





# **Corporations Legislation Amendment (Simpler Regulatory System) Act 2007**

**No. 101, 2007**

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

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



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# **Corporations Legislation Amendment (Simpler Regulatory System) Act 2007**

**No. 101, 2007**

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

[Assented to 28 June 2007]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Corporations Legislation Amendment (Simpler Regulatory System) 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.	28 June 2007
2. Schedule 1, Part 1	The day on which this Act receives the Royal Assent.	28 June 2007
3. Schedule 1, Part 2	1 July 2007.	1 July 2007
4. Schedule 1, Part 3	A day or days 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.	
5. Schedule 1, Part 4	1 July 2008.	1 July 2008
6. Schedule 1, Part 5	1 January 2009.	1 January 2009
7. Schedule 1, Part 6	The day on which this Act receives the Royal Assent.	28 June 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.

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### **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—Amendments

### Part 1—Amendments commencing on Royal Assent

#### *Corporations Act 2001*

#### **1 Section 9 (paragraph (a) of the definition of *continuously quoted securities*)**

Omit “12 months”, substitute “3 months”.

#### **2 Section 9 (paragraph (b) of the definition of *continuously quoted securities*)**

Repeal the paragraph, substitute:

- (b) are securities of an entity in relation to which the following subparagraphs are satisfied during the shorter of the period during which the class of securities were quoted, and the period of 12 months before the date of the prospectus or Product Disclosure Statement:
- (i) no exemption under section 111AS or 111AT, or modification under section 111AV, covered the entity, or any person as director or auditor of the entity;
  - (ii) no exemption under paragraph 741(1)(a), or declaration under paragraph 741(1)(b), relating to a provision that is a disclosing entity provision for the purposes of Division 4 of Part 1.2A covered the entity, or any person as director or auditor of the entity;
  - (iii) no order under section 340 or 341 covered the entity, or any person as director or auditor of the entity;

#### **3 Section 9**

Insert:

***contribution plan*** means a plan in respect of which the following conditions are met:

- (a) regular deductions are made from the wages or salary of an employee or director (the ***contributor***) to acquire financial products that are offered for issue or sale to the contributor under an eligible employee share scheme;

- (b) the deductions are authorised by the contributor in a form which is included in, or accompanies, the disclosure document or the Product Disclosure Statement for the scheme;
- (c) before acquiring the financial products under the scheme, the deductions are held on trust in an account with an Australian ADI that is kept solely for that purpose;
- (d) the contributor may elect to discontinue the deductions at any time;
- (e) if the contributor so elects, the amount of the deductions standing, at that time, to the credit of the account for the contributor, and any interest on that amount, is repaid to the contributor;
- (f) the scheme does not involve the offer to the contributor of a loan or similar financial assistance for the purpose of, or in connection with, the acquisition of the financial products that are offered under the scheme.

#### 4 Section 9

Insert:

*eligible employee share scheme* means an employee share scheme for a body corporate in respect of which the following conditions are met:

- (a) the scheme is offered only to employees or directors mentioned in paragraph (a) of the definition of *employee share scheme*;
- (b) the financial products that are offered under the scheme are offered:
  - (i) under a disclosure document or Product Disclosure Statement; or
  - (ii) without disclosure under Part 6D.2 in accordance with subsection 708(12);
- (c) the financial products which may be acquired under the scheme are the following:
  - (i) fully paid ordinary shares;
  - (ii) options, offered for no more than nominal consideration, for the issue or transfer of fully paid ordinary shares;
  - (iii) units in fully paid ordinary shares.

**5 Section 9 (definition of *employee share scheme*)**

After “or units in shares”, insert “or options to acquire unissued shares”.

**6 Section 9 (after paragraph (m) of the definition of *managed investment scheme*)**

Insert:

(ma) a contribution plan;

**7 Section 9 (at the end of the definition of *Product Disclosure Statement*)**

Add:

Note: For the effect of the lodgment of a Replacement Product Disclosure Statement, see section 1014J.

**8 Section 9**

Insert:

*Replacement Product Disclosure Statement*, when used in a provision outside Chapter 7, has the same meaning it has in Chapter 7.

**9 Section 9**

Insert:

*rights issue* has the meaning given by subsections 9A(1) and (2).

**10 At the end of Division 1 of Part 1.2**

Add:

**9A Meaning of *rights issue***

(1) A *rights issue* is an offer of a body’s securities for issue in respect of which the following conditions are met:

(a) the securities being offered for issue are in a particular class;

(b) either:

(i) the offer is made to every person who holds securities in that class to issue them, or their assignee, with the percentage of the securities to be issued that is the same as the percentage of the securities in that class that they hold before the offer; or

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- (ii) if the conditions in subsection (3) are met—such an offer is made to every person with a registered address in Australia or New Zealand who holds securities in that class;
  - (c) the terms of each offer are the same.
- (2) A **rights issue** is an offer of interests in a managed investment scheme for issue in respect of which the following conditions are met:
  - (a) the interests being offered for issue are in a particular class;
  - (b) either:
    - (i) the offer is made to every person who holds interests in that class to issue them, or their assignee, with the percentage of the interests to be issued that is the same as the percentage of the interests in that class that they hold before the offer; or
    - (ii) if the conditions in subsection (3) are met—such an offer is made to every person with a registered address in Australia or New Zealand who holds interests in that class;
  - (c) the terms of each offer are the same.
- (3) The conditions in this subsection are met if:
  - (a) the body or responsible entity (as the case requires) decides that it is unreasonable to offer securities or interests (as the case requires) for issue to persons (the **non-residents**) with a registered address in a place outside Australia or New Zealand, after taking into account the following matters:
    - (i) the number of non-residents, in that place, to whom offers would otherwise be made;
    - (ii) the number and value of the securities or interests that would otherwise be offered for issue;
    - (iii) the cost of complying with the laws, and any requirements of any regulatory authority, of the place where the securities or interests would otherwise be offered for issue; and
  - (b) the body or responsible entity:
    - (i) sends details of the offer to each non-resident in that place; and

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**Part 1** Amendments commencing on Royal Assent

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- (ii) advises each non-resident in that place that the non-resident will not be offered the securities or interests; and
- (c) if the invitation to apply for, or the right to be issued with, the securities or interests is able to be assigned—the body or responsible entity:
  - (i) advises each non-resident in that place that a nominee will be appointed to sell the invitation or right that would otherwise have been offered to the non-resident; and
  - (ii) advises each non-resident that the nominee will send the non-resident any net proceeds from the sale of that invitation or those rights; and
  - (iii) appoints a nominee in Australia to carry out the obligations referred to in subparagraphs (i) and (ii).
- (4) For the purposes of this section, a reference to an offer of securities includes a reference to an invitation to apply for the issue of securities.

**11 Paragraph 45A(2)(a)**

Omit “consolidated gross operating revenue”, substitute “consolidated revenue”.

**12 Paragraph 45A(2)(a)**

Omit “\$10 million”, substitute “\$25 million, or any other amount prescribed by the regulations for the purposes of this paragraph”.

**13 Paragraph 45A(2)(b)**

Omit “\$5 million”, substitute “\$12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph”.

**14 Paragraph 45A(2)(c)**

After “50”, insert “, or any other number prescribed by the regulations for the purposes of this paragraph,”.

**15 Paragraph 45A(3)(a)**

Omit “consolidated gross operating revenue”, substitute “consolidated revenue”.

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**16 Paragraph 45A(3)(a)**

Omit “\$10 million”, substitute “\$25 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(a),”.

**17 Paragraph 45A(3)(b)**

Omit “\$5 million”, substitute “\$12.5 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(b),”.

**18 Paragraph 45A(3)(c)**

After “50”, insert “, or any other number prescribed by the regulations for the purposes of paragraph (2)(c),”.

**19 Subsection 45A(6)**

Omit “Consolidated gross operating revenue”, substitute “Consolidated revenue”.

**20 Subsection 163(3) (note)**

After “708”, insert “, 708AA”.

**21 Subsection 283AA(1) (note)**

After “708”, insert “, 708AA”.

**22 Subsection 285(1) (table item 4)**

Omit “send”, substitute “provide”.

**23 Subsection 285(1) (table item 4)**

Omit “sent”, substitute “provided”.

**24 Subparagraph 300A(1)(a)(i)**

Omit “directors, secretaries and senior managers of”, substitute “the key management personnel for”.

**25 Subparagraph 300A(1)(a)(ii)**

Omit “other group executives”, substitute “the key management personnel”.

**26 Paragraph 300A(1)(ba)**

Omit “director, secretary or senior manager”, substitute “member of the key management personnel for the company, or if consolidated financial statements are required, for the consolidated entity”.

## **27 Paragraph 300A(1)(c)**

Repeal the paragraph, substitute:

- (c) the prescribed details in relation to the remuneration of:
  - (i) if consolidated financial statements are required—each member of the key management personnel for the consolidated entity; and
  - (ii) if consolidated financial statements are not required—each member of the key management personnel for the company; and
  - (iii) if consolidated financial statements are required—each of the 5 named relevant group executives who receive the highest remuneration for that year; and
  - (iv) in any case—each of the 5 named company executives who receive the highest remuneration for that year; and

## **28 After paragraph 300A(1)(d)**

Insert:

- (da) if an element of the remuneration of a person referred to in paragraph (c) consists of securities of a body—discussion of board policy in relation to the person limiting his or her exposure to risk in relation to the securities, and the mechanism to enforce the policy; and

## **29 Subparagraph 300A(1)(e)(iv)**

Repeal the subparagraph, substitute:

- (iv) if options granted to the person as part of their remuneration lapse during the financial year because a condition required for the options to vest was not satisfied—the value of those options (worked out as at the time the options lapse, but assuming that the condition was satisfied); and

## **30 Subparagraph 300A(1)(e)(v)**

Repeal the subparagraph.

## **31 Subsection 300A(1)**

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Omit all the words from and including “If a person” to and including “under subparagraph (c)(iii).”, substitute “If a person is covered by more than one subparagraph in paragraph (c), details of the person’s remuneration are only required in the report under one subparagraph of that paragraph.”.

### **32 After subsection 300A(1A)**

Insert:

(1AAA) For the purposes of subsection (1), *key management personnel* has the same meaning as in the accounting standards.

### **33 Subsection 300A(2)**

Repeal the subsection, substitute:

(2) This section applies to any disclosing entity that is a company.

### **34 Paragraph 307C(5)(a)**

Repeal the paragraph, substitute:

(a) either:

- (i) must be given when the audit report is given to the directors of the company, registered scheme or disclosing entity; or
- (ii) must satisfy the conditions in subsection (5A); and

### **35 After subsection 307C(5)**

Insert:

(5A) A declaration under subsection (1) or (3) in relation to a financial report for a financial year or half-year satisfies the conditions in this subsection if:

- (a) the declaration is given to the directors of the company, registered scheme or disclosing entity before the directors pass a resolution under subsection 298(2) or 306(3) (as the case requires) in relation to the directors’ report for the financial year or half-year; and
- (b) a director signs the directors’ report within 7 days after the declaration is given to the directors; and
- (c) the auditor’s report on the financial report is made within 7 days after the directors’ report is signed; and

- (d) the auditor's report includes either of the following statements:
  - (i) a statement to the effect that the declaration would be in the same terms if it had been given to the directors at the time the auditor's report was made;
  - (ii) a statement to the effect that circumstances have changed since the declaration was given to the directors, and setting out how the declaration would differ if it had been given to the directors at the time the auditor's report was made.
- (5B) An individual auditor or a lead auditor is not required to give a declaration under subsection (1) or (3) in respect of a contravention if:
  - (a) the contravention was a contravention by a person of subsection 324CE(2), 324CF(2) or 324CG(2); and
  - (b) the person does not commit an offence because of subsection 324CE(4), 324CF(4) or 324CG(4).

### **36 After subsection 308(3B)**

Insert:

- (3C) If the directors' report for the financial year includes a remuneration report, the auditor must also report to members on whether the auditor is of the opinion that the remuneration report complies with section 300A. If not of that opinion, the auditor's report must say why.

### **37 Subsection 308(5)**

After "(3A)", insert ", (3C)".

### **38 Subsection 314(1)**

Repeal the subsection, substitute:

- (1) A company, registered scheme or disclosing entity must report to members for a financial year by providing either of the following in accordance with subsection (1AA) or (1AE):
    - (a) all of the following reports:
      - (i) the financial report for the year;
      - (ii) the directors' report for the year (see sections 298 to 300A);
-

- (iii) the auditor's report on the financial report;
  - (b) a concise report for the year that complies with subsection (2).
- (1AA) A company, registered scheme or disclosing entity may provide the reports, or the concise report, for a financial year by doing all of the following:
- (a) sending, to each member who has made the election referred to in paragraph (1AB)(a):
    - (i) a hard copy of the reports, or the concise report; or
    - (ii) if the member has elected to receive the reports, or the concise report, as an electronic copy in accordance paragraph (1AB)(c)—an electronic copy of the reports, or the concise reports;
  - (b) making a copy of the reports, or the concise report, readily accessible on a web site;
  - (c) directly notifying, in writing, all members who did not make the election referred to in paragraph (1AB)(a) that the copy is accessible on the web site, and specifying the direct address on the web site where the reports, or the concise report, may be accessed.

Note: A direct address may be specified, for example, by specifying the URL of the reports or the concise report.

- (1AB) For the purposes of paragraph (1AA)(a), a company, registered scheme or disclosing entity must, on at least one occasion, directly notify in writing each member that:
- (a) the member may elect to receive, free of charge, a copy of the reports for each financial year, or a copy of the concise report for each financial year; and
  - (b) if the member does not so elect—the member may access the reports, or the concise report, on a specified web site; and
  - (c) if the member does so elect and the company, scheme or entity offers to send the report either as a hard copy or an electronic copy—the member may elect to receive the copy as either a hard copy or an electronic copy.
- (1AC) An election made under subsection (1AB) is a standing election for each later financial year until the member changes his, her or its election.

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Note: The member may request, under section 316, the company, registered scheme or disclosing entity not to send them material under this section.

(1AD) A member may, for the purposes of paragraph (1AA)(c) or subsection (1AB), be notified by electronic means only if the member has previously nominated that means as one by which the member may be notified.

(1AE) A company, registered scheme or disclosing entity may provide the reports, or the concise report, by sending each member:

- (a) a hard copy of the reports, or the concise report; or
- (b) an electronic copy of the reports, or the concise report, if the member has nominated that means as one by which the member may be sent the reports or the concise report.

#### **39 Subsection 314(1A)**

After “subsection (1)”, insert “or (1AB)”.

#### **40 Subsections 314(4), (5) and (6)**

Repeal the subsections.

#### **41 At the end of section 315**

Add:

- (5) For the purposes of this section, a company, registered scheme or disclosing entity that reports in accordance with subsection 314(1AA) is taken to report at the time that the company, scheme or entity has fully complied with the requirements of that subsection.

#### **42 Paragraph 318(2)(a)**

Omit “sent”, substitute “provided”.

#### **43 Subsection 319(1)**

Omit “sent”, substitute “provided”.

#### **44 At the end of section 324AE**

Add:

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- ; and (d) any person who recommends or decides what the lead auditor is to be paid in connection with the performance of the audit; and
- (e) any person who provides, or takes part in providing, quality control for the audit.

**45 Subsections 324CA(1A), 324CB(1A) and 324CC(1A) (note 2)**

After “21 days”, insert “(or a longer period that has been approved by ASIC)”.

**46 Subsection 324CE(1A) (note)**

After “21 days”, insert “(or a longer period that has been approved by ASIC)”.

**47 Subsection 324CE(5) (table item 2)**

Omit “firm”, substitute “individual auditor”.

**48 Subsection 324CE(5) (table items 3 and 4)**

Repeal the items, substitute:

3	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 19
4	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 19

**49 Subsection 324CF(1A) (note)**

After “21 days”, insert “(or a longer period that has been approved by ASIC)”.

**50 Subsection 324CF(5) (table items 3, 4 and 5)**

Repeal the items, substitute:

3	a member of the firm	1 to 7 9 15
4	a professional member of the audit team	1 to 6

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### Part 1 Amendments commencing on Royal Assent

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	conducting the audit of the audited body	8 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 19

#### 51 Subsections 324CG(1A) and (5A) (note)

After “21 days”, insert “(or a longer period that has been approved by ASIC)”.

#### 52 Subsection 324CG(9) (table items 3, 4 and 5)

Repeal the items, substitute:

3	a director or senior manager of the audit company	1 to 7 9 15
4	a professional member of the audit team conducting the audit of the audited body	1 to 6 8 to 19
5	an immediate family member of a professional member of the audit team conducting the audit of the audited body	1 and 2 10 to 19

#### 53 Subsection 324CH(1) (table item 15)

Repeal the item, substitute:

15	owes an amount to: (a) the audited body; or (b) a related body corporate; or (c) an entity that the audited body controls; unless the debt is disregarded under subsection (5), (5A) or (5B)
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#### 54 Subsection 324CH(1) (table item 16)

After “subsection (6)”, insert “or (6A)”.

#### 55 Subsection 324CH(1) (table item 18)

Repeal the item.

#### 56 After subsection 324CH(5)

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Insert:

*Goods and services exception*

- (5A) For the purposes of item 15 of the table in subsection (1), disregard a debt owed by a person or firm to a body corporate or entity if:
- (a) the debt arises from the acquisition of goods or services from:
    - (i) the audited body; or
    - (ii) an entity that the audited body controls; or
    - (iii) a related body corporate; and
  - (b) the acquisition of goods and services was on the terms and conditions that would normally apply to goods or services acquired from the body, entity or related body corporate; and
  - (c) the debt is owed on the terms and conditions that would normally apply to a debt owing to the body, entity or related body corporate; and
  - (d) the goods or services will be used by the person or firm:
    - (i) for the personal use of the person or firm; or
    - (ii) in the ordinary course of business of the person or firm.

*Ordinary commercial loan exception*

- (5B) For the purposes of item 15 of the table in subsection (1), disregard a debt owed under a loan that:
- (a) is made or given in the ordinary course of business of:
    - (i) the audited body; or
    - (ii) the related body corporate; or
    - (iii) the controlled entity; and
  - (b) is made or given on the terms and conditions that would normally apply to a loan made or given by the audited body, the related body corporate or the controlled entity.

**57 After subsection 324CH(6)**

Insert:

- (6A) For the purposes of item 16 in the table in subsection (1), disregard an amount owed under a loan to a person or firm by the audited body, a related body corporate or an entity that the audited body controls if:

- (a) the body, body corporate or entity is an Australian ADI; and
- (b) the amount is deposited in a basic deposit product (within the meaning of section 761A) provided by the body, body corporate or entity; and
- (c) the amount was deposited, in the ordinary course of business of the audited body, body corporate or entity, on the terms and conditions that would normally apply to a basic deposit product provided by the body, body corporate or entity.

**58 Subsection 324CH(7)**

Repeal the subsection.

**59 After subsection 324CH(8)**

Insert:

*Future debts and liabilities*

(8A) In this section:

- (a) a reference to a debt or amount that is owed by one entity to another entity includes a reference to a debt or amount that will (or may) be owed by the first entity to the other entity under an existing agreement between the entities; and
- (b) a reference to a liability under a guarantee of a loan includes a reference to a liability that will arise under the guarantee if the loan is not repaid.

**60 Paragraph 324CI(d)**

Omit “at the departure time”, substitute “on the date the report under section 308 or 309 was made on the latest audit to which paragraphs (b) and (c) apply”.

**61 Paragraph 324CJ(d)**

Omit “at the departure time”, substitute “on the date the report under section 308 or 309 was made on the latest audit to which paragraphs (b) and (c) apply”.

**62 Paragraph 324CK(c)**

After “audited body”, insert “within a period of 5 years after the person ceased (or last ceased) to be a member of the audit firm or a director of the audit company (as the case may be)”.

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**63 Paragraphs 327B(2A)(b), (2B)(b) and (2C)(b)**

After “21 days”, insert “, or such longer period as ASIC approves in writing.”.

**64 Paragraphs 331AAA(2A)(b), (2B)(b) and (2C)(b)**

After “21 days”, insert “, or such longer period as ASIC approves in writing.”.

**65 After section 342**

Insert:

**342AA Exemption orders—non-auditor members and former members of audit firms; former employees of audit companies**

- (1) On an application made in accordance with subsection (3) by any of the following, ASIC may make an order in writing relieving the applicant from all or specified requirements of Division 3 of Part 2M.4 (auditor independence):
  - (a) a member of the firm who is not a registered company auditor;
  - (b) a person who has ceased to be:
    - (i) a member of an audit firm; or
    - (ii) a director of an audit company; or
    - (iii) a professional employee of an audit company.

Note: For the criteria for making orders under this section, see section 342AC.

- (2) The order may:
  - (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) The application must be:
  - (a) in writing and signed by the applicant; and
  - (b) lodged with ASIC.
- (4) ASIC must give the applicant written notice of the making, revocation or suspension of the order.
- (5) An order under subsection (1) is not a legislative instrument.

**342AB Exemption orders—class orders for non-auditor members etc.**

- (1) ASIC may make an order in writing in respect of a specified class of audit firms or audit companies, relieving any of the following from all or specified requirements of Division 3 of Part 2M.4 (auditor independence):
- (a) members of firms who are not registered company auditors;
  - (b) persons who have ceased to be:
    - (i) members of audit firms; or
    - (ii) directors of audit companies; or
    - (iii) professional employees of audit companies.
- Note: For the criteria for making orders under this section, see section 342AC.
- (2) The order may:
- (a) be expressed to be subject to conditions; and
  - (b) be indefinite or limited to a specified period.
- (3) An order under subsection (1) is a legislative instrument.

**342AC Exemption orders—criteria for orders for non-auditor members etc.**

To make an order under section 342AA or 342AB, ASIC must be satisfied that complying with the relevant requirements of Division 3 of Part 2M.4 would:

- (a) make the financial report or other reports misleading; or
- (b) be inappropriate in the circumstances; or
- (c) impose unreasonable burdens.

Note 1: The heading to section 340 is replaced by the heading “**Exemption orders—companies, registered schemes and disclosing entities**”.

Note 2: The heading to section 341 is replaced by the heading “**Exemption orders—class orders for companies, registered schemes and disclosing entities**”.

Note 3: The heading to section 342 is replaced by the heading “**Exemption orders—criteria for orders for companies, registered schemes and disclosing entities**”.

**66 Subsection 601FC(4)**

Repeal the subsection.

**67 Subsections 601HG(1) and (2)**

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Repeal the subsections, substitute:

- (1) The responsible entity of a registered scheme must ensure that at all times a registered company auditor, an audit firm or an authorised audit company is engaged to audit compliance with the scheme's compliance plan in accordance with this section. This auditor, firm or company is referred to as the *auditor of the compliance plan*.
- (2) A person is not eligible to act as the individual auditor, lead auditor or review auditor of the compliance plan if the person is:
  - (a) an associate of the responsible entity; or
  - (b) an agent holding scheme property on behalf of the responsible entity or an associate of an agent of that kind; or
  - (c) the auditor of the responsible entity's financial statements.
- (2A) However:
  - (a) the auditor of the compliance plan and the auditor of the responsible entity's financial statements may work for the same firm of auditors or audit company; and
  - (b) the lead auditor or review auditor of the compliance plan (on the one hand) and the lead auditor or review auditor of the responsible entity's financial statements (on the other hand) may work for the same firm of auditors or audit company.

#### **68 Subdivision D of Division 5 of Part 6.5**

Repeal the Subdivision.

#### **69 Division 3 of Part 6A.2**

Repeal the Division.

#### **70 Subparagraph 675(2)(c)(ii)**

Omit "or a Supplementary Product Disclosure Statement," substitute "a Supplementary Product Disclosure Statement, or a Replacement Product Disclosure Statement,".

#### **71 Subsection 700(1)**

Repeal the subsection, substitute:

- (1) In this Chapter, *securities* has the same meaning as it has in Chapter 7, but does not include a security referred to in paragraph (e) of the definition of *security* in section 761A.

**72 Section 704**

After “708”, insert “, 708AA”.

**73 Section 705 (table item 4)**

Omit “\$5 million”, substitute “\$10 million”.

**74 Section 706**

After “708”, insert “or 708AA”.

**75 At the end of subsection 708(8)**

Add:

- ; or (d) the offer is made to a company or trust controlled by a person who meets the requirements of subparagraph (c)(i) or (ii).

**76 After subsection 708(9A)**

Insert:

- (9B) In determining the net assets of a person under subparagraph (8)(c)(i), the net assets of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.

- (9C) In determining the gross income of a person under subparagraph (8)(c)(ii), the gross income of a company or trust controlled by the person may be included.

Note: *Control* is defined in section 50AA.

**77 Subsection 708(11)**

Repeal the subsection, substitute:

*Professional investors*

- (11) An offer of securities does not need disclosure to investors under this Part if it is made to:

- (a) a person covered by the definition of *professional investor* in section 9 (except a person mentioned in paragraph (e) of the definition); or
- (b) a person who has or controls gross assets of at least \$10 million (including any assets held by an associate or under a trust that the person manages).

## **78 After section 708**

Insert:

### **708AA Rights issues that do not need disclosure**

- (1) This section applies to an offer of a body's securities (the *relevant securities*) for issue if:
  - (a) but for subsection (2), disclosure to investors under this Part would be required by section 706; and
  - (b) a determination under subsection (3) is not in force in relation to the body at the time when the relevant securities are offered.

#### *Conditions required for rights issue*

- (2) The offer does not need disclosure to investors under this Part if:
  - (a) the relevant securities are being offered under a rights issue; and
  - (b) the class of the relevant securities are quoted securities at the time at which the offer is made; and
  - (c) trading in that class of securities on a prescribed financial market on which they are quoted was not suspended for more than a total of 5 days during the shorter of the following periods:
    - (i) the period during which the class of securities is quoted;
    - (ii) the period of 12 months before the day on which the offer is made; and
  - (d) no exemption under section 111AS or 111AT covered the body, or any person as director or auditor of the body, at any time during the relevant period referred to in paragraph (c); and

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- (e) no order under section 340 or 341 covered the body, or any person as director or auditor of the body, at any time during the relevant period referred to in paragraph (c); and
- (f) the body gives the relevant market operator for the body a notice that complies with subsection (7) within the 24 hour period before the offer is made.

*Determination by ASIC*

- (3) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the body contravened any of the following provisions:
  - (a) subsection 283AA(1), 283AB(1) or 283AC(1);
  - (b) the provisions of Chapter 2M as they apply to the body;
  - (c) section 674 or 675;
  - (d) section 724 or 728;
  - (e) subsection (10) of this section;
  - (f) section 1308 as that section applies to a notice under subsection (2) of this section.
- (4) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.
- (5) The determination made under subsection (3) is not a legislative instrument.
- (6) A failure to publish a copy of the determination does not affect the validity of the determination.

*Requirements for notice*

- (7) A notice complies with this subsection if the notice:
    - (a) states that the body will offer the relevant securities for issue without disclosure to investors under this Part; and
    - (b) states that the notice is being given under paragraph (2)(f); and
    - (c) states that, as at the date of the notice, the body has complied with:
      - (i) the provisions of Chapter 2M as they apply to the body; and
      - (ii) section 674; and
-

(d) sets out any information that is excluded information as at the date of the notice (see subsections (8) and (9)); and

(e) states:

(i) the potential effect the issue of the relevant securities will have on the control of the body; and

(ii) the consequences of that effect.

Note 1: A person is taken not to contravene section 727 if a notice purports to comply with this subsection but does not actually comply with this subsection: see subsection 727(5).

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The body has an obligation to correct a defective notice: see subsection (10) of this section.

(8) For the purposes of subsection (7), excluded information is information:

(a) that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and

(b) that investors and their professional advisers would reasonably require for the purpose of making an informed assessment of:

(i) the assets and liabilities, financial position and performance, profits and losses and prospects of the body; or

(ii) the rights and liabilities attaching to the relevant securities.

(9) The notice given under subsection (2) must contain any excluded information only to the extent to which it is reasonable for investors and their professional advisers to expect to find the information in a disclosure document.

*Obligation to correct defective notice*

(10) The body contravenes this subsection if:

(a) the notice given under subsection (2) is defective; and

(b) the body becomes aware of the defect in the notice within 12 months after the relevant securities are issued; and

(c) the body does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a

notice that sets out the information necessary to correct the defect.

- (11) For the purposes of subsection (10), the notice under subsection (2) is *defective* if the notice:
- (a) does not comply with paragraph (2)(f); or
  - (b) is false or misleading in a material particular; or
  - (c) has omitted from it a matter or thing, the omission of which renders the notice misleading in a material respect.

## 79 After subsection 708A(1)

Insert:

- (1A) This section also applies to an offer (the *sale offer*) of a body's securities (the *relevant securities*) for sale by a person if:
- (a) but for subsection (5), disclosure to investors under this Part would be required by subsection 707(5) for the sale offer; and
  - (b) the securities were not sold by the controller with the purpose referred to in subparagraph 707(5)(c)(i); and
  - (c) a determination under subsection (2) was not in force in relation to the body at the time when the relevant securities were issued.

Note: The heading to subsection 708A(1) is altered by omitting "*offer*" and substituting "*offers*".

## 80 Paragraph 708A(5)(a)

Omit "12 months", substitute "3 months".

## 81 Paragraph 708A(5)(b)

Omit "in that 12 months", substitute "during the shorter of the period during which the class of securities were quoted, and the period of 12 months before the day on which the relevant securities were issued".

## 82 Paragraphs 708A(5)(c) and (d)

Omit "in that 12 months", substitute "during the relevant period referred to in paragraph (b)".

## 83 Paragraph 708A(5)(e)

Repeal the paragraph, substitute:

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(e) either:

- (i) if this section applies because of subsection (1)—the body gives the relevant market operator for the body a notice that complies with subsection (6) before the sale offer is made; or
- (ii) if this section applies because of subsection (1A)—both the body, and the controller, give the relevant market operator for the body a notice that complies with subsection (6) before the sale offer is made.

**84 Subsection 709(4)**

Omit “\$5 million”, substitute “\$10 million”.

**85 Subsection 709(4) (Note 1)**

Omit “that are less than”, substitute “that are less than”.

**86 At the end of subsection 709(5)**

Add:

However, do not include an amount payable for securities, or payable on the exercise of options, if the securities or options are issued under an eligible employee share scheme.

**87 Paragraph 713(6)(ab)**

After “subsection”, insert “708AA(10) or”.

**88 Paragraph 713(6)(d)**

After “subsection”, insert “708AA(2) or”.

**89 Subsection 727(2) (note)**

After “708”, insert “, 708AA”.

**90 Paragraph 727(5)(a)**

Omit “subsection 708A(5) to make offers of securities for sale”, insert “subsection 708AA(2) or 708A(5) to make offers of securities for issue or sale”.

**91 Paragraph 727(5)(b)**

After “with subsection” (wherever occurring), insert “708AA(7) or”.

**92 At the end of subsection 736(2)**

Add:

; or (e) the offer is made under an eligible employee share scheme.

**93 Section 761A (at the end of the definition of *Product Disclosure Statement*)**

Add:

Note: For the effect of the lodgment of a Replacement Product Disclosure Statement, see section 1014J.

**94 Section 761A**

Insert:

*Replacement Product Disclosure Statement* has the meaning given by section 1014H.

**95 Section 761A (definition of *retail client*)**

Omit “section 761G”, substitute “sections 761G and 761GA”.

**96 Section 761A (after paragraph (d) of the definition of *security*)**

Insert:

or (e) a right (whether existing or future and whether contingent or not) to acquire, by way of issue, the following under a rights issue:

- (i) a security covered by paragraph (a), (b), (c) or (d);
- (ii) an interest or right covered by paragraph 764A(1)(b) or (ba);

**97 Subsection 761G(1)**

After “or (7)”, insert “, or section 761GA,”.

**98 After paragraph 761G(6)(a)**

Insert:

(aa) however, if a trustee of a pooled superannuation trust (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) provides a financial product that is an interest in the trust to a person covered by subparagraph (c)(i), the product is not provided to the person as a retail client; and

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### **99 Subsection 761G(6)**

Omit all the words after paragraph (b), substitute:

- (c) if a financial service (other than the provision of a financial product) provided to a person who is:
  - (i) the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that has net assets of at least \$10 million; or
  - (ii) an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*);relates to a superannuation product or an RSA product, that does not constitute the provision of a financial service to the person as a retail client.

### **100 After section 761G**

Insert:

#### **761GA Meaning of *retail client*—sophisticated investors**

For the purposes of this Chapter, a financial product, or a financial service in relation to a financial product, is not provided by one person to another person as a *retail client* if:

- (a) the first person (the *licensee*) is a financial services licensee; and
- (b) the financial product is not a general insurance product, a superannuation product or an RSA product; and
- (c) the financial product or service is not provided for use in connection with a business; and
- (d) the licensee is satisfied on reasonable grounds that the other person (the *client*) has previous experience in using financial services and investing in financial products that allows the client to assess:
  - (i) the merits of the product or service; and
  - (ii) the value of the product or service; and
  - (iii) the risks associated with holding the product; and
  - (iv) the client's own information needs; and
  - (v) the adequacy of the information given by the licensee and the product issuer; and

- (e) the licensee gives the client before, or at the time when, the product or advice is provided a written statement of the licensee's reasons for being satisfied as to those matters; and
- (f) the client signs a written acknowledgment before, or at the time when, the product or service is provided that:
  - (i) the licensee has not given the client a Product Disclosure Statement; and
  - (ii) the licensee has not given the client any other document that would be required to be given to the client under this Chapter if the product or service were provided to the client as a retail client; and
  - (iii) the licensee does not have any other obligation to the client under this Chapter that the licensee would have if the product or service were provided to the client as a retail client.

### 101 Section 798C

Repeal the section, substitute:

#### **798C Market licensee or related body corporate etc. listing on market**

- (1) Any of the following kinds of entity or scheme (the *listed entity*) may be included in a market's official list:
  - (a) the market licensee for the market;
  - (b) a related body corporate of the market licensee;
  - (c) a managed investment scheme whose responsible entity is a related body corporate of the market licensee;
  - (d) a trust whose trustee is a related body corporate of the market licensee.

Note: There are certain matters that must be included in the market's listing rules before such an entity or scheme is included in the official list (see subsection (4)).

- (2) In such a case, the financial products of the listed entity may be traded on the market, if either or both the listed entity and the market licensee have entered into such arrangements as ASIC requires:
    - (a) for dealing with possible conflicts of interest that might arise from the listed entity's financial products being able to be traded on the market; and
-

(b) for the purposes of ensuring the integrity of trading in the listed entity's financial products.

Note: For fees in respect of ASIC performing functions under such arrangements, see Part 9.10.

(3) The listed entity, and the market licensee (if applicable), with whom ASIC has entered into arrangements for the purposes of subsection (2) must comply with the arrangements.

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

(4) Before, and at all times while, the listed entity is included in the market's official list, the market's listing rules must provide for ASIC, instead of the market licensee, to make decisions and to take action (or to require the market licensee to take action on ASIC's behalf) in relation to these matters, and matters related to these matters:

- (a) the admission of the listed entity to the market's official list; and
- (b) the removal of the listed entity from that list; and
- (c) allowing, stopping or suspending the trading on the market of the listed entity's financial products.

Note: For fees in respect of ASIC performing this function, see Part 9.10.

(5) ASIC has the powers and functions that are provided for it in any listing rules or arrangements made for the purposes of this section.

(6) The products of an entity or scheme referred to in subsection (1) must not be traded on the market licensee's market otherwise than as allowed by this section.

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

(7) This section does not apply if the licence of the market licensee was granted under subsection 795B(2) (overseas markets). Instead, the law of the country in which the market licensee's principal place of business is located applies for all purposes connected with the inclusion of the listed entity in the market's official list.

## **102 Paragraphs 798D(1)(a) and (b)**

Omit "a market licensee", substitute "an entity or scheme referred to in subsection 798C(1)".

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Note: The heading to section 798D is altered by adding at the end “**or related bodies corporate etc.**”.

#### **103 Subsection 798D(4)**

Omit “market licensee”, substitute “entity or scheme”.

#### **104 Subsection 798D(5)**

Omit “licensee”, substitute “entity or scheme”.

#### **105 After section 798D**

Insert:

#### **798DA Market licensee, related body corporate etc. or competitor participating in market**

- (1) This section applies if any of the following is a participant (the *participant*) in a market:
  - (a) the market licensee;
  - (b) a related body corporate of the market licensee;
  - (c) a partnership if a partner in the partnership is a related entity of the market licensee;
  - (d) an entity if:
    - (i) the entity conducts, or participates in, a business that is in competition with a business conducted by the market licensee, or by a related body corporate of the market licensee; and
    - (ii) the entity requests that ASIC make decisions and take action in relation to the matters referred to in subsection (2).
- (2) Before, and at all times while, the participant is participating in the market, the market’s operating rules must provide for ASIC, instead of the market licensee, to make decisions and to take action (or to require the market licensee to take action on ASIC’s behalf) in relation to these matters, and matters related to these matters:
  - (a) the admission of the participant to the market; and
  - (b) the expulsion and suspension of the participant from the market; and
  - (c) the disciplining of the participant; and

(d) the participant's compliance with the operating rules or this Act, including:

- (i) the method of determining whether the participant has complied with those rules or this Act; and
- (ii) any action (including the imposition of a fine or penalty) to be taken in respect of contraventions of those rules or this Act.

Note: For fees in respect of ASIC performing this function, see Part 9.10.

(3) ASIC has the powers and functions that are provided for it in any operating rules made for the purposes of this section.

(4) A participant referred to in subsection (1) must not participate in the market licensee's market otherwise than as allowed by this section.

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

(5) This section does not apply if the licence of the market licensee was granted under subsection 795B(2) (overseas markets). Instead, the law of the country in which the market licensee's principal place of business is located applies for all purposes connected with the participation of the participant in the market.

(6) To avoid doubt, subsection (1) does not authorise a market licensee to participate in its own market.

## **106 After paragraph 911A(2)(ec)**

Insert:

(ed) both of the following apply:

- (i) the service is the provision of general advice by the person in connection with an offer of financial products under an eligible employee share scheme;
- (ii) the person is the corporation whose financial products are being issued or sold under the scheme, or an entity that that corporation controls;

(ee) all of the following apply:

- (i) the service is dealing in a financial product by the person in connection with an offer of the financial product under an eligible employee share scheme;

- (ii) the scheme requires that any purchase or disposal of the financial product under the scheme occurs through a person who holds an Australian financial services licence to deal in financial products, or a person outside this jurisdiction who is licensed or otherwise authorised to deal in financial products in that jurisdiction;
  - (iii) the person is the corporation whose financial products are being issued or sold under the scheme, or an entity that that corporation controls;
- (ef) both of the following apply:
- (i) the service is, or is provided incidentally to, a custodial or depository service that is provided by the person in connection with an eligible employee share scheme;
  - (ii) the person is the corporation whose financial products are being issued or sold under the scheme, or an entity that that corporation controls;
- (eg) both of the following apply:
- (i) the service is dealing in an interest in a contribution plan operated by the person in relation to an eligible employee share scheme;
  - (ii) the person is the corporation whose financial products are being issued or sold under the scheme, or an entity that that corporation controls;

**107 Subsection 940C(3)**

Omit “or 946B(3)”, substitute “, paragraph 946AA(5)(b) or subsection 946B(3) or (8)”.

**108 Paragraph 942B(2)(g)**

After “(subsection 946B(1))”, insert “or advice to which subsection 946B(7) applies”.

**109 Subparagraph 942B(2)(g)(i)**

Omit “further market-related advice that is provided to them”, substitute “that advice”.

**110 Paragraph 942B(8)(a)**

After “further market-related advice”, insert “or advice to which subsection 946B(7) applies”.

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**111 Paragraph 942B(8)(b)**

Omit “further market-related”.

**112 Paragraph 942C(2)(h)**

After “(subsection 946B(1))”, insert “or advice to which subsection 946B(7) applies”.

**113 Subparagraph 942C(2)(h)(i)**

Omit “further market-related advice that is provided to them”, substitute “that advice”.

**114 Paragraph 942C(8)(a)**

After “further market-related advice”, insert “or advice to which subsection 946B(7) applies”.

**115 Paragraph 942C(8)(b)**

Omit “further market-related”.

**116 Subsection 946A(3)**

Omit “section 946B”, substitute “sections 946AA and 946B”.

**117 After section 946A**

Insert:

**946AA Small investments—Statement of Advice not required**

*Small investments generally*

- (1) The providing entity does not have to give the client a Statement of Advice for particular advice (the *small investment advice*) if:
- (a) both of the following apply:
    - (i) an amount (the *threshold amount*) has been prescribed by regulations made for the purposes of this paragraph;
    - (ii) the total value of all financial investments in relation to which the advice is provided, as worked out under subsection (2), does not exceed the threshold amount; and
  - (b) the advice does not relate to any of the following:
    - (i) a derivative;

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- (ii) a general insurance product;
- (iii) a life risk insurance product (except to the extent that advice about a superannuation product relates to a life risk insurance product); and
- (c) the advice does not relate to any superannuation product or RSA product, unless the client already has an interest in the product.

*Total value of investments*

- (2) For the purposes of paragraph (1)(a), the total value of investments in relation to which the small investment advice is provided is:
  - (a) if the advice solely relates to the acquisition of all (or part) of one or more financial products, or of an increased interest in one or more financial products—the sum of the values (the ***total acquisition value***) of each acquisition; or
  - (b) if the advice solely relates to the disposal of all (or part) of one or more financial products, or of a part of an interest in one or more financial products—the sum of the values (the ***total disposal value***) of each disposal; or
  - (c) if the advice relates to both an acquisition, and a disposal, mentioned in paragraphs (a) and (b):
    - (i) the total acquisition value; or
    - (ii) if the total disposal value exceeds the total acquisition value—the total disposal value.

*Method for working out threshold amount*

- (3) Regulations made for the purposes of paragraph (1)(a) may prescribe how the threshold amount is to be worked out in relation to particular kinds of financial products.

*Record of advice*

- (4) The providing entity must keep a record of the small investment advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

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

- (5) The providing entity must, at the applicable time, give the client:
-

- (a) a copy of the record of the small investment advice; and
- (b) the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires.

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

- (6) For the purposes of subsection (5), the *applicable time* for something to be given relating to the small investment advice is the time:
  - (a) when, or as soon as practicable after, the advice is provided; and
  - (b) in any event—before the providing entity provides the client with any further financial service arising out of, or connected with, the advice.

### **118 At the end of section 946B**

Add:

*Where advice does not recommend the purchase or sale of products*

- (7) The providing entity does not have to give the client a Statement of Advice for particular advice if:
  - (a) the advice does not recommend or state an opinion in respect of:
    - (i) the acquisition or disposal of any specific financial product, or the products of a specific issuer; nor
    - (ii) a modification to an investment strategy or a contribution level in relation to a financial product held by the client; and
  - (b) the following persons do not directly receive any remuneration (other than remuneration that is currently being received for an earlier acquisition of a product) or other benefit for, or in relation to, the advice:
    - (i) the providing entity;
    - (ii) an employer of the providing entity;
    - (iii) the authorising licensee, or any of the authorising licensees;

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- (iv) an employee or director of the authorising licensee, or of any of the authorising licensees;
  - (v) an associate of any of the above;
  - (vi) any other person prescribed by regulations made for the purposes of this paragraph.
- (8) However, in the same communication as is used to provide to the client the advice referred to in subsection (7), the client must be given the information that would, if a Statement of Advice were to be given, be required to be in the Statement by paragraphs 947B(2)(d) and (e), or 947C(2)(e) and (f), as the case requires.
- (9) The providing entity must keep a record of the advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

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

Note 2: For the client's right to a record of the advice, see subsections 942B(8) and 942C(8).

Note: The heading to section 946B is altered by omitting "**Situations**" and substituting "**Other situations**".

#### **119 Subsection 952B(1) (paragraph (b) of the definition of *defective*)**

Omit "information or a statement required by subsection 946B(3), 946B(6) or 946C(2)" (wherever occurring), substitute "information, a statement or a copy of a record required by subsection 946AA(5), 946B(3), (6) or (8) or 946C(2)".

#### **120 Subsection 952B(1) (subparagraph (b)(iii) of the definition of *defective*)**

Omit "information or statement", substitute "information, statement or copy".

#### **121 Subsection 952B(1) (paragraph (d) of the definition of *disclosure document or statement*)**

Repeal the paragraph, substitute:

- (d) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2).

**122 Paragraph 952E(3)(a)**

Omit “information or a statement required by subsection 941C(5), 941C(7), 941D(2), 946B(3), 946B(6) or 946C(2)”, substitute “information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2)”.

**123 Subsections 952F(1) and 952G(1)**

Omit “information or a statement required by subsection 941C(5), 941C(7), 941D(2), 946B(3), 946B(6) or 946C(2)” (wherever occurring), substitute “information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2)”.

**124 Subsection 953A(1) (paragraph (b) of the definition of *defective*)**

Omit “information or a statement required by subsection 946B(3), 946B(6) or 946C(2)” (wherever occurring), substitute “information, a statement or a copy of a record required by subsection 946AA(5), 946B(3), (6) or (8) or 946C(2)”.

**125 Subsection 953A(1) (subparagraph (b)(iii) of the definition of *defective*)**

Omit “information or statement”, substitute “information, statement or copy”.

**126 Subsection 953A(1) (paragraph (d) of the definition of *disclosure document or statement*)**

Repeal the paragraph, substitute:

- (d) information, a statement or a copy of a record required by subsection 941C(5) or (7), 941D(2), 946AA(5), 946B(3), (6) or (8) or 946C(2).

**127 Section 990A**

Repeal the section, substitute:

**990A Sections 990B to 990H not to apply to public companies**

Sections 990B to 990H do not apply to a financial services licensee that is a public company.

**128 At the end of section 990B**

Add:

(9) In this section:

*person* means:

- (a) an individual auditor; or
- (b) an authorised audit company.

**129 Paragraph 990I(2)(b)**

Omit “senior manager”, substitute “director, secretary or senior manager”.

**130 Subsection 990I(3)**

Omit “senior manager”, substitute “director, secretary or senior manager”.

**131 After subsection 992A(3A)**

Insert:

(3B) Neither subsection (1) nor (3) applies to an offer of financial products that is made under an eligible employee share scheme.

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

**132 At the end of subsection 992AA(2)**

Add:

; or (d) the offer is made under an eligible employee share scheme.

**133 After section 1010B**

Insert:

**1010BA Part does not apply to contribution plans**

Apart from section 1017F and Divisions 5A and 6 (and provisions of Division 7 that apply in relation to that section or provisions of those Divisions), nothing in this Part applies in relation to contribution plans.

**134 Section 1011B (definition of *regulated person*)**

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Omit “in relation”, substitute “in relation to”.

**135 Paragraph 1012A(3)(c)**

Omit “financial advice”, substitute “financial product advice”.

**136 Subsection 1012B(5)**

After “1012D,”, insert “1012DAA,”.

**137 After section 1012D**

Insert:

**1012DAA Rights issues for which Product Disclosure Statement is not required**

- (1) In a recommendation situation or issue situation, the regulated person does not have to give the client a Product Disclosure Statement if:
  - (a) but for subsection (2), the regulated person would be required by section 1012B to give a Product Disclosure Statement for the transfer or issue of a financial product (the *relevant product*); and
  - (b) a determination under subsection (3) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

*Conditions required for rights issue*

- (2) The regulated person does not have to give the client a Product Disclosure Statement if:
  - (a) the relevant product is being offered under a rights issue; and
  - (b) the class of the relevant product are quoted securities at the time at which the offer is made; and
  - (c) trading in that class of the relevant product on a prescribed financial market on which they are quoted was not suspended for more than a total of 5 days during the shorter of the following periods:
    - (i) the period during which the class of the relevant product is quoted;
    - (ii) the period of 12 months before the day on which the offer is made; and

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- (d) no exemption under section 111AS or 111AT covered the issuer of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (c); and
- (e) no order under section 340 or 341 covered the issuer of the relevant product, or any person as director or auditor of the issuer, at any time during the relevant period referred to in paragraph (c); and
- (f) the issuer of the relevant product gives the relevant market operator for the issuer a written notice that complies with subsection (7) within the 24 hour period before the relevant conduct occurs.

*Determination by ASIC*

- (3) ASIC may make a determination under this subsection if ASIC is satisfied that in the previous 12 months the issuer of the relevant product contravened any of the following provisions:
  - (a) the provisions of Chapter 2M as they apply to the registered scheme in which the relevant product is an interest;
  - (b) section 674 or 675 as it applies to the registered scheme in which the relevant product is an interest;
  - (c) section 1016E, 1021D, 1021E or 1021J;
  - (d) subsection (10) of this section;
  - (e) section 1308 as it applies to a notice under subsection (2) of this section.
- (4) The determination must be made in writing and a copy must be published in the *Gazette* as soon as practicable after the determination is made.
- (5) The determination made under subsection (3) is not a legislative instrument.
- (6) A failure to publish a copy of the determination does not affect the validity of the determination.

*Requirements for notice*

- (7) A notice complies with this subsection if the notice:

- (a) states that the relevant product was issued without a Product Disclosure Statement for the relevant product being prepared; and
- (b) states that the notice is being given under paragraph (2)(f); and
- (c) states that, as a disclosing entity, the issuer of the relevant product is subject to regular reporting and disclosure obligations; and
- (d) states that, as at the date of the notice, the issuer of the relevant product has complied with:
  - (i) the provisions of Chapter 2M as they apply to the registered scheme in which the relevant product is an interest; and
  - (ii) section 674 as it applies to that registered scheme; and
- (e) sets out any information that is excluded information as at the date of the notice (see subsections (8) and (9)); and
- (f) states:
  - (i) the potential effect the issue of the relevant product will have on the control of the body; and
  - (ii) the consequences of that effect.

Note 1: A person is taken not to contravene section 1021C if a notice purports to comply with this subsection but does not actually comply with this subsection: see subsection 1021C(5).

Note 2: A notice must not be false or misleading in a material particular, or omit anything that would render it misleading in a material respect: see sections 1308 and 1309. The issuer has an obligation to correct a defective notice: see subsection (10) of this section.

- (8) For the purposes of subsection (7), excluded information is information:
  - (a) that has been excluded from a continuous disclosure notice in accordance with the listing rules of the relevant market operator to whom that notice is required to be given; and
  - (b) that a person would reasonably require for the purpose of making a decision, as a retail client, whether to acquire the relevant product.
- (9) The notice given under subsection (2) must contain any excluded information only to the extent to which it is reasonable for a person considering, as a retail client, whether to acquire the relevant

product to expect to find the information in a Product Disclosure Statement.

*Obligation to correct defective notice*

- (10) The issuer of the relevant product contravenes this subsection if:
- (a) the notice given under subsection (2) is defective; and
  - (b) the issuer becomes aware of the defect in the notice within 12 months after the relevant product is issued; and
  - (c) the issuer does not, within a reasonable time after becoming aware of the defect, give the relevant market operator a notice that sets out the information necessary to correct the defect.
- (11) For the purposes of subsection (10), the notice under subsection (2) is *defective* if the notice:
- (a) does not comply with paragraph (2)(f); or
  - (b) is false or misleading in a material particular; or
  - (c) has omitted from it a matter or thing, the omission of which renders the notice misleading in a material respect.

**138 After subsection 1012DA(1)**

Insert:

- (1A) In a recommendation situation or sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:
- (a) but for subsection (5), the regulated person would be required by section 1012C to give a Product Disclosure Statement for the transfer or sale of the financial product (the *relevant product*); and
  - (b) the transfer or sale of the relevant product to the client would take place in circumstances covered by subsection 1012C(8); and
  - (c) the relevant product was not sold by the controller with the purpose referred to in subparagraph 1012C(8)(d)(i); and
  - (d) a determination under subsection (2) was not in force in relation to the issuer of the relevant product at the time when the relevant product was issued.

**139 Paragraph 1012DA(5)(a)**

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Omit “12 months”, substitute “3 months”.

**140 Paragraph 1012DA(5)(b)**

Omit “in that 12 months”, substitute “during the shorter of the period during which the class of financial product was quoted, and the period of 12 months before the day on which the relevant product was issued”.

**141 Paragraphs 1012DA(5)(c) and (d)**

Omit “in that 12 months”, substitute “during the relevant period referred to in paragraph (b)”.

**142 Paragraph 1012DA(5)(e)**

Repeal the paragraph, substitute:

(e) either:

- (i) if the regulated person is not required under subsection (1) to give a Product Disclosure Statement—the issuer of the relevant product gives the relevant market operator for the issuer a written notice that complies with subsection (6) before the relevant conduct occurs; or
- (ii) if the regulated person is not required under subsection (1A) to give a Product Disclosure Statement—both the issuer of the relevant product, and the controller, give the relevant market operator for the issuer a written notice that complies with subsection (6) before the relevant conduct occurs.

**143 Subparagraph 1013FA(3)(a)(iii)**

After “subsection”, insert “1012DAA(10) or”.

**144 Subparagraph 1013FA(3)(a)(iv)**

After “subsection”, insert “1012DAA(2) or”.

**145 At the end of section 1014A**

Add:

Note: In certain circumstances a Replacement Product Disclosure Statement may be prepared instead of a Supplementary Product Disclosure Statement (see Subdivision DA).

**146 After Subdivision D of Division 2 of Part 7.9**

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Insert:

## **Subdivision DA—Replacement Product Disclosure Statements**

### **1014G Application of this Subdivision—stapled securities**

This Subdivision applies if:

- (a) a Product Disclosure Statement has been lodged in relation to an offer for the issue or sale of an interest in a managed investment scheme; and
- (b) the interest can only be transferred together with one or more securities; and
- (c) a disclosure document has been lodged in relation to an offer for the issue or sale of the security (or securities).

### **1014H What a Replacement Product Disclosure Statement is**

A *Replacement Product Disclosure Statement* is a document that replaces the Product Disclosure Statement (the *earlier PDS*) mentioned in paragraph 1014G(a) in order to:

- (a) correct a misleading or deceptive statement in the earlier PDS; or
- (b) correct an omission from the earlier PDS of information it is required to contain; or
- (c) update, or add to, the information contained in the earlier PDS; or
- (d) change a statement of a kind referred to in paragraph 1016E(1)(a) or (b).

### **1014J Consequences of lodging a Replacement Product Disclosure Statement**

If a Replacement Product Disclosure Statement is prepared in accordance with section 1014K and lodged with ASIC as provided by Subdivision E (in its application under section 1014L), a reference to a Product Disclosure Statement is taken to be a reference to the Replacement Product Disclosure Statement for the purposes of the application of this Act to events that occur after the lodgment.

Note: This section means, for example, that offers made after lodgment of the Replacement Product Disclosure Statement must be accompanied

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by copies of the Replacement Product Disclosure Statement and not the earlier PDS.

**1014K Form, content and preparation of Replacement Product Disclosure Statements**

- (1) At the beginning of a Replacement Product Disclosure Statement, there must be:
  - (a) a statement that it is a Replacement Product Disclosure Statement; and
  - (b) an identification of the Product Disclosure Statement it replaces.
- (2) The title “Replacement Product Disclosure Statement” must be used on the cover of, or at or near the front of, a Replacement Product Disclosure Statement.
- (3) In any other part of a Replacement Product Disclosure Statement, “Replacement Product Disclosure Statement” may be abbreviated to “RPDS”.
- (4) Otherwise, section 1012J and Subdivision C (apart from section 1013B) apply in relation to a Replacement Product Disclosure Statement in the same way as they apply to a Product Disclosure Statement.

Note: Section 1012J provides that the information in a Product Disclosure Statement must be up to date at the time it is given. Subdivision C deals with the preparation and content of Product Disclosure Statements.

**1014L Giving, lodgment and notice of Replacement Product Disclosure Statements**

Subdivision E applies in relation to a Replacement Product Disclosure Statement in the same way as it applies to a Product Disclosure Statement that is required to be lodged with ASIC under section 1015B.

**147 Paragraphs 1016D(3)(a) and (b)**

Omit “if the Statement”, substitute “if the statement”.

**148 At the end of subsection 1016D(3)**

Add:

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; or (c) if the statement is express or implied in a Replacement Product Disclosure Statement (whether or not it is express or implied in the earlier Product Disclosure Statement it replaces)—the date of the Replacement Product Disclosure Statement.

**149 After subsection 1016E(2B)**

Insert:

(2BA) If Subdivision DA applies:

- (a) for the purposes of subsection (2), instead of giving the applicant a Supplementary Product Disclosure Statement, the responsible person may give the applicant a Replacement Product Disclosure Statement; and
- (b) if the responsible person gives the applicant a Replacement Product Disclosure Statement, subsection (2B) applies as if references in that subsection to a Supplementary Product Disclosure Statement were references to the Replacement Product Disclosure Statement.

**150 At the end of subsection 1016E(4)**

Add:

; or (c) if the statement is express or implied in a Replacement Product Disclosure Statement (whether or not it is express or implied in the earlier Product Disclosure Statement it replaces)—the date of the Replacement Product Disclosure Statement.

**151 Subsections 1021C(1) and (3) (note)**

After “1012D,” insert “1012DAA,”.

**152 Paragraph 1021C(5)(a)**

After “section”, insert “1012DAA or”.

**153 Paragraph 1021C(5)(b)**

After “subsection”, insert “1012DAA(2) or”.

**154 Paragraph 1021C(5)(c)**

After “with subsection”, insert “1012DAA(7) or”.

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**155 Subsections 1021D(1), 1021E(1) and 1021F(1) (note)**

After “1012D,” insert “1012DAA.”

**156 Paragraph 1021H(1)(a)**

Omit “or a Supplementary Product Disclosure Statement”, substitute “, a Supplementary Product Disclosure Statement or a Replacement Product Disclosure Statement”.

**157 Subparagraph 1021H(1)(b)(ii)**

Omit “and”, substitute “or”.

**158 At the end of paragraph 1021H(1)(b)**

Add:

- (iii) if it is a Replacement Product Disclosure Statement—  
subsection 942DA(3), section 1013G or subsection  
1014K(1), (2) or (3); and

**159 Subsections 1021H(1) and 1021I(1) (note)**

After “1012D,” insert “1012DAA.”

**160 Paragraph 1308(7)(c)**

Omit “sent”, substitute “provided”.

**161 Paragraph 1308(9)(a)**

Omit “708A(5) or 1012DA(5)”, substitute “708AA(2), 708A(5), 1012DAA(2) or 1012DA(5)”.

**162 Paragraph 1308(9)(b)**

Omit “708A(5) or 1012DA(5)”, substitute “708AA(2), 708A(5), 1012DAA(2) or 1012DA(5)”.

**163 Paragraph 1308(9)(b)**

Omit “708A(6)(e) or 1012DA(6)(f)”, substitute “708AA(7)(d), 708A(6)(e), 1012DAA(7)(e) or 1012DA(6)(f)”.

**164 Paragraph 1309(5)(a)**

Omit “708A(5) or 1012DA(5)”, substitute “708AA(2), 708A(5), 1012DAA(2) or 1012DA(5)”.

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**165 Paragraph 1309(5)(b)**

Omit “708A(5) or 1012DA(5)”, substitute “708AA(2), 708A(5), 1012DAA(2) or 1012DA(5)”.

**166 Paragraph 1309(5)(b)**

Omit “708A or 1012DA”, substitute “708AA, 708A, 1012DAA or 1012DA”.

**167 Paragraph 1317DAG(5)(a)**

Omit “708A(2), 713(6),”, substitute “708AA(3), 708A(2), 713(6), 1012DAA(3),”.

**168 Schedule 3 (table item 104)**

After “(3A)”, insert “, (3C)”.

**169 Schedule 3 (table item 108)**

After “314(1)”, insert “or (1AB)”.

**170 Schedule 3 (table items 201A to 201M)**

Repeal the items.

**171 Schedule 3 (table items 219 and 220)**

Repeal the items.

**172 Schedule 3 (after table item 229C)**

Insert:

229CA	Subsection 708AA(10)	25 penalty units or imprisonment for 6 months, or both.
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**173 Schedule 3 (table item 253A)**

After the item, insert:

253AA	Subsection 798DA(4)	100 penalty units or imprisonment for 2 years, or both.
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**174 Schedule 3 (table item 270CA)**

Repeal the table item, substitute:

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270CA	Subsection 946AA(4)	50 penalty units.
270CB	Subsection 946B(3A) or (9)	50 penalty units.

**175 Schedule 3 (after table item 290C)**

Insert:

290CA	Subsection 1012DAA(10)	25 penalty units or imprisonment for 6 months, or both.
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***Social Security Act 1991***

**176 Subparagraph 1207N(1)(a)(i)**

Omit “consolidated gross operating revenue”, substitute “consolidated revenue”.

**177 Subparagraph 1207N(1)(a)(i)**

Omit “\$10 million”, substitute “\$25 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(a) of the *Corporations Act 2001*”.

**178 Subparagraph 1207N(1)(a)(ii)**

Omit “\$5 million”, substitute “\$12.5 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(b) of the *Corporations Act 2001*”.

**179 Subparagraph 1207N(1)(a)(iii)**

After “50”, insert “, or any other number prescribed by regulations made for the purposes of paragraph 45A(2)(c) of the *Corporations Act 2001*,”.

**180 Subsection 1207N(8) (definition of *consolidated gross operating revenue*)**

Repeal the definition.

**181 Subsection 1207N(8)**

Insert:

*consolidated revenue* has the same meaning as in section 45A of the *Corporations Act 2001*.

### ***Veterans' Entitlements Act 1986***

#### **182 Subparagraph 52ZZA(1)(a)(i)**

Omit “consolidated gross operating revenue”, substitute “consolidated revenue”.

#### **183 Subparagraph 52ZZA(1)(a)(i)**

Omit “\$10 million”, substitute “\$25 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(a) of the *Corporations Act 2001*”.

#### **184 Subparagraph 52ZZA(1)(a)(ii)**

Omit “\$5 million”, substitute “\$12.5 million, or any other amount prescribed by regulations made for the purposes of paragraph 45A(2)(b) of the *Corporations Act 2001*”.

#### **185 Subparagraph 52ZZA(1)(a)(iii)**

After “50”, insert “, or any other number prescribed by regulations made for the purposes of paragraph 45A(2)(c) of the *Corporations Act 2001*,”.

#### **186 Subsection 52ZZA(8) (definition of *consolidated gross operating revenue*)**

Repeal the definition.

#### **187 Subsection 52ZZA(8)**

Insert:

*consolidated revenue* has the same meaning as in section 45A of the *Corporations Act 2001*.

## **Part 2—Amendments commencing on 1 July 2007**

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

#### **188 After subsection 151(2)**

Insert:

(2AA) If:

- (a) a company holds a licence that is in force under this section;  
and
- (b) either the licence or the company's constitution requires a modification to the constitution to have previously been submitted to, and approved by:
  - (i) the Minister; or
  - (ii) another Minister of the Commonwealth, a State or a Territory; or
  - (iii) an officer, instrumentality or agency of the Commonwealth, a State or a Territory;

then the licence or constitution (as the case requires) is taken instead to require the company to notify ASIC as soon as practicable of the modification.

#### **189 Subsection 151(3)**

Repeal the subsection, substitute:

- (3) ASIC may revoke the company's licence if:
  - (a) the company does anything set out in paragraphs (2)(a) to (e);  
or
  - (b) the company fails to notify ASIC in accordance with subsection (2AA).

#### **190 Section 213**

Repeal the section, substitute:

#### **213 Small amounts given to related entity**

- (1) Member approval is not needed to give a financial benefit to a related party in a financial year if the total of the following

amounts or values is less than or equal to the amount prescribed by the regulations for the purposes of this section:

- (a) the amount or value of the financial benefit;
  - (b) the total of all other amounts or values of financial benefits given to the related party, in the financial year, for which member approval was not needed because of this section.
- (2) In working out the total of the amounts or values referred to in paragraphs (1)(a) and (b):
- (a) add in all amounts or values of financial benefits given to the related party in the financial year by:
    - (i) the public company or entity; and
    - (ii) any entities controlled by the public company or entity; and
  - (b) disregard:
    - (i) amounts that have been repaid; and
    - (ii) amounts that fall under any other exception in this Part.

For the purposes of this subsection, the time at which the entity must be controlled by the public company is the time at which the financial benefit is given.

**191 Subsection 272(1)**

Omit “under the common seal of ASIC”.

**192 Subsection 272(3)**

Omit “appear in the register”, substitute “appear in the Register”.

**193 Subsection 272(3)**

Omit “under the common seal of ASIC”.

**194 After subparagraph 274(b)(ii)**

Insert:

or (iii) was due to a failure of an electronic system to lodge a notice in respect of a charge;

**195 Section 274**

After “the application of”, insert “ASIC”.

**196 After subsection 352(1)**

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Insert:

- (1A) For the purposes of paragraph (1)(b), ASIC may approve:
- (a) a particular kind of document; or
  - (b) documents in a particular class of documents.

**197 After subsection 1345A(1)**

Insert:

- (1A) The Minister may, by signed instrument, delegate the function or power under subsection 147(2) or 601DC(2) to:
- (a) a member of ASIC (within the meaning of paragraph (a) of the definition of *member* in subsection 5(1) of the *Australian Securities and Investments Commission Act 2001*); or
  - (b) a staff member of ASIC.

## **Part 3—Amendments commencing on Proclamation**

### *Corporations Act 2001*

#### **198 Paragraph 4.4 of the small business guide in Part 1.5 (table item 4)**

After “28 days after the change”, insert “(unless the director or company secretary has notified ASIC of the change)”.

#### **199 Paragraph 5.1 of the small business guide in Part 1.5**

Omit “The company must notify ASIC of a director’s resignation. A director who resigns may also notify ASIC of the resignation.”, substitute “A director who resigns may notify ASIC of the resignation. If the director does not do so, the company must notify ASIC of the director’s resignation.”.

#### **200 Paragraph 5.4 of the small business guide in Part 1.5**

Omit “The company must notify ASIC of a company secretary’s resignation. A company secretary who resigns may also notify ASIC of the resignation.”, substitute “A company secretary who resigns may notify ASIC of the resignation. If the company secretary does not do so, the company must notify ASIC of the company secretary’s resignation.”.

#### **201 Subsection 142(1) (note)**

Omit “Note”, substitute “Note 1”.

#### **202 At the end of subsection 142(1)**

Add:

Note 2: Communications and notices from ASIC may also be addressed to the company’s contact address (see section 146A).

#### **203 At the end of Part 2B.5**

Add:

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### **146A Contact address**

- (1) A company may have a contact address (whether or not in this jurisdiction). Communications and notices from ASIC to the company may be addressed to its contact address.
- (2) If a company is to have a contact address, the company must lodge notice of the address in the prescribed form.

### **204 At the end of subsection 205A(2)**

Add:

Note: If a director, secretary or alternative director of a company gives a written notice in accordance with this section, the company is not required to lodge a notice with ASIC under subsection 205B(5) (see subsection 205B(6)).

### **205 Subsection 205A(3)**

Repeal the subsection.

### **206 Subsection 205B(6)**

Repeal the subsection, substitute:

- (6) Subsection (5) does not apply if:
  - (a) the person was an alternate director who stopped being a director in accordance with the terms of their appointment as an alternate director; or
  - (b) the person gives ASIC a written notice of the person's retirement or resignation as a director, alternate director or secretary of the company in accordance with section 205A.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6), see subsection 13.3(3) of the *Criminal Code*.

### **207 Subparagraph 264(1)(a)(ii)**

Omit "263(1)(a)", substitute "263(1)(b)".

### **208 Subsection 348A(1)**

Repeal the subsection, substitute:

- (1) ASIC may give to a company or responsible entity of a registered scheme a return of particulars for the company or scheme if ASIC suspects or believes that particulars recorded in relation to the

company or scheme in a register maintained by ASIC under subsection 1274(1) are not correct.

**209 Paragraph 348D(2)(a)**

Omit “28 days”, substitute “2 months”.

**210 Subparagraphs 734(5)(a)(i) and (ii)**

Repeal the subparagraphs, substitute:

- (i) if the securities are likely to be offered by way of issue—identifies the issuer of the securities; and
- (ii) if the securities are likely to be offered pursuant to sale offers to which section 707 will apply—identifies the issuer of the securities and the seller of the securities; and
- (iii) in any case—a disclosure document for the offer will be made available when the securities are offered; and
- (iv) indicates when and where the disclosure document is expected to be made available; and
- (v) a person should consider the disclosure document in deciding whether to acquire the securities; and
- (vi) anyone who wants to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document; and

**211 At the end of subparagraphs 734(5)(b)(i), (ii) and (iii)**

Add “;”.

**212 Paragraphs 734(6)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) identifies:
    - (i) if the securities are offered by way of issue—the issuer of the securities; or
    - (ii) if the securities are offered pursuant to sale offers to which section 707 applies or will apply—the issuer of the securities and the seller of the securities; and
  - (b) indicates that the disclosure document for the offer is available and where it can be obtained; and
  - (c) the offers of the securities will be made in, or accompanied by, a copy of the disclosure document; and
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- (d) a person should consider the disclosure document in deciding whether to acquire the securities; and
- (e) anyone who wants to acquire the securities will need to complete the application form that will be in or will accompany the disclosure document.

### **213 Subsection 739(1)**

Repeal the subsection, substitute:

*Power to make orders*

- (1) This section applies if ASIC is satisfied that:
  - (a) information in a disclosure document lodged with ASIC is not worded and presented in a clear, concise and effective manner (see section 715A); or
  - (b) an offer of securities under a disclosure document lodged with ASIC would contravene section 728; or
  - (c) an advertisement or publication of a kind referred to in subsection 734(5) or (6) that relates to securities is defective (see subsection (6) of this section).
- (1A) ASIC may order that:
  - (a) if paragraph (1)(a) or (b) applies—no offers, issues, sales or transfers of the securities be made while the order is in force; or
  - (b) if paragraph (1)(c) applies—specified conduct in respect of the securities to which the advertisement or publication relates must not be engaged in.
- (1B) An order under paragraph (1A)(b) may include a statement that specified conduct engaged in contrary to the order will be regarded as not complying with the requirements of a specified provision of this Chapter.

### **214 Subsections 739(2) to (5)**

Omit “subsection (1)”, substitute “subsection (1A)”.

### **215 At the end of section 739**

Add:

*Defective advertisements or statements*

- (6) For the purposes of this section, an advertisement or publication of a kind referred to in subsection 734(5) or (6) is *defective* if:
- (a) there is a misleading or deceptive statement in the advertisement or publication; or
  - (b) there is an omission from the advertisement or publication of material required by the relevant subsection to be included in the advertisement or publication; or
  - (c) if the advertisement or publication relates to an offer of securities in a class that is not already quoted, and is published before a disclosure document in relation to the offer is lodged—the advertisement or publication includes material that is not referred to in paragraph 734(5)(b).

*Forecasts and other forward-looking statements*

- (7) For the purposes of the definition of *defective* in subsection (6), a person is taken to make a misleading statement about a future matter (including the doing of, or refusing to do, an act) if they do not have reasonable grounds for making the statement.
- (8) Subsection (7) does not limit the circumstances in which a statement may be misleading.

**216 After paragraph 917A(3)(b)**

Insert:

- (ba) the conduct relates to a particular kind of financial product prescribed by regulations made for the purposes of paragraph 917C(3)(ba); and

**217 Paragraphs 917A(3)(c), (d) and (e)**

After “product”, insert “of that kind”.

**218 After paragraph 917C(3)(b)**

Insert:

- (ba) the conduct relates to a particular kind of financial product prescribed by regulations made for the purposes of this paragraph; and

**219 Subsection 941C(4)**

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Omit “in a public forum”, substitute “to the public, or a section of the public, in the manner prescribed by regulations made for the purposes of this subsection”.

Note: The heading to subsection 941C(4) is altered by omitting “*in a public forum*” and substituting “*to the public*”.

**220 Subsection 941C(4A)**

Repeal the subsection.

**221 At the end of section 1351**

Add:

- (4) However, a fee imposed under the *Corporations (Review Fees) Act 2003* is not payable to the Commonwealth by a company in relation to a review date in a year if:
- (a) both of the following apply:
    - (i) ASIC has given notice of the proposed deregistration of the company in accordance with subsection 601AA(4);
    - (ii) the review date for that year falls in the 2 month period before or after the publication of the relevant *Gazette* notice; or
  - (b) in the case of a company, a registered scheme or a registered Australian body—the company, scheme or body has, in a previous year, paid the fee in respect of the review date for that year in accordance with regulations made under the *Corporations (Review Fees) Act 2003* for the purposes of this section.

***Income Tax Assessment Act 1936***

**222 Subsection 222AOF(2) (paragraphs (a) and (b) of the definition of *ASIC document*)**

Omit “205B or 345”, substitute “205A, 205B or 346C”.

## Part 4—Amendment commencing on 1 July 2008

### *Corporations Act 2001*

#### **223 Subsection 1015D(2)**

Repeal the subsection (including the note), substitute:

- (2) The responsible person for the Statement (other than the trustee of a self-managed superannuation fund) must lodge a notice with ASIC advising of the occurrence of any of the following events as soon as practicable, and in any event within 5 business days, after the occurrence of the event:
- (a) except in the case of a Supplementary Product Disclosure Statement—a copy of the Statement is first given to someone in a recommendation, issue or sale situation;
  - (b) a change is made to fees and charges set out in the Statement;
  - (c) the financial product to which the Statement relates ceases to be available to be recommended or offered to new clients in a recommendation, issue or sale situation.

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

Note 2: The fees and charges set out in a Product Disclosure Statement may be changed by a Supplementary Product Disclosure Statement (see section 1014A).

Note 3: Documents may be lodged with ASIC in electronic form (but see section 352).

## **Part 5—Amendments commencing on 1 January 2009**

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

#### **224 At the end of subsection 352(2)**

Add “or a notice lodged under subsection 1015D(2)”.

#### **225 Subsection 1015D(2)**

After “ASIC”, insert “, in electronic form,”.

#### **226 Subsection 1015D(2) (note 3)**

Repeal the note.

## **Part 6—Application and saving provisions**

### **227 Application of items 3, 6 and 133**

The amendments made by items 3, 6 and 133 of this Schedule apply to contribution plans offered on or after the day on which those items commence.

### **228 Application of items 4, 5, 86, 92, 106, 131 and 132**

The amendments made by items 4, 5, 86, 92, 106, 131 and 132 of this Schedule apply to employee share schemes offered on or after the day on which those items commence.

### **229 Application of items 9, 10, 71 and 96**

The amendments made by items 9, 10, 71 and 96 of this Schedule apply to rights issues offered on or after the day on which those items commence.

### **230 Application of items 8, 70, 94, 146 to 150 and 156 to 158**

The amendments made by items 8, 70, 94, 146 to 150 and 156 to 158 of this Schedule apply in relation to a Product Disclosure Statement that is lodged with ASIC whether the Statement is lodged before, on or after the day the amendments commence.

### **231 Application of items 11 to 19 and 176 to 187**

The amendments made by items 11 to 19 and 176 to 187 of this Schedule apply to a financial year that ends on or after the day on which those items commence.

### **232 Application of items 24 to 33, 36, 37 and 168**

The amendments made by items 24 to 33, 36, 37 and 168 of this Schedule apply to a financial year that begins on or after the day on which those items commence.

### **233 Application of items 34, 35, 38 to 41 and 169**

- (1) The amendments made by items 34, 35, 38 to 41 and 169 of this Schedule apply to a report for a financial year that ends on or after the day on which those items commence.

- (2) A company, registered scheme or disclosing entity must notify each member of the company, scheme or entity for the purposes of subsection 314(1AB) of the *Corporations Act 2001* (as inserted by item 38 of this Schedule) after that item commences.
- (3) However, subitem (2) of this item does not apply in respect of a member of a company, registered scheme or disclosing entity if the member has previously requested, under section 316 of the *Corporations Act 2001*, the company, scheme or entity not to send him or her the material required by section 314 of that Act.

#### **234 Application of items 47, 48, 50 and 52 to 59**

The amendments made by items 47, 48, 50 and 52 to 59 of this Schedule apply to:

- (a) an audit of the financial report for a financial year; or
- (b) an audit or review of the financial report for a half-year in a financial year;

if the financial year begins on or after the day on which those items commence.

#### **235 Application of items 60, 61 and 62**

The amendments made by items 60, 61 and 62 apply to any person who ceases to be:

- (a) a member of an audit firm; or
- (b) a director of an audit company; or
- (c) a professional employee of an audit company;

whether the person so ceases before or after the day on which those items commence.

#### **236 Application of items 63 and 64**

The amendments made by items 63 and 64 of this Schedule apply in relation to information given to ASIC under subsection 327B(2A), (2B) or (2C), or 331AAA(2A), (2B) or (2C), of the *Corporations Act 2001* on or after the day on which that item commences.

#### **237 Application of items 73, 75 to 77 and 84**

The amendments made by items 73, 75 to 77 and 84 of this Schedule apply to offers of securities made on or after the day on which those items commence.

### **238 Application of items 95 and 97 to 100**

The amendments made by items 95 and 97 to 100 of this Schedule apply to financial products and financial services provided on and after the day on which those items commence.

### **239 Saving provision for item 101**

The amendment made by item 101 of this Schedule does not affect the continuity of:

- (a) any arrangement entered into for the purposes of section 798C of the *Corporations Act 2001*; or
- (b) any market listing rules made for the purposes of section 798C of the *Corporations Act 2001*;

that are in force immediately before that item commences.

### **240 Application of item 190**

The amendment made by item 190 of this Schedule applies to a financial year that begins on or after the day on which that item commences.

### **241 Application of item 209**

The amendment made by item 209 of this Schedule applies to a return of particulars issued on or after the day on which that item commences.

### **242 Application of items 210 to 215**

The amendments made by items 210 to 215 of this Schedule apply to an advertisement or publication that is made on or after the day on which those items commence.

### **243 Application of items 216 to 218**

The amendments made by items 216 to 218 of this Schedule apply in relation to the conduct of a representative on or after the day on which those items commence.

### **244 Application of item 221**

Paragraph 1351(4)(a) of the *Corporations Act 2001* (as inserted by item 221 of this Schedule) applies to a review date that occurs on or after the day on which that item commences.

### **245 Application of item 223**

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The amendment made by item 223 of this Schedule applies in relation to events occurring on or after the day on which that item commences.

**246 Application of items 224 to 226**

The amendments made by items 224 to 226 of this Schedule apply in relation to events occurring on or after the day on which those items commence.

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*[Minister's second reading speech made in—  
House of Representatives on 24 May 2007  
Senate on 14 June 2007]*

(87/07)

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