under paragraph 791E(4)(b) unless the Minister has consented, in writing, to the making of the determination.

- (2) A consent given under subsection (1) is not a legislative instrument.

**791G Revoking declarations that financial markets have a material connection with this jurisdiction**

ASIC may, by written notice given to a body corporate, revoke a declaration made under subsection 791D(2) about a financial market operated by the body corporate if:

- (a) after having regard to subsection 791E(2), ASIC considers that the market does not have a connection with this jurisdiction; or  
(b) after having regard to subsection 791E(3), ASIC no longer considers that the market's connection with this jurisdiction is material.

**139 Section 820D**

Repeal the section, substitute:

**820D When a clearing and settlement facility is operated in this jurisdiction**

- (1) A clearing and settlement facility is taken to be *operated in this jurisdiction* if it:
- (a) is operated by a body corporate that is registered under Chapter 2A; or  
(b) is covered by a declaration in force under subsection (2).
- (2) ASIC may, by written notice given to a body corporate, declare that a clearing and settlement facility operated by the body corporate has a material connection with this jurisdiction.

*Referrals to the Minister*

- (3) If, at any time after a body corporate receives a declaration under subsection (2), the body corporate requests in writing that ASIC refer the declaration to the Minister, ASIC must do so immediately.

- (4) The Minister may, if the Minister considers it appropriate after being referred the declaration, direct ASIC to vary or revoke the declaration.
- (5) ASIC must comply with the direction given under subsection (4) immediately.
- (6) A direction given under subsection (4) is not a legislative instrument.

**820E Criteria for declarations that clearing and settlement facilities have a material connection with this jurisdiction**

- (1) When ASIC is deciding under subsection 820D(2) whether to declare that a clearing and settlement facility has a material connection with this jurisdiction:
  - (a) the facility must have a connection with this jurisdiction (see subsection (2) of this section); and
  - (b) ASIC must consider, under subsection (3) of this section, whether the connection is material.

*Does the facility have a connection with this jurisdiction?*

- (2) The clearing and settlement facility has a connection with this jurisdiction if one or more of the following paragraphs apply to the facility:
  - (a) the facility has operations located in this jurisdiction;
  - (b) the facility provides services for financial products:
    - (i) denominated in Australian currency; or
    - (ii) issued by a domestic corporation or by the Commonwealth, a State or a Territory;
  - (c) the facility provides services for financial products based on something else (of any nature whatsoever and whether or not deliverable) located or issued in this jurisdiction, including, for example, one or more of the following:
    - (i) an asset;
    - (ii) a rate (including an interest rate or exchange rate);
    - (iii) an index;
    - (iv) a commodity;

- (d) one or more current or expected participants in the facility are resident or based in this jurisdiction;
- (e) the operator of the facility has entered into an arrangement:
  - (i) with the holder of an Australian market licence granted under subsection 795B(1); or
  - (ii) (either directly or indirectly through one or more interposed entities) with the holder of an Australian CS facility licence granted under subsection 824B(1); or
  - (iii) with the operator of a payments system determined under subsection 820F(1);
- (f) circumstances determined under paragraph 820F(3)(a) exist in relation to the facility.

*If such a connection exists, is it material?*

- (3) The clearing and settlement facility's connection with this jurisdiction is material if ASIC considers that, after applying any principles in force under paragraph 820F(3)(c), one or more of the following paragraphs apply to the facility:
  - (a) the current or expected number of participants in the facility who are resident or based in this jurisdiction is material;
  - (b) the size and extent of current or expected aggregate activity with the facility of those participants is material to:
    - (i) the risk management activities of those participants; or
    - (ii) the efficient allocation of capital or liquidity to the Australian economy;
  - (c) the size and extent of current or expected activity in a relevant financial product class offered by the facility is material to:
    - (i) risk management activities in the Australian financial system; or
    - (ii) the efficient allocation of capital or liquidity to the Australian economy;
  - (d) the operator of the facility has an arrangement covered by paragraph (2)(e) of this section that is material;
  - (e) circumstances determined under paragraph 820F(3)(b) exist in relation to the facility.

*ASIC may request related information*

- (4) ASIC may, by written notice given to a body corporate, request the body to give ASIC, within a period specified in the notice, information about a clearing and settlement facility operated by the body.

**820F Relevant determinations**

*Reserve Bank determination*

- (1) For the purposes of subparagraph 820E(2)(e)(iii), the Reserve Bank may, by legislative instrument, determine a payment system.
- (2) In making a determination under subsection (1), the Reserve Bank must have regard to matters that include the following:
  - (a) whether the aggregate value of Australian dollar payments processed through the system is high relative to other payment systems;
  - (b) whether the system mainly handles time-critical payments;
  - (c) whether the system mainly handles high-value payments;
  - (d) whether the system is used to settle payments that effect settlement in other clearing and settlement facilities;
  - (e) whether the system is located in Australia;
  - (f) any matter prescribed by the regulations for the purposes of this paragraph.

*ASIC determinations*

- (3) ASIC may, by legislative instrument:
  - (a) determine circumstances for the purposes of paragraph 820E(2)(f); or
  - (b) determine circumstances for the purposes of paragraph 820E(3)(e); or
  - (c) determine, for each paragraph of subsection 820E(3), principles for working out if that paragraph applies to a clearing and settlement facility.

Note: A single document could cover any or all of the things mentioned in paragraphs (a) to (c).

- (4) In making a determination under subsection (3), ASIC must have regard to any relevant advice received from the Reserve Bank.

**820G Ministerial consent to Reserve Bank or ASIC determination required**

- (1) The Reserve Bank must not make a determination under subsection 820F(1) unless the Minister has consented, in writing, to the making of the determination.
- (2) ASIC must not make a determination under paragraph 820F(3)(b) unless the Minister has consented, in writing, to the making of the determination.
- (3) A consent given under subsection (1) or (2) is not a legislative instrument.

**820H Revoking declarations that clearing and settlement facilities have a material connection with this jurisdiction**

ASIC may, by written notice given to a body corporate, revoke a declaration made under subsection 820D(2) about a clearing and settlement facility operated by the body corporate if:

- (a) after having regard to subsection 820E(2), ASIC considers that the facility does not have a connection with this jurisdiction; or
- (b) after having regard to subsection 820E(3), ASIC no longer considers that the facility's connection with this jurisdiction is material.

**140 After paragraph 1317C(gc)**

Insert:

- (gcaa) a decision by ASIC to declare under subsection 791D(2) that a financial market has a material connection with this jurisdiction; or
- (gcab) a decision by ASIC under subsection 791E(4) to determine connections, matters or principles; or
- (gcac) a decision by the Minister under subsection 791F(1) to consent to the making of a determination; or



**141 After paragraph 1317C(gcc)**

Insert:

- (gcca) a decision by ASIC to declare under subsection 820D(2) that a clearing and settlement facility has a material connection with this jurisdiction; or
- (gccb) a decision by ASIC to make a determination under subsection 820F(3); or
- (gccc) a decision by the Minister under subsection 820G(1) or (2) to consent to the making of a determination; or

## **Part 13—Application and transitional provisions**

### *Corporations Act 2001*

#### **142 In the appropriate position in Chapter 10**

Insert:

## **Part 10.75—Application and transitional provisions relating to Schedule 2 to the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024**

### **Division 1—Definitions**

#### **1705 Definitions**

In this Part:

*amending Schedule* means Schedule 2 to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.

*commencement time* means the time this section commences.

### **Division 2—Granting of Australian CS facility licences**

#### **1705A Application of amendments—applications for Australian CS facility licences**

The amendments of section 824B made by Part 1 of the amending Schedule apply in relation to applications made under section 824A at or after the commencement time.

**1705B Transitional—Australian CS facility licences in force before the commencement time**

- (1) This section applies to an Australian CS facility licence:
  - (a) granted under subsection 824B(1) as in force before the commencement time; and
  - (b) in force immediately before the commencement time.
- (2) The licence continues in force (and may be dealt with) at and after the commencement time as if the licence had been granted under subsection 824B(1) as amended by Part 1 of the amending Schedule.

**1705C Transitional—Australian CS facility licences in force before the commencement time for operating overseas clearing and settlement facilities**

- (1) This section applies to an Australian CS facility licence:
  - (a) granted under subsection 824B(2) as in force before the commencement time; and
  - (b) in force immediately before the commencement time.
- (2) The licence continues in force (and may be dealt with) at and after the commencement time as if the licence had been granted under subsection 824B(2) as amended by Part 1 of the amending Schedule.

**1705D Transitional—applications for an Australian CS facility licence undecided before the commencement time**

- (1) This section applies to an application for an Australian CS facility licence if:
  - (a) the application is lodged under section 824A as in force before the commencement time; and
  - (b) before the commencement time, the Minister had not made a decision under section 824B in relation to the application.
- (2) This Act, as in force immediately before the commencement time, (the *old Act*) continues to apply, at and after the commencement

time, in relation to the application despite the amendments made by Part 1 of the amending Schedule.

- (3) However, if at or after the commencement time, the Minister decides the application by granting a licence under section 824B of the old Act, the licence is taken to be (and may be dealt with as if it were) granted as follows:
- (a) if the licence is granted under subsection 824B(1) of the old Act—as if the licence had been granted under subsection 824B(1) as amended by Part 1 of the amending Schedule;
  - (b) if the licence is granted under subsection 824B(2) of the old Act—as if the licence had been granted under subsection 824B(2) as amended by Part 1 of the amending Schedule.

### **Division 3—Dealing with licences that are not being used etc.**

#### **1705E Application of amendments—suspension or cancellation of licences**

For the purposes of section 797B, 826B, 905H, or 908BI as amended by Part 2 of the amending Schedule, it does not matter whether:

- (a) a related act, omission or change happens; or
  - (b) a period starts;
- before, at or after the commencement time.

### **Division 4—Declared financial markets and widely held market bodies**

#### **Subdivision A—Declared financial markets**

#### **1705F Transitional—prescribed financial markets to be declared financial markets**

- (1) A reference in subsection 9D(1) to a financial market declared under subsection 9D(2) is taken to include a reference to a
-

financial market that, immediately before the commencement time, was prescribed by the regulations for the purposes of the definition of *prescribed financial market* in section 9.

- (2) Subsection (1) of this section ceases to have effect on the commencement of the first declaration made under subsection 9D(2).

### **1705G Translation of references to prescribed financial markets in instruments**

- (1) This section applies to an instrument (the *affected instrument*), other than regulations, that:
- (a) was made under:
    - (i) an Act; or
    - (ii) an instrument made under an Act; and
  - (b) was in force immediately before the commencement time.
- (2) If:
- (a) immediately before the commencement time, the affected instrument contained a reference to the expression in column 1 of an item of the following table; and
  - (b) the expression had the same meaning in the affected instrument as it had in this Act as in force immediately before the commencement time; and
  - (c) the reference to the expression remains in the affected instrument at the commencement time;
- then, at and after the commencement time, the affected instrument applies as if the reference to the expression were instead a reference to the expression in column 2 of that item.

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#### **Translating references in instruments made under this Act**

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<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>
1	prescribed financial market	declared financial market
2	prescribed financial markets	declared financial markets

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## **Subdivision B—Widely held market bodies**

### **1705H Transitional—widely held market bodies**

- (1) A reference in paragraph 850A(2)(b) to a body corporate declared under subsection 850A(3) is taken to include a reference to a body corporate that, immediately before the commencement time, was specified for the purposes of paragraph 850A(b).
- (2) Subsection (1) of this section ceases to have effect on the commencement of the first declaration made under subsection 850A(3).

### **1705J Application of amendments—preservation of voting power**

- (1) The amendments of section 851I made by Part 3 of the amending Schedule apply to a body corporate becoming a widely held market body at a time occurring at or after the commencement time.
- (2) To avoid doubt, a reference to a body corporate becoming a widely held market body does not include a reference to a body corporate being a widely held market body at the commencement time because of section 1705H.

### **1705K Transitional—pre-commencement approvals granted for preservation of voting power**

- (1) This section applies to an approval to hold a particular percentage of voting power in a body corporate if the approval:
  - (a) was in force immediately before the commencement time; and
  - (b) was taken to be granted under section 851B because of the operation of section 851I as in force at that time.
- (2) The approval continues in force (and may be dealt with) at and after the commencement time as if the approval were granted under section 851B because of the operation of section 851I as amended by Part 3 of the amending Schedule.

## **Division 5—Approval for control of certain Australian licensees**

### **1705L Transitional—preservation of voting power in controlled Australian financial bodies**

- (1) This section applies to a person if:
  - (a) at the commencement time, the person holds a particular percentage of voting power in a controlled Australian financial body; and
  - (b) that percentage is more than 20%.
- (2) The person is taken to be granted, at the commencement time, an approval under subsection 852DH(1) to have that percentage of voting power in the body.

Note: ASIC can impose conditions on the approval: see section 852DL.

- (3) The approval:
  - (a) comes into force at the commencement time; and
  - (b) remains in force indefinitely (unless varied under section 852DM or revoked under section 852DN).
- (4) ASIC is taken to have complied with its obligations under Division 1A of Part 7.4 for the granting of the approval.

Example: ASIC is taken to have given the notice required by section 852DH.

### **1705M Application of amendments—market licensees and CS facility licensees**

The amendments made by Division 2 of Part 5 of the amending Schedule apply in relation to changes in voting power that occur at or after the commencement time.

## Division 6—Limits on certain market licences and CS facility licences

### 1705N Transitional—exemptions (Part 7.2)

#### *Exemption of particular financial market*

- (1) Subsections (2) to (4) apply to an exemption of a particular financial market:
  - (a) given under subsection 791C(1); and
  - (b) in force immediately before the commencement time.
- (2) The exemption continues in force (and may be dealt with) at and after the commencement time as if the exemption had been given under subsection 791C(1) as amended by Part 6 of the amending Schedule.
- (3) To avoid doubt, a condition specified in the exemption is taken to be specified for the purposes of paragraph 791C(2)(a) as inserted by that Part.
- (4) For the purposes of paragraph 791C(2)(b), the exemption is taken to be expressed to apply indefinitely.

#### *Exemption of classes of financial markets*

- (5) Subsections (6) to (8) apply to an exemption of a class of financial markets:
  - (a) given under subsection 791C(1); and
  - (b) in force immediately before the commencement time.
- (6) The exemption continues in force (and may be dealt with) at and after the commencement time as if the exemption had been given under subsection 791C(7) as amended by Part 6 of the amending Schedule.
- (7) To avoid doubt, a condition specified in the exemption is taken to be specified for the purposes of paragraph 791C(8)(a) as amended by that Part.
- (8) For the purposes of paragraph 791C(8)(b), the exemption is taken to be expressed to apply indefinitely.



**1705P Transitional—exemptions (Part 7.3)**

*Exemption of particular clearing and settlement facility*

- (1) Subsections (2) to (4) apply to an exemption of a particular clearing and settlement facility:
  - (a) given under subsection 820C(1); and
  - (b) in force immediately before the commencement time.
- (2) The exemption continues in force (and may be dealt with) at and after the commencement time as if the exemption had been given under subsection 820C(1) as amended by Part 6 of the amending Schedule.
- (3) To avoid doubt, a condition specified in the exemption is taken to be specified for the purposes of paragraph 820C(2)(a) as inserted by that Part.
- (4) For the purposes of paragraph 820C(2)(b), the exemption is taken to be expressed to apply indefinitely.

*Exemption of classes of clearing and settlement facilities*

- (5) Subsections (6) to (8) apply to an exemption of a class of clearing and settlement facilities:
  - (a) given under subsection 820C(1); and
  - (b) in force immediately before the commencement time.
- (6) The exemption continues in force (and may be dealt with) at and after the commencement time as if the exemption had been given under subsection 820C(7) as amended by Part 6 of the amending Schedule.
- (7) To avoid doubt, a condition specified in the exemption is taken to be specified for the purposes of paragraph 820C(8)(a) as amended by that Part.
- (8) For the purposes of paragraph 820C(8)(b), the exemption is taken to be expressed to apply indefinitely.

## **Division 7—Rule-making**

### **1705Q Application of amendments**

- (1) To avoid doubt, paragraphs 793B(2)(aa) and 822B(2)(aa) apply in relation to operating rules that are in force at or after the commencement time, whether the operating rules were made before, at or after the commencement time.
- (2) To avoid doubt, the amendment of subsection 827D(2A) made by Part 7 of the amending Schedule applies in relation to standards:
  - (a) made under subsection 827D(1); and
  - (b) in force at or after the commencement time;whether the standards were made before, at or after the commencement time.

## **Division 8—Streamlining some of ASIC’s existing directions powers**

### **1705R Application of amendments**

The amendments made by Part 8 of the amending Schedule do not apply in relation to a direction given under subsection 794D(2), 798J(2), 823D(2) or 904G(2) before the commencement time.

## **Division 9—Enhancing regulator powers for CS facility licensees**

### **1705S Transitional—directions power to reduce systemic risk**

- (1) The amendments made by Division 1 of Part 9 of the amending Schedule do not apply in relation to a direction given under section 823E before the commencement time.
- (2) The amendment of subparagraph 1101B(1)(a)(iii) made by Division 1 of Part 9 of the amending Schedule does not apply in relation to:
  - (a) an application made by ASIC under subsection 1101B(1) before the commencement time; or

(b) an order made by the Court before the commencement time.

**Part 14—Amendments contingent on the Treasury  
Laws Amendment (Reserve Bank Reforms)  
Act 2024**

*Reserve Bank Act 1959*

**143 Paragraph 84A(3)(d)**

Omit “Reserve Bank Board”, substitute “Governance Board or Monetary Policy Board”.

## **Schedule 3—Financial market infrastructure: transfer of powers**

### **Part 1—Main amendments**

#### **Division 1—Licensing of financial markets**

##### *Corporations Act 2001*

###### **1 Subparagraph 792A(1)(g)(ii)**

Omit “the Minister’s”, substitute “ASIC’s”.

###### **2 Subsection 792B(1)**

Omit “If ASIC considers it appropriate to do so, ASIC may give the Minister advice about the matter.”.

###### **3 Subsection 792F(3)**

Omit “the Minister”, substitute “ASIC”.

###### **4 Subsections 792F(4) and (5)**

Repeal the subsections, substitute:

- (4) ASIC may, by giving written notice to a market licensee, require the licensee to obtain from ASIC, or a suitably qualified person or body nominated by ASIC, an audit report on the annual report and on any information or statements accompanying it.

###### **5 Subsection 792H(1)**

Omit “the Minister”, substitute “ASIC”.

###### **6 Subsection 793E(2)**

Repeal the subsection.

###### **7 Subsection 793E(3)**

Omit “the notice from the licensee, the Minister”, substitute “a notice under section 793D from a market licensee, ASIC”.

**8 Subsection 793E(4)**

Omit “the Minister”, substitute “ASIC”.

**9 Subsection 793E(4) (note)**

Omit “The Minister”, substitute “ASIC”.

**10 Subdivision C of Division 3 of Part 7.2 (heading)**

Omit “the Minister and”.

**11 Section 794A (heading)**

Repeal the heading, substitute:

**794A ASIC’s directions power—promoting compliance**

**12 Subsection 794A(1)**

Repeal the subsection, substitute:

- (1) If ASIC considers that a market licensee is not complying or is not likely to comply with its obligations as a market licensee under this Chapter, ASIC may give the licensee a written direction:
  - (a) to do specified things that ASIC believes will promote compliance by the licensee with those obligations; or
  - (b) to refrain from doing specified things, if ASIC believes that refraining from doing those things will promote compliance by the licensee with those obligations.

**13 Subsection 794A(4)**

Omit “The Minister”, substitute “ASIC”.

**14 At the end of section 794A**

Add:

- (5) If, at any time after the licensee receives a direction, the licensee requests in writing that ASIC refer the matter to the Minister, ASIC must do so immediately.
- (6) The Minister may, if the Minister considers it appropriate after being referred the matter, direct ASIC to vary or revoke the direction.

(7) ASIC must comply with the direction given under subsection (6) immediately.

(8) A direction under subsection (6) is not a legislative instrument.

**15 Section 794B**

Repeal the section, substitute:

**794B ASIC’s power to require special report**

(1) ASIC may give a market licensee a written notice requiring the licensee to give ASIC a special report on specified matters.

(2) The licensee must give the special report to ASIC within the time required by the notice.

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

**16 Subsection 794C(3)**

Omit “and to the Minister”.

**17 Subsection 794C(6)**

Omit “Either the Minister or”.

**18 Subsection 794C(6)**

Omit “to be printed and published”, substitute “to be published”.

**19 Subsection 795A(1)**

Omit “(1)”.

**20 Subsection 795A(2)**

Repeal the subsection.

**21 Subsection 795B(1)**

Omit “The Minister” (first occurring), substitute “ASIC”.

**22 Subsection 795B(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**23 Subsection 795B(1) (note)**

Omit “The Minister”, substitute “ASIC”.

**24 Subsection 795B(2)**

Omit “the Minister”, substitute “ASIC”.

**25 Subsection 795B(2)**

Omit “The Minister” (first occurring), substitute “ASIC”.

**26 Subsection 795B(2) (note)**

Omit “The Minister”, substitute “ASIC”.

**27 Subsection 795B(3)**

Omit “the Minister”, substitute “ASIC”.

**28 Section 795C**

Omit “If the Minister grants an Australian market licence, the Minister must publish a notice in the *Gazette*”, substitute “If ASIC grants an Australian market licence, ASIC must publish a notice on ASIC’s website”.

**29 Section 795D**

Omit “the Minister”, substitute “ASIC”.

**30 Subsection 795E(3)**

Omit “the Minister”, substitute “ASIC”.

**31 Subsection 796A(1)**

Omit “The Minister” (wherever occurring), substitute “ASIC”.

**32 Subsection 796A(1)**

Omit “in the *Gazette*”, substitute “on ASIC’s website”.

**33 Subsection 796A(1) (note)**

Omit “the Minister”, substitute “ASIC”.



**34 Subsection 796A(2)**

Omit “The Minister”, substitute “ASIC”.

**35 Paragraph 796A(2)(a)**

Omit “his or her”, substitute “ASIC’s”.

**36 Paragraph 796A(2)(b)**

Omit “the Minister”, substitute “ASIC”.

**37 Subsection 796A(3)**

Omit “The Minister”, substitute “ASIC”.

**38 Subsection 796A(3)**

Omit “his or her”, substitute “ASIC’s”.

**39 Paragraph 796A(3)(a)**

Omit “he or she”, substitute “ASIC”.

**40 Paragraph 796A(3)(b)**

Omit “the Minister”, substitute “ASIC”.

**41 Subsection 796A(3)**

Omit “the Minister” (last occurring), substitute “ASIC”.

**42 Subsection 796A(4)**

Omit “The Minister”, substitute “ASIC”.

**43 Paragraph 796A(4)(c)**

Omit “the Minister”, substitute “ASIC”.

**44 Subsection 796A(6)**

Repeal the subsection.

**45 Subsections 797A(1) and (2)**

Omit “The Minister”, substitute “ASIC”.

**46 Subsection 797A(3)**

Repeal the subsection.

**47 Section 797B**

Omit “The Minister”, substitute “ASIC”.

**48 Paragraph 797B(c)**

Omit “the Minister”, substitute “ASIC”.

**49 Subsection 797C(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**50 Paragraph 797C(3)(b)**

Omit “the Minister”, substitute “ASIC”.

**51 Subsection 797C(4)**

Omit “the Minister”, substitute “ASIC”.

**52 Section 797C (note)**

Omit “The Minister”, substitute “ASIC”.

**53 Subsection 797D(2)**

Omit “the Minister”, substitute “ASIC”.

**54 Section 797E**

Omit “The Minister”, substitute “ASIC”.

**55 Subsection 797F(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**56 Subsection 797F(1)**

Omit “in the *Gazette*”, substitute “on ASIC’s website”.

**57 Section 798A (heading)**

Omit “the Minister”, substitute “ASIC”.

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**58 Subsection 798A(1)**

Omit “The Minister”, substitute “ASIC”.

**59 Subsection 798A(2)**

Omit “the Minister” (first occurring), substitute “ASIC”.

**60 Paragraph 798A(2)(h)**

Repeal the paragraph.

**61 Subsection 798A(2)**

Omit “The Minister may also have regard to any other matter that the Minister”, substitute “ASIC may also have regard to any other matter that ASIC”.

**62 Subsection 798A(3)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**63 Section 798B (note)**

Repeal the note.

**64 Section 798M (heading)**

Omit “**Minister**”, substitute “**ASIC**”.

**65 Subsections 798M(1) and (2)**

Omit “The Minister”, substitute “ASIC”.

**66 Subsection 798M(3)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**67 Subsection 798M(5)**

Omit “the Minister must publish notice of it in the Gazette”, substitute “ASIC must publish notice of it on ASIC’s website”.

## Division 2—Licensing of CS facilities

### *Corporations Act 2001*

#### 68 After section 820C

Insert:

#### 820CA Exemptions by Reserve Bank

*Exemption of a particular clearing and settlement facility or person*

- (1) The Reserve Bank may, in writing, exempt:
  - (a) a particular clearing and settlement facility; or
  - (b) a particular person;from:
  - (c) paragraph 821A(1)(aa) or (ab); or
  - (d) a provision of a standard determined under section 827D or 827DA.
- (2) The exemption may apply:
  - (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the ***exemption duration***).
- (3) The Reserve Bank may, at any time, in writing:
  - (a) vary an exemption given under subsection (1) to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or
  - (b) revoke an exemption given under subsection (1).
- (4) However, the Reserve Bank may only take action under subsection (3) after giving notice, and an opportunity to make submissions on the proposed action, to:

- (a) if paragraph (1)(a) applies to the exemption—the operator of the clearing and settlement facility covered by the exemption; or
  - (b) if paragraph (1)(b) applies to the exemption—the person covered by the exemption.
- (5) An exemption given under subsection (1), or a variation or revocation made under subsection (3), is not a legislative instrument.
- (6) If the Reserve Bank gives an exemption under subsection (1), or varies or revokes an exemption under subsection (3), the Reserve Bank must publish notice of the exemption, variation or revocation on the Reserve Bank’s website.

*Exemption of classes of clearing and settlement facilities and persons*

- (7) The Reserve Bank may, by legislative instrument, exempt:
- (a) a class of clearing and settlement facilities; or
  - (b) a class of persons;
- from:
- (c) paragraph 821A(1)(aa) or (ab); or
  - (d) a provision of a standard determined under section 827D or 827DA.
- (8) The exemption may apply:
- (a) unconditionally or subject to specified conditions; and
  - (b) for a specified period or indefinitely (the ***exemption duration***).
- (9) The Reserve Bank may, at any time, by legislative instrument:
- (a) vary an exemption given under subsection (7) to:
    - (i) impose conditions, or additional conditions, on the exemption; or
    - (ii) vary or revoke any of the conditions on the exemption; or
    - (iii) extend or shorten the exemption duration (including as affected by any variation from a previous operation of this subparagraph); or

- (b) revoke an exemption given under subsection (7).
- (10) However, the Reserve Bank may only take action under subsection (9) after:
  - (a) giving notice, and an opportunity to make submissions on the proposed action, to:
    - (i) if paragraph (7)(a) applies to the exemption—the operator of each clearing and settlement facility known by the Reserve Bank to be covered by the exemption; or
    - (ii) if paragraph (7)(b) applies to the exemption—each person known by the Reserve Bank to be covered by the exemption; and
  - (b) both:
    - (i) a notice has been published on the Reserve Bank’s website allowing a reasonable period within which the operator of each clearing and settlement facility covered by the exemption, or each person covered by the exemption, (as applicable) may make submissions on the proposed action; and
    - (ii) that period has ended.

**69 Subparagraph 821A(1)(f)(ii)**

Omit “the Minister’s”, substitute “ASIC’s”.

**70 Subsection 821B(1)**

Omit “If ASIC considers it appropriate to do so, ASIC may give the Minister advice about the matter.”.

**71 Subsection 821E(3)**

Omit “the Minister”, substitute “ASIC”.

**72 Subsections 821E(4) and (5)**

Repeal the subsections, substitute:

- (4) ASIC may, by giving written notice to a CS facility licensee, require the licensee to obtain from ASIC, or a suitably qualified person or body nominated by ASIC, an audit report on the annual report and on any information or statements accompanying it.

**73 Subsection 821F(1)**

Omit “the Minister”, substitute “ASIC”.

**74 Subsections 822E(2) and (3)**

Repeal the subsections, substitute:

- (2) Within 28 days after ASIC receives a notice under section 822D from a CS facility licensee, ASIC may disallow all or a specified part of the change to the operating rules.

**75 Subsection 822E(4)**

Omit “do so, the Minister”, substitute “disallow all or a specified part of the change to the operating rules, ASIC”.

**76 Subsection 822E(4) (note)**

Omit “The Minister”, substitute “ASIC”.

**77 Subdivision C of Division 2 of Part 7.3 (heading)**

Omit “the Minister,”.

**78 Section 823A (heading)**

Omit “Minister’s”, substitute “ASIC’s”.

**79 Subsection 823A(1)**

Repeal the subsection, substitute:

- (1) If ASIC considers that a CS facility licensee is not complying or is not likely to comply with its obligations as a CS facility licensee under this Chapter (other than its obligations under paragraph 821A(1)(aa), section 821BA or subsection 821C(3)), ASIC may give the licensee a written direction:
- (a) to do specified things that ASIC believes will promote compliance by the licensee with those obligations; or
  - (b) to refrain from doing specified things, if ASIC believes that refraining from doing those things will promote compliance by the licensee with those obligations.

**80 Subsection 823A(4)**

Omit “The Minister”, substitute “ASIC”.

**81 At the end of section 823A**

Add:

- (5) If, at any time after the licensee receives a direction, the licensee requests in writing that ASIC refer the matter to the Minister, ASIC must do so immediately.
- (6) The Minister may, if the Minister considers it appropriate after being referred the matter, direct ASIC to vary or revoke the direction.
- (7) ASIC must immediately comply with the direction under subsection (6).
- (8) A direction under subsection (6) is not a legislative instrument.

**82 Section 823B**

Repeal the section, substitute:

**823B ASIC’s power to require special report**

- (1) ASIC may give a CS facility licensee a written notice requiring the licensee to give ASIC a special report on specified matters.
- (2) The licensee must give the special report to ASIC within the time required by the notice.

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

**83 Subsection 823C(3)**

Omit “the Minister and a copy of the written report to”.

**84 Subsection 823C(6)**

Omit “Either the Minister or”.

**85 Subsection 823C(6)**

Omit “printed and published”, substitute “published”.

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**86 Subsection 823CA(2)**

Omit “the Minister and a copy of the written report to”.

**87 Subsection 823CA(5)**

Omit “Either the Minister or the”, substitute “The”.

**88 Subsection 823CA(5)**

Omit “to be printed and published”, substitute “to be published”.

**89 Subsection 824A(1)**

Omit “(1)”.

**90 Subsection 824A(2)**

Repeal the subsection.

**91 Section 824C**

Omit “If the Minister grants an Australian CS facility licence, the Minister must publish a notice in the *Gazette*”, substitute “If ASIC grants an Australian CS facility licence, ASIC must publish a notice on ASIC’s website”.

**92 Section 824D**

Omit “the Minister”, substitute “ASIC”.

**93 Subsection 824E(3)**

Omit “the Minister”, substitute “ASIC”.

**94 Subsection 825A(1)**

Omit “The Minister” (wherever occurring), substitute “ASIC”.

**95 Subsection 825A(1)**

Omit “in the *Gazette*”, substitute “on ASIC’s website”.

**96 Subsection 825A(1) (note)**

Omit “the Minister”, substitute “ASIC”.

**97 Subsection 825A(2)**

Omit “The Minister”, substitute “ASIC”.

**98 Paragraph 825A(2)(a)**

Omit “the Minister’s”, substitute “its”.

**99 Paragraph 825A(2)(b)**

Omit “the Minister”, substitute “ASIC”.

**100 Subsection 825A(3)**

Omit “The Minister”, substitute “ASIC”.

**101 Subsection 825A(3)**

Omit “his or her”, substitute “ASIC’s”.

**102 Paragraph 825A(3)(a)**

Omit “he or she”, substitute “ASIC”.

**103 Paragraph 825A(3)(b)**

Omit “the Minister”, substitute “ASIC”.

**104 Subsection 825A(3)**

Omit “the Minister” (last occurring), substitute “ASIC”.

**105 Subsection 825A(4)**

Omit “The Minister”, substitute “ASIC”.

**106 Subsections 826A(1) and (2)**

Omit “The Minister”, substitute “ASIC”.

**107 Subsection 826A(3)**

Repeal the subsection.

**108 Section 826B**

Omit “The Minister”, substitute “ASIC”.

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**109 Section 826B**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**110 Subsection 826C(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**111 Paragraph 826C(3)(b)**

Omit “the Minister”, substitute “ASIC”.

**112 Subsection 826C(4)**

Omit “the Minister”, substitute “ASIC”.

**113 Subsection 826C(4) (note)**

Omit “The Minister”, substitute “ASIC”.

**114 Subsection 826D(2)**

Omit “the Minister”, substitute “ASIC”.

**115 Section 826E**

Omit “The Minister”, substitute “ASIC”.

**116 Subsection 826F(1)**

Omit “the Minister” (first occurring), substitute “ASIC”.

**117 Subsection 826F(1)**

Omit “the Minister must publish a notice in the *Gazette*”, substitute “ASIC must publish a notice on ASIC’s website”.

**118 Section 827A (heading)**

Omit “the Minister”, substitute “ASIC”.

**119 Subsection 827A(1)**

Omit “The Minister”, substitute “ASIC”.

**120 Subsection 827A(2)**

Omit “the Minister” (first occurring), substitute “ASIC”.

**121 Paragraph 827A(2)(h)**

Omit “ASIC,”.

**122 Subsection 827A(2)**

Omit “The Minister may also have regard to any other matter that the Minister”, substitute “ASIC may also have regard to any other matter that ASIC”.

**123 Subsection 827A(3)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**124 Sections 827B and 827C**

Repeal the sections, substitute:

**827B ASIC may give advice to Minister and Reserve Bank**

- (1) ASIC may give advice to the Minister in relation to:
  - (a) any matter in respect of which the Minister has a discretion under this Part; or
  - (b) any other matter concerning clearing and settlement facilities.
- (2) ASIC may give advice to the Reserve Bank in relation to any matter concerning clearing and settlement facilities.

**827C Reserve Bank may give advice to Minister and ASIC**

- (1) The Reserve Bank may give advice to the Minister in relation to:
  - (a) any matter in respect of which the Minister has a discretion under this Part; or
  - (b) any other matter concerning clearing and settlement facilities.
- (2) The Reserve Bank may give advice to ASIC in relation to any matter concerning clearing and settlement facilities.

**125 Subsections 827D(1) and (6)**

Omit “in writing”, substitute “by legislative instrument”.

**126 Subsections 827D(7) to (10)**

Repeal the subsections, substitute:

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- (7) If the Reserve Bank determines or varies a standard, it must, as soon as practicable, give a copy of the standard, or of the variation, to the following:
  - (a) each CS facility licensee to which the standard applies;
  - (b) the Minister;
  - (c) ASIC.
- (8) The Reserve Bank may revoke a standard by legislative instrument.
- (9) If the Reserve Bank revokes a standard, it must, as soon as practicable, give notice of the revocation of the standard to the following:
  - (a) each CS facility licensee to which the standard applied;
  - (b) the Minister;
  - (c) ASIC.

**127 At the end of Division 4 of Part 7.3**

Add:

**827E Certain powers—consultation between ASIC and the Reserve Bank**

*ASIC must consult Reserve Bank*

- (1) Before exercising a power under subsection 820C(1) or (7), 822E(2), 824B(1) or (2), 825A(1), 826A(1) or 826C(1) or section 826E, ASIC must consult the Reserve Bank.

*Reserve Bank must consult ASIC*

- (2) Before exercising a power under subsection 820CA(1), (3), (7) or (9), the Reserve Bank must consult ASIC.

**128 Subsection 853D(3)**

Omit “and to the Minister”.

**129 Paragraph 853D(6)(b)**

Omit “each”, substitute “both”.

**130 Subparagraphs 853D(6)(b)(ii) and (iii)**

Repeal the subparagraphs, substitute:  
(ii) the individual.

**131 Subsection 853E(2)**

Omit “, the individual and the Minister”, substitute “and the individual”.

**132 Section 853G**

Omit “, the licensee and the Minister”, substitute “and the licensee”.

**133 Section 881C**

Omit “the Minister”, substitute “ASIC”.

**134 Subsection 881D(1)**

Omit “the Minister must consider whether he or she”, substitute “ASIC must consider whether ASIC”.

**135 Subsections 881D(2) and (3)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**136 Section 882A**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**137 Subsection 882B(1)**

After “the operator must apply”, insert “to ASIC”.

**138 Subsection 882B(2)**

Repeal the subsection (not including the note), substitute:

- (2) The application must:
- (a) contain the information, in relation to the proposed compensation arrangements, required by regulations made for the purposes of this paragraph; and
  - (b) be accompanied by a copy of the proposed compensation rules.

**139 Subsections 882B(3), (4) and (5)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**140 Section 882C**

Omit “The Minister may at any time revoke an approval of compensation arrangements if the Minister”, substitute “ASIC may at any time revoke an approval of compensation arrangements if ASIC”.

**141 Section 882D (heading)**

Omit “Minister’s”, substitute “ASIC’s”.

**142 Subsection 882D(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**143 Subsection 882D(4)**

Omit “The Minister”, substitute “ASIC”.

**144 At the end of section 882D**

Add:

- (5) If, at any time after the licensee receives a direction, the licensee requests in writing that ASIC refer the matter to the Minister, ASIC must do so immediately. In that event, the Minister may, if the Minister considers it appropriate, require ASIC to vary, or to revoke, the direction. ASIC must immediately comply with such a requirement.

**145 Subsection 884B(5)**

Repeal the subsection.

**146 Subsection 884B(6)**

Omit “the Minister”, substitute “ASIC”.

**147 Subsection 884B(7)**

Omit “The Minister must not disallow all or part of the change unless the Minister”, substitute “ASIC must not disallow all or part of the change unless ASIC”.

**148 Paragraph 884C(1)(d)**

Omit “the Minister”, substitute “ASIC”.

**149 Paragraph 884C(2)(b)**

Omit “made to the Minister by lodging the application”, substitute “lodged”.

**150 Subsections 884C(3) and (4)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**151 Subsections 885B(1) and (2)**

Omit “the Minister”, substitute “ASIC”.

**152 Subsection 885C(3)**

Omit “the Minister”, substitute “ASIC”.

**153 Subsection 885J(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**154 Subsection 885J(2)**

Omit “The Minister may take into account such other matters as the Minister”, substitute “ASIC may take into account such other matters as ASIC”.

**155 Subsections 890H(1) and (2)**

Repeal the subsections, substitute:

- (1) Within 28 days after receiving a notice under section 890G, ASIC may disallow all or a specified part of the change to the SEGC’s operating rules.

**156 Subsection 892K(1)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**157 Section 893B (heading)**

Omit “Minister”, substitute “ASIC”.

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**158 Subsections 893B(1) and (2)**

Omit “The Minister”, substitute “ASIC”.

**159 Subsection 893B(3)**

Omit “the Minister” (wherever occurring), substitute “ASIC”.

**160 Subsection 893B(5)**

Omit “the Minister must publish notice of it in the Gazette”, substitute “ASIC must publish notice of it on ASIC’s website”.

**161 Subsection 904H(1)**

Omit “ASIC may give a copy of the report to the Minister.”.

**162 Subsection 904J(2)**

Omit “ASIC may give a copy of the report to the Minister.”.

**163 Subsection 908BV(3)**

Repeal the subsection.

**164 Subsection 908BW(2)**

Omit “ASIC may give a copy of the report to the Minister.”.

**165 Subsection 1101J(1)**

After “under this chapter”, insert “(other than powers under Part 7.2, 7.2A, 7.3, 7.3A, 7.3B, 7.4, 7.5 or 7.5A)”.

**166 Schedule 3 (table item dealing with subsection 794B(3))**

Omit “794B(3)”, substitute “794B(2)”.

**167 Schedule 3 (table item dealing with subsection 823B(3))**

Omit “823B(3)”, substitute “823B(2)”.

## Part 2—Application and transitional provisions

### *Corporations Act 2001*

#### 168 In the appropriate position in Chapter 10

Insert:

### **Part 10.76—Application and transitional provisions relating to Schedule 3 to the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024**

#### 1706 Definitions

In this Part:

*amending Part* means Part 1 of Schedule 3 to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.

*commencement time* means the time this section commences.

#### 1706A Transitional—Ministerial instruments

- (1) This section applies to an instrument (however described):
  - (a) made by the Minister under a provision of this Act amended by the amending Part; and
  - (b) in force immediately before the commencement time.
- (2) The instrument continues in force (and may be dealt with) at and after the commencement time as if the instrument had been made under that provision as amended by the amending Part (or, if the amending Part replaces the provision with another provision, for the purposes of the replacement provision).

**1706B Application of amendments—special reports and audit reports**

Despite section 1706A, the amendments made by the amending Part do not apply in relation to a notice:

- (a) given under subsection 794B(1) or 823B(1); and
- (b) in force immediately before the commencement time.

**1706C Transitional—reports in relation to market licensees**

- (1) This section applies if:
  - (a) a report and recommendation was given to the Minister under paragraph 797C(3)(b) before the commencement time; and
  - (b) the Minister did not take action under paragraph 797C(4)(a) or (b) in response to that report before the commencement time.
- (2) The Minister must give the report and recommendation to ASIC.
- (3) Subsection 797C(4) of this Act, as amended by the amending Part, applies in relation to the report and recommendation in the same way as that subsection applies in relation to a report given to ASIC under paragraph 797C(3)(b) of this Act, as amended by the amending Part.

**1706D Transitional—reports in relation to CS facility licensees**

- (1) This section applies if:
  - (a) a report and recommendation was given to the Minister under paragraph 826C(3)(b) before the commencement time; and
  - (b) the Minister did not take action under paragraph 826C(4)(a) or (b) in response to that report before the commencement time.
- (2) The Minister must give the report and recommendation to ASIC.
- (3) Subsection 826C(4) of this Act, as amended by the amending Part, applies in relation to the report and recommendation in the same way as that subsection applies in relation to a report given to ASIC under paragraph 826C(3)(b) of this Act, as amended by the amending Part.

## Schedule 4—Sustainability reporting

### Part 1—Sustainability reporting

#### *Australian Securities and Investments Commission Act 2001*

##### **1 Section 5 (after paragraph (c) of the definition of *books*)**

Insert:

- (ca) sustainability reports or sustainability records, however compiled, recorded or stored; and

#### *Corporations Act 2001*

##### **2 Section 9 (after paragraph (c) of the definition of *books*)**

Insert:

- (ca) sustainability reports or sustainability records, however compiled, recorded or stored; and

##### **3 Section 9**

Insert:

*climate statements* means annual climate statements under sections 296A and 296B.

*financed emissions* has the meaning given by the sustainability standards.

*scope 1 greenhouse gas emissions* has the meaning given by the sustainability standards.

*scope 2 greenhouse gas emissions* has the meaning given by the sustainability standards.

*scope 3 greenhouse gas emissions* has the meaning given by the sustainability standards.

*substantive provision*, of a sustainability report, means anything required to be included in the sustainability report under

subsection 296A(1), other than the directors' declaration mentioned in paragraph 296A(1)(e).

*sustainability records* includes documents and working papers needed to explain the methods, assumptions and evidence from which the substantive provisions of sustainability reports are made up.

*sustainability report* means an annual sustainability report required under section 292A.

Note: Sections 296A, 296B and 296D deal with the contents of annual sustainability reports.

#### **4 Subsection 250N(3) (note 1)**

After "annual financial report," insert "sustainability report,".

#### **5 Paragraph 250R(1)(a)**

After "financial report," insert "sustainability report,".

#### **6 Chapter 2M (heading)**

After "**Financial reports**", insert "**“, sustainability reports”**".

#### **7 Subsection 285(1)**

Repeal the subsection (not including the table), substitute:

*Obligations under this Chapter—companies, registered schemes, registrable superannuation entities and disclosing entities*

(1) Under this Chapter:

- (a) all companies, registered schemes, registrable superannuation entities and disclosing entities must keep financial records (see sections 286 to 291); and
- (b) some must keep sustainability records (see section 286A); and
- (c) some must prepare financial reports; and
- (d) some must prepare sustainability reports.

All those that have to prepare financial reports or sustainability reports have to prepare them annually; disclosing entities have to prepare half-year financial reports as well.

(1AA) The following table sets out what is involved in annual financial and sustainability reporting:

**8 Subsection 285(1) (table heading)**

After “Annual financial”, insert “and sustainability”.

**9 Subsection 285(1) (after table item 1)**

Insert:

1A	prepare sustainability report	s. 292A, 296A, 296B	The sustainability report includes the following: <ul style="list-style-type: none"><li>• climate statements and notes;</li><li>• any statements and notes required by legislative instrument;</li><li>• directors’ declaration.</li></ul>
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**10 Subsection 285(1) (table item 4, column headed “steps”)**

After “financial report”, insert “, sustainability report”.

**11 Subsection 285(1) (table item 5, column headed “steps”)**

After “financial report”, insert “, sustainability report”.

**12 Subsection 285(1) (table item 6, column headed “steps”)**

After “financial report”, insert “, sustainability report”.

**13 Section 285A**

After “financial” (first occurring), insert “and sustainability”.

**14 Section 285A (at the end of the table)**

Add:

4	Company limited by guarantee with annual revenue or, if part of a consolidated entity, annual consolidated	Must prepare a financial report. Must prepare a sustainability report.	Sections 292, 292A, 296A, 296B, 298, 300B, 301, 301A, 307AA, 316A
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revenue of \$1 million or more and which meets sustainability reporting thresholds in section 292A.	Must prepare a directors' report, although less detailed than that required of other companies. Must have financial report audited. Must have sustainability report audited. Must give reports to any member who elects to receive them.
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## **15 Part 2M.2 (heading)**

After “**Financial**”, insert “**and sustainability**”.

## **16 After section 286**

Insert:

### **286A Obligation to keep sustainability records**

- (1) If an entity must prepare a sustainability report for a financial year, the entity must keep written sustainability records that correctly explain and record its preparation of the substantive provisions of the sustainability report.

Note: Section 9 defines *sustainability records*.

*Period for which records must be retained*

- (2) The sustainability records must be retained for 7 years after the sustainability report to which the records relate is completed.

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

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

**17 Subsections 287(1) and (2) and 288(1)**

After “financial”, insert “and sustainability”.

**18 Section 289 (heading)**

Before “records”, insert “financial”.

**19 After section 289**

Insert:

**289A Place where sustainability records are kept**

- (1) An entity may decide where to keep the sustainability records.

*Records kept outside this jurisdiction*

- (2) If sustainability records about particular matters are kept outside this jurisdiction, sufficient written information about those matters must be kept in this jurisdiction to enable substantive provisions of the sustainability report to be prepared.
- (3) Subsection (4) applies in relation to an entity and a particular place in this jurisdiction if the entity:
- (a) does not currently keep information at that place for the purposes of subsection (2); and
  - (b) begins to keep information at that place for that purpose.
- (4) The entity must give ASIC written notice of that place:
- (a) in the prescribed form; and
  - (b) no later than:
    - (i) the day the entity is required to lodge a sustainability report under section 319 for the financial year in which the entity begins to keep information at that place; or
    - (ii) the day the entity would be required to lodge a sustainability report under section 319 for the financial



year in which the entity begins to keep information at that place if the entity were required to prepare a sustainability report for that financial year.

- (5) ASIC may direct an entity to produce specified sustainability records that are kept outside this jurisdiction.
- (6) The direction must:
  - (a) be in writing; and
  - (b) specify a place in this jurisdiction where the records are to be produced (the place must be reasonable in the circumstances); and
  - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.
- (7) The entity must comply with the direction.

*Offences*

- (8) An offence based on subsection (2), (4) or (7) is an offence of strict liability.

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

**20 Subsection 290(1)**

Omit “the financial records”, substitute “any financial or sustainability records”.

**21 Subsection 290(2)**

After “financial”, insert “or sustainability”.

**22 Section 291 (table item 4)**

Repeal the table item, substitute:

		<b>ASIC</b>
4	sections 28 to 39C of the ASIC Act	ASIC has power to inspect the records and give related information to other entities. It also has power under subsection 289(3) of this Act to call for the production of financial records kept outside this jurisdiction.

### 23 Part 2M.3 (heading)

After “Financial”, insert “and sustainability”.

### 24 Division 1 of Part 2M.3 (heading)

After “Annual financial reports”, insert “, sustainability reports”.

### 25 After section 292

Insert:

#### 292A Who has to prepare annual sustainability reports

- (1) Subject to subsection (2), an entity must prepare a sustainability report for a financial year if:
- (a) the entity must prepare a financial report for the financial year under this Chapter; and
  - (b) subsection (3), (5) or (6) of this section applies to the entity for the financial year.

Note: For financial years commencing before 1 July 2027, only certain entities are required to prepare a sustainability report: see Part 10.77.

- (2) Despite subsection (1), if:
- (a) the accounting standards require an entity (the *parent*) to prepare financial statements in relation to a consolidated entity for the financial year; and
  - (b) the parent elects to prepare a sustainability report for the consolidated entity for the financial year;
- then:
- (c) the parent is the only entity in the consolidated entity that must prepare a sustainability report for the financial year; and
  - (d) the sustainability report must be prepared as if the consolidated entity is a single entity.

#### *Thresholds for sustainability reports*

- (3) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs:
- (a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is the following amount or more:

- (i) the amount prescribed by regulations made for the purposes of paragraph 45A(2)(a);
    - (ii) if no amount is prescribed—\$50 million;
  - (b) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is the following amount or more:
    - (i) the amount prescribed by regulations made for the purposes of paragraph 45A(2)(b);
    - (ii) if no amount is prescribed—\$25 million;
  - (c) the entity and the entities it controls (if any) have the following number of employees or more at the end of the financial year:
    - (i) the number prescribed by regulations made for the purposes of paragraph 45A(2)(c);
    - (ii) if no number is prescribed—100.
- (4) In counting employees for the purposes of subsection (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (5) This subsection applies to an entity for a financial year if it is:
- (a) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or
  - (b) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial year.
- (6) This subsection applies to an entity for a financial year if:
- (a) the entity is a registered scheme, registrable superannuation entity or retail CCIV; and
  - (b) the value of assets at the end of the financial year of the entity and the entities it controls (if any) is the following amount or more:
    - (i) the amount prescribed by regulations made for the purposes of this subparagraph;
    - (ii) if no amount is prescribed—\$5 billion.

*Matters worked out in accordance with standards*

- (7) For the purposes of this section:
-

- (a) the question whether an entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
- (b) consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time; (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).

## **26 After section 296**

Insert:

### **296A Contents of annual sustainability report**

#### *Basic contents*

- (1) The sustainability report for a financial year consists of:
  - (a) the climate statements for the year; and
  - (b) any notes to the climate statements; and
  - (c) any statements required under subsection (5); and
  - (d) any notes to the statements mentioned in paragraph (1)(c) required under subsection (5); and
  - (e) the directors' declaration about the statements and the notes.

#### *Climate statements*

- (2) Subject to section 296B, the climate statements for the year are the climate statements in relation to the entity required by sustainability standards made for the purposes of this subsection.

#### *Notes to climate statements*

- (3) A sustainability report must include the following notes to the climate statements:
  - (a) any disclosures required under subsection (4);
  - (b) any notes, required by sustainability standards made for the purposes of this paragraph, in relation to:
    - (i) the preparation of the climate statements; or
    - (ii) anything included in the climate statements; or

- (iii) other matters concerning environmental sustainability;
  - (c) notes containing any other information necessary to ensure that the climate statements and notes together make the disclosures required by section 296D.
- (4) The Minister may, by legislative instrument, require a sustainability report to include specified disclosures in relation to:
- (a) the preparation of the climate statements; or
  - (b) anything included in the climate statements.

*Other statements and notes*

- (5) For the purposes of paragraphs (1)(c) and (d), the Minister may, by legislative instrument, require a sustainability report to include:
- (a) statements relating to financial matters concerning environmental sustainability; and
  - (b) notes to the statements.

*Directors' declaration*

- (6) The directors' declaration is a declaration by the directors as to whether, in the directors' opinion, the substantive provisions of the sustainability report are in accordance with this Act, including:
- (a) section 296C (compliance with sustainability standards etc.); and
  - (b) section 296D (climate statement disclosures).
- (7) The declaration must:
- (a) be made in accordance with a resolution of the directors; and
  - (b) specify the date on which the declaration is made; and
  - (c) be signed by a director.

Note: Section 1228 deals with directors' resolutions for CCIVs.

**296B Contents of climate statements—statement about there being no financial risks or opportunities relating to climate**

- (1) Despite subsection 296A(2), if, for a financial year:
- (a) there are none of the following for the entity:
    - (i) material financial risks relating to climate;

- (ii) material financial opportunities relating to climate; and
- (b) none of subsections (2), (4) and (5) of this section apply to the entity;

the climate statements for the year are:

- (c) a statement of the circumstance mentioned in paragraph (a) of this subsection; and
- (d) a statement explaining how paragraph (a) of this subsection applies to the entity for the financial year.

*Entities to which subsection (1) does not apply*

- (2) This subsection applies to an entity for a financial year if it satisfies at least 2 of the following paragraphs:
  - (a) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is \$200 million or more;
  - (b) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is \$500 million or more;
  - (c) the entity and the entities it controls (if any) have 250 or more employees at the end of the financial year.
- (3) In counting employees for the purposes of subsection (2), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (4) This subsection applies to an entity for a financial year if it is:
  - (a) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or
  - (b) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial year.
- (5) This subsection applies to an entity for a financial year if:
  - (a) the entity is a registered scheme, registrable superannuation entity or retail CCIV; and
  - (b) the value of assets at the end of the financial year of the entity and the entities it controls (if any) is \$5 billion or more.

- (6) For the purposes of this section, the question of whether there are any of the following for an entity is to be worked out in accordance with sustainability standards made for the purposes of this subsection:
- (a) a material financial risk relating to climate;
  - (b) a material financial opportunity.
- (7) For the purposes of this section:
- (a) the question whether an entity controls another entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
  - (b) consolidated revenue, the value of consolidated gross assets and the value of assets are to be calculated in accordance with accounting standards in force at the relevant time;
- (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).

### **296C Compliance with sustainability standards etc.**

- (1) The substantive provisions of the sustainability report must comply with:
- (a) sustainability standards made for the purposes of this paragraph; and
  - (b) any further requirements determined under subsection (2) of this section.
- (2) For the purposes of paragraph (1)(b) of this section, the Minister may, by legislative instrument, determine requirements in relation to the substantive provisions of a sustainability report.

### **296D Climate statement disclosures**

- (1) The climate statements for a financial year, and the notes to the climate statements, must together disclose all of the following:
- (a) any:
    - (i) material financial risks there are for the entity; or
    - (ii) material financial opportunities relating to climate there are for the entity;that are required to be disclosed by sustainability standards made for the purposes of this paragraph;

- (b) any metrics and targets of the entity relating to climate that are required to be disclosed by sustainability standards made for the purposes of this paragraph, including metrics and targets relating to:
    - (i) scope 1 greenhouse gas emissions; or
    - (ii) scope 2 greenhouse gas emissions; or
    - (iii) scope 3 greenhouse gas emissions (including financed emissions);
  - (c) any information that:
    - (i) is about governance of, strategy of, or risk-management by, the entity in relation to the risks, opportunities, metrics and targets mentioned in paragraphs (a) and (b); and
    - (ii) is required to be disclosed by sustainability standards made for the purposes of this paragraph.
- (2) For the purposes of this section, the question of whether there are any of the following for an entity is to be worked out in accordance with sustainability standards made for the purposes of this subsection:
- (a) a material financial risk relating to climate;
  - (b) a material financial opportunity relating to climate.
- (2A) Subsection (2B) applies if sustainability standards made for the purposes of subsection (1) require the disclosure of:
- (a) a scenario analysis (within the meaning given by sustainability standards made for the purposes of this paragraph); or
  - (b) information derived from a scenario analysis; or
  - (c) information about a scenario analysis.
- (2B) For the purposes of subsection (1), a disclosure of a scenario analysis, information derived from a scenario analysis or information about a scenario analysis is taken not to satisfy that requirement unless the scenario analysis is carried out using at least both of the following scenarios:
- (a) the increase in the global average temperature well exceeds the increase mentioned in subparagraph 3(a)(i) of the *Climate Change Act 2022*;



- (b) the increase in the global average temperature is limited to the increase mentioned in subparagraph 3(a)(ii) of that Act.
- (3) This section does not apply if subsection 296B(1) applies for the financial year.

## **296E ASIC directions**

### *Giving directions*

- (1) If ASIC considers that a statement made by an entity in a sustainability report is:
  - (a) incorrect; or
  - (b) incomplete; or
  - (c) misleading in any way;ASIC may, by written notice given to the entity, direct the entity to do any of the following:
  - (d) confirm to ASIC that the statement is correct or complete;
  - (e) explain to ASIC the statement;
  - (f) give to ASIC information or documents that could substantiate or support the statement;
  - (g) correct, complete or amend the statement in accordance with the direction;
  - (h) if ASIC directs the entity to correct, complete or amend the statement:
    - (i) publish the corrected, completed or amended statement in accordance with the direction; or
    - (ii) give the corrected, completed or amended statement to specified persons in accordance with the direction.
- (2) The entity must comply with the direction.
  - (a) within the time specified in the direction, which must be a reasonable time; or
  - (b) if the direction does not specify a reasonable time—within a reasonable time.
- (3) ASIC may extend the time within which the entity must comply with the direction by written notice given to the entity.

- (4) Before giving to an entity a notice that includes a direction under paragraph (1)(g), or both a direction under paragraph (1)(g) and a direction under paragraph (1)(h), ASIC must give the entity an opportunity:
- (a) to appear, or be represented, at a hearing before ASIC that takes place in private; or
  - (b) to make submissions to ASIC on the matter.

*Varying and revoking directions*

- (5) ASIC may vary a direction given under subsection (1) in like manner and subject to like conditions.
- (6) ASIC may revoke a direction given under subsection (1) by written notice given to the entity.

*Publication of directions*

- (7) As soon as practicable after giving, varying or revoking a direction mentioned in paragraph (1)(g), ASIC must publish a notice of its action on its website.

*Offences*

- (8) An offence based on subsection (2) is an offence of strict liability.

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

**27 Division 4 of Part 2M.3 (heading)**

After “**Annual financial**”, insert “**and sustainability**”.

**28 Section 314 (heading)**

After “**Annual financial**”, insert “**and sustainability**”.

**29 After subparagraph 314(1)(a)(i)**

Insert:

- (ia) the sustainability report for the year;

**30 After paragraph 314(2)(a)**

Insert:

- (aa) the sustainability report for the year; and

**31 After paragraph 314AA(1)(a)**

Insert:

- (aa) if the registrable superannuation entity is required to prepare a sustainability report for the year—the sustainability report;

**32 Subsection 316(1)**

After “full financial report”, insert “, sustainability report (if one is required to be prepared)”.

**33 Subsection 316(3)**

After “full financial report”, insert “, sustainability report”.

**34 Section 316A (heading)**

After “financial”, insert “and sustainability”.

**35 After paragraph 316A(1)(a)**

Insert:

- (aa) the sustainability reports;

**36 After subsection 316A(3)**

Insert:

(3A) If the company prepares a sustainability report for a financial year, the company must send a copy of the report, free of charge, to each member who has made an election for that financial year by the earlier of:

- (a) 21 days before the next AGM after the end of the financial year; and
- (b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

**37 Subsection 316A(5)**

After “subsection (3)”, insert “, (3A)”.

**38 After section 316A**

Insert:

**316B Annual sustainability reporting to the public by other entities**

- (1) If:
- (a) an entity is required to prepare a sustainability report for a financial year; and
  - (b) the entity is not required by this Division to provide the sustainability report to members;
- the entity must ensure that the sustainability report is publicly available on the entity's website on and after the day on which the report is lodged with ASIC under section 319.
- (2) An offence based on subsection (1) is an offence of strict liability.

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

**39 After paragraph 317(1)(a)**

Insert:

- (aa) the sustainability report (if one is required to be prepared); and

**40 Subsection 318(1)**

After "annual financial report", insert ", sustainability report (if one is required to be prepared)".

**41 Paragraph 318(2)(b)**

After "financial report", insert ", sustainability report (if one was required to be prepared)".

**42 Section 322 (heading)**

Omit "financial statements", substitute "financial reports, sustainability reports".

**43 Subsection 322(1) (heading)**

After "*Financial reports*", insert ", *sustainability reports*".

**44 Subsection 322(1)**

After "financial report", insert ", sustainability report".

**45 Subsection 322(2A) (heading)**

After “*Financial reports*”, insert “, *sustainability reports*”.

**46 Paragraph 322(2A)(a)**

After “financial report”, insert “, sustainability report”.

**47 Division 6 of Part 2M.3 (heading)**

After “financial”, insert “and climate”.

**48 Subsection 323(1)**

After “has to prepare consolidated financial statements”, insert “or has to prepare climate statements”.

**49 At the end of subsection 323(1)**

Add “or to prepare the climate statements”.

**50 Subsection 323B(1)**

After “financial report that includes consolidated financial statements”, insert “or has to prepare a sustainability report as if a consolidated entity is a single entity”.

**51 Section 323C**

After “preparation or audit of a financial report”, insert “or sustainability report”.

**52 Section 323C**

Omit “whose financial report is being prepared or audited”, substitute “whose reports are being prepared or audited”.

**53 After subparagraph 713(4)(a)(i)**

Insert:

- (ia) if the body has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

**54 After paragraph 715(1)(i)**

Insert:

- (ia) if the body has prepared a sustainability report—include a copy of the most recent sustainability report; and

**55 After subsection 715(2)**

Insert:

- (2A) The sustainability report included under paragraph (1)(ia) must:
- (a) comply with the sustainability standards; and
  - (b) be audited.

**56 After subparagraph 1013FA(2)(a)(i)**

Insert:

- (ia) if the issuer of the product has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

**57 After subparagraph 1013I(3)(a)(i)**

Insert:

- (ia) if the scheme has lodged with ASIC a sustainability report—the most recently lodged sustainability report;

**58 After paragraph 1017C(3AA)(a)**

Insert:

- (aa) if the entity prepared a sustainability report for a specified financial year—a copy of the sustainability report; and

**59 Section 1222M (table item 15, column headed “topic”)**

After “financial”, insert “and sustainability”.

**60 Part 8B.4 (heading)**

Omit “and financial reporting”, substitute “, financial reporting and sustainability reporting”.

**61 Division 4 of Part 8B.4 (heading)**

After “Financial reports”, insert “, sustainability reports”.

**62 Subsection 1232(1)**

After “financial reports”, insert “, sustainability reports”.

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**63 Subdivision C of Division 4 of Part 8B.4 (heading)**

After “financial”, insert “and sustainability”.

**64 Section 1232C (heading)**

After “financial reports”, insert “, sustainability reports”.

**65 After paragraph 1232C(1)(a)**

Insert:

- (aa) in a case in which subsection 292A(1) requires the CCIV to prepare a sustainability report for a financial year—that subsection requires the CCIV to prepare a sustainability report for each of its sub-funds for the financial year; and

**66 Paragraph 1232C(2)(a)**

After “financial report”, insert “, a sustainability report”.

**67 After paragraph 1232C(2)(b)**

Insert:

- (c) the documents of which the sustainability report consists under subsection 296A(1);

**68 Section 1232D (heading)**

Repeal the heading, substitute:

**1232D Annual financial reports, sustainability reports and directors’ reports for sub-funds—special rules for financial reports and sustainability reports**

**69 At the end of section 1232D**

Add:

- (4) A sustainability report for a sub-fund referred to in subsection 1232C(1) must comply with any further requirements prescribed by regulations made for the purposes of this subsection.

**70 Section 1232H (heading)**

After “financial”, insert “and sustainability”.

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**71 Subparagraph 1232H(1)(a)(i)**

After “financial report”, insert “, sustainability report”.

**72 Section 1232M (heading)**

Omit “financial statements”, substitute “financial reports, sustainability reports”.

**73 Section 1232M**

After “financial report”, insert “, sustainability report”.

**74 In the appropriate position in Schedule 3**

Insert:

Subsection 286A(3)	2 years imprisonment
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Subsection 286A(4)	60 penalty units
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**75 In the appropriate position in Schedule 3**

Insert:

Subsections 289A(2), (4) and (7)	60 penalty units
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**76 In the appropriate position in Schedule 3**

Insert:

Subsection 296E(2)	60 penalty units
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**77 Schedule 3 (table item dealing with subsections 316A(3) and (4), column headed “Provision”)**

After “(3)”, insert “, (3A)”.

**78 In the appropriate position in Schedule 3**

Insert:

Subsection 316B(1)	30 penalty units
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## **Part 2—Audit**

### ***Corporations Act 2001***

#### **79 Section 9 (at the end of the definition of *auditor’s report*)**

Add:

; or (c) an auditor’s report on an annual sustainability report required by section 301A.

#### **80 Subsection 250N(3) (note 1)**

Omit “auditor’s report”, substitute “auditor’s reports”.

#### **81 Paragraph 250PA(1)(a)**

Omit “the auditor’s report”, substitute “any auditor’s report”.

#### **82 Paragraph 250PA(1)(b)**

After “annual financial report”, insert “or annual sustainability report”.

#### **83 Paragraph 250R(1)(a)**

Omit “auditor’s report”, substitute “auditor’s reports”.

#### **84 Paragraph 250RA(1)(a)**

Omit “the auditor’s report”, substitute “an auditor’s report”.

#### **85 Paragraph 250RA(3)(c)**

Omit “the auditor’s report”, substitute “an auditor’s report”.

#### **86 Subparagraph 250T(1)(a)(i)**

Omit “the audit”, substitute “audits”.

#### **87 Subparagraph 250T(1)(a)(ii)**

Omit “report”, substitute “reports”.

#### **88 After subparagraph 250T(1)(a)(iii)**

Insert:

- (iii) the policies adopted by the company in relation to the preparation of any sustainability reports the company is required to prepare; and

**89 Subparagraph 250T(1)(a)(iv)**

Omit “the audit”, substitute “audits”.

**90 Subsection 285(1) (after table item 1A)**

Insert:

1B	have the sustainability report audited and obtain auditor’s report	s. 301A, 307AA, 309A	Under s. 312, officers must assist the auditor in the conduct of the audit.  ASIC may use its exemption powers under s. 340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s. 342(2) and (3)).
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**91 Subsection 285(1) (table item 4, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

**92 Subsection 285(1) (table item 5, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

**93 Subsection 285(1) (table item 6, column headed “steps”)**

Omit “auditor’s report”, substitute “auditor’s reports”.

**94 At the end of Division 1 of Part 2M.3**

Add:

**301A Audit of annual sustainability report**

An entity that is required to prepare a sustainability report for a financial year must:

- (a) have the sustainability report audited in accordance with Division 3; and

(b) obtain an auditor's report.

Note: For financial years commencing before 1 July 2030, the requirement to have the sustainability report audited may be modified: see Part 10.77.

**95 Division 3 of Part 2M.3 (heading)**

Repeal the heading, substitute:

**Division 3—Audits and auditor's reports**

**96 Section 307 (heading)**

Repeal the heading, substitute:

**307 Audit of financial report**

**97 Section 307A (heading)**

Repeal the heading, substitute:

**307A Audit of financial report to be conducted in accordance with auditing standards**

**98 After section 307A**

Insert:

**307AA Audit of sustainability report**

An auditor who conducts an audit of the sustainability report for a financial year must form an opinion about:

- (a) whether the sustainability report is in accordance with this Act, including sections 296C (compliance with sustainability standards etc.) and 296D (climate statement disclosures); and
- (b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether the entity that prepared the sustainability report has kept sustainability records sufficient to enable the sustainability report to be prepared and audited.

Note: This section applies to sub-funds of retail CCIVs in a modified form: see section 1232G.

**307AB Audit of sustainability report to be conducted in accordance with auditing standards**

- (1) If an individual auditor, or an audit company, conducts an audit of the sustainability report for a financial year, the individual auditor or audit company must conduct the audit in accordance with the auditing standards.
- (2) If an audit firm, or an audit company, conducts an audit of the sustainability report for a financial year, the lead auditor for the audit must ensure that the audit is conducted in accordance with the auditing standards.

*Fault-based offence*

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

*Strict liability offence*

- (4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

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

**99 Section 307B (heading)**

Repeal the heading, substitute:

**307B Working papers for audit of financial or sustainability report to be retained for 7 years**

**100 Subparagraph 307B(1)(b)(ii)**

Omit “and”, substitute “or”.

**101 At the end of paragraph 307B(1)(b)**

Add:

- (iii) an audit of the sustainability report for the financial year; and

**102 Subparagraph 307B(3)(a)(ii)**

Omit “and”, substitute “or”.

**103 At the end of paragraph 307B(3)(a)**

Add:

- (iii) an audit of the sustainability report for the financial year; and

**104 After paragraph 307C(1)(b)**

Insert:

- or (ba) an audit of the sustainability report for the financial year;

**105 After paragraph 307C(3)(b)**

Insert:

- or (ba) an audit of the sustainability report for the financial year;

**106 Subsection 307C(5A)**

After “financial report for a financial year or half-year”, insert “, or in relation to a sustainability report for a financial year.”.

**107 Paragraph 307C(5A)(c)**

After “financial report”, insert “or sustainability report”.

**108 After section 309**

Insert:

**309A Auditor’s report on sustainability report**

*Audit of sustainability report*

- (1) An auditor who audits the sustainability report for a financial year must report to members in accordance with subsections (2), (3), (4) and (5) on whether the auditor is of the opinion that the sustainability report is in accordance with this Act, including:
  - (a) subsection 296A(2) or 296B(1) (contents of climate statements); and
  - (b) section 296C (compliance with sustainability standards etc.); and

(c) section 296D (climate statement disclosures).

If the auditor is not of that opinion, the auditor's report must say why.

- (2) The auditor's report must describe:
- (a) any defect or irregularity in the sustainability report; and
  - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307AA(b).

*Requirements for report*

- (3) The auditor's report must include any statements or disclosures required by the auditing standards.
- (4) If the sustainability report includes additional information under paragraph 296A(3)(c), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to make the disclosures required by section 296D.
- (5) The auditor's report must specify the date on which it is made.

*Offences*

- (6) An offence based on subsection (1) is an offence of strict liability.

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

**109 At the end of paragraph 314(1)(a)**

Add:

- (iv) the auditor's report on the sustainability report for the year;

**110 After paragraph 314(2)(d)**

Insert:

- (da) the auditor's report on the sustainability report for the year;  
and

**111 At the end of subsection 314AA(1)**

Add:

- ; (d) the auditor's report on the sustainability report.
-

**112 Paragraph 316A(1)(c)**

Repeal the paragraph, substitute:

- (c) the auditor's reports on the financial report;
- (d) the auditor's reports on the sustainability report.

**113 Before subsection 316A(4)**

Insert:

- (3B) If the company obtains an auditor's report on the sustainability report, the company must send a copy of the report, free of charge, to each member who has made an election for that financial year by the earlier of:
- (a) 21 days before the next AGM after the end of the financial year; and
  - (b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

**114 Subsection 316A(5)**

Before "or", insert ", (3B)".

**115 Paragraph 317(1)(c)**

Omit "report", substitute "reports".

**116 Paragraph 318(2)(b)**

Omit "auditor's report", substitute "auditor's reports".

**117 Subsection 323A(1)**

After "financial report that includes consolidated financial statements", insert "or a sustainability report that includes consolidated climate statements".

**118 Subsection 336(3)**

After "financial reports", insert "or sustainability reports".

**119 At the end of section 336**

Add:

(5) If:

- (a) the AUASB makes an auditing standard; and
- (b) the standard applies to sustainability reports in relation to particular periods under subsection (3); and
- (c) an auditor is conducting an audit of a sustainability report in relation to a period that occurs before the start of the earliest of those periods;

the auditor may elect to apply the auditing standard to that audit unless the standard says otherwise. The election must be recorded in the auditor's report.

**120 Paragraph 342(1)(a)**

After "financial report", insert ", sustainability report".

**121 Paragraph 1017C(3AA)(c)**

Repeal the paragraph, substitute:

- (c) a copy of the auditor's report on the financial report; and
- (d) a copy of the auditor's report on the sustainability report.

**122 After subsection 1232D(2)**

Insert:

- (2A) Despite subsection 1232C(2), section 301A applies to a CCIV referred to in subsection 1232C(1) in relation to the sustainability report for each of its sub-funds.

**123 After paragraph 1232G(1)(a)**

Insert:

- (aa) a sustainability report prepared as described in subsection 1232C(1);

**124 Subparagraph 1232H(1)(a)(ii)**

Omit "the auditor's report on the financial report", substitute "the auditor's reports".

**125 In the appropriate position in Schedule 3**

Insert:

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Subsection 307AB(3) 2 years imprisonment

Subsection 307AB(4) 50 penalty units

**126 In the appropriate position in Schedule 3**

Insert:

Subsection 309A(1) 50 penalty units

**127 Schedule 3 (table item dealing with subsections 316A(3) and (4), column headed “Provision”)**

Before “and”, insert “, (3B)”.

## Part 3—Sustainability and auditing standards

### *Australian Securities and Investments Commission Act 2001*

#### 128 After paragraph 227(1)(b)

Insert:

- (ba) to make sustainability standards under section 336A of the Corporations Act for the purposes of the corporations legislation (other than the excluded provisions); and

#### 129 Paragraph 227(1)(ca)

After “sustainability standards”, insert “for other purposes”.

#### 130 Subsection 227(1) (notes 2 and 3)

Repeal the notes, substitute:

- Note 2: The standards mentioned in paragraphs (b) and (ba) are made and have legal effect under the Corporations Act. The standards mentioned in paragraphs (c) and (ca) do not have legal effect under the Corporations Act but may be applied or adopted by some other authority.

#### 131 Subsection 227B(1) (note 1)

Repeal the note, substitute:

- Note 1: The standards mentioned in paragraph (a) are made and have legal effect under the Corporations Act. The standards mentioned in paragraph (b) do not have legal effect under the Corporations Act but may be applied or adopted by some other authority.

### *Corporations Act 2001*

#### 132 Section 9 (definition of *commencement*)

Repeal the definition, substitute:

*commencement*, in relation to an accounting standard or a sustainability standard, means:

- (a) in the case of an accounting standard or a sustainability standard as originally in effect—the time when the accounting standard or sustainability standard took effect; or

- (b) in the case of an accounting standard or a sustainability standard as varied by a particular provision of an instrument made under section 334 or 336A—the time when that provision took effect.

**133 Section 9**

Insert:

*sustainability standard* means:

- (a) a standard in force under section 336A; or
- (b) a provision of such a standard as it so has effect.

**134 Part 2M.5 (heading)**

After “Accounting”, insert “, sustainability”.

**135 Subsection 334(1)**

After “purposes of this Act”, insert “or the ASIC Act”.

**136 Subsection 334(1)**

After “inconsistent with this Act”, insert “, the ASIC Act”.

**137 Subsection 336(1)**

After “purposes of this Act”, insert “or the ASIC Act”.

**138 Subsection 336(1)**

After “inconsistent with this Act”, insert “, the ASIC Act”.

**139 Section 336**

After “financial” (wherever occurring), insert “or sustainability”.

**140 After section 336**

Insert:

**336A Sustainability standards**

- (1) The AASB may, by legislative instrument, make sustainability standards for the purposes of this Act or the ASIC Act. The

standards must not be inconsistent with this Act, the regulations or a legislative instrument made under this Act.

- (2) A sustainability standard applies to:
  - (a) periods ending after the commencement of the standard; or
  - (b) periods ending, or starting, on or after a later date specified in the standard.
- (3) A company, registered scheme, registrable superannuation entity or disclosing entity may elect to apply the sustainability standard to an earlier period unless the standard says otherwise. The election must be made in writing by the directors.

**141 Section 337 (heading)**

Omit “**accounting and auditing**”, substitute “**accounting, auditing and sustainability**”.

**142 Section 337**

Omit “accounting or auditing”, substitute “accounting, auditing or sustainability”.

**143 Section 338 (heading)**

Omit “**accounting standard or auditing**”, substitute “**accounting, auditing or sustainability**”.

**144 Paragraph 338(1)(a)**

Omit “334 or 336”, substitute “334, 336 or 336A”.

## **Part 4—Application and transitional provisions**

### *Corporations Act 2001*

#### **145 In the appropriate position in Chapter 10**

Insert:

## **Part 10.77—Application and transitional provisions relating to Schedule 4 to the Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024**

### **Division 1—Preliminary**

#### **1707 Definitions**

In this Part:

***amending Schedule*** means Schedule 4 to the *Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Act 2024*.

***first transitional period***: if the start date occurs on 1 January 2025 or 1 July 2025, the ***first transitional period*** is the period that:

- (a) starts on the start date; and
- (b) ends on 30 June 2026.

Otherwise, there is no ***first transitional period***.

***second transitional period*** means the period that:

- (a) starts on 1 July 2026; and
- (b) ends on 30 June 2027.

***start date*** means:

- (a) if this section commences on or before 2 December 2024—  
1 January 2025; or

- (b) if this section commences between 3 December 2024 and 1 June 2025—1 July 2025; or
- (c) if this section commences on or after 2 June 2025—the first 1 January or 1 July to occur 29 days or more after the day this section commences.

## **Division 2—Sustainability reporting**

### **1707A Application of amendments—place where sustainability records are kept**

- (1) If, under subsection 289A(4), an entity would be required to give ASIC notice before the end of the 12 months starting on the commencement of this section, that subsection has effect as if it required the notice to be given at the end of those 12 months.
- (2) For the purposes of subsections 289A(3) and (4), if, at the commencement of this section, an entity keeps information at a particular place in this jurisdiction for the purposes of subsection 289A(2), the entity is taken:
  - (a) not to keep information at that place for that purpose immediately before that commencement; and
  - (b) to begin to keep information at that place for that purpose on that commencement.

### **1707B Application of amendments—sustainability reporting**

- (1) Section 292A, as inserted by Part 1 of the amending Schedule, applies to an entity for a financial year if:
  - (a) both of the following subparagraphs apply:
    - (i) the financial year commences during the first transitional period;
    - (ii) subsection (2) or (4) of this section applies to the entity for the financial year; or
  - (b) both of the following subparagraphs apply:
    - (i) the financial year commences during the second transitional period;
    - (ii) subsection 296B(2), (4) or (5) applies to the entity for the financial year; or

(c) the financial year commences on or after 1 July 2027.

*Entities with new reporting for a financial year commencing during first transitional period*

- (2) This subsection applies to an entity for a financial year if:
- (a) the entity satisfies at least 2 of the following subparagraphs:
    - (i) the consolidated revenue for the financial year of the entity and the entities it controls (if any) is \$500 million or more;
    - (ii) the value of the consolidated gross assets at the end of the financial year of the entity and the entities it controls (if any) is \$1 billion or more;
    - (iii) the entity and the entities it controls (if any) have 500 or more employees at the end of the financial year; and
  - (b) the entity is not a registered scheme, registrable superannuation entity or retail CCIV.
- (3) In counting employees for the purposes of subsection (2), take part-time employees into account as an appropriate fraction of a full-time equivalent.
- (4) This subsection applies to an entity for a financial year if:
- (a) the entity is:
    - (i) a registered corporation under the *National Greenhouse and Energy Reporting Act 2007* at the end of the financial year; or
    - (ii) required to make an application to be registered under subsection 12(1) of that Act in relation to the financial year; and
  - (b) the entity's group meets the threshold mentioned in paragraph 13(1)(a) of that Act for the financial year; and
  - (c) the entity is not a registered scheme, registrable superannuation entity or retail CCIV.

*Matters worked out in accordance with standards*

- (5) For the purposes of this section:

- (a) the question whether an entity controls an entity is to be decided in accordance with accounting standards made for the purposes of paragraph 295(2)(b); and
  - (b) consolidated revenue and the value of consolidated gross assets are to be calculated in accordance with accounting standards in force at the relevant time;
- (even if the standards do not otherwise apply to the financial year of some or all of the entities concerned).

**1707C Application of amendments—directors’ declaration**

- (1) This section applies in relation to a financial year commencing during the 3 years starting on the start date.
- (2) Subsection 296A(6) applies to an entity for the financial year as if the reference in that subsection to whether, in the directors’ opinion, the substantive provisions of the sustainability report are in accordance with this Act were a reference to whether, in the directors’ opinion, the entity has taken reasonable steps to ensure the substantive provisions of the sustainability report are in accordance with this Act.

**1707D Limited immunity for statements in new sustainability reporting**

- (1) No action, suit or proceeding lies against a person in relation to:
  - (a) a protected statement; or
  - (b) a statement that is required to be made under a Commonwealth law and:
    - (i) is the same as a protected statement; or
    - (ii) differs from a protected statement only in so far as it contains updates or corrections to the protected statement.
- (2) Subsection (1) does not apply to an action, suit or proceeding if it is any of the following:
  - (a) criminal in nature;
  - (b) brought by ASIC.



*Meaning of protected statement*

- (3) A statement is a **protected statement** if it is:
- (a) made:
    - (i) in a sustainability report, for a financial year commencing during the 3 years starting on the start date, for the purpose of complying with a sustainability standard; or
    - (ii) in an auditor's report of an audit or review of a sustainability report mentioned in subparagraph (i) of this paragraph for the purposes of complying with this Act or the auditing standards; and
  - (b) about any of the following:
    - (i) scope 3 greenhouse gas emissions (including financed emissions);
    - (ii) scenario analysis (within the meaning given by sustainability standards made for the purposes of this subparagraph);
    - (iii) a transition plan (within the meaning given by sustainability standards made for the purposes of this subparagraph).
- (4) A statement is also a **protected statement** if it:
- (a) is made:
    - (i) in a sustainability report, for a financial year commencing during the 12 months starting on the start date, for the purpose of complying with a sustainability standard; or
    - (ii) in an auditor's report of an audit or review of a sustainability report mentioned in subparagraph (i) of this paragraph for the purposes of complying with this Act or the auditing standards; and
  - (b) relates to climate; and
  - (c) at the time it is made, is about the future.

### Division 3—Audit and review

#### 1707E Accounting standards must deal with audit and review of sustainability reports before 1 July 2030

- (1) This section applies in relation to a sustainability report for a financial year commencing on or before 30 June 2030.

*AUASB must make standards to specify the extent of, and provide for, audit and review of sustainability reports*

- (2) The AUASB must make auditing standards under section 336 that:
- (a) specify:
    - (i) the extent to which the sustainability report must be audited; or
    - (ii) that the sustainability report is not required to be audited to any extent; and
  - (b) specify:
    - (i) the extent to which the sustainability report must be reviewed; or
    - (ii) that the sustainability report is not required to be reviewed to any extent; and
  - (c) if a sustainability report must be audited or reviewed to any extent—provide standards for such audits or reviews.

*Modified references to audit and review*

- (3) Paragraph 301A(a) or 715(2A)(b) has effect as if the reference to audited in that paragraph were a reference to:
- (a) audited to the extent (if any) required by the auditing standards; and
  - (b) reviewed to the extent (if any) required by the auditing standards.
- (4) If the AUASB makes auditing standards for the purposes of subsection (2) of this section that require a sustainability report to be reviewed to any extent, references in this Act and the ASIC Act (other than in sections 307AA and 309A of this Act and this section):

- (a) to audit include a reference to a review of a sustainability report; and
  - (b) to an auditor's report include a reference to an auditor's report under section 1707F(2).
- (5) Section 307AA has effect as if:
- (a) the reference in paragraph 307AA(a) to the sustainability report were a reference to the sustainability report to the extent (if any) that it is required to be audited by the auditing standards; and
  - (b) the reference in paragraph 307AA(c) to audited were a reference to audited to the extent (if any) required to by the auditing standards.
- (6) Subsection 309A(1) has effect as if the reference in that subsection to whether the auditor is of the opinion that the sustainability report is in accordance with this Act were a reference to whether the auditor is of the opinion that the sustainability report, to the extent (if any) that it is required to be audited by the auditing standards, is in accordance with this Act.

#### **1707F Review of sustainability report before 1 July 2030**

- (1) This section applies in relation to a sustainability report for a financial year if the AUASB makes auditing standards for the purposes of subsection 1707E(2) that require the sustainability report to be reviewed to any extent.
- (2) An auditor who reviews the sustainability report must report to members in accordance with subsections (3), (4) and (5) of this section on whether the auditor became aware of any matter in the course of the review that makes the auditor believe that the sustainability report, to the extent that it is required to be reviewed by the auditing standards, does not comply with Division 1 of Part 2M.3.
- (3) A report under subsection (2) must:
  - (a) describe any matter referred to in subsection (2); and
  - (b) say why that matter makes the auditor believe that the sustainability report, to the extent that it is required to be

**Schedule 4** Sustainability reporting

**Part 4** Application and transitional provisions

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reviewed by the auditing standards, does not comply with Division 1 of Part 2M.3.

*Requirements for report*

- (4) The auditor’s report must include any statements or disclosures required by the auditing standards for the purposes of this section.
- (5) The auditor’s report must specify the date on which it is made.

*Offences*

- (6) An offence based on subsection (2) is an offence of strict liability.

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

## **Division 4—Review of operation of laws**

### **1707G Review of operation of laws**

- (1) The Minister must cause a review of the operation of the amendments made by the amending Schedule to be conducted.
- (2) The review must be conducted as soon as practicable after 1 July 2028.
- (3) The Minister must cause a written report of the review to be prepared.
- (4) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

### **146 In the appropriate position in Schedule 3**

Insert:

Subsection 1707F(2)	50 penalty units
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## Schedule 5—Other amendments

### *Australian Securities and Investments Commission Act 2001*

#### **1 Paragraphs 243D(d) and 243E(d)**

After “Corporations Act”, insert “from the requirement to hold an Australian market licence”.

### *Corporations Act 2001*

#### **2 Paragraph 437E(1)(a)**

Omit “section 5 of the *Crimes Act 1914*”, substitute “section 11.2 of the *Criminal Code*”.

#### **3 Section 791B (note)**

Omit “subsection” (first occurring), substitute “section”.

#### **4 Paragraph 792A(1)(h)**

Omit “()”.

#### **5 Section 820B (note)**

Omit “subsection” (first occurring), substitute “section”.

#### **6 Paragraph 821A(1)(g)**

Omit “()”.

#### **6A Paragraphs 850B(1)(b) and (c)**

Omit “Australian Stock Exchange Limited” (wherever occurring), substitute “ASX Limited”.

#### **6B Subsection 851A(1)**

Omit “Australian Stock Exchange Limited”, substitute “ASX Limited”.

#### **7 Subsections 883D(6), 889J(7) and 889K(6)**

Omit “*Financial Management and Accountability Act 1997*”, substitute “*Public Governance, Performance and Accountability Act 2013*”.

**8 Paragraph 890A(3)(a)**

Omit “the Australian Stock Exchange Limited”, substitute “ASX Limited”.

***Insurance Act 1973***

**9 Subsection 3(1) (paragraph (a) of the definition of *securities exchange*)**

Repeal the paragraph, substitute:

(a) ASX Limited; or

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*[Minister’s second reading speech made in—  
House of Representatives on 27 March 2024  
Senate on 24 June 2024]*

(42/24)

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