





# **Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007**

**No. 85, 2007**

**An Act to amend the law in relation to corporations and trade practices, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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**No. 85, 2007**

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## **An Act to amend the law in relation to corporations and trade practices, and for other purposes**

*[Assented to 21 June 2007]*

The Parliament of Australia enacts:

### **1 Short title**

*This Act may be cited as the Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007.*

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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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	21 June 2007
2. Schedule 1, items 1 to 18	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
3. Schedule 1, item 19	Immediately after the provision(s) covered by table item 2. However, if the provision(s) covered by table item 2 commence before the provision(s) covered by table item 6, the provision(s) covered by this table item do not commence at all.	
4. Schedule 1, item 20	At the same time as the provision(s) covered by table item 2. However, if the provision(s) covered by table item 6 commence before or at the same time as the provision(s) covered by table item 2, the provision(s) covered by this table item do not commence at all.	
5. Schedule 1, items 21 and 22	At the same time as the provision(s) covered by table item 2.	

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
6. Schedule 2	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.	
7. Schedule 3	The 28th day after the day on which this Act receives the Royal Assent.	19 July 2007

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### **3 Schedule(s)**

Each Act 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—Mutual recognition of securities offers

### *Corporations Act 2001*

#### 1 Section 9 (after paragraph (b) of the definition of *debenture*)

Insert:

Note: This paragraph has an extended meaning in relation to Chapter 8 (see subsection 1200A(2)).

#### 2 Section 9 (after paragraph (c) of the definition of *managed investment scheme*)

Insert:

Note: This paragraph has an extended meaning in relation to Chapter 8 (see subsection 1200A(3)).

#### 3 Section 9 (after paragraph (i) of the definition of *managed investment scheme*)

Insert:

Note: This paragraph has an extended meaning in relation to Chapter 8 (see subsection 1200A(3)).

#### 4 Section 9

Insert:

*recognised offer* has the meaning given by section 1200B.

#### 5 Section 111AF

Before “Securities”, insert “(1)”.

Note: The heading to section 111AF is altered by omitting “to which lodged or deemed prospectus relates” and substituting “held by 100 or more persons”.

#### 6 At the end of section 111AF

Add:

- (2) Securities (except debentures and managed investment products) in a class of securities of a body are *ED securities* if securities in that class have been issued under a recognised offer and the offeror’s

records indicate that 100 or more people who reside in this jurisdiction have held securities in that class (whether or not as a result of the recognised offer) at all times since the issue.

## 7 Section 111AFA

Before “Managed”, insert “(1)”.

## 8 At the end of section 111AFA

Add:

- (2) Interests in a class of interests in a managed investment scheme issued by a body are *ED securities* if interests in that class have been issued under a recognised offer and the offeror’s records indicate that 100 or more people who reside in this jurisdiction have held interests in that class (whether or not as a result of the recognised offer) at all times since the issue.

## 9 Section 111AI

Repeal the section, substitute:

### 111AI Debentures

Debentures of a borrower are *ED securities* if:

- (a) section 283AA requires the borrower to appoint a trustee; or
- (b) section 283AA does not apply to the borrower only because the offer of the debentures to which section 283AA would otherwise have applied is a recognised offer.

## 10 At the end of subsection 675(2)

Add:

Note 4: Subsection (2) has an extended operation in relation to disclosing entities that have made recognised offers of securities under Chapter 8 (see section 1200K).

## 11 At the end of subsection 734(4)

Add:

Note: Subsection (4) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(1)).

## 12 At the end of subsection 734(5)

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Add:

Note: Subsection (5) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(2)).

**13 At the end of subsection 734(6)**

Add:

Note: Subsection (6) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(3)).

**14 Subsection 1018A(2) (note)**

Omit “Note”, substitute “Note 1”.

**15 At the end of subsection 1018A(2)**

Add:

Note 2: Subsection (2) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(4)).

**16 Subsection 1018A(3) (note)**

Omit “Note”, substitute “Note 1”.

**17 At the end of subsection 1018A(3)**

Add:

Note 2: Subsection (3) has an extended operation in relation to recognised offers under Chapter 8 (see subsection 1200L(5)).

**18 After Chapter 7**

Insert:

**Chapter 8—Mutual recognition of securities offers**

**Part 8.1—Preliminary**

**1200A Definitions**

(1) In this Chapter:

*foreign recognition scheme* means the provisions of a law of a recognised jurisdiction that are prescribed by the regulations as

comprising a foreign recognition scheme for the purposes of this Chapter.

**law of a recognised jurisdiction** includes law of part of a recognised jurisdiction.

**offer** securities includes:

- (a) invite applications for the issue of securities; and
- (b) invite offers to purchase securities.

**offeror**, of securities, means:

- (a) in relation to an offer of a kind prescribed by the regulations—a person of a kind prescribed by the regulations; and
- (b) otherwise—the person who has the capacity, or who agrees, to issue or transfer the securities if the offer is accepted.

**recognised jurisdiction** means a foreign country prescribed by the regulations as a recognised jurisdiction.

**recognised offer** has the meaning given by section 1200B.

**securities** means:

- (a) a share in a body; or
- (b) a debenture of a body; or
- (c) an interest in a managed investment scheme; or
- (d) a legal or equitable right or interest in a security or interest covered by paragraph (a), (b) or (c); or
- (e) an option to acquire, by way of issue, an interest or right covered by paragraph (a), (b), (c) or (d).

(2) For the purposes of this Chapter, paragraph (b) of the definition of **debenture** in section 9 is taken to include a reference to an undertaking by an institution, authorised by or under the law of a recognised jurisdiction as a deposit-taking institution (however described), to repay money deposited with it, or lent to it, in the ordinary course of its banking business.

(3) For the purposes of this Chapter:

- (a) paragraph (c) of the definition of **managed investment scheme** in section 9 is taken to include a reference to a partnership that, if this Act applied to it, would not need to be

- incorporated or formed under an Australian law because of regulations made for the purposes of subsection 115(2); and
- (b) paragraph (i) of the definition of *managed investment scheme* in section 9 is taken to include a reference to a scheme operated by an institution, authorised by or under the law of a recognised jurisdiction as a deposit-taking institution (however described), in the ordinary course of its banking business.

## **Part 8.2—Foreign offers that are recognised in this jurisdiction**

### **Division 1—Recognised offers**

#### **1200B When an offer is a recognised offer**

- (1) An offer of securities becomes a *recognised offer*, in relation to a recognised jurisdiction, on the day the offer is first made in this jurisdiction, if the conditions in section 1200C are met in relation to the offer on that day.
- (2) The offer continues to be a recognised offer after that day, even if a condition in section 1200C ceases to be met after that day.
- (3) If, at the time an offer is first made in this jurisdiction, the offer would be a recognised offer but for a failure to meet the condition in subsection 1200C(5) or (6) that ASIC is satisfied is minor or technical, ASIC may declare in writing that the offer is a recognised offer within the meaning of subsection (1).
- (4) If ASIC makes a declaration under subsection (3) in relation to an offer, the condition is taken to have been met at the time the offer was first made in this jurisdiction.
- (5) A declaration under subsection (3) is not a legislative instrument.

#### **1200C Conditions that must be met to be a recognised offer**

- (1) For the purposes of subsection 1200B(1), the conditions that must be met are those set out in this section.
  - (2) The person offering the securities must be:
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- (a) a person incorporated by or under the law of the recognised jurisdiction; or
  - (b) a natural person resident in the recognised jurisdiction; or
  - (c) a legal person established by or under the law of the recognised jurisdiction; or
  - (d) a person of a kind prescribed by regulations made in relation to the recognised jurisdiction for the purposes of this paragraph.
- (3) The person offering the securities must not be banned under section 1200P.
- (4) The offer must be an offer of a kind prescribed by the regulations in relation to the recognised jurisdiction.
- (5) At least 14 days before the day on which the offer is first made in this jurisdiction, the person making the offer must have lodged with ASIC:
- (a) a notice in the prescribed form (if any) of the person's intention to make a recognised offer; and
  - (b) the documents and information required to be lodged under section 1200D.
- (6) If:
- (a) before the offer is first made in this jurisdiction; and
  - (b) after a document or information was lodged with ASIC under section 1200D;
- either:
- (c) an event of a kind mentioned in the table in subsection 1200G(9) happened; or
  - (d) the address for service in this jurisdiction of the person proposing to offer the securities changed;
- the person making the offer must have lodged with ASIC:
- (e) if paragraph (c) applies—the document or information that would have been required to have been lodged under subsection 1200G(9) for the event if that subsection had applied; and
  - (f) if paragraph (d) applies—the changed address for service.

**1200D Required documents and information**

- (1) For the purposes of paragraph 1200C(5)(b), the documents and information required to be lodged under this section are:
    - (a) any offer document required by the law of the recognised jurisdiction; and
    - (b) the warning statement that is to be included with an offer document in this jurisdiction (which, if regulations are in force for the purposes of section 1200E, must comply with those regulations); and
    - (c) unless paragraph (d) applies—the constitution of the body whose securities are to be the subject of the offer; and
    - (d) if the securities that are to be the subject of the offer are interests in a managed investment scheme, rights or interests in such interests, or options to acquire such interests by way of issue—the constituent document of the scheme; and
    - (e) details, in the prescribed form (if any), of any exemption from the securities law of the recognised jurisdiction that applies, but not exclusively, to the offer or to the offeror in relation to the offer; and
    - (f) if the offeror is relying on subsection (2)—notice of the document or information that is not being lodged because of the offeror’s reliance on that subsection; and
    - (g) an address for service in this jurisdiction, in the prescribed form (if any); and
    - (h) a copy of any exemption from the securities law of the recognised jurisdiction that applies exclusively to the offer or to the offeror; and
    - (i) any other documents or information prescribed by the regulations.
  - (2) For the purposes of this Chapter, a person is taken to have lodged a document or information under this section if:
    - (a) the document or information has been lodged under Division 2 or 3 of Part 5B.2; or
    - (b) the document or information is not required to be lodged because of section 601CDA or 601CTA.
  - (3) For the purposes of this Chapter, a person is taken to have lodged a document or information under this section if the person lodged the document or information in compliance with subsection 1200C(6).
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## 1200E Warning statement

The regulations may, in relation to offer documents used in this jurisdiction for recognised offers, prescribe either or both of the following:

- (a) statements to be included with those documents that relate to the status of an offer as a recognised offer and the laws that regulate the offer;
- (b) details to be given in statements to be included with those documents that relate to the status of an offer as a recognised offer and the laws that regulate the offer.

## Division 2—Effect of a recognised offer

### 1200F Effect of a recognised offer

- (1) The provisions listed in the table do not apply, in relation to a recognised offer, to the things specified in the table for those provisions.

Note: Recognised offers must comply with Division 3 instead.

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<b>Provisions that do not apply in relation to a recognised offer</b>		
<b>Item</b>	<b>These provisions:</b>	<b>do not apply, in relation to the offer, to:</b>
1	Chapter 2L	if the recognised offer is an offer of debentures—the offeror.
2	Chapter 5C	if the recognised offer is an offer of interests in a managed investment scheme—the operator of the managed investment scheme.
3	Chapter 6D, other than sections 736 and 738	(a) the recognised offer; or (b) the offeror of the recognised offer; or (c) any offer document for the offer.

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**Provisions that do not apply in relation to a recognised offer**

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<b>Item</b>	<b>These provisions:</b>	<b>do not apply, in relation to the offer, to:</b>
4	Parts 7.6, 7.7 and 7.8, other than section 992AA	(a) the issue or disposal of a security under the recognised offer; or (b) general advice (within the meaning of Chapter 7) contained in any offer document for the offer; or (c) general advice contained in an advertisement for the recognised offer issued by, or on behalf of, the offeror; or (d) the provision of a custodial or depository service (within the meaning of Chapter 7) in relation to interests in a managed investment scheme that are the subject of the recognised offer.
5	Part 7.9, other than sections 1020B and 1020C	the offeror of the recognised offer.

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(2) Despite subsection (1), the regulations may:

- (a) apply a provision listed in the table in subsection (1) to a person or class of persons; or
- (b) apply a provision listed in the table in subsection (1) to a security or class of securities; or
- (c) provide that a provision listed in the table in subsection (1) applies with the modifications specified in the regulations.

### **Division 3—Ongoing conditions for recognised offers**

#### **1200G Offering conditions**

*When the offering conditions apply*

(1) The offering conditions in this section apply in relation to a recognised offer until the recognised offer closes in this jurisdiction.

Note: Failure to comply with an offering condition is an offence (see sections 1200Q and 1311).

*Offering conditions*

- (2) The offer must be made in the recognised jurisdiction as well as in this jurisdiction.
- (3) The offeror must meet the conditions in subsections 1200C(2) and (3).
- (4) The offer must meet the condition in subsection 1200C(4).
- (5) The offer must comply with the law of the recognised jurisdiction.
- (6) There must be no person concerned in the management of the offeror:
  - (a) who is disqualified from managing corporations for the purposes of Part 2D.6; or
  - (b) who is disqualified from being concerned in the management of the offeror under the law of the recognised jurisdiction; or
  - (c) who is subject to a banning order under section 920A; or
  - (d) who is subject to a court order under paragraph 921A(2)(a).
- (7) An offer document provided to a person in this jurisdiction must have included with it:
  - (a) the warning statement lodged under subsection 1200D(1) for that offer document; or
  - (b) if a changed warning statement is lodged with ASIC under subsection 1200G(9)—the changed warning statement.
- (8) The offeror must, on request by a person in this jurisdiction, provide a copy of the constitution or constituent document lodged under paragraph 1200D(1)(c) or (d).
- (9) If an event mentioned in an item of this table occurs in relation to the offer or offeror, the offeror must lodge with ASIC the document, statement or notice specified in the table for that event, by the time specified for that event.

<b>Offering condition under subsection (9)</b>			
<b>Item</b>	<b>If:</b>	<b>the offeror must lodge with ASIC:</b>	<b>by this time:</b>
1	a change is made to an offer document, or any other document, required by the law of the recognised jurisdiction in relation to the offer	a copy of the document as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
2	a change is made to the warning statement that is included with the offer document in this jurisdiction	a copy of the warning statement as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
3	a supplementary or replacement offer document is required by the law of the recognised jurisdiction	a copy of the supplementary or replacement offer document	no later than 7 days after the day on which the supplementary or replacement offer document is (or should have been) lodged with the home regulator.
4	a change is made to the constitution or constituent document lodged under paragraph 1200D(1)(c) or (d)	a copy of the constitution or constituent document as changed	no later than 7 days after the day on which the offeror notified (or should have notified) the home regulator of the change.
5	the home regulator makes, changes or revokes an exemption that applies, but not exclusively, to the offer or the offeror under the law of the recognised jurisdiction	written notice in the prescribed form (if any) of the details of the exemption, change or revocation	no later than 14 days after the making, change or revocation occurs.

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**Offering condition under subsection (9)**

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<b>Item</b>	<b>If:</b>	<b>the offeror must lodge with ASIC:</b>	<b>by this time:</b>
6	the home regulator makes, changes or revokes an exemption that applies exclusively to the offer or the offeror under the law of the recognised jurisdiction	a copy of the exemption, the exemption as changed, or notice in the prescribed form (if any) of the details of the revocation	no later than 7 days after the making, change or revocation occurs.
7	the home regulator begins enforcement action, or exercises a power it has under law, in relation to the offeror or offer	written notice in the prescribed form (if any) of the details of the action taken or power exercised	no later than 7 days after the action is taken or the power is exercised.

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(10) For the purposes of this Chapter, a person is taken to have lodged a document under subsection (9) if:

- (a) the document has been lodged under Division 2 or 3 of Part 5B.2; or
- (b) the document is not required to be lodged because of section 601CDA or 601CTA.

(11) If:

- (a) an event mentioned in the table in subsection (9) occurs while the offering conditions in this section apply; and
- (b) the time by which an offeror is required to lodge a document, statement or notice with ASIC because of that event is after the offering conditions cease to apply;

then, for the purposes of this section and paragraph 1200Q(1)(b), the offering conditions are taken to continue to apply until that time in relation to the offer to the extent necessary to require the offeror to lodge the document, statement or information by that time.

(12) The offer must meet any other conditions prescribed by the regulations.

*Home regulator*

- (13) For the purposes of subsection (9), the *home regulator* for a recognised jurisdiction is an authority in the recognised jurisdiction whose functions under the law of the recognised jurisdiction include functions equivalent to any of those of ASIC under this Act and that is prescribed by the regulations as the home regulator for that jurisdiction.
- (14) If there is more than one authority in a recognised jurisdiction whose functions include functions under the law of the recognised jurisdiction equivalent to any of those of ASIC under this Act and that is prescribed under subsection (13), the regulations may prescribe the matters in relation to which that authority is to be regarded as the home regulator.

**1200H Address for service condition**

*When the address for service condition applies*

- (1) The address for service condition in this section applies in relation to a recognised offer:
  - (a) until the end of the last day on which a person who resides in this jurisdiction could acquire securities under the offer; and
  - (b) if a person who resides in this jurisdiction acquires securities under the offer—at all times when the offeror's records indicate that someone who resides in this jurisdiction holds securities in the class of securities that was the subject of the recognised offer.

Note: Failure to comply with the address for service condition is an offence (see sections 1200Q and 1311).

*Address for service condition*

- (2) The offeror must lodge with ASIC written notice, in the prescribed form (if any), of any change in its address for service in this jurisdiction, no later than the end of the seventh day after the day on which the address changed.
- (3) If:
  - (a) the offeror's address for service in this jurisdiction changes while the address for service condition in this section applies; and

(b) the time by which the offeror is required to lodge notice with ASIC because of the change is after the address for service condition ceases to apply;

then, for the purposes of this section and subparagraph 1200Q(2)(b)(i), the address for service condition is taken to continue to apply until that time to the extent necessary to require the offeror to lodge notice by that time.

## **1200J Dispute resolution condition**

### *When the dispute resolution condition applies*

- (1) The dispute resolution condition in this section applies, to a person who is or who has been the offeror of a recognised offer, at all times when the person's records indicate that someone who resides in this jurisdiction holds securities in the class of securities that was the subject of the recognised offer.

Note: Failure to comply with the dispute resolution condition is an offence (see sections 1200Q and 1311).

### *Dispute resolution condition*

- (2) The person must have a dispute resolution process that complies with subsection 1017G(2), if the recognised offer was an offer of:
- (a) interests in a managed investment scheme; or
  - (b) rights or interests in such interests, or options to acquire such interests by way of issue.

### *Exemption from the dispute resolution condition*

- (3) ASIC may, on application by a person in the prescribed form (if any), grant the person an exemption from the dispute resolution condition in this section, subject to any conditions specified in the exemption.
- (4) If ASIC grants a person an exemption under subsection (3), then, for the purposes of this Chapter, the person is taken to comply with the dispute resolution condition in this section for so long as the exemption is in force.
- (5) ASIC may, in relation to an exemption under subsection (3):
- (a) vary, or impose, a condition in relation to the exemption; or

- (b) revoke the exemption.
- (6) A variation, imposition or revocation under subsection (5) takes effect:
  - (a) if the person has an address for service in this jurisdiction—when it is served on the person at that address; or
  - (b) if the person does not have an address for service in this jurisdiction—on publication in the *Gazette*.

## **Division 4—Modification of provisions of this Act**

### **1200K Additional operation of section 675 (continuous disclosure)**

In relation to a disclosing entity that has been the offeror of a recognised offer, section 675 also has the operation it would have if paragraph 675(2)(c) were replaced by the following paragraph:

- (c) the information is not required, by the law of the recognised jurisdiction to which the offer relates, to be included in a supplementary or replacement offer document; and

### **1200L Pre-offer advertising**

#### *Offers that need a disclosure document*

- (1) Subsection 734(4) also has the operation it would have if:
  - (a) the reference in that subsection to a disclosure document that has been lodged with ASIC were a reference to an offer document lodged with ASIC for the purposes of this Chapter; and
  - (b) the reference in that subsection to section 739 were a reference to section 1200N.
- (2) Subsection 734(5) also has the operation it would have if:
  - (a) references in that subsection to a disclosure document were references to an offer document that complies with the law of a recognised jurisdiction; and
  - (b) references in that subsection to completing an application form were references to completing an application process under the law of that recognised jurisdiction.
- (3) Subsection 734(6) also has the operation it would have if:

- (a) references in that subsection to a disclosure document were references to an offer document lodged with ASIC for the purposes of this Chapter; and
- (b) references in that subsection to completing an application form were references to completing an application process under the law of the recognised jurisdiction to which the offer relates.

*Offers that need a Product Disclosure Statement*

- (4) Subsection 1018A(2) also has the operation it would have if:
  - (a) a reference in that subsection to a Product Disclosure Statement were a reference to an offer document that complies with the law of a recognised jurisdiction; and
  - (b) a reference in that subsection to sale offers to which section 1012C will apply were a reference to sale offers to which section 1012C would apply if the financial product, when made available, were not made available under a recognised offer.
- (5) Subsection 1018A(3) also has, in relation to subsection 1018A(2), the operation it would have if:
  - (a) the reference in that subsection to a Product Disclosure Statement were a reference to an offer document that complies with the law of a recognised jurisdiction; and
  - (b) the reference to section 1020E were a reference to section 1200N.

**1200M Modification by the regulations**

The regulations may modify a provision of this Act in relation to its application in respect of a recognised offer or a proposed offer of securities that may become a recognised offer.

**Division 5—ASIC’s powers in relation to recognised offers**

**1200N Stop orders**

- (1) If, in relation to a thing mentioned in an item of this table, ASIC is satisfied of the matters specified in the table item for that thing, ASIC may make either or both of the orders specified in the table item about that thing.
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**Stop orders**

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<b>Item</b>	<b>If, in relation to:</b>	<b>ASIC is satisfied that:</b>	<b>ASIC may order:</b>
1	(a) an offer document lodged under paragraph 1200D(1)(a); or (b) a warning statement lodged under paragraph 1200D(1)(b); or (c) a document or information lodged under paragraph 1200D(1)(i)	there is a misleading or deceptive statement in, or a material omission from, the document, statement or information	(a) that no offers, issues, sales or transfers of the securities to which the document, statement or information relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, statement or information, must not be engaged in while the order is in force.
2	a document, statement or notice lodged under subsection 1200G(9)	the change results in there being a misleading or deceptive statement in, or a material omission from, the document, statement or notice	(a) that no offers, issues, sales or transfers of the securities to which the document, statement or notice relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, statement or notice, must not be engaged in while the order is in force.

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**Stop orders**

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<b>Item</b>	<b>If, in relation to:</b>	<b>ASIC is satisfied that:</b>	<b>ASIC may order:</b>
3	(a) an advertisement of securities the subject of a recognised offer; or (b) a published statement that is reasonably likely to induce people to acquire securities the subject of a recognised offer	there is a misleading or deceptive statement in, or a material omission from, the advertisement or statement	(a) that no offers, issues, sales or transfers of the securities to which the advertisement or statement relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the advertisement or statement, must not be engaged in while the order is in force.
4	an offer document lodged under paragraph 1200D(1)(a)	a new circumstance has arisen since lodgment and that circumstance would have been required by the law of the recognised jurisdiction to be included in the offer document, if the circumstance had arisen before the document was lodged with the home regulator (as defined in subsection 1200G(13))	(a) that no offers, issues, sales or transfers of the securities to which the document relates be made while the order is in force; (b) that specified conduct in respect of those securities, or in respect of the document, must not be engaged in while the order is in force.

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**Stop orders**

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<b>Item</b>	<b>If, in relation to:</b>	<b>ASIC is satisfied that:</b>	<b>ASIC may order:</b>
5	a notice of intention to make a recognised offer lodged under paragraph 1200C(5)(a)	one or more of the requirements in section 1200C is not met in relation to the proposed offer	(a) that no offers, issues, sales or transfers of the securities that are proposed to be offered be made while the order is in force;  (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.
6	a recognised offer	an offering condition in section 1200G, the address for service condition in section 1200H or the dispute resolution condition in section 1200J is not being met	(a) that no offers, issues, sales or transfers of the securities be made while the order is in force;  (b) that specified conduct in respect of those securities must not be engaged in while the order is in force.

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- (2) The order may include a statement that specified conduct engaged in contrary to the order will be regarded as not meeting a specified ongoing condition in Division 3.
- (3) Before making an order under subsection (1), ASIC must:
- (a) hold a hearing; and
  - (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.
- (4) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order.
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The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

- (5) At any time during the hearing, ASIC may make an interim order. The interim order lasts until:
- (a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or
  - (b) the interim order is revoked;
- whichever happens first.
- (6) An order under subsection (1), (4) or (5) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities or not to engage in specified conduct.
- (7) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (8) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (9) A statement under subsection (2) has effect accordingly in relation to a person on whom the order is served, or who is aware of it, who engages in conduct contrary to the order. This applies in addition to any other consequence that is provided for in this Act.

### **1200P Ban on making subsequent recognised offers**

- (1) ASIC may declare in writing that a person is, for the time specified in the declaration (which must be no longer than 5 years from the day the declaration takes effect), banned from making a recognised offer if:
- (a) the person, or an associate of the person, has been convicted (whether or not in this jurisdiction) of an offence constituted by conduct engaged in in relation to a recognised offer; or
  - (b) a court in this jurisdiction has made a civil penalty order against the person, or an associate of the person, for a contravention in relation to a recognised offer; or
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- (c) a court in a recognised jurisdiction has made an order against the person, or an associate of the person, for a contravention of the law of the recognised jurisdiction (other than an offence) in relation to an offer that is a recognised offer in this jurisdiction.
- (2) Before making the declaration, ASIC must give the person 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.
- This subsection does not apply if the person does not have an address for service in this jurisdiction.
- (3) ASIC may, in writing, vary or cancel the declaration, on ASIC's own initiative or on application lodged by the person in the prescribed form (if any) together with any prescribed documents, if ASIC is satisfied that a circumstance on which ASIC based the declaration has changed.
- (4) If ASIC proposes to reject an application by the person to vary or cancel the declaration, ASIC must give the person 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.
- (5) The declaration, and any variation or cancellation of the declaration, takes effect:
- (a) if the person to whom the declaration applies has an address for service in this jurisdiction—when it is served on the person at that address; or
  - (b) if the person to whom the declaration applies does not have an address for service in this jurisdiction—when it is published in the *Gazette* under subsection (7).
- (6) A declaration that is served on a person under paragraph (5)(a) must be accompanied by a statement of ASIC's reasons for the declaration.
- (7) ASIC must publish a notice in the *Gazette* as soon as practicable after making, varying or cancelling the declaration. The notice:
- (a) must state when the action takes or took effect; and

- (b) in the case of the making of a declaration—set out a copy of the declaration; and
  - (c) in the case of the varying of a declaration—set out a copy of the declaration as varied.
- (8) A declaration under this section is not a legislative instrument.

**1200Q Offence of breaching an ongoing condition**

- (1) A person commits an offence if, at any particular time:
- (a) the person is the offeror of a recognised offer; and
  - (b) an offering condition in section 1200G applies in relation to the offer; and
  - (c) the condition is not met in relation to the offer.
- (2) A person commits an offence if:
- (a) the person is or has been the offeror of a recognised offer; and
  - (b) at any particular time:
    - (i) the address for service condition in section 1200H; or
    - (ii) the dispute resolution condition in section 1200J; applies in relation to the offer; and
  - (c) the condition is not met in relation to the offer.

**Division 6—Miscellaneous**

**1200R Service of documents**

- (1) For the purposes of any law, a document may be served on a person who is, or who has been, the offeror of a recognised offer by leaving it at, or posting it to, the person's address for service in this jurisdiction.
- (2) The person's address for service in this jurisdiction is:
- (a) the address lodged under paragraph 1200D(1)(g); or
  - (b) if a change to that address has been lodged with ASIC under section 1200H—the changed address, on and from the later of:
    - (i) the day that is 7 days after the day on which the change (or, if more than one change has been lodged, the latest change) was lodged; or

- (ii) the day specified in the notice of change as the day from which the change is to take effect.
- (3) This section does not affect:
  - (a) any other provision of this Act, or any provision of another law, that permits a document to be served in a different way; or
  - (b) the power of a court to authorise a document to be served in a different way.
- (4) This section does not apply in relation to a person who is, or who has been, the offeror of a recognised offer if the address for service condition in section 1200H does not apply to the person.

### **Part 8.3—Offers made under foreign recognition schemes**

#### **1200S Notice to ASIC**

If:

- (a) a body proposes to make an offer of securities in a recognised jurisdiction under a foreign recognition scheme; and
- (b) under the foreign recognition scheme, the offer is to be regulated by the law of this jurisdiction;

the body must lodge with ASIC written notice, in the prescribed form (if any), of its intention to make the offer under the foreign recognition scheme, no later than the time it notifies the recognised jurisdiction of that intention.

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

#### **1200T Extension of this Act to recognised jurisdictions**

- (1) If:
  - (a) a body proposes to make, or is making, an offer of securities in a recognised jurisdiction under a foreign recognition scheme; and
  - (b) under the foreign recognition scheme, the offer is to be regulated by the law of this jurisdiction;

this Act applies in the recognised jurisdiction in relation to the offer as if it were an offer being made in this jurisdiction.

- (2) Despite subsection (1), the regulations may:
- (a) exempt a person or class of persons from all or specified provisions of this Act as it applies by force of subsection (1); or
  - (b) exempt a security or a class of securities from all or specified provisions of this Act as it applies by force of subsection (1); or
  - (c) provide that a provision of this Act as it applies by force of subsection (1) applies with the modifications specified in the regulations.

### **1200U ASIC stop order for advertising in a recognised jurisdiction**

- (1) If ASIC is satisfied that:
- (a) an offer of securities is being made or has been made in a recognised jurisdiction under a foreign recognition scheme; and
  - (b) there is a contravention of section 734 or 1018A (as they apply by force of section 1200T) constituted by conduct in the recognised jurisdiction in relation to the offer;

ASIC may order that no offers, issues, sales or transfers of the securities the subject of the offer be made in the recognised jurisdiction while the order is in force.

- (2) Before making an order under subsection (1), ASIC must:
- (a) hold a hearing; and
  - (b) give a reasonable opportunity to any interested people to make oral or written submissions to ASIC on whether an order should be made.
- (3) If ASIC considers that any delay in making an order under subsection (1) pending the holding of a hearing would be prejudicial to the public interest, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order may be made without holding a hearing and lasts for 21 days after the day on which it is made unless revoked before then.

- (4) At any time during the hearing, ASIC may make an interim order that no offers, issues, sales or transfers of the securities be made while the interim order is in force. The interim order lasts until:
- (a) ASIC makes an order under subsection (1) after the conclusion of the hearing; or
  - (b) the interim order is revoked;
- whichever happens first.
- (5) An order under subsection (1), (3) or (4) must be in writing and must be served on the person who is ordered not to offer, issue, sell or transfer securities.
- (6) The person on whom the order is served must take reasonable steps to ensure that other people who engage in conduct to which the order applies are aware of the order.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (7) The person on whom the order is served, or a person who is aware of the order, must not engage in conduct contrary to the order.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

## **19 After subsection 1274(2B)**

Insert:

- (2C) For the purposes of subsections (2) and (5), information or a copy of a document that is taken to be lodged with ASIC because of paragraph 1200D(2)(b) or 1200G(10)(b) is taken to be a document lodged with ASIC if an authority mentioned in section 601CDA or 601CTA has given the information or document to ASIC.

Note: If items 1 to 18 of this Schedule commence before Schedule 2, this item does not commence at all. See table item 3 of the commencement provision.

## **20 After subsection 1274(2A)**

Insert:

- (2C) For the purposes of subsections (2) and (5), information or a copy of a document that is taken to be lodged with ASIC because of paragraph 1200D(2)(b) or 1200G(10)(b) is taken to be a document lodged with ASIC if an authority mentioned in section 601CDA or 601CTA has given the information or document to ASIC.

Note: If Schedule 2 commences before or at the same time as items 1 to 18 of this Schedule, this item does not commence at all. See table item 4 of the commencement provision.

**21 After paragraph 1311(1A)(db)**

Insert:

(dc) Chapter 8;

**22 Schedule 3 (after table item 318A)**

Insert:

322	Subsection 1200N(7)	100 penalty units or imprisonment for 2 years, or both.
323	Subsection 1200N(8)	100 penalty units or imprisonment for 2 years, or both.
324	Subsection 1200Q(1)	200 penalty units or imprisonment for 5 years, or both.
325	Subsection 1200Q(2)	200 penalty units or imprisonment for 5 years, or both.
326	Section 1200S	100 penalty units or imprisonment for 2 years, or both.
327	Subsection 1200U(6)	100 penalty units or imprisonment for 2 years, or both.
328	Subsection 1200U(7)	100 penalty units or imprisonment for 2 years, or both.

## Schedule 2—Recognition of companies

### *Corporations Act 2001*

#### **1 After section 601CD**

Insert:

##### **601CDA Limited disclosure if place of origin is a prescribed country**

A foreign company is not required to lodge information or a copy of a document with ASIC under this Division if:

- (a) the company's place of origin is a country prescribed by the regulations; and
- (b) the company has given the information or a copy of the document to an authority in that country whose functions under the law of the country include functions equivalent to any of those of ASIC under this Act.

#### **2 Before section 601CT**

Insert:

##### **601CTA Limited disclosure if place of origin is a prescribed country**

A foreign company is not required to lodge information or a copy of a document with ASIC under this Division if:

- (a) the company's place of origin is a country prescribed by regulations made for the purposes of section 601CDA; and
- (b) the company has given the information or a copy of the document to an authority in that country whose functions under the law of the country include functions equivalent to any of those of ASIC under this Act.

#### **3 After subsection 1274(2A)**

Insert:

- (2B) For the purposes of subsections (2) and (5), information or a copy of a document that is not required to be lodged with ASIC because of section 601CDA or 601CTA is taken to be a document lodged

with ASIC if an authority mentioned in the section has given the information or document to ASIC.

## **Schedule 3—Protection of information obtained by the Australian Competition and Consumer Commission**

### *Radiocommunications Act 1992*

#### **1 Subsection 118C(6)**

Repeal the subsection.

#### **2 Subsection 118G(6)**

Repeal the subsection.

### *Trade Practices Act 1974*

#### **3 After section 155**

Insert:

#### **155AAA Protection of certain information**

- (1) A Commission official must not disclose any protected information to any person except:
  - (a) when the Commission official is performing duties or functions as a Commission official; or
  - (b) when the Commission official or the Commission is required or permitted by:
    - (i) this Act or any other law of the Commonwealth; or
    - (ii) a prescribed law of a State or internal Territory;to disclose the information.
- (2) Subsection (1) does not allow a Commission official to disclose protected information when performing a function of the Commission described in section 28.

#### *Disclosure to Ministers*

- (3) A Commission official may disclose protected information to the designated Minister.

- (4) If protected information relates to a matter arising under:
- (a) a provision of this Act; or
  - (b) a provision of another Act;
- that is administered by a Minister other than the designated Minister, a Commission official may disclose the protected information to the other Minister.
- (5) Subsection (4) does not limit subsection (3).

*Disclosure to Secretaries etc.*

- (6) A Commission official may disclose protected information to:
- (a) the Secretary of the designated Department; or
  - (b) an officer of the designated Department who is authorised by the Secretary of that Department, in writing, for the purposes of this subsection;
- for the purpose of advising the designated Minister.
- (7) If protected information relates to a matter arising under:
- (a) a provision of this Act; or
  - (b) a provision of another Act;
- that is administered by a Minister other than the designated Minister, a Commission official may disclose the protected information to:
- (c) the Secretary of the Department that is administered by the other Minister; or
  - (d) an officer of that Department who is authorised by the Secretary of that Department, in writing, for the purposes of this subsection;
- for the purpose of advising the other Minister.
- (8) Subsection (7) does not limit subsection (6).

*Disclosure to a Royal Commission*

- (9) A Commission official may disclose protected information to a Royal Commission.
- (10) The Chairperson may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (9).
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- (11) An instrument under subsection (10) is not a legislative instrument.

*Disclosure to certain agencies, bodies and persons*

- (12) If the Chairperson is satisfied that particular protected information will enable or assist any of the following agencies, bodies or persons:

- (a) the Australian Bureau of Statistics;
- (b) the Australian Communications and Media Authority;
- (c) the Australian Prudential Regulation Authority;
- (d) the Australian Securities and Investments Commission;
- (e) the National Competition Council;
- (f) the Productivity Commission;
- (g) any other agency within the meaning of the *Freedom of Information Act 1982*;
- (h) the Australian Statistician;
- (i) the Commissioner of Taxation;
- (j) the Australian Competition Tribunal;
- (k) the Director of Public Prosecutions;
- (l) the Reserve Bank of Australia;
- (m) a State/Territory government body;
- (n) a foreign government body;

to perform or exercise any of the functions or powers of the agency, body or person, an authorised Commission official may disclose that protected information to the agency, body or person concerned.

- (13) The Chairperson may, by writing, impose conditions to be complied with in relation to protected information disclosed under subsection (12).
- (14) An instrument under subsection (13) is not a legislative instrument.

*Disclosure with consent*

- (15) A Commission official may disclose protected information that relates to the affairs of a person if:
- (a) the person has consented to the disclosure; and
  - (b) the disclosure is in accordance with that consent.

*Disclosure of publicly available information*

- (16) A Commission official may disclose protected information if it is already publicly available.

*Disclosure of summaries or statistics*

- (17) A Commission official may disclose:
- (a) summaries of protected information; or
  - (b) statistics derived from protected information;
- if those summaries or statistics, as the case may be, are not likely to enable the identification of a person.

*Disclosure authorised by regulations*

- (18) The regulations may:
- (a) authorise a Commission official to disclose protected information in specified circumstances; and
  - (b) provide that the Chairperson may, by writing, impose conditions to be complied with in relation to the disclosure of protected information in those circumstances.
- (19) An instrument under regulations made for the purposes of paragraph (18)(b) is not a legislative instrument.

*Delegation*

- (20) The Chairperson may, by writing, delegate any or all of his or her functions and powers under:
- (a) this section; or
  - (b) regulations made for the purposes of subsection (18);
- to a member of the Commission.

*Definitions*

- (21) In this section:

***authorised Commission official*** means a Commission official authorised by the Chairperson, in writing, for the purposes of this section.

***Commission official*** means:

- (a) a member, or associate member, of the Commission; or
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- (b) a person referred to in subsection 27(1); or
- (c) a person engaged under section 27A.

**core statutory provision** means:

- (a) a provision of Part IV, IVA, V, VA, VII, VIII, XIB or XIC (other than a provision of Division 1AA of Part V); or
- (b) the remaining provisions of this Act so far as they relate to a provision covered by paragraph (a); or
- (c) a provision of the regulations so far as it relates to a provision covered by paragraph (a) or (b).

**designated Department** means the Department that is responsible for the administration of this section (other than subsections (4) and (7)).

**designated Minister** means the Minister who is responsible for the administration of this section (other than subsections (4) and (7)).

**disclose** means divulge or communicate.

**foreign country** includes a region where:

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

**foreign government body** means:

- (a) the government of a foreign country; or
- (b) an agency or authority of a foreign country; or
- (c) the government of part of a foreign country; or
- (d) an agency or authority of part of a foreign country.

**information** includes information in a document and information given in evidence.

**protected information** means:

- (a) information that:
    - (i) was given in confidence to the Commission; and
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- (ii) relates to a matter arising under a core statutory provision; or
- (b) information that:
  - (i) was obtained by the Commission under Part XIV or section 155; and
  - (ii) relates to a matter arising under a core statutory provision; or
- (c) information that:
  - (i) was obtained by the Commission under section 151AU, 152AU, 152BT, 152BZ, 152CBB or 152CBH or rules in force under section 151BU; and
  - (ii) relates to a matter arising under Part XIB or XIC; or
- (d) information that was obtained by the Commission under section 118C or 118G of the *Radiocommunications Act 1992*; or
- (e) information that:
  - (i) was given in confidence to the Commission by a foreign government body; and
  - (ii) relates to a matter arising under a provision of a law of a foreign country or of a part of a foreign country.

For the purposes of this definition, it is immaterial whether the information was given to or obtained by the Commission before, at or after the commencement of this section.

**Royal Commission** has the same meaning as in the *Royal Commissions Act 1902*.

**State/Territory government body** means:

- (a) the government of a State or Territory; or
- (b) an agency or authority of a State or Territory.

#### **4 Subsection 155AA(1)**

Omit “protected Part IV information or”.

Note: The heading to section 155AA is altered by omitting “**IV or**”.

#### **5 Paragraph 155AA(1)(b)**

After “required”, insert “or permitted”.

#### **6 Subsection 155AA(2)**

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Omit “Paragraph (1)(a)”, substitute “Subsection (1)”.

**7 Subsection 155AA(2)**

Omit “protected Part IV information or”.

**8 Subsection 155AA(3) (definition of *protected Part IV information*)**

Repeal the definition.

**9 Section 155AB**

Repeal the section.

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*[Minister’s second reading speech made in—  
House of Representatives on 29 March 2007  
Senate on 12 June 2007]*

(63/07)

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