



Treasury Laws Amendment (2017 Measures No. 5) Act 2018

No. 27, 2018

**An Act to amend the law relating to corporations,
financial products and services and the
Productivity Commission, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
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**An Act to amend the law relating to corporations,
financial products and services and the
Productivity Commission, and for related purposes**

[Assented to 11 April 2018]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (2017 Measures No. 5) Act 2018*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 April 2018
2. Schedule 1, Parts 1 and 2	The day after this Act receives the Royal Assent.	12 April 2018
3. Schedule 1, Part 3	Immediately after the commencement of Schedule 5 to the <i>Treasury Laws Amendment (2016 Measures No. 1) Act 2017</i> .	4 April 2018
4. Schedule 2	The day after this Act receives the Royal Assent.	12 April 2018

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Financial benchmarks

Part 1—Main amendments

Corporations Act 2001

1 After Part 7.5A

Insert:

Part 7.5B—Regulation of financial benchmarks

Division 1—Preliminary

908AA Simplified outline of this Part

Administrators of significant financial benchmarks must be licensed under this Part. Administrators of other financial benchmarks may voluntarily opt in to the same licensing scheme.

Licensees are subject to certain obligations.

ASIC may make financial benchmark rules that apply in relation to licensees and the financial benchmarks they administer.

ASIC may also make compelled financial benchmark rules to deal with circumstances such as the failure of a licensee to administer a significant financial benchmark specified in its licence.

Offences and civil penalty provisions apply to conduct that could unduly manipulate a financial benchmark.

908AB Meaning of financial benchmark

- (1) A ***financial benchmark*** is a price, estimate, rate, index or value that:
- (a) is made available to users (whether or not for a fee); and
 - (b) is calculated periodically from one or more:

- (i) transactions, instruments, currencies, prices, estimates, rates, indices, values, financial products, bank accepted bills or negotiable certificates of deposit; or
 - (ii) other interests or goods (whether tangible or intangible); and
- (c) is referenced or otherwise used for purposes that include one or more of the following:
 - (i) calculating the interest, or other amounts, payable under financial products, bank accepted bills or negotiable certificates of deposit;
 - (ii) calculating the price at which a financial product, bank accepted bill or negotiable certificate of deposit may be traded, redeemed or dealt in;
 - (iii) calculating the value of a financial product, bank accepted bill or negotiable certificate of deposit;
 - (iv) measuring the performance of a financial product, bank accepted bill or negotiable certificate of deposit.
- (2) However, the regulations, or ASIC by written instrument, may provide that a price, estimate, rate, index or value is not a ***financial benchmark***.
- (3) Such an instrument by ASIC is a legislative instrument if it is expressed to apply in relation to a class of prices, estimates, rates, indices or values (whether or not it is also expressed to apply in relation to one or more prices, estimates, rates, indices or values identified otherwise than by reference to membership of a class).
- (4) If subsection (3) does not apply to an instrument by ASIC under subsection (2), ASIC must publish the instrument.

908AC Meaning of significant financial benchmark

- (1) A ***significant financial benchmark*** is a financial benchmark that is declared under subsection (2).
 - (2) ASIC may, by legislative instrument, declare a financial benchmark to be a significant financial benchmark if ASIC is satisfied that:
 - (a) the benchmark is systemically important to the Australian financial system; or
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- (b) there is a material risk of financial contagion, or systemic instability, in Australia if the availability or integrity of the benchmark were disrupted; or
- (c) there would be a material impact on retail or wholesale investors in Australia if the availability or integrity of the benchmark were disrupted.

Note 1: For declaration by class, see subsection 13(3) of the *Legislation Act 2003*.

Note 2: For variation and revocation of a declaration, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) ASIC must not make a declaration under subsection (2) unless consent for it has been given under subsection (4).
- (4) The Minister may, in writing, consent to the making of a declaration under subsection (2).

908AD Emergency declarations: consultation and consent not required

- (1) Despite subsection 908AC(3), ASIC may make a declaration under subsection 908AC(2) without the consent of the Minister if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:
 - (a) the Australian economy; or
 - (b) the efficiency, integrity and stability of the Australian financial system.
- (2) If ASIC makes a declaration under subsection 908AC(2) without the consent of the Minister, ASIC must:
 - (a) provide the Minister, on the following day, with a written explanation of the need for the declaration; and
 - (b) revoke the declaration in accordance with any direction under subsection (3).
- (3) The Minister may give ASIC a written direction to revoke a declaration made as described in subsection (1).
- (4) A direction under subsection (3) is not a legislative instrument.

908AE Notifying administrator about declarations

ASIC must, as soon as practicable, give the administrator of a financial benchmark written notice of:

- (a) any declaration of the financial benchmark under subsection 908AC(2); or
- (b) any variation, or revocation, under subsection 908AC(2) of a declaration of the financial benchmark under that subsection; or
- (c) any revocation under subsection 908AD(2)(b) of a declaration of the financial benchmark under subsection 908AC(2).

908AF ASIC to supervise financial benchmarks that are specified in benchmark administrator licences

- (1) ASIC has the function of supervising financial benchmarks that are specified in benchmark administrator licences.
- (2) If such a financial benchmark is wholly or partly generated or administered in a foreign country, ASIC may, to such extent as ASIC considers appropriate, perform the function of supervising the financial benchmark by satisfying itself:
 - (a) that the regulatory regime that applies in relation to the financial benchmark in that country provides for adequate supervision of the financial benchmark; or
 - (b) that adequate cooperative arrangements are in place with an appropriate authority of that country to ensure that the financial benchmark will be adequately supervised by that authority.

908AG Extraterritorial application

Subject to sections 908BB and 908DD, this Part applies to acts, omissions, matters and things in Australia or outside Australia.

Division 2—Licensing of financial benchmarks

Subdivision A—Requirement to be licensed

908BA Administrators of significant financial benchmarks must be licensed

- (1) A person commits an offence if:
 - (a) the person:
 - (i) administers a significant financial benchmark; or
 - (ii) holds out that the person administers a significant financial benchmark; and
 - (b) the person does not hold a benchmark administrator licence that specifies the financial benchmark; and
 - (c) the period applying under subsection (2) for the financial benchmark has ended.

Penalty: 500 penalty units or imprisonment for 5 years, or both.

- (2) The period for the purposes of paragraph (1)(c):
 - (a) starts on the day (the *start day*) the financial benchmark is declared under subsection 908AC(2) to be a significant financial benchmark; and
 - (b) ends as described in subsection (3).
- (3) The period ends at the end of the later of the following days:
 - (a) the 90th day after the start day;
 - (b) if, before the end of that 90th day, the person applies for a benchmark administrator licence specifying the financial benchmark—either:
 - (i) the day the person withdraws the application; or
 - (ii) the day the person is notified under subsection 908BC(4) of ASIC’s decision to grant or refuse to grant the licence.
- (4) Absolute liability applies to paragraph (1)(c).

Note: For absolute liability, see section 6.2 of the *Criminal Code*.

908BB Other prohibitions on holding out

A person commits an offence if:

- (a) in Australia, the person holds out that:
 - (i) the person holds a benchmark administrator licence; or
 - (ii) the administration of a financial benchmark by the person is authorised by a benchmark administrator licence; or
 - (iii) a financial benchmark is specified in a benchmark administrator licence; or
 - (iv) a financial benchmark is a significant financial benchmark; or
 - (v) a financial benchmark is not a significant financial benchmark; and
- (b) this is not the case.

Penalty: 500 penalty units or imprisonment for 5 years, or both.

Subdivision B—Granting licences

908BC When a licence may be granted

Granting licences—general

- (1) ASIC may grant an applicant a licence (a **benchmark administrator licence**) to administer a specified financial benchmark if ASIC is satisfied that:
 - (a) the application was made in accordance with section 908BD; and
 - (b) the applicant will comply with the obligations that will apply if the licence is granted; and
 - (c) no disqualified individual appears to be involved in the applicant.

The licence may be granted subject to conditions.

Note 1: ASIC must also have regard to the matters in section 908BO in deciding whether to grant a licence.

Note 2: A licence is required if the benchmark is a significant financial benchmark (see section 908BA). Licences are not required, but can still be granted, for other financial benchmarks.

Foreign bodies

- (2) Despite subsection (1), if the applicant is a foreign body corporate, ASIC must not grant the applicant a licence unless the applicant is registered under Division 2 of Part 5B.2.

Disqualified individuals

- (3) Despite subsection (1), ASIC must not grant the applicant a licence unless:
- (a) 42 days have passed since the application was made; and
 - (b) if ASIC gives a notice under subsection 853D(2) to the applicant within those 42 days, ASIC decides not to make a declaration under section 853C about any individual who is involved in the applicant.

Notice of decision

- (4) ASIC must give the applicant written notice of:
- (a) ASIC's decision whether to grant the applicant a licence; and
 - (b) if the licence is granted—any conditions to which the licence is subject.

908BD Applying for a licence

- (1) A body corporate may, by lodging an application with ASIC that is in a form approved by ASIC in writing, apply for a benchmark administrator licence for a particular financial benchmark.

Note: For fees for lodging applications, see Part 9.10.

- (2) ASIC may, by written notice given to an applicant, require the applicant to lodge with ASIC, within the period specified in the notice, further information in connection with the application.
- (3) If the applicant fails to lodge the further information as required, ASIC may, by written notice given to the applicant:
- (a) refuse to consider the application; or
 - (b) refuse to take any action, or any further action, in relation to the application.

908BE More than one financial benchmark may be specified in the same licence

- (1) The same benchmark administrator licence may specify 2 or more financial benchmarks.
- (2) In that case, a reference in this Chapter to the financial benchmark specified in the licence is taken instead to be a reference to each of those financial benchmarks severally.
- (3) A benchmark administrator licence that specifies 2 or more financial benchmarks may be suspended or cancelled under Subdivision D in respect of one or some of those financial benchmarks only, as if the licensee held a separate licence for each of the financial benchmarks.

908BF Publishing details of licences

If ASIC grants a benchmark administrator licence, ASIC must publish a notice stating:

- (a) the name of the licensee and of the financial benchmark specified in the licence; and
- (b) when the licence was granted; and
- (c) any conditions to which the licence is subject; and
- (d) when the licence takes effect.

Subdivision C—Conditions on licences

908BG Conditions, including varying and revoking conditions

- (1) ASIC may, at any time, take action to:
 - (a) impose conditions, or additional conditions, on a benchmark administrator licence; or
 - (b) vary or revoke any conditions to which a benchmark administrator licence is subject (whether imposed under paragraph (a) or under subsection 908BC(1));by giving written notice to the licensee. ASIC must also publish a notice with details of the action and when it took effect.

Note 1: As well as complying with the requirements in this section, ASIC must have regard to the matters in section 908BO.

Note 2: A licensee is also subject to other obligations in this Part (for example, see Divisions 3 and 4).

- (2) ASIC may take action under subsection (1):
- (a) on its own initiative, subject to subsection (3); or
 - (b) if the licensee lodges an application with ASIC, in a form approved by ASIC in writing, seeking:
 - (i) the imposition of conditions; or
 - (ii) the variation or revocation of conditions.

Note: For fees for lodging applications, see Part 9.10.

- (3) ASIC may only take action on its own initiative to impose conditions or additional conditions, or to vary or revoke conditions, to which the licence is subject if:
- (a) ASIC considers it appropriate to do so having regard to:
 - (i) the licensee's obligations under this Part; and
 - (ii) the licensee's obligations under rules made under Division 3; and
 - (iii) any change in the administration of the financial benchmark specified in the licence; and
 - (b) ASIC gives the licensee written notice of the proposed action and an opportunity to make a submission before the proposed action is to take effect.

This subsection does not apply to ASIC imposing conditions when a licence is granted.

Subdivision D—When a licence can be varied, suspended or cancelled

908BH Varying licences

ASIC may vary a benchmark administrator licence to:

- (a) take account of a change in the licensee's name; or
 - (b) take account of a change in the financial benchmark specified in the licence; or
 - (c) specify one or more further financial benchmarks;
- if the licensee seeks the variation by lodging an application with ASIC in a form approved by ASIC in writing.

Note 1: The conditions on the licence can be varied under section 908BG.

Schedule 1 Financial benchmarks

Part 1 Main amendments

Note 2: For a variation referred to in paragraph (b) or (c), ASIC must also have regard to the matters in section 908BO.

Note 3: For fees for lodging applications, see Part 9.10.

908BI Immediate suspension or cancellation

- (1) ASIC may, by giving written notice to a benchmark administrator licensee, suspend the licensee's licence for a specified period, or cancel it, if:
 - (a) the licensee ceases to carry on the business of administering the financial benchmark specified in the licence; or
 - (b) the licensee is a Chapter 5 body corporate, or under a foreign law is in a similar position to a Chapter 5 body corporate; or
 - (c) the licensee asks ASIC to do so; or
 - (d) in the case of a licensee that is a leviable entity (within the meaning of the *ASIC Supervisory Cost Recovery Levy Act 2017*)—the following have not been paid in full at least 12 months after the due date for payment:
 - (i) an amount of levy (if any) payable in respect of the licensee;
 - (ii) the amount of late payment penalty payable (if any) in relation to the levy;
 - (iii) the amount of shortfall penalty payable (if any) in relation to the levy.
- (2) However, before doing so, ASIC must have regard to anything that is required, or could be required, of the licensee under the compelled financial benchmark rules.

908BJ Suspension or cancellation following hearing and report

- (1) If ASIC considers that a benchmark administrator licensee has breached, or is in breach of:
 - (a) any conditions to which the licence is subject; or
 - (b) any of its obligations under this Part; or
 - (c) any of its obligations under rules made under Division 3;ASIC may give the licensee a written notice that requires the licensee to show cause, at a hearing before a specified person, why the licence should not be suspended or cancelled.
 - (2) The notice must specify:
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- (a) the grounds on which it is proposed to suspend or cancel the licence; and
- (b) a reasonable time and place at which the hearing is to be held.

However, if the licensee consents, the person conducting the hearing may fix a different time or place.

- (3) The person conducting the hearing must:
 - (a) give the licensee an opportunity to be heard at the hearing; and
 - (b) give ASIC:
 - (i) a report about the hearing; and
 - (ii) a recommendation about the grounds in the notice on which it is proposed to suspend or cancel the licence.
- (4) After considering the report and recommendation, ASIC may:
 - (a) decide to take no further action in relation to the matter and give written advice of that decision to the licensee; or
 - (b) suspend the licence for a specified period, or cancel the licence, by giving written notice to the licensee.

Note: ASIC must also have regard to the matters in section 908BO.

- (5) A notice under subsection (1) is not a legislative instrument.

908BK Effect of suspension

- (1) A person whose benchmark administrator licence is suspended is taken not to hold that licence while it is suspended.
- (2) However, ASIC may specify in the written notice to the licensee under section 908BI, or paragraph 908BJ(4)(b), that subsection (1) of this section does not apply for specified purposes.

908BL Varying or revoking a suspension

ASIC may at any time vary or revoke a suspension of a benchmark administrator licence by giving written notice to the licensee.

908BM Publishing details of suspensions or cancellations of licences

- (1) If ASIC takes action to:
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- (a) suspend, or vary or revoke a suspension of, a benchmark administrator licence; or
 - (b) cancel a benchmark administrator licence;
- ASIC must publish a notice to that effect.
- (2) The notice must state when the action took effect.

908BN Variations, suspensions or cancellations only in accordance with this Subdivision

A benchmark administrator licence cannot be varied, suspended or cancelled otherwise than in accordance with this Subdivision.

Note: The conditions on the licence can be varied under section 908BG.

Subdivision E—Matters to which ASIC must have regard

908BO Matters to which ASIC must have regard

- (1) ASIC must have regard to certain matters in deciding whether to take any of the following actions in relation to a financial benchmark:
- (a) grant under section 908BC a benchmark administrator licence that specifies the financial benchmark;
 - (b) impose, vary or revoke conditions on such a licence under section 908BC or 908BG;
 - (c) vary such a licence under section 908BH for a change referred to in paragraph 908BH(b) or (c);
 - (d) suspend or cancel such a licence under section 908BJ.
- (2) The matters ASIC must have regard to are as follows:
- (a) how the financial benchmark is, or is to be, administered;
 - (b) the nature and purpose of the financial benchmark;
 - (c) the manner in which the financial benchmark is, or is to be, used;
 - (d) the persons who are, or may be, required to report data or other information to the licensee for the purposes of generating or administering the financial benchmark;
 - (e) for an entity that is authorised to administer the same or a similar financial benchmark in the foreign country in which its principal place of business is located:

- (i) the criteria that the entity satisfied to obtain an authorisation to administer that financial benchmark in that country; and
 - (ii) the obligations the entity must continue to comply with to keep the authorisation; and
 - (iii) the level of supervision to which the administration of that financial benchmark in that country is subject; and
 - (iv) whether adequate arrangements exist for cooperation between ASIC and the authority that is responsible for that supervision;
 - (f) whether it would be in the public interest to take the action referred to in subsection (1).
- (3) ASIC may also have regard to any other matter that ASIC considers relevant.

Subdivision F—Other obligations of licensees

908BP General obligations

A benchmark administrator licensee must:

- (a) comply with the conditions on the licence; and
- (b) if the licensee is a foreign body corporate—be registered under Division 2 of Part 5B.2; and
- (c) take all reasonable steps to ensure that no disqualified individual becomes, or remains, involved in the administration of the financial benchmark specified in the licence.

Note: The licensee also needs to comply with the rules made under Division 3 (see section 908CF).

908BQ Obligation to notify ASIC of certain matters

- (1) A person commits an offence if:
 - (a) the person is a benchmark administrator licensee; and
 - (b) the licensee becomes aware of any of the following events:
 - (i) that the licensee may no longer be able to comply with an obligation under section 908BP;
 - (ii) that the licensee has failed to comply with an obligation under section 908BP;

- (iii) that a person becomes or ceases to be a director, secretary or senior manager of the licensee;
- (iv) that a person becomes or ceases to be a director, secretary or senior manager of a holding company of the licensee; and
- (c) the licensee fails to give written notice to ASIC of:
 - (i) the event; and
 - (ii) such related information (if any) as is prescribed by the regulations for the purposes of this subparagraph;as soon as practicable after becoming aware of the event.

Penalty: 100 penalty units.

- (2) Without limiting subparagraph (1)(b)(iii) or (iv), that subparagraph applies to the case where a person:
 - (a) changes from one of the positions mentioned in that subparagraph to another; or
 - (b) changes from a position mentioned in that subparagraph to a position mentioned in the other subparagraph.

908BR Obligation to assist ASIC, APRA and the Reserve Bank

- (1) ASIC, APRA and the Reserve Bank of Australia are each a regulator to which this section applies.
- (2) A person commits an offence if:
 - (a) the person is a benchmark administrator licensee; and
 - (b) a regulator to which this section applies reasonably requests, in writing, the person to:
 - (i) give the regulator access to the person's books that relate to the person's capacity as such a licensee; or
 - (ii) give other assistance to the regulator in relation to the performance of the regulator's functions; and
 - (c) the person fails to comply with the request.

Penalty: 100 penalty units.

908BS Obligation to give ASIC access to licensee's facilities

A person commits an offence if:

- (a) the person is a benchmark administrator licensee; and

- (b) ASIC requests, in writing, the person to provide reasonable access to any of the person's facilities for any of the purposes of this Part; and
- (c) the facilities relate to the person's capacity as such a licensee; and
- (d) the person fails to comply with the request.

Penalty: 100 penalty units.

Subdivision G—Directions to licensees

908BT ASIC's power to give directions to licensee not complying with obligations

- (1) If ASIC considers that a benchmark administrator licensee is not complying with:
 - (a) any of its obligations under this Part; or
 - (b) any of its obligations under rules made under Division 3;ASIC may give the licensee a written direction to do specified things that ASIC believes will promote the licensee's compliance with those obligations.
- (2) The licensee must comply with the direction.
- (3) If the licensee fails to comply with the direction, ASIC may apply to the Court for, and the Court may make, an order that the licensee comply with the direction.
- (4) ASIC may vary or revoke a direction at any time by giving written notice to the licensee.
- (5) A direction under subsection (1) is not a legislative instrument.

908BU Minister may disallow all or part of an ASIC direction etc.

- (1) As soon as practicable after giving the benchmark administrator licensee:
 - (a) a direction under subsection 908BT(1); or
 - (b) a notice of variation or revocation under subsection 908BT(4);ASIC must give the Minister a copy of the direction or notice.

- (2) Within 30 days after ASIC gives the Minister the copy of the direction or notice, the Minister may, by written instrument, disallow all or a specified part of that direction or notice.
- (3) In deciding whether to do so, the Minister must have regard to:
 - (a) the consistency of the direction or notice with the licensee's obligations referred to in subsection 908BT(1); and
 - (b) the matters referred to in subsection 908BO(2).
- (4) As soon as practicable after all or a part of a direction or notice is disallowed, ASIC must give notice of the disallowance to the licensee. The direction or notice ceases to have effect, to the extent of the disallowance, when the licensee receives notice of the disallowance.
- (5) An instrument under subsection (2) is not a legislative instrument.

908BV ASIC's power to give directions requiring reports

- (1) ASIC may, in writing, direct a benchmark administrator licensee to give ASIC a report that:
 - (a) deals with specified matters; and
 - (b) if ASIC requires—includes an audit statement on the licensee's report on those matters.
- (2) A direction under subsection (1) must specify:
 - (a) a reasonable period for giving ASIC the report; and
 - (b) if paragraph (1)(b) applies—a person or body that is suitably qualified to prepare the audit statement.
- (3) ASIC may give a copy of the report to the Minister.
- (4) A person commits an offence if:
 - (a) the person is a benchmark administrator licensee; and
 - (b) the person is given a direction under subsection (1); and
 - (c) the person fails to comply with the direction.

Penalty: 100 penalty units.
- (5) A direction under subsection (1) is not a legislative instrument.

Subdivision H—Other matters

908BW ASIC may assess licensee’s compliance

- (1) ASIC may do an assessment of how well a benchmark administrator licensee is complying with one or more of its obligations:
 - (a) under this Part; or
 - (b) under rules made under Division 3.In doing the assessment, ASIC may take account of any information and reports that it thinks appropriate.
- (2) As soon as practicable after doing an assessment under this section, ASIC must give a written report on the assessment to the licensee. ASIC may give a copy of the report to the Minister.
- (3) If an assessment, or part of an assessment, relates to any other person’s affairs to a material extent, ASIC may, at the person’s request or on its own initiative, give the person a copy of the report on the assessment or the relevant part of the report.
- (4) If an assessment, or part of an assessment, relates to a serious contravention of a law of the Commonwealth or of a State or Territory, ASIC may give a copy of the report on the assessment, or the relevant part of the report, to:
 - (a) the Australian Federal Police; or
 - (b) the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC (within the meaning of the *Australian Crime Commission Act 2002*); or
 - (c) the Director of Public Prosecutions; or
 - (d) a person or body prescribed by the regulations for the purposes of this paragraph.
- (5) ASIC may publish all or part of the written report on an assessment.

908BX Basis of licences

- (1) A benchmark administrator licence is granted under this Part on the basis that:

- (a) the licence may be varied, suspended or cancelled, or made subject to conditions (or additional conditions), by or under:
 - (i) this Division; or
 - (ii) later legislation; and
 - (b) no compensation is payable if the licence is varied, suspended or cancelled, or made subject to conditions (or additional conditions), as mentioned in paragraph (a).
- (2) Subsection (1) does not, by implication, affect the interpretation of any other provision:
- (a) of this Act; or
 - (b) of an instrument made under this Act.

Division 3—Financial benchmark rules and compelled financial benchmark rules

Subdivision A—Power to make financial benchmark rules

908CA ASIC may make financial benchmark rules

Subject to this Division, ASIC may, by legislative instrument, make rules (the *financial benchmark rules*) dealing with one or more of the matters permitted by this Subdivision.

Note: Subdivision D deals with the process of making the rules.

908CB Main permitted matters that may be dealt with in the rules

The main permitted matters are the following:

- (a) the responsibilities of benchmark administrator licensees, including for their oversight of internal and external parties who have a role in the generation and administration of the financial benchmarks specified in those licences;
- (b) the generation and administration of financial benchmarks specified in benchmark administrator licences, including:
 - (i) the design of the financial benchmarks; and
 - (ii) the use of data or information in generating the financial benchmarks; and
 - (iii) the method for generating the financial benchmarks; and

- (iv) the approach for changing the design referred to in subparagraph (i) or changing the method referred to in subparagraph (iii); and
 - (v) the public disclosure of one or more of the matters referred to in this paragraph;
 - (c) the manner in which benchmark administrator licensees may or must provide their services, including the manner and conditions (including fees) on which they provide access to the financial benchmarks specified in those licences;
 - (d) business continuity planning for financial benchmarks specified in benchmark administrator licences, including the possible transition of such benchmarks to new licensees;
 - (e) the governance, management and resources (including financial, technological and human resources) of benchmark administrator licensees, including the following:
 - (i) the handling of conflicts of interest;
 - (ii) the handling of complaints;
 - (iii) the monitoring and enforcing of compliance with obligations;
 - (iv) the resources that benchmark administrator licensees must have (including requirements relating to the experience, qualifications or fitness for office of their officers and employees);
 - (v) the integrity and security of computer systems and other systems;
 - (vi) operational reliability;
 - (vii) business continuity planning;
 - (viii) the operational separation of functions;
 - (ix) the outsourcing of functions to other entities;
 - (f) the public disclosure of conditions (including fees) on which benchmark administrator licensees provide their services;
 - (g) the handling or use of financial benchmark data by benchmark administrator licensees and their officers and employees, including the following:
 - (i) the acceptance and retention of such data;
 - (ii) the creation of statistical data from such data;
 - (iii) the use and disclosure of, and provision of access to, such data (including statistical data referred to in subparagraph (ii));
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- (h) the responsibilities of entities whose activities result in the provision of data or information to benchmark administrator licensees for the generation or administration of the financial benchmarks specified in those licences;
- (i) the reporting to ASIC or other regulators of matters relating to:
 - (i) benchmark administrator licensees; or
 - (ii) the generation or administration of financial benchmarks specified in benchmark administrator licences;
- (j) a matter prescribed by the regulations for the purposes of this paragraph.

Note: For paragraph (c), the rules may (for example) require benchmark administrator licensees to provide open and non-discriminatory access to their financial benchmarks, including as to price.

908CC Other permitted matters that may be dealt with in the rules

The other permitted matters are matters incidental or related to the matters permitted under section 908CB, including the following:

- (a) subject to section 908CP, the persons who are obliged to comply with requirements imposed by the rules;
- (b) the manner and form in which persons must comply with requirements imposed by the rules;
- (c) the circumstances in which persons are, or may be, relieved from complying with requirements in the rules that would otherwise apply to them;
- (d) the keeping of records, or the provision of records or other information, relating to compliance with (or determining whether there has been compliance with) the rules;
- (e) any other matters that the provisions of this Act provide may be dealt with in the financial benchmark rules.

Subdivision B—Power to make compelled financial benchmark rules

908CD ASIC may make compelled financial benchmark rules

Subject to this Division, ASIC may, by legislative instrument, make rules (the *compelled financial benchmark rules*) conferring

one or more of the powers, or dealing with one or more of the matters, permitted by this Subdivision.

Note: Subdivision D deals with the process of making the rules.

908CE Permitted powers and matters that may be dealt with in the rules

- (1) The permitted powers and matters are the following:
 - (a) the power for ASIC to require, by written notice, an entity referred to in paragraph 908CB(h):
 - (i) to provide data or information to a benchmark administrator licensee, or to another entity, for the generation or administration of a significant financial benchmark specified in that licence; and
 - (ii) to provide ASIC with some or all of that data or information for purposes relating to the generation or administration of that significant financial benchmark;
 - (b) the power for ASIC to require, by written notice, a benchmark administrator licensee:
 - (i) to continue to generate or administer a significant financial benchmark specified in that licence; or
 - (ii) to generate or administer in a particular way a significant financial benchmark specified in that licence;
 - (c) powers or matters incidental or related to:
 - (i) one or more of the above powers; or
 - (ii) the compulsory generation or administration of a significant financial benchmark specified in a benchmark administrator licence;including a power or matter prescribed by the regulations for the purposes of this paragraph.
- (2) However, ASIC may only require something under a power referred to in subsection (1) if:
 - (a) ASIC reasonably believes it is in the public interest to do so; and
 - (b) in the case of paragraph (1)(a)—the activities of the entity concerned have previously resulted in the provision of data or information to that licensee for the generation or administration of that significant financial benchmark.

Subdivision C—Compliance with each set of rules etc.

908CF Obligation to comply with each set of rules

- (1) A person (whether a benchmark administrator licensee or otherwise) must comply with:
 - (a) provisions of the financial benchmark rules; and
 - (b) provisions of the compelled financial benchmark rules;that apply to the person.

Note 1: This subsection is a civil penalty provision (see section 1317E). For the maximum penalty amount for contravening a provision of the rules, see section 908CO and subsection 1317G(1DD). For relief from liability to a civil penalty relating to this subsection, see section 1317S.

Note 2: The regulations may limit the persons on whom each set of rules may impose requirements (see section 908CP).

- (2) If there is an inconsistency between the financial benchmark rules and the compelled financial benchmark rules, the compelled financial benchmark rules prevail to the extent of the inconsistency.
- (3) If there is an inconsistency between any of the rules made under this Division and any of the other rules made under other provisions of this Chapter, those other rules prevail to the extent of the inconsistency.

908CG Alternatives to civil proceedings

- (1) The regulations may provide for a person who is alleged to have contravened subsection 908CF(1) to do one or more of the following as an alternative to civil proceedings:
 - (a) pay a penalty to the Commonwealth;
 - (b) undertake or institute remedial measures (including education programs);
 - (c) accept sanctions other than the payment of a penalty to the Commonwealth.
- (2) The penalty payable under regulations made for the purposes of paragraph (1)(a) in relation to a rule must not exceed one-fifth of the penalty amount specified for the rule in the applicable set of rules.

908CH Infringement notices

- (1) Subsection 908CF(1) is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Infringement officer

- (2) For the purposes of Part 5 of the Regulatory Powers Act, each staff member of ASIC who holds, or is acting in, an office or position that is equivalent to an SES employee is an infringement officer in relation to subsection 908CF(1) of this Act.

Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, each member of ASIC (within the meaning of section 9 of the ASIC Act) is the relevant chief executive in relation to subsection 908CF(1) of this Act.

908CI Enforceable undertakings

- (1) Subsection 908CF(1) is enforceable under Part 6 of the Regulatory Powers Act (about enforceable undertakings).

Authorised person

- (2) For the purposes of Part 6 of the Regulatory Powers Act, each staff member of ASIC who holds, or is acting in, an office or position that is equivalent to an SES employee is an authorised person in relation to subsection 908CF(1) of this Act.

Relevant courts

- (3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to subsection 908CF(1) of this Act:
- (a) the Federal Court of Australia;
 - (b) the Federal Circuit Court of Australia;
 - (c) a court of a State or Territory that has jurisdiction in relation to the matter.

908CJ Protection from liability for compliance in good faith

If:

- (a) a person (the *protected person*):
 - (i) provides financial benchmark data, or other information, to another person; or
 - (ii) otherwise allows another person access to financial benchmark data, or other information; or
 - (iii) generates or administers in a particular way a significant financial benchmark specified in a benchmark administrator licence; and
- (b) the protected person does so, in good faith, in compliance with a requirement imposed by the compelled financial benchmark rules;

the protected person is not liable to an action or other proceeding, whether civil or criminal, for or in relation to that conduct.

Subdivision D—Matters relating to the making of each set of rules

908CK Matters to which ASIC has regard when making rules

In considering whether to make a rule under this Division, ASIC:

- (a) must have regard to:
 - (i) the final report titled “Principles for Financial Benchmarks”, dated July 2013 and published by the Board of the International Organization of Securities Commissions, as amended from time to time; and
 - (ii) the likely effect of the proposed rule on the Australian economy, and on the efficiency, integrity and stability of the Australian financial system; and
 - (iii) the likely regulatory impact of the proposed rule; and
- (b) may have regard to any other matters that ASIC considers relevant.

Note 1: The Principles for Financial Benchmarks could in 2018 be viewed on the International Organization of Securities Commissions website (<https://www.iosco.org/>).

Note 2: Matters that ASIC may have regard to under paragraph (b) could, for example, include foreign laws relating to financial benchmarks, and any matters raised in consultations under section 908CL.

908CL ASIC to consult before making rules

- (1) ASIC must not make a rule under this Division unless ASIC:
 - (a) has consulted the public about the proposed rule; and
 - (b) has also consulted any other person or body as required by regulations made for the purposes of this paragraph.

Note: In some situations, consultation is not required (see section 908CN).

- (2) Without limiting the ways in which ASIC may comply with the obligation in paragraph (1)(a) to consult the public about a proposed rule, ASIC is taken to comply with that obligation if ASIC, on its website:
 - (a) makes the proposed rule, or a description of the content of the proposed rule, available; and
 - (b) invites the public to comment on the proposed rule.
- (3) A failure to consult as required by subsection (1) does not invalidate a rule.

908CM Ministerial consent to rules required

- (1) ASIC must not make a rule under this Division unless consent for it has been given under subsection (2).

Note: In some situations, consent is not required (see section 908CN).

- (2) The Minister may, in writing, consent to the making of a rule under this Division.

908CN Emergency rules: consultation and consent not required

- (1) ASIC may make a rule under this Division without consulting as required by section 908CL, and without the consent of the Minister as required by section 908CM, if ASIC is of the opinion that it is necessary, or in the public interest, to do so in order to protect:
 - (a) the Australian economy; or
 - (b) the efficiency, integrity or stability of the Australian financial system; or
 - (c) the security or confidentiality of financial benchmark data.
- (2) However, if ASIC does so, ASIC must:

- (a) provide the Minister, on the following day, with a written explanation of the need for the rule; and
 - (b) vary or revoke the rule in accordance with any direction under subsection (3).
- (3) The Minister may give ASIC a written direction to vary or revoke a rule made as described in subsection (1).
- (4) A direction under subsection (3) is not a legislative instrument.

908CO Requirements and penalty amounts

Each of the financial benchmark rules and compelled financial benchmark rules may:

- (a) deal with a matter by imposing requirements; or
- (b) specify a penalty amount for a rule.

A penalty amount must not exceed 5,550 penalty units (for any entity).

908CP Regulations may limit how rules may deal with certain matters

- (1) The regulations may prescribe limits on:
- (a) the extent to which, or the way in which, the financial benchmark rules may deal with matters permitted by Subdivision A; or
 - (b) the classes of persons on whom those rules may impose requirements; or
 - (c) the extent to which those rules may impose requirements (or certain kinds of requirements) on certain classes of persons.
- (2) The regulations may prescribe limits on:
- (a) the extent to which, or the way in which, the compelled financial benchmark rules may deal with matters permitted by Subdivision B; or
 - (b) the classes of persons on whom those rules may impose requirements; or
 - (c) the extent to which those rules may impose requirements (or certain kinds of requirements) on certain classes of persons.

908CQ Varying or revoking the rules

- (1) ASIC may vary or revoke a rule made under this Division in like manner and subject to like conditions (see subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*).
- (2) However, the requirements of sections 908CK, 908CL and 908CM do not apply in relation to a variation or revocation pursuant to a direction by the Minister under subsection 908CN(3).

Division 4—Offences and civil penalties relating to manipulation of financial benchmarks

908DA Manipulation of financial benchmarks

Civil penalty provisions

- (1) A person contravenes this subsection if:
 - (a) the person does, or omits to do, one or more acts; and
 - (b) the acts or omissions have or are likely to have the effect of influencing the level at which a financial benchmark is generated or administered; and
 - (c) the person intends for the acts or omissions to have that effect (whether or not the person also intends for the acts or omissions to have another effect).

Note 1: This is a civil penalty provision (see section 1317E). For relief from liability, see section 1317S.

Note 2: Section 908DD (about geographical scope) causes this subsection to be read down so that it covers persons who are Australian entities, or persons whose acts or omissions occur wholly or partly in Australia etc.

- (2) A person contravenes this subsection if:
 - (a) paragraphs (1)(a) to (c) apply in relation to the person, one or more acts or omissions, and a financial benchmark; and
 - (b) the acts or omissions result, or are likely to result, in an Australian entity suffering financial or other disadvantage from use of the financial benchmark.

Note 1: This is a civil penalty provision (see section 1317E). For relief from liability, see section 1317S.

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Note 2: This subsection extends subsection (1) so that persons, who are not otherwise covered, will be covered if a result of their acts or omissions occurs wholly or partly in Australia etc.

Offence

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Note: For the penalty for the offence, see section 908DC. For its geographical scope, see section 908DD.

908DB False or misleading statements or information that could affect financial benchmarks

Civil penalty provisions

- (1) A person contravenes this subsection if:
- (a) the person makes one or more statements, or disseminates information; and
 - (b) the statements or information:
 - (i) are false or misleading; or
 - (ii) omit any matter or thing without which the statements or information are misleading; and
 - (c) the person knows the statements or information could be used in the generation or administration of a financial benchmark.

Note 1: This is a civil penalty provision (see section 1317E). For relief from liability, see section 1317S.

Note 2: Section 908DD (about geographical scope) causes this subsection to be read down so that it covers persons who are Australian entities, or persons whose conduct occurs wholly or partly in Australia etc.

- (2) A person contravenes this subsection if:
- (a) paragraphs (1)(a) to (c) apply in relation to the person, one or more statements or information, and a financial benchmark; and
 - (b) making the statements or disseminating the information results, or is likely to result, in an Australian entity suffering financial or other disadvantage from use of the financial benchmark.

Note 1: This is a civil penalty provision (see section 1317E). For relief from liability, see section 1317S.

Note 2: This subsection extends subsection (1) so that persons, who are not otherwise covered, will be covered if a result of their conduct occurs wholly or partly in Australia etc.

Offence

- (3) A person commits an offence if the person contravenes subsection (1) or (2).

Note: For the penalty for the offence, see section 908DC. For its geographical scope, see section 908DD.

908DC Penalties for offences against this Division

Penalty for an individual

- (1) An offence against this Division committed by an individual is punishable on conviction by either or both of the following:
- (a) imprisonment for not more than 10 years;
 - (b) a fine of not more than the greater of:
 - (i) 4,500 penalty units; and
 - (ii) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value.

Penalty for a body corporate

- (2) An offence against this Division committed by a body corporate is punishable on conviction by a fine of not more than the greater of:
- (a) 45,000 penalty units; and
 - (b) if the court can determine the total value of the benefits that have been obtained by one or more persons and are reasonably attributable to the commission of the offence—3 times that total value; and
 - (c) if the court cannot determine the total value of those benefits—10% of the body corporate's annual turnover during the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

908DD Geographical scope of offences and civil penalty provisions

Offences

- (1) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to each offence against this Division.

Contraventions of civil penalty provisions

- (2) A declaration of contravention by a person must not be made under section 1317E relating to an alleged contravention by the person of a civil penalty provision in this Division unless:
- (a) the person's conduct that allegedly contravenes the provision occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (b) the person's conduct that allegedly contravenes the provision occurs wholly outside Australia and a result of the conduct occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian aircraft or an Australian ship; or
 - (c) the person's conduct that allegedly contravenes the provision occurs wholly outside Australia and, at the time of the alleged contravention, the person is an Australian entity.

Defences relating to contraventions of civil penalty provisions

- (3) In proceedings under section 1317E for a declaration of contravention by a person relating to an alleged contravention by the person of a civil penalty provision in this Division, it is a defence if:
- (a) the conduct constituting the alleged contravention occurs wholly in a foreign country, but not on board an Australian aircraft or an Australian ship; and
 - (b) the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and

- (c) there is not in force in:
 - (i) the foreign country where the conduct constituting the alleged contravention occurs; or
 - (ii) the part of the foreign country where the conduct constituting the alleged contravention occurs;
a law of that foreign country, or a law of that part of that foreign country, that provides for a pecuniary or criminal penalty for such conduct.
- (4) A defendant bears an evidential burden in relation to the matter in subsection (3).

Attorney-General's consent needed for certain proceedings

- (5) The Attorney-General's prior written consent must be obtained to commence proceedings under section 1317E for a declaration of contravention by a person relating to an alleged contravention by the person of a civil penalty provision in this Division if:
 - (a) the conduct constituting the alleged contravention occurs wholly in a foreign country; and
 - (b) at the time of the alleged contravention, the person is neither:
 - (i) an Australian citizen; nor
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

When conduct taken to occur partly in Australia

- (6) For the purposes of (but without limiting) this section, if a person sends a thing, or causes a thing to be sent:
 - (a) from a point outside Australia to a point in Australia; or
 - (b) from a point in Australia to a point outside Australia;that conduct is taken to have occurred partly in Australia.
- (7) For the purposes of (but without limiting) this section, if a person sends, or causes to be sent, an electronic communication:
 - (a) from a point outside Australia to a point in Australia; or
 - (b) from a point in Australia to a point outside Australia;that conduct is taken to have occurred partly in Australia.

Definitions

(8) In this section:

Australian aircraft has the same meaning as in the *Criminal Code*.

Australian ship has the same meaning as in the *Criminal Code*.

conduct has the same meaning as in the *Criminal Code*.

electronic communication has the same meaning as in the *Criminal Code*.

evidential burden has the same meaning as in the *Criminal Code*.

foreign country has the same meaning as in the *Criminal Code*.

point has the same meaning as in section 16.2 of the *Criminal Code*.

Division 5—Other provisions

908EA Making provision by referring to instruments as in force from time to time

- (1) This section applies to the following instruments:
 - (a) regulations made for the purposes of a provision of this Part;
 - (b) rules made under Division 3.
- (2) An instrument to which this section applies may make provision in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (3) Subsection (2) has effect despite subsection 14(2) of the *Legislation Act 2003*.

908EB Exemptions by the regulations or by ASIC

- (1) The *provisions covered by this section* are:
 - (a) the following provisions:
 - (i) the provisions of this Part;
-

- (ii) the provisions of regulations made for the purposes of provisions of this Part;
 - (iii) the provisions of rules made under Division 3; and
 - (b) definitions in this Act, or in the regulations, as they apply to references in provisions referred to in paragraph (a).
- (2) The regulations, or ASIC by written instrument, may:
- (a) exempt a person or class of persons from all or specified provisions covered by this section; or
 - (b) exempt a financial benchmark or class of financial benchmarks from all or specified provisions covered by this section.
- (3) An exemption may apply unconditionally or subject to specified conditions. A person to whom a condition specified in an exemption applies must comply with the condition. The Court may, on application by ASIC, order the person to comply with the condition in a specified way.
- (4) An exemption by ASIC is a legislative instrument if the exemption is expressed to apply in relation to:
- (a) a class of persons; or
 - (b) a class of financial benchmarks;
- (whether or not it is also expressed to apply in relation to one or more persons or financial benchmarks identified otherwise than by reference to membership of a class).
- (5) If subsection (4) does not apply to an exemption by ASIC, ASIC must publish the exemption.
- (6) If there is an inconsistency between:
- (a) an exemption prescribed by regulations made for the purposes of subsection (2); and
 - (b) an exemption by ASIC under that subsection;
- (including in relation to any conditions specified by ASIC), the regulations prevail to the extent of the inconsistency.

Part 2—Main consequential amendments

Corporations Act 2001

2 Section 9

Insert:

benchmark administrator licence means a licence granted under section 908BC.

benchmark administrator licensee means a person who holds a benchmark administrator licence.

3 Section 9 (paragraph (c) of the definition of *civil penalty order*)

Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

4 Section 9

Insert:

compelled financial benchmark rules means rules made under section 908CD.

financial benchmark has the meaning given by section 908AB.

financial benchmark data means:

- (a) information obtained to generate or administer a financial benchmark; or
- (b) information (including statistical data) that is created or derived from information referred to in paragraph (a).

financial benchmark rules means rules made under section 908CA.

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

significant financial benchmark has the meaning given by section 908AC.

5 Paragraph 199A(2)(b)

Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

6 Subsection 199A(3) (note 1)

Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

7 Section 761A

Insert:

Australian entity means:

- (a) an Australian citizen; or
- (b) a resident of Australia (within the meaning of the *Criminal Code*); or
- (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory.

8 Section 761A (note at the end of the definition of *financial product*)

Repeal the note, substitute:

Note: Some references in this Chapter to financial products have effect subject to particular express exclusions (for example, see sections 1010A and 1074A) or inclusions (see section 1040B).

9 Section 853B

Omit “or a derivative trade repository licensee”, substitute “, a derivative trade repository licensee or a benchmark administrator licensee”.

10 Subsection 853C(1)

Omit “or a derivative trade repository licensee”, substitute “, a derivative trade repository licensee or a benchmark administrator licensee”.

11 Paragraphs 853D(2)(a) and (b)

Omit “or an Australian derivative trade repository licence”, substitute “, an Australian derivative trade repository licence or a benchmark administrator licence”.

12 Subsections 853F(1) and (2)

Omit “or a derivative trade repository licensee”, substitute “, a derivative trade repository licensee or a benchmark administrator licensee”.

13 Section 853G

Omit “or a derivative trade repository licensee”, substitute “, a derivative trade repository licensee or a benchmark administrator licensee”.

14 After section 1040A

Insert:

1040B Treat certain instruments as if they were financial products and Division 3 financial products

- (1) This Part applies to bank accepted bills, and to negotiable certificates of deposit, as if they were:
 - (a) financial products; and
 - (b) Division 3 financial products (within the meaning of Division 3).
- (2) If a term used in this Part is defined outside of this Part by reference to financial products, treat that term when used in this Part as if that reference to financial products included a reference to each of the following:
 - (a) bank accepted bills;
 - (b) negotiable certificates of deposit.
- (3) Subsections (1) and (2) do not, by implication, affect the interpretation of any other provision:
 - (a) of this Act; or
 - (b) of an instrument made under this Act.

15 Paragraph 1100A(1)(b)

After “798H(1) (complying with market integrity rules)”, insert “, 908CF(1) (complying with rules about financial benchmarks)”.

16 After paragraph 1100A(2)(d)

Insert:

or (e) a benchmark administrator licensee;

17 Paragraph 1101B(1)(d)

After “a licensed market,” insert “or subsection 908CF(1) (complying with rules about financial benchmarks),”.

18 Paragraph 1101B(4)(b)

After “operating rules of a licensed CS facility”, insert “, or a provision of the financial benchmark rules or the compelled financial benchmark rules,”.

19 Subparagraph 1101B(4)(c)(i)

After “a licensed market”, insert “, or a provision of the financial benchmark rules or the compelled financial benchmark rules,”.

20 Subparagraph 1101B(4)(d)(i)

After “a licensed market,” insert “or a provision of the financial benchmark rules or the compelled financial benchmark rules,”.

21 Before paragraph 1312(2)(a)

Insert:

(aa) subsection 908DA(3) or 908DB(3);

22 Subsection 1312(2) (note)

After “are”, insert “generally”.

23 Before paragraph 1317C(ge)

Insert:

(gdf) a decision by ASIC to make a declaration under subsection 908AC(2), or to vary or revoke such a declaration (about significant financial benchmarks); or

(gdg) a decision by the Minister under:

(i) subsection 908AC(4) to consent to the making of a declaration under subsection 908AC(2); or

(ii) subsection 908AD(3) to direct ASIC to revoke a declaration made under subsection 908AC(2); or

(gdh) a decision of the Minister under subsection 908BU(2) to disallow a direction or notice given by ASIC under

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- section 908BT (about compliance directions or notices given to benchmark administrator licensees); or
- (gdi) a decision by ASIC to make rules under Division 3 of Part 7.5B, or to vary or revoke such rules; or
 - (gdj) a decision by ASIC to do or not do anything under regulations made for the purposes of subsection 908CG(1) (alternatives to civil proceedings for contraventions of rules about financial benchmarks); or
 - (gdk) a decision by the Minister:
 - (i) under subsection 908CM(2) to consent to the making of rules under Division 3 of Part 7.5B; or
 - (ii) under subsection 908CN(3) to direct ASIC to vary or revoke rules made under Division 3 of Part 7.5B; or
 - (gdl) a decision by ASIC to require something, by giving written notice, under the compelled financial benchmark rules; or

24 Subsection 1317E(1) (after table item 17)

Insert:

17A	subsection 908CF(1)	complying with financial benchmark rules or compelled financial benchmark rules
17B	subsections 908DA(1) and (2) and 908DB(1) and (2)	manipulating financial benchmarks

25 At the end of subsection 1317E(1)

Add:

- Note 3: Section 908DD contains some matters relevant for making declarations of contravention for the civil penalty provisions mentioned in table item 17B (about manipulating financial benchmarks).

26 After subsection 1317G(1DB)

Insert:

Financial benchmark rules and compelled financial benchmark rules

- (1DC) A Court may order a person to pay the Commonwealth a pecuniary penalty if:

- (a) a declaration of contravention by the person has been made under section 1317E; and
 - (b) the contravention is of subsection 908CF(1) (complying with rules about financial benchmarks).
- (1DD) The maximum amount that the court may order the person to pay for contravening a financial benchmark rule, or a compelled financial benchmark rule, is the penalty amount specified in those rules for the rule that has been contravened.

Manipulating financial benchmarks

- (1DE) A Court may order a person to pay the Commonwealth a pecuniary penalty if:
- (a) a declaration of contravention by the person has been made under section 1317E; and
 - (b) the contravention is of subsection 908DA(1) or (2) or 908DB(1) or (2).
- (1DF) The maximum amount that the court may order the person to pay for contravening a provision mentioned in paragraph (1DE)(b) is:
- (a) \$200,000 for an individual; or
 - (b) \$1 million for a body corporate.

27 After section 1317HB

Insert:

1317HC Compensation orders—financial benchmark rules or compelled financial benchmark rules

Compensation for damage suffered

- (1) A Court may order a person (the *liable person*) to compensate another person (including a corporation), or a registered scheme, for damage suffered by the person or scheme if:
- (a) the liable person has contravened subsection 908CF(1) (complying with rules about financial benchmarks); and
 - (b) the damage resulted from the contravention.

The order must specify the amount of compensation.

Note: An order may be made under this subsection whether or not a declaration of contravention has been made under section 1317E.

Damage includes profits

- (2) In determining the damage suffered by a person or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention.

Damage to scheme includes diminution of value of scheme property

- (3) In determining the damage suffered by a registered scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.

Recovery of damage

- (4) A compensation order may be enforced as if it were a judgment of the Court.

28 Subsection 1317S(1) (paragraphs (a) and (b) of the definition of *eligible proceedings*)

Omit “or 1317HB”, substitute “, 1317HB or 1317HC”.

29 Section 1324B

After “section 901E or 903D”, insert “, subsection 908CF(1)”.

30 Subsections 1325(1), (2) and (3)

After “subsection 798H(1)” (wherever occurring), insert “or 908CF(1)”.

31 In the appropriate position in Chapter 10

Insert:

**Part 10.30—Transitional provisions relating to the
Treasury Laws Amendment (2017
Measures No. 5) Act 2018**

1639 Definitions

In this Part:

start day means the later of:

- (a) 1 January 2018; and
- (b) the day after the *Treasury Laws Amendment (2017 Measures No. 5) Act 2018* receives the Royal Assent.

1640 Application—obligation to comply with rules about financial benchmarks

Subsection 908CF(1) applies on or after the start day in relation to rules made before, on or after that day.

1641 Application—offences relating to manipulation of financial benchmarks

Division 4 of Part 7.5B applies in relation to acts or omissions occurring on or after the start day (whether or not the financial benchmark to which the acts or omissions relate is first generated or administered before, on or after the start day).

1642 Application—extended meaning of financial products and Division 3 financial products for Part 7.10

Section 1040B applies in relation to acts or omissions occurring on or after the start day (whether or not the bank accepted bills or negotiable certificates of deposit to which the acts or omissions relate are issued before, on or after the start day).

Part 3—Other consequential amendments

Treasury Laws Amendment (2016 Measures No. 1) Act 2017

32 Items 27 and 28 of Schedule 5

Repeal the items, substitute:

27 Section 1324B

After “subsection 908CF(1)”, insert “or 981M(1)”.

28 Subsections 1325(1), (2) and (3)

Omit “or 908CF(1)” (wherever occurring), insert “, 908CF(1) or 981M(1)”.

Schedule 2—Indigenous policy and program evaluation

Productivity Commission Act 1998

2 Paragraph 23(1)(b)

Omit “11”, substitute “12”.

3 Paragraph 23(2)(c)

Repeal the paragraph, substitute:

- (c) the lack of a Commissioner who meets the requirements of subsection 24(3), (4), (5) or (6) for a period of not more than 4 months.

4 At the end of section 24

Add:

- (6) At least one Commissioner must:
 - (a) have extensive skills and experience in dealing with policies and programs that have an impact on Indigenous persons; and
 - (b) have experience in dealing with one or more communities of Indigenous persons.

5 Subsections 26(3), (4) and (5)

Repeal the subsections.

*[Minister’s second reading speech made in—
House of Representatives on 7 September 2017
Senate on 19 March 2018]*

(187/17)
