





# **Treasury Laws Amendment (2017 Measures No. 3) Act 2017**

**No. 75, 2017**

***An Act to amend the *Australian Securities and  
Investments Commission Act 2001* and the  
*Corporations Act 2001*, and for related purposes***

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



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***An Act to amend the *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001*, and for related purposes***

[Assented to 26 June 2017]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017*.

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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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	Immediately after the commencement of the <i>Australian Securities and Investments Commission Act 2001</i> .	15 July 2001

Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Validation of agreements to employ staff or engage consultants**

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

#### **1 Subsection 5(1)**

Insert:

*old ASIC Act* means the *Australian Securities and Investments Commission Act 1989* as in force from time to time before the commencement of this Act.

#### **2 After section 248**

Insert:

#### **249 Validation of agreements to employ staff or engage consultants**

- (1) The following are, for all purposes, taken to be, and always to have been, valid agreements:
- (a) an agreement purportedly made, before the end of 9 March 2017, under subsection 120(3) of this Act or the old ASIC Act (whether or not the terms and conditions of employment under the agreement were validly determined under subsection 120(4) of this Act or the old ASIC Act);
  - (b) an agreement purportedly made, before the end of 9 March 2017, under subsection 121(1) of this Act or the old ASIC Act (whether or not the terms and conditions of engagement under the agreement were validly determined under subsection 121(2) of this Act or the old ASIC Act).

Note 1: As a result of this section (and the definition of *staff member* in subsection 5(1)), a person employed or engaged under the purported agreement would be a staff member of ASIC, and would therefore be able to exercise functions and powers delegated under section 102.

Note 2: Validation of an agreement under this section affects the significance, status and effect of the agreement, and matters relating to the agreement, for the purposes of section 279 of this Act and section 1403 of the *Corporations Act 2001*.

- (2) Subsection (1) applies to such an agreement whether or not it was expressed to be made on behalf of the Commonwealth.

- (3) Subsections (1) and (2) have effect in relation to:
- (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and
  - (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.

## 250 Compensation for compulsory acquisition

- (1) If:
- (a) the operation of a validation provision would result in the acquisition of property from a person otherwise than on just terms; and
  - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution; and
  - (c) section 1350 of the *Corporations Act 2001* does not apply in relation to the acquisition;
- the Commonwealth is liable to pay compensation of a reasonable amount to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Court for the recovery from the Commonwealth of such reasonable amount as the court determines.
- (3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.

- (4) In this section:

***acquisition of property*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

***Court*** has the same meaning as in section 58AA of the *Corporations Act 2001*.

***just terms*** has the same meaning as in paragraph 51(xxxi) of the Constitution.

*validation provision* means:

- (a) section 249; or
- (b) paragraph 276(1)(b) or subsection 276(4) or (5); or
- (c) paragraph 277(1)(b) or subsection 277(5) or (6).

### **3 Subsection 254(1) (definition of *old ASIC Act*)**

Repeal the definition.

### **4 Paragraphs 276(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) was:
  - (i) acquired, accrued or incurred under a carried over provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory; and
  - (ii) in existence immediately before the commencement; or
- (b) would have been:
  - (i) acquired, accrued or incurred under such a provision; and
  - (ii) in existence immediately before the commencement; if every agreement that was valid only because of section 249 had been a valid agreement without the application of that section.

### **5 At the end of section 276**

Add:

- (4) This section does not apply to a pre-commencement right or liability that:
  - (a) existed under a law of the Commonwealth or of a State or Territory; and
  - (b) would not have existed if any agreement that is valid only because of section 249 had been a valid agreement without the application of that section.
- (5) Paragraph (1)(b) and subsection (4) have effect in relation to:
  - (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and

- (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.
- (6) Nothing in paragraph (1)(b) or subsection (4) or (5) limits the operation of section 249.

## 6 Paragraphs 277(1)(a) and (b)

Repeal the paragraphs, substitute:

- (a) was:
    - (i) acquired, accrued or incurred under a provision of the old ASIC legislation of the Commonwealth, a State in this jurisdiction or the Northern Territory that was no longer in force immediately before the commencement; and
    - (ii) in existence immediately before the commencement; or
  - (b) would have been:
    - (i) acquired, accrued or incurred under such a provision; and
    - (ii) in existence immediately before the commencement;
- if every agreement that was valid only because of section 249 had been a valid agreement without the application of that section.

## 7 At the end of section 277

Add:

- (5) This section does not apply to a pre-commencement right or liability that:
  - (a) existed under a law of the Commonwealth or of a State or Territory; and
  - (b) would not have existed if any agreement that is valid only because of section 249 had been a valid agreement without the application of that section.
- (6) Paragraph (1)(b) and subsection (5) have effect in relation to:
  - (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and

- (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.
- (7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249.

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

#### **8 Paragraphs 1400(1)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) was:
  - (i) acquired, accrued or incurred under a carried over provision of the old corporations legislation of a State or Territory in this jurisdiction; and
  - (ii) in existence immediately before the commencement; or
- (b) would have been:
  - (i) acquired, accrued or incurred under such a provision; and
  - (ii) in existence immediately before the commencement; if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

#### **9 At the end of section 1400**

Add:

- (5) This section does not apply to a pre-commencement right or liability that:
  - (a) existed under a law of the Commonwealth or of a State or Territory; and
  - (b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.
- (6) Paragraph (1)(b) and subsection (5) have effect in relation to:
  - (a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and

(b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.

(7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.

## 10 Paragraphs 1401(1)(a) and (b)

Repeal the paragraphs, substitute:

(a) was:

(i) acquired, accrued or incurred under a provision of the old corporations legislation of a State or Territory in this jurisdiction that was no longer in force immediately before the commencement; and

(ii) in existence immediately before the commencement; or

(b) would have been:

(i) acquired, accrued or incurred under such a provision; and

(ii) in existence immediately before the commencement;

if every agreement that was valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

## 11 At the end of section 1401

Add:

(5) This section does not apply to a pre-commencement right or liability that:

(a) existed under a law of the Commonwealth or of a State or Territory; and

(b) would not have existed if any agreement that is valid only because of section 249 of the ASIC Act had been a valid agreement without the application of that section.

(6) Paragraph (1)(b) and subsection (5) have effect in relation to:

(a) proceedings (whether original or appellate) that begin on or after the day the *Treasury Laws Amendment (2017 Measures No. 3) Act 2017* receives the Royal Assent; and

- (b) proceedings that began before that day, if the proceedings (including any appeals) had not been finally determined as at that day.
- (7) Nothing in paragraph (1)(b) or subsection (5) or (6) limits the operation of section 249 of the ASIC Act.
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*[Minister's second reading speech made in—  
House of Representatives on 14 June 2017  
Senate on 22 June 2017]*

(126/17)

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