# Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

# No. 17, 2019

## An Act to amend the law in relation to penalties and other enforcement mechanisms within legislation administered by ASIC, and for related purposes

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

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# Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

**No. 17, 2019**

## An Act to amend the law in relation to penalties and other enforcement mechanisms within legislation administered by ASIC, and for related purposes

[*Assented to 12 March 2019*]

The Parliament of Australia enacts:



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## 1 Short title

This Act is the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

## 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. | 12 March 2019 |
| 2. Schedules 1, 2, 3 and 4 | The day after this Act receives the Royal Assent. | 13 March 2019 |
| 3. Schedule 5, Part 1 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of the *Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019*.<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 4. Schedule 5, Part 2 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of items 1 to 11 of Schedule 1 to the | |



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| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| | *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Act 2019.*<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 5. Schedule 5, Part 3, Division 1 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of Division 2 of Part 2 of Schedule 5 to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018.*<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 13 March 2019<br>(paragraph (a) applies) |
| 6. Schedule 5, Part 3, Division 2 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of Parts 3 and 4 of Schedule 5 to the *Treasury Laws Amendment (Banking Measures No. 1) Act 2018.*<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | 13 March 2019<br>(paragraph (a) applies) |
| 7. Schedule 5, Part 4, Division 1 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of Schedule 1 to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*. | |



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| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| | However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 8. Schedule 5, Part 4, Division 2 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of Schedule 2 to the *Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019*.<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 9. Schedule 5, Part 5 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of Schedule 6 to the *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019.*<br>However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur. | |
| 10. Schedule 5, Part 6 | The later of:<br>(a) immediately after the commencement of the provisions covered by table item 2; and<br>(b) immediately after the commencement of sections 3 to 249 of the *Federal Circuit and Family Court of Australia Act 2019*.<br>However, the provisions do not commence | |



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| Commencement information | | |
|---|---|---|
| **Column 1** | **Column 2** | **Column 3** |
| **Provisions** | **Commencement** | **Date/Details** |
| | at all if the event mentioned in paragraph (b) does not occur. | |

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.



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# Schedule 1—Amendment of the Corporations Act 2001

## Part 1—Amendments

### *Corporations Act 2001*

#### 1 Section 9

Insert:

***annual turnover***, when used in a provision outside Chapter 7, has the same meaning as it has in Chapter 7.

***benefit derived and detriment avoided***:

(a) because of an offence—has the meaning given by section 1311D; and

(b) because of a contravention of a civil penalty provision—has the meaning given by section 1317GAD.

#### 2 Section 9 (after paragraph (b) of the definition of *civil penalty order*)

Insert:

(baa) a relinquishment order under section 1317GAB;

#### 3 Section 9 (definition of *civil penalty provision*)

Omit “subsection 1317E(1)”, substitute “subsection 1317E(3)”.

#### 4 Section 9 (definition of *compliance period*)

Repeal the definition.

#### 5 Section 9

Insert:

***contravene***, in relation to a civil penalty provision, has a meaning affected by subsection 1317E(4).



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## 6 Section 9 (definition of *corporation/scheme civil penalty provision*)

Omit "section 1317DA", substitute "subsection 1317E(3)".

## 7 Section 9

Insert:

> ***dishonest*** means dishonest according to the standards of ordinary people.

## 8 Section 9 (definition of *financial services civil penalty provision*)

Omit "section 1317DA", substitute "subsection 1317E(3)".

## 9 Section 9

Insert:

> ***individual fine formula*** means the formula set out in subsection 1311B(3).

## 10 Section 9 (definition of *infringement notice*)

Repeal the definition.

## 11 Section 9 (at the end of the definition of *offence based on*)

Add:

; or (c) if another provision creates an offence relating to that provision—an offence against that other provision or section 1314 that relates to that other provision.

## 12 Section 9

Insert:

> ***Part 7.7A civil penalty provision*** means any of the following provisions:
>
> (a) subsections 961K(1) and (2) (financial services licensee responsible for breach of certain best interests duties);
>
> (b) section 961L (financial services licensee to ensure compliance with certain best interests duties);



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(c) subsection 961Q(1) (authorised representative responsible for breach of certain best interests duties);
(d) section 962P (charging ongoing fee after termination of ongoing fee arrangement);
(e) subsection 962S(1) (fee recipient must give fee disclosure statement);
(f) subsections 963E(1) and (2) (financial services licensee must not accept conflicted remuneration);
(g) section 963F (financial services licensee must ensure representatives do not accept conflicted remuneration);
(h) subsection 963G(1) (authorised representative must not accept conflicted remuneration);
(i) section 963J (employer must not pay employees conflicted remuneration);
(j) section 963K (financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative);
(k) subsection 964A(1) (platform operator must not accept volume-based shelf-space fees);
(l) subsections 964D(1) and (2) (financial services licensee must not charge asset-based fees on borrowed amounts);
(m) subsection 964E(1) (authorised representative must not charge asset-based fees on borrowed amounts);
(n) section 965 (anti-avoidance of Part 7.7A provisions).

***payment period***, in relation to an infringement notice issued under Part 9.4AB, has the meaning given by section 1317DAQ.

***relinquishment order*** has the meaning given by subsection 1317GAB(1).

***subject to an infringement notice*** under Part 9.4AB has a meaning given by section 1317DAN.

## 13 Paragraph 5.3 of the small business guide in Part 1.5

Omit:

• may be guilty of a criminal offence with a penalty of $200,000 or imprisonment for up to 5 years, or both; and



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• may contravene a civil penalty provision (and the Court may order the person to pay to the Commonwealth an amount of up to $200,000); and

substitute:

• may be guilty of a criminal offence with a penalty of imprisonment for up to 10 years or a fine, or both (the fine is the greater of 4,500 penalty units and 3 times the amount of the benefit derived and detriment avoided because of the offence); and

• may contravene a civil penalty provision (and the Court may order the person to pay the Commonwealth an amount equal to the greater of 5,000 penalty units and 3 times the amount of the benefit derived and detriment avoided because of the contravention); and

## 14 Paragraph 184(1)(b)

Omit "intentionally".

## 15 After subsection 184(2)

Insert:

(2A) To avoid doubt, it is not a defence in a proceeding for an offence against subsection (2) that the director, other officer or employee of the corporation uses their position dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for the corporation; or

(b) with the result that the corporation directly or indirectly gained an advantage.

## 16 At the end of section 184

Add:

(4) To avoid doubt, it is not a defence in a proceeding for an offence against subsection (3) that the person uses the information dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for the corporation; or



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(b) with the result that the corporation directly or indirectly gained an advantage.

## 17 Subsection 198G(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 18 Subsection 205G(1)

Omit "under subsections (3) and (4)", substitute "in accordance with subsections (2), (3) and (4)".

## 19 Subsection 205G(9)

Repeal the subsection (including the note), substitute:

*Fault-based offence*

(9) A person commits an offence if the person contravenes subsection (1).

*Strict liability offence*

(10) A person commits an offence of strict liability if the person contravenes subsection (1).

## 20 Subparagraph 206C(1)(a)(i)

After "contravened a corporation/scheme civil penalty provision", insert "or subsection 670A(4), 727(6), 728(4) or 1309(12)".

## 21 Section 250SA

Before "At a listed company's AGM,", insert "(1)".

## 22 At the end of section 250SA

Add:

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

## 23 Subsection 286(3)

Repeal the subsection (including the note), substitute:



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*Fault-based offence*

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

*Strict liability offence*

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

## 24 Subsection 307A(3)

Repeal the subsection (including the note), substitute:

*Fault-based offence*

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

*Strict liability offence*

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

## 25 Subsection 347A(3)

Repeal the subsection (including the note), substitute:

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

## 26 Subsection 347B(3)

Repeal the subsection (including the note), substitute:

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

## 27 Subsection 428(3)

Repeal the subsection (including the note), substitute:

*Strict liability offence*

(3) An offence based on subsection (1), (2), (2B) or (2C) is an offence of strict liability.



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## 28 Subsection 588G(2) (note)

Omit "subsection 1317E(1)", substitute "section 1317E".

## 29 At the end of subsection 601ED(5)

Add:

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

## 30 At the end of subsection 601ED(7)

Add:

Note: In criminal proceedings, a defendant in the prosecution of an offence under subsection (5) bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

## 31 At the end of section 601ED

Add:

(8) A person contravenes this subsection if the person contravenes subsection (5).

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

## 32 Subsection 606(4A)

Repeal the subsection (including the note), substitute:

*Fault-based offence*

(4A) A person commits an offence if the person contravenes subsection (1), (2) or (4).

*Absolute liability offence*

(4B) A person commits an offence of absolute liability if the person contravenes subsection (1), (2) or (4).

## 33 At the end of section 670A

Add:

*Civil liability*

(4) A person contravenes this subsection if:



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(a) the person contravenes subsection (1); and
(b) either:
(i) the misleading or deceptive statement; or
(ii) the omission or new circumstance;
is materially adverse from the point of view of the holder of securities to whom the document is given.

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

## 34 Subsection 671B(1)

After "to a listed company, or the responsible entity for a listed registered scheme, or the operator of a listed notified foreign passport fund", insert "in accordance with this section".

## 35 Subsection 671B(1A)

Repeal the subsection.

## 36 At the end of section 671B

Add:

*Fault-based offence*

(8) A person commits an offence if the person contravenes subsection (1).

*Strict liability offence*

(9) A person commits an offence of strict liability if the person contravenes subsection (1).

## 37 At the end of section 727

Add:

*Civil liability*

(6) A person contravenes this subsection if the person contravenes subsection (1), (2), (3) or (4).

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



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## 38 At the end of section 728

Add:

*Civil liability if statement, omission or new matter materially adverse*

(4) A person contravenes this subsection if:
  (a) the person contravenes subsection (1); and
  (b) either:
    (i) the misleading or deceptive statement; or
    (ii) the omission or new circumstance;
  is materially adverse from the point of view of an investor.

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

## 39 At the end of section 791A

Add:

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 40 Section 792A

Before "A market licensee", insert "(1)".

## 41 At the end of section 792A

Add:

(2) A person contravenes this subsection if the person contravenes paragraph (1)(a), (c), (d), (e), (f), (g), (h) or (i).

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

## 42 At the end of section 792B

Add:

(7) A person contravenes this subsection if the person contravenes subsection (1), (2), (3), (4) or (5).

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



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## 43 Subsection 793E(4)

Omit "paragraph 792A(a)", substitute "paragraph 792A(1)(a)".

## 44 Subsection 794C(2)

Omit "paragraph 792A(c)", substitute "paragraph 792A(1)(c)".

## 45 Paragraph 795B(1)(c)

Omit "paragraph 792A(a)", substitute "paragraph 792A(1)(a)".

## 46 Subparagraph 795B(1)(d)(i)

Omit "paragraph 792A(a)", substitute "paragraph 792A(1)(a)".

## 47 Subsection 798E(1)

Omit "paragraph 792A(a)", substitute "paragraph 792A(1)(a)".

## 48 Subsection 798G(2)

Repeal the subsection.

## 49 Subsection 798K(2)

Repeal the subsection, substitute:

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a market integrity rule must not exceed:
  (a) for an individual—3,000 penalty units; and
  (b) for a body corporate—15,000 penalty units.

## 50 At the end of section 820A

Add:

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 51 Section 821A

Before "A CS facility licensee", insert "(1)".



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## 52 At the end of section 821A

Add:

(2) A person contravenes this subsection if the person contravenes paragraph (1)(aa), (a), (c), (d), (e), (f), (g) or (h).

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

## 53 At the end of section 821B

Add:

(6) A person contravenes this subsection if the person contravenes subsection (1), (2), (3) or (4).

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

## 54 Paragraph 821BA(1)(b)

Omit "subparagraph 821A(aa)(ii)", substitute "subparagraph 821A(1)(aa)(ii)".

## 55 Subsection 822E(4)

Omit "paragraphs 821A(aa) and (a)", substitute "paragraphs 821A(1)(aa) and (a)".

## 56 Subsection 823C(1)

Omit "paragraph 821A(aa)", substitute "paragraph 821A(1)(aa)".

## 57 Subsection 823C(2)

Omit "paragraph 821A(c)", substitute "paragraph 821A(1)(c)".

## 58 Subsection 823CA(1)

Omit "paragraph 821A(aa)", substitute "paragraph 821A(1)(aa)".

## 59 At the end of section 853F

Add:

(3) A person contravenes this subsection if the person contravenes subsection (2).

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



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## 60 Subsection 901A(4)

Repeal the subsection.

## 61 Subsection 901F(2)

Repeal the subsection, substitute:

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a derivative transaction rule must not exceed:
  (a) for an individual—200 penalty units; and
  (b) for a body corporate—1,000 penalty units.

## 62 Subsection 903A(4)

Repeal the subsection.

## 63 Subsection 903E(2)

Repeal the subsection, substitute:

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a derivative trade repository rule must not exceed:
  (a) for an individual—200 penalty units; and
  (b) for a body corporate—1,000 penalty units.

## 64 Section 904A

Before “A derivative trade repository licensee”, insert “(1)”.

## 65 At the end of section 904A

Add:

(2) A person contravenes this subsection if the person contravenes paragraph (1)(b) or (c).

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

## 66 After subsection 904C(1)

Insert:

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



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

## 67 At the end of section 905A

Add:

(3) A person contravenes this subsection if the person contravenes subsection (2).

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

## 68 Subsection 908BA(1) (penalty)

Repeal the penalty, substitute:

Penalty: 5 years imprisonment.

## 69 Section 908BB (penalty)

Repeal the penalty, substitute:

Penalty: 5 years imprisonment.

## 70 Subsection 908CF(1) (note 1)

Repeal the note, substitute:

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

## 71 Subsection 908CG(2)

Repeal the subsection, substitute:

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a provision of the financial benchmark rules or the compelled financial benchmark rules must not exceed:
  (a) for an individual—1,110 penalty units; and
  (b) for a body corporate—5,550 penalty units.

## 72 Section 908CO

Repeal the section, substitute:



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### 908CO Requirements

Each of the financial benchmark rules and compelled financial benchmark rules may deal with a matter by imposing requirements.

## 73 Section 908DC

Repeal the section, substitute:

### 908DC Penalties for offences against this Division

The penalty for an offence against this Division is 15 years imprisonment.

Note: However, sections 1311A to 1311E will apply in relation to the penalty in the usual way.

## 74 After subsection 911A(5A)

Insert:

(5B) A person contravenes this subsection if the person contravenes subsection (1).

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

## 75 At the end of section 911B

Add:

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

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

## 76 After subsection 912A(5)

Insert:

(5A) A person contravenes this subsection if the person contravenes paragraph (1)(a), (aa), (ca), (d), (e), (f), (g), (h) or (j).

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

## 77 At the end of section 912D

Add:



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(3) A person contravenes this subsection if the person contravenes subsection (1B) or (2).

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

## 78 Subsection 920C(2)

Repeal the subsection (including the note), substitute:

(2) A person against whom a banning order is made must not engage in conduct in breach of the banning order.

*Fault-based offence*

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

*Civil liability*

(4) A person contravenes this subsection if the person contravenes subsection (2).

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

## 79 Subsection 921L(7) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 80 Subsections 921M(1), (2) and (3) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 81 Subsection 921P(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 82 Section 922M

Repeal the section, substitute:



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## 922M Failing to comply with obligation to notify ASIC

*Failing to comply with obligation to notify ASIC*

(1) A person contravenes this subsection if:
  (a) the person is required to cause a notice to be lodged under a notice provision; and
  (b) the person fails to cause the notice to be lodged in accordance with that provision.

Note: A notice must be lodged in accordance with section 922L in order to be lodged in accordance with a notice provision (see subsection (1) of the notice provision).

(2) However, subsection (1) does not apply if:
  (a) the person fails to cause the notice to be lodged in accordance with section 922D; and
  (b) the only reason the person fails to cause the notice to be lodged in accordance with that section is because the information referred to in paragraph 922F(1)(h), (l) or (m) is not included in the notice; and
  (c) subsection 922F(3) provides that the notice does not need to include that information.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Fault-based offence*

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

(4) Subsection 4K(2) of the *Crimes Act 1914* does not apply to subsection (1) of this section.

Note: A person may commit an offence if the person knowingly gives false or misleading information (see section 1308 of this Act and section 137.1 of the *Criminal Code*).

*Civil liability*

(5) A person contravenes this subsection if the person contravenes subsection (1).



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

## 83 At the end of section 941A

Add:

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 84 At the end of section 941B

Add:

(4) A person contravenes this subsection if the person contravenes subsection (1) or (2).

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

## 85 At the end of section 946A

Add:

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

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

## 86 Section 952E

Repeal the section, substitute:

### 952E Giving a defective disclosure document or statement (whether or not known to be defective)

*Financial services licensee gives a defective disclosure document or statement*

(1) A person (the ***providing entity***), being a financial services licensee, contravenes this subsection if:

(a) the providing entity:

(i) gives (see subsection (5)) another person a disclosure document or statement in circumstances in which the document or statement is required by a provision of this Part to be given to the other person; or



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(ii) is a financial services licensee and gives (see subsection (5)), or makes available to, another person a disclosure document or statement, being a Financial Services Guide or a Supplementary Financial Services Guide, reckless as to whether the other person will or may rely on the information in it; and

(b) the disclosure document or statement is defective.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsections 941C(1), (2), (3) and (3A). See subsection 13.3(3) of the *Criminal Code*.

*Authorised representative gives a defective disclosure statement or document*

(2) An authorised representative of a financial services licensee contravenes this subsection if:

(a) the representative gives (see subsection (5)) a person a disclosure document or statement, being a Statement of Advice, or 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), in circumstances in which the document or statement is required by a provision of this Part to be given to the person; and

(b) the disclosure document or statement is defective.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsections 941C(1), (2), (3) and (3A). See subsection 13.3(3) of the *Criminal Code*.

*Exceptions*

(3) A person does not contravene subsection (1) or (2) if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

(4) A person does not contravene subsection (2) if the disclosure document or statement:



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(a) was provided to the person by a financial services licensee for whom they were, at that time, an authorised representative; or

(b) was defective because of information, or an omission from information, provided to them by a financial services licensee for whom they were, at that time, an authorised representative.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

*Meaning of **give***

(5) In this section, ***give*** means give by any means (including orally), and is not limited to the meaning it has because of section 940C.

*Fault-based offence*

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

(7) For the purposes of an offence based on subsection (1), strict liability applies to the physical element of the offence specified in paragraph (1)(b).

(8) For the purposes of an offence based on subsection (2), strict liability applies to the physical element of the offence specified in paragraph (2)(b).

*Civil liability*

(9) A person contravenes this subsection if the person contravenes subsection (1) or (2).

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

## 87 Section 952H

Repeal the section, substitute:



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### 952H Financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required

*Obligation*

(1) A financial services licensee contravenes this subsection if the licensee does not take reasonable steps to ensure that an authorised representative of the licensee:
  (a) complies with their obligations under this Part to give disclosure documents or statements as and when required; and
  (b) without limiting paragraph (a), does not, in purported compliance with obligations under this Part, give disclosure documents or statements that are defective.

*Fault-based offence*

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

*Civil liability*

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 88 At the end of section 981B

Add:

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 89 Section 981C

Before “The regulations”, insert “(1)”.

## 90 At the end of section 981C

Add:



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(2) A person contravenes this subsection if the person contravenes regulations made for the purposes of subsection (1).

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

## 91 Subsection 981K(3)

Repeal the subsection.

## 92 Subsection 981N(2)

Repeal the subsection, substitute:

(2) The penalty payable under regulations made under paragraph (1)(a) in relation to an alleged contravention of a provision of client money reporting rules must not exceed:
  (a) for an individual—3,000 penalty units; and
  (b) for a body corporate—15,000 penalty units.

## 93 Subsection 989CA(3)

Repeal the subsection (including the note), substitute:

*Fault-based offence*

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

*Strict liability offence*

(4) A person commits an offence of strict liability if the person contravenes subsection (1) or (2).

## 94 Section 993D

Repeal the section, substitute:

### 993D Failing to pay loan money into an account as required

*Failing to pay loan money into account as required*

(1) A financial services licensee contravenes this subsection if:
  (a) the licensee is required by subsection 982B(1) to pay particular money into an account in accordance with that subsection; and



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(b) the licensee does not pay the money into an account in accordance with that subsection.

*Fault-based offence*

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

*Strict liability offence*

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

*Civil liability*

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

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

## 95 At the end of section 1012A

Add:

*Civil liability*

(5) A person contravenes this subsection if the person contravenes this section.

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

## 96 At the end of section 1012B

Add:

*Civil liability*

(6) A person contravenes this subsection if the person contravenes this section.

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

## 97 At the end of section 1012C

Add:



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*Civil liability*

(11) A person contravenes this subsection if the person contravenes this section.

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

## 98 After subsection 1017BA(4A)

Insert:

*Civil liability*

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

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

## 99 After subsection 1017BB(5)

Insert:

(5AA) A person contravenes this subsection if the person contravenes subsection (1) or (2), or regulations made for the purposes of subsection (3).

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

## 100 Section 1020A

Repeal the section, substitute:

### 1020A Offers etc. relating to certain managed investment schemes not to be made in certain circumstances

*Obligation*

(1) A person must not engage in conduct of a kind referred to in subsection (2) in relation to a financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes) if the managed investment scheme concerned needs to be, or will need to be, registered and has not been registered. This is so even if it is proposed to register the scheme.



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(2) Subject to subsection (3), the kinds of conduct that must not be engaged in in relation to such a managed investment product are as follows:

(a) making a recommendation, as described in subsection 1012A(3), that is received in this jurisdiction;

(b) making an offer, as described in subsection 1012B(3) or 1012C(3), that is received in this jurisdiction;

(c) accepting an offer, made as described in subsection 1012B(3) or (4), that was received in this jurisdiction.

*Exceptions*

(3) Subsection (2) does not apply to a recommendation or offer made in a situation to which a subsection of section 1012D, other than subsection 1012D(1), applies.

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

*Fault-based offence*

(4) A person commits an offence if the person contravenes subsection (1).

*Civil liability*

(5) A person contravenes this subsection if the person contravenes subsection (1).

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

## 101 Section 1021E

Repeal the section, substitute:

### 1021E Preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective)

*Obligations*

(1) A person contravenes this subsection if:



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(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and
(b) the disclosure document or statement is defective; and
(c) the person:
(i) gives (see subsection (4)) another person the disclosure document or statement in circumstances in which it is required by a provision of this Part to be given to the other person; or
(ii) gives (see subsection (4)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person will or may rely on the information in it.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in sections 1012D, 1012DAA, 1012DA and 1012E.

(2) A person contravenes this subsection if:
(a) the person prepares (or has someone else prepare for them) a disclosure document or statement (not being information required by paragraph 1012G(3)(a)); and
(b) the disclosure document or statement is defective; and
(c) the person gives (see subsection (4)), or makes available to, another person the disclosure document or statement, reckless as to whether the other person, or someone else, will or may give it, or make it available, to another person as mentioned in subparagraph (1)(c)(i) or (ii).

*Exception*

(3) A person does not contravene subsection (1) or (2) if the person took reasonable steps to ensure that the disclosure document or statement would not be defective.

Note: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in subsection (3). See subsection 13.3(3) of the *Criminal Code*.



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*Meaning of **give***

(4) In this section, ***give*** means give by any means (including orally), and is not limited to giving in accordance with section 1015C.

*Fault-based offence*

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

(6) For the purposes of an offence based on subsection (1), strict liability applies to the physical element of the offence specified in paragraph (1)(b).

(7) For the purposes of an offence based on subsection (2), strict liability applies to the physical element of the offence specified in paragraph (2)(b).

*Civil liability*

(8) A person contravenes this subsection if the person contravenes subsection (1) or (2).

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

## 102 Section 1021G

Repeal the section, substitute:

### 1021G Financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required

*Financial services licensee must ensure authorised representative gives etc. disclosure documents or statements as required*

(1) A financial services licensee contravenes this subsection if the licensee does not take reasonable steps to ensure that an authorised representative of the licensee complies with their obligations under this Part to give or communicate disclosure documents or statements as and when required by this Part.



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*Fault-based offence*

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

*Civil liability*

(3) A person contravenes this subsection if the person contravenes subsection (1).

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

## 103 Subsection 1041F(2)

Repeal the subsection.

## 104 Subsection 1041G(1)

Omit "(1)" (first occurring).

## 105 Subsection 1041G(2)

Repeal the subsection.

## 106 Subsection 1211B(3) (penalty)

Repeal the penalty, substitute:

Penalty:

(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and

(b) for a body corporate—20,000 penalty units.

## 107 Subsections 1309(1) and (2)

Omit "is guilty of an offence", substitute "contravenes this subsection".

## 108 At the end of section 1309

Add:

*Fault-based offence*

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



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*Civil liability*

(12) A person contravenes this subsection if the person contravenes subsection (2).

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

## 109 Subsections 1311(2) to (6)

Repeal the subsections (including the note).

## 110 After section 1311

Insert:

### 1311A Penalty for committing an offence

A person who commits an offence against this Act is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.

### 1311B Penalty applicable to an offence committed by an individual

(1) The ***penalty applicable*** to an offence committed by an individual is:

(a) for an offence for which a fine is the only penalty specified—the fine specified; and

(b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.

(2) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula.

(3) The ***individual fine formula*** is:

$$\text{Term of imprisonment, expressed in months} \times 10$$



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(4) If:
  (a) a term of imprisonment is the only penalty specified for an offence; and
  (b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greater of:
  (c) 4,500 penalty units; and
  (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.

(5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:
  (a) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;
  (b) a regulation made under paragraph 1364(2)(w) prescribing a penalty for an individual for a contravention of the regulations.

## 1311C Penalty applicable to an offence committed by a body corporate

(1) The ***penalty applicable*** to an offence committed by a body corporate is:
  (a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and
  (b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.

(2) If:
  (a) a term of imprisonment is the only penalty specified for an offence; and
  (b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.

(3) If:



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(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greatest of:

(c) 45,000 penalty units; and

(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and

(e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

Note: The following are examples of cases in which a penalty is specified that would indicate a contrary intention:

(a) subsection 1211B(3), which specifies a penalty for a body corporate;

(b) the table item in Schedule 3 relating to subsection 794D(3), which specifies a penalty for each day, or part of a day, in respect of which an offence is committed;

(c) a regulation made under paragraph 1364(2)(w) prescribing a penalty for a body corporate for a contravention of the regulations.

## 1311D Meaning of *benefit derived and detriment avoided* because of an offence

The ***benefit derived and detriment avoided*** because of an offence is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the commission of the offence; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the commission of the offence.



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## 1311E Where is the penalty for an offence specified?

(1) The penalty ***specified*** for an offence is:
  (a) if a penalty, pecuniary or otherwise, is specified in Schedule 3 for the provision under which the offence is created, or a provision or provisions in which that provision is included—that penalty; and
  (b) if a penalty, pecuniary or otherwise, is specified in any other provision of this Act for the provision under which the offence is created, or a provision or provisions in which that provision is included—that penalty.

(2) To avoid doubt, a penalty is not ***specified*** for an offence if it is a consequence for committing the offence that is not a punishment on conviction for the offence.

(3) Without limiting subsection (2), each of the following is a consequence for committing an offence that is not a punishment on conviction for the offence:
  (a) the availability of a pecuniary penalty order for the contravention of a civil penalty provision that relates to the same conduct as that which gave rise to the offence;
  (b) the availability of an infringement notice in relation to an alleged commission of the offence;
  (c) the availability of administrative consequences as a result of the commission of the offence, such as:
    (i) disqualification from any office; or
    (ii) consequences in relation to a licence; or
    (iii) other actions that may be taken by ASIC under this Act or any other Act;
  (d) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an order to refund money, pay compensation, relinquish a benefit or make any other payment if the offence is committed;
  (e) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an injunction or any other order directing a person to take, or refrain from taking, action if the offence is committed.



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### 1311F If no penalty is specified

If no penalty is specified for an offence:

(a) the offence is an offence of strict liability; and

(b) 20 penalty units is taken to be the penalty specified for the offence.

## 111 Sections 1312 and 1313

Repeal the sections.

## 112 Paragraph 1317C(gf)

Repeal the paragraph, substitute:

(gf) a decision of ASIC:

(i) to give an infringement notice under section 1317DAM; or

(ii) to extend, or to refuse to extend, the payment period for an infringement notice under section 1317DAR; or

(iii) to make an arrangement, or to refuse to make an arrangement, to pay the amount payable under an infringement notice by instalments under section 1317DAS; or

(iv) to withdraw, or not to withdraw, an infringement notice under section 1317DAT; or

## 113 After Part 9.4AA

Insert:

# Part 9.4AB—Infringement notices for other alleged contraventions

### 1317DAM When an infringement notice may be given

(1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, ASIC may give the person an infringement notice for the alleged contravention.



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(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.

(4) ASIC may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  (b) the person fails or refuses to do that thing within that period or before that time; and
  (c) the failure or refusal occurs on more than 1 day; and
  (d) each contravention is constituted by the failure or refusal on one of those days.

(5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

### 1317DAN Provisions subject to an infringement notice

The following provisions are ***subject to an infringement notice*** under this Part:
  (a) strict liability offences against this Act;
  (b) absolute liability offences against this Act;
  (c) other prescribed offences;
  (d) prescribed civil penalty provisions.

### 1317DAP Matters to be included in an infringement notice

(1) An infringement notice must:
  (a) be identified by a unique number; and
  (b) state the day on which it is given; and
  (c) state the name of the person to whom the notice is given; and
  (d) state the name and contact details of the person who gave the notice; and



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(e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
  (i) the provision that was allegedly contravened; and
  (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
  (iii) the time (if known) and day of, and the place of, each alleged contravention; and
(f) state the amount that is payable under the notice; and
(g) give an explanation of how payment of the amount is to be made; and
(h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and
(i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):
  (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or
  (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or
  (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and
(j) state that payment of the amount is not an admission of guilt or liability; and
(k) state that the person may apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and
(l) state that the person may choose not to pay the amount and, if the person does so:



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(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(m) set out how the notice can be withdrawn; and

(n) state that if the notice is withdrawn:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.

(2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:

(a) for a single contravention of an offence provision—half the maximum penalty that a court could impose on the person for the contravention; and



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(b) for multiple contraventions of an offence provision—the amount worked out under paragraph (a) for a single contravention multiplied by the number of contraventions; and

(c) for a single contravention of a civil penalty provision—12 penalty units for an individual and 60 penalty units for a body corporate; and

(d) for multiple contraventions of a civil penalty provision—the amount worked out under paragraph (c) for a single contravention multiplied by the number of contraventions.

## 1317DAQ Payment period

*Usual payment period*

(1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

*Payment period extended under section 1317DAR*

(2) If, under section 1317DAR, ASIC extends the payment period for the notice, the ***payment period*** is as extended.

(3) If ASIC refuses an application under subsection 1317DAR(1) for an extension of the payment period for the notice, the ***payment period*** ends on the later of the following days:

(a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;

(b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAR(4).

*Instalments*

(4) If, under section 1317DAS, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:

(a) the last day on which an instalment is to be paid under the arrangement;



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(b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.

(5) If ASIC refuses an application made under subsection 1317DAS(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:

(a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;

(b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 1317DAS(4).

*Payment period if ASIC refuses to withdraw infringement notice*

(6) If ASIC refuses a representation made under subsection 1317DAT(1) for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:

(a) the last day of the period that, without the withdrawal, would be the payment period for the notice;

(b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;

(c) the day that is 7 days after the day on which, under subsection 1317DAT(5), ASIC is taken to have refused to withdraw the infringement notice.

## 1317DAR Extension of time to pay amount

(1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.

(2) ASIC may, in writing, extend the payment period for an infringement notice:

(a) if a person makes an application in accordance with subsection (1); or

(b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.



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(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) grant or refuse to grant an extension of the payment period for the infringement notice;
  (b) give the applicant notice in writing of ASIC's decision.

(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may extend the payment period more than once under subsection (2).

### 1317DAS Payment by instalments

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.

(2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
  (a) if a person makes an application in accordance with subsection (1); or
  (b) on ASIC's own initiative.

  ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
  (b) give the applicant notice in writing of ASIC's decision;
  (c) if ASIC decides to make the arrangement, specify in the notice:
    (i) the day by which each instalment is to be paid; and
    (ii) the amount of each instalment.



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(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

(6) If:
  (a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and
  (b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;

ASIC must refund to the person the amount of any instalments paid.

## 1317DAT Withdrawal of an infringement notice

*Representations seeking withdrawal of notice*

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

(2) ASIC may withdraw an infringement notice given to a person:
  (a) if the person makes representations to ASIC in accordance with subsection (1); or
  (b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):
  (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  (b) if ASIC decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and



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(c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.

(4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:

(a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and

(b) may take into account the following:

(i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;

(ii) the circumstances of the alleged contravention;

(iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;

(iv) any other matter ASIC considers relevant.

(5) If ASIC does not comply with subsection (3):

(a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and

(b) the refusal is taken to have occurred on the last day of the 14 day period.

*Notice of withdrawal*

(6) The withdrawal notice must state:

(a) the person's name and address; and

(b) the day the infringement notice was given; and

(c) the identifying number of the infringement notice; and

(d) that the infringement notice is withdrawn; and

(e) that:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order



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may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

(7) If:

(a) ASIC withdraws the infringement notice; and

(b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.

## 1317DAU Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:

(a) any liability of the person for the alleged contravention is discharged; and

(b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and

(c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and

(d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and

(e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and

(f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.



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(2) Subsection (1) does not apply if the notice has been withdrawn.

### 1317DAV Effect of this Part

This Part does not:

(a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

(b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:

(i) the person does not comply with an infringement notice given to the person for the contravention; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

## 114 After Part 9.4B (heading)

Insert:

# Division 1—The Court may make declarations of contravention, pecuniary penalty orders, relinquishment orders, refund orders and compensation orders

## 115 Section 1317DA

Repeal the section.

## 116 Section 1317E

Repeal the section, substitute:



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## 1317E Declaration of contravention of a civil penalty provision

*Declaration of contravention*

(1) If a Court is satisfied that a person has contravened a civil penalty provision, the Court must make a declaration of contravention.

(2) The declaration must specify the following:
  (a) the Court that made the declaration;
  (b) the civil penalty provision that was contravened;
  (c) the person who contravened the provision;
  (d) the conduct that constituted the contravention;
  (e) if the contravention is of a corporation/scheme civil penalty provision—the corporation, registered scheme or notified foreign passport fund to which the conduct related;
  (f) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction)—the passport fund in relation to which the obligation was imposed on the person;
  (g) if the contravention is of subsection 670A(4), 727(6), 728(4) or 1309(12) (misleading statements etc.)—the corporation, registered scheme or notified foreign passport fund to which the conduct related.

*Meanings of* ***civil penalty provision****,* ***corporation/scheme civil penalty provision*** *and* ***financial services civil penalty provision***

(3) In this Act:
  (a) a provision specified in column 1 of the following table is a ***civil penalty provision***; and
  (b) a civil penalty provision categorised as a corporation/scheme provision in column 3 of the following table is a ***corporation/scheme civil penalty provision***; and
  (c) a civil penalty provision categorised as a financial services provision in column 3 of the following table is a ***financial services civil penalty provision***; and
  (d) a provision that is specified as having no categorisation in column 3 of the following table is neither a ***corporation/scheme civil penalty provision*** nor a ***financial services civil penalty provision***.



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| subsections 180(1), 181(1) and (2), 182(1) and (2) and 183(1) and (2) | officers' duties | corporation/scheme |
| subsections 188(1) and (2) | responsibilities of secretaries etc. for corporate contraventions | corporation/scheme |
| subsection 209(2) | related parties rules | corporation/scheme |
| subsections 254L(2), 256D(3), 259F(2) and 260D(2) | share capital transactions | corporation/scheme |
| subsections 344(1) and (1A) | requirements for financial reports | corporation/scheme |
| subsection 588G(2) | insolvent trading | corporation/scheme |
| subsection 601ED(8) | obligation to be registered if operating certain managed investment schemes | corporation/scheme |
| subsection 601FC(5) | duties of responsible entity | corporation/scheme |
| subsection 601FD(3) | duties of officers of responsible entity | corporation/scheme |
| subsection 601FE(3) | duties of employees of responsible entity | corporation/scheme |
| subsection 601FG(2) | acquisition of interest in scheme by responsible entity | corporation/scheme |
| subsection 601JD(3) | duties of members | corporation/scheme |
| subsection 601UAA(2) | duties of officers of licensed trustee company | corporation/scheme |
| subsection 601UAB(2) | duties of employees of licensed trustee company | corporation/scheme |
| subsection 670A(4) | misstatements in, or omissions from, takeover and compulsory acquisition and buy-out documents | uncategorised |
| subsections 674(2), 674(2A), 675(2) and | continuous disclosure | financial services |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| 675(2A) | | |
| subsection 727(6) | offering securities without a current disclosure document | uncategorised |
| subsection 728(4) | misstatement in, or omission from, disclosure document | uncategorised |
| subsection 791A(3) | need for an Australian market licence | uncategorised |
| subsection 792A(2) | general obligations of market licensees | uncategorised |
| subsection 792B(7) | market licensee to notify ASIC of certain matters | uncategorised |
| subsection 798H(1) | complying with market integrity rules | uncategorised |
| subsection 820A(3) | need for an Australian CS facility licence | uncategorised |
| subsection 821A(2) | general obligations of CS facility licensees | uncategorised |
| subsection 821B(6) | CS facility licensee to notify ASIC of certain matters | uncategorised |
| subsection 853F(3) | obligations on disqualified individuals | uncategorised |
| section 901E | complying with derivative transaction rules | uncategorised |
| section 903D | complying with derivative trade repository rules | uncategorised |
| subsection 904A(2) | general obligations of derivative trade repository licensees | uncategorised |
| subsection 904C(1A) | obligation to notify ASIC of inability to meet obligations under section 904A | uncategorised |
| subsection 905A(3) | need to hold a licence to operate a derivative trade repository | uncategorised |
| subsection 908CF(1) | complying with financial | uncategorised |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| | benchmark rules or compelled financial benchmark rules | |
| subsections 908DA(1) and (2) and 908DB(1) and (2) | manipulating financial benchmarks | uncategorised |
| subsection 911A(5B) | need for an Australian financial services licence | uncategorised |
| subsection 911B(4) | providing financial services on behalf of a person who carries on a financial services business | uncategorised |
| subsection 912A(5A) | general obligations of a financial services licensee | uncategorised |
| subsection 912D(3) | financial services licensee to notify ASIC of certain matters | uncategorised |
| subsection 920C(4) | need to comply with a banning order | uncategorised |
| subsection 922M(5) | need to comply with obligation to notify ASIC | uncategorised |
| subsection 941A(3) | obligation on financial services licensee to give a Financial Services Guide if financial service provided to person as a retail client | uncategorised |
| subsection 941B(4) | obligation on authorised representative to give a Financial Services Guide if financial service provided to person as a retail client | uncategorised |
| subsection 946A(4) | obligation to give client a Statement of Advice | uncategorised |
| subsection 952E(9) | giving a defective disclosure document or statement (whether or not known to be defective) | uncategorised |
| subsection 952H(3) | financial services licensee failing to ensure authorised representative gives disclosure documents or statements as required | uncategorised |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| subsections 961K(1) and (2) | financial services licensee responsible for breach of certain best interests duties | uncategorised |
| section 961L | financial services licensee to ensure compliance with certain best interests duties | uncategorised |
| subsection 961Q(1) | authorised representative responsible for breach of certain best interests duties | uncategorised |
| section 962P | charging ongoing fee after termination of ongoing fee arrangement | uncategorised |
| subsection 962S(1) | fee recipient must give fee disclosure statement | uncategorised |
| subsections 963E(1) and (2) | financial services licensee responsible for breach of ban on conflicted remuneration | financial services |
| section 963F | financial services licensee must ensure representatives do not accept conflicted remuneration | financial services |
| subsection 963G(1) | authorised representative must not accept conflicted remuneration | financial services |
| section 963J | employer must not pay employees conflicted remuneration | financial services |
| section 963K | financial product issuer or seller must not give conflicted remuneration to financial services licensee or representative | financial services |
| subsection 964A(1) | platform operator must not accept volume-based shelf-space fees | financial services |
| subsections 964D(1) and (2) | financial services licensee responsible for breach of asset-based fees on borrowed amounts | financial services |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| subsection 964E(1) | authorised representative must not charge asset-based fees on borrowed amounts | financial services |
| section 965 | anti-avoidance of Part 7.7A provisions | financial services |
| subsection 981B(3) | obligation to pay money into an account | uncategorised |
| subsection 981C(2) | various matters relating to accounts maintained for the purposes of section 981B | uncategorised |
| subsection 981M(1) | complying with client money reporting rules | uncategorised |
| subsection 985E(1) | issuing or increasing limit of margin lending facility without having made assessment etc. | financial services |
| subsection 985H(1) | failure to assess a margin lending facility as unsuitable | financial services |
| subsection 985J(1) | failure to give assessment to retail client if requested before issue of facility or increase in limit | financial services |
| subsection 985J(2) | failure to give assessment to retail client if requested after issue of facility or increase in limit | financial services |
| subsection 985J(4) | demanding payment to give assessment to retail client | financial services |
| subsection 985K(1) | issuing or increasing limit of margin lending facility if unsuitable | financial services |
| section 985L | making issue of margin lending facility conditional on retail client agreeing to receive communications through agent | financial services |
| subsection 985M(1) | failure to notify of margin call where there is no agent | financial services |
| subsection 985M(2) | failure to notify of margin call | financial services |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| | where there is an agent | |
| subsection 993D(4) | failure to pay loan money into an account as required | financial services |
| subsection 1012A(5) | obligation to give Product Disclosure Statement—personal advice recommending particular financial product | financial services |
| subsection 1012B(6) | obligation to give Product Disclosure Statement—situations related to issue of financial products | financial services |
| subsection 1012C(11) | obligation to give Product Disclosure Statement—offers related to sale of financial products | financial services |
| subsection 1017BA(4B) | trustee of regulated superannuation funds—obligation to make product dashboard publicly available | financial services |
| subsection 1017BB(5AA) | trustee of registrable superannuation entities—obligation to make information relating to investment of assets publicly available | financial services |
| subsection 1020A(5) | offers etc. relating to certain managed investment schemes not to be made in certain circumstances | financial services |
| subsection 1021E(8) | preparer of defective disclosure document or statement giving the document or statement (whether or not known to be defective) | financial services |
| subsection 1021G(3) | financial services licensee failing to ensure authorised representative gives etc. disclosure documents or statements as required | financial services |
| section 1041A | market manipulation | financial services |
| subsection 1041B(1) | false trading and market rigging— | financial services |



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| **Civil penalty provisions** | | |
|---|---|---|
| **Column 1**<br>**Provision** | **Column 2**<br>**Brief description of the provision** | **Column 3**<br>**Categorisation of the provision** |
| | creating a false or misleading appearance of active trading etc. | |
| subsection 1041C(1) | false trading and market rigging—artificially maintaining etc. market price | financial services |
| section 1041D | dissemination of information about illegal transactions | financial services |
| subsections 1043A(1) and (2) | insider trading | financial services |
| subsections 1211B(1) and (2) | contravening the Passport Rules | uncategorised |
| subsection 1309(12) | false information | uncategorised |
| subclause 29(6) of Schedule 4 | disclosure for proposed demutualisation | corporation/scheme |

Note 1: Once a declaration has been made, ASIC can seek a pecuniary penalty order (section 1317G) or (in the case of a corporation/scheme civil penalty provision and certain other civil penalty provisions) a disqualification order (section 206C).

Note 2: The descriptions of matters in column 2 are indicative only.

Note 3: Section 908DD contains some matters relevant for making declarations of contravention for subsections 908DA(1) and (2) and 908DB(1) and (2) (about manipulating financial benchmarks).

*Attempt and involvement in contravention treated in same way as actual contravention*

(4) A person who:
(a) attempts to contravene a civil penalty provision; or
(b) is involved in a contravention of a civil penalty provision;
is taken to have ***contravened*** the provision.

## 117 Section 1317G

Repeal the section, substitute:



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## 1317G Pecuniary penalty orders

*Court may order person to pay pecuniary penalty*

(1) A Court may order a person to pay to the Commonwealth a pecuniary penalty in relation to the contravention of a civil penalty provision if:
  (a) a declaration of contravention of the civil penalty provision by the person has been made under section 1317E; and
  (b) if the contravention is of a corporation/scheme civil penalty provision, the contravention:
    (i) materially prejudices the interests of the corporation, scheme or fund, or its members; or
    (ii) materially prejudices the corporation's ability to pay its creditors; or
    (iii) is serious; and
  (c) if the contravention is of a financial services civil penalty provision that is not a Part 7.7A civil penalty provision, the contravention:
    (i) materially prejudices the interests of acquirers or disposers of the relevant financial products; or
    (ii) materially prejudices the issuer of the relevant financial products or, if the issuer is a corporation, scheme or fund, the members of that corporation, scheme or fund; or
    (iii) is serious; and
  (d) if the contravention is of subsection 1211B(1) or (2) (complying with the Passport Rules for this jurisdiction), the contravention:
    (i) materially prejudices the interests of the passport fund or its members; or
    (ii) is serious.

The order is a ***pecuniary penalty order***.

*Maximum pecuniary penalty*

(2) The pecuniary penalty must not exceed the pecuniary penalty applicable to the contravention of the civil penalty provision.



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*Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*

(3) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
  (a) 5,000 penalty units; and
  (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

(4) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:
  (a) 50,000 penalty units; and
  (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
  (c) either:
    (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

*Contrary intention in relation to pecuniary penalty applicable*

(5) Subsections (3) and (4) apply in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the contravention. In that case, the ***pecuniary penalty applicable*** is the penalty specified for the civil penalty provision.

*Determining pecuniary penalty*

(6) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:



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(a) the nature and extent of the contravention; and
(b) the nature and extent of any loss or damage suffered because of the contravention; and
(c) the circumstances in which the contravention took place; and
(d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct.

### 1317GAA Civil enforcement of pecuniary penalty order

(1) A pecuniary penalty is a debt payable to ASIC on behalf of the Commonwealth.

(2) ASIC or the Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

### 1317GAB Relinquishing the benefit derived and detriment avoided from contravening a civil penalty provision

*Relinquishment order*

(1) A Court may order a person to pay the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision if a declaration of contravention by the person has been made under section 1317E. The order is a ***relinquishment order***.

(2) The Court may make a relinquishment order:
(a) on its own initiative, during proceedings before the Court; or
(b) on application by ASIC, made within 6 years after the alleged contravention.

*Relationship between relinquishment orders and pecuniary penalty orders*

(3) To avoid doubt, the Court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.



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Note: The relationship between relinquishment orders and proceedings for an offence are dealt with in sections 1317M, 1317N, 1317P and 1317Q.

### 1317GAC Civil enforcement of relinquishment order

(1) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.

(2) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

### 1317GAD Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision

The ***benefit derived and detriment avoided*** because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

## 118 Before section 1317J

Insert:

# Division 2—Procedural and other matters relating to orders by the Court

## 119 Section 1317M

Omit “or a pecuniary penalty order”, substitute “, a pecuniary penalty order or a relinquishment order”.

## 120 Subsection 1317N(1)

Omit “or pecuniary penalty order”, substitute “, a pecuniary penalty order or a relinquishment order”.

## 121 Subsection 1317N(2)

Repeal the subsection, substitute:



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(2) The proceedings for the declaration or order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:
  (a) the civil proceedings are dismissed; and
  (b) costs must not be awarded in relation to the civil proceedings.

## 122 After paragraph 1317P(1)(b)

Insert:

(baa) a relinquishment order has been made against the person; or

## 123 Paragraph 1317P(2)(a)

After "an infringement notice is issued", insert "under section 1317DAC".

## 124 Paragraph 1317Q(a)

After "a pecuniary penalty order", insert "or a relinquishment order".

## 125 Section 1317Q

After "the pecuniary penalty order", insert "or the relinquishment order".

## 126 After section 1317Q

Insert:

### 1317QA Continuing contraventions of civil penalty provisions

(1) If an act or thing is required under a civil penalty provision to be done:
  (a) within a particular period; or
  (b) before a particular time;

  then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
  (a) within a particular period; or
  (b) before a particular time;



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commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order or relinquishment order is made or any later day).

## 1317QB State of mind

(1) In proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, it is not necessary to prove:
  (a) the person's intention; or
  (b) the person's knowledge; or
  (c) the person's recklessness; or
  (d) the person's negligence; or
  (e) any other state of mind of the person.

(2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.

(3) Subsection (1) does not affect the operation of section 1317QC (which is about mistake of fact).

(4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

## 1317QC Mistake of fact

(1) A person is not liable to have a declaration of contravention or an order under Division 1 made against the person for a contravention of a civil penalty provision if:
  (a) at or before the time of the conduct constituting the contravention, the person:
    (i) considered whether or not facts existed; and
    (ii) was under a mistaken but reasonable belief about those facts; and
  (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.



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(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a declaration of contravention or an order under Division 1 bears an evidential burden in relation to that matter.

(4) In subsection (3), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

### 1317QD Exceptions etc. to civil penalty provisions—burden of proof

(1) If, in proceedings for a declaration of contravention or an order under Division 1 against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

(2) In subsection (1), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

### 1317QE Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:
  (a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or
  (b) within the employee's, agent's, or officer's actual or apparent authority;

the element must also be attributed to the body corporate.



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### 1317QF Preference must be given to compensate persons who suffer damage as a result of contravention

(1) This section applies if a court considers that it is appropriate to:
  (a) make a pecuniary penalty order against a person in relation to a contravention of a civil penalty provision; or
  (b) make a relinquishment order against a person in relation to a contravention of a civil penalty provision; or
  (c) impose a fine against a person in relation to a commission of an offence constituted by the same conduct as the conduct constituting the contravention of the pecuniary penalty order.

(2) In making the pecuniary penalty order or relinquishment order or imposing the fine, the court:
  (a) must consider the effect that making the order or imposing the fine would have on the amount available to pay:
    (i) compensation to which persons might reasonably be expected to be entitled under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or
    (ii) refunds to which persons might reasonably be expected to be entitled under section 1317GA; and
  (b) give preference to making an appropriate amount available for refunds and compensation under those sections.

(3) If the court gives preference to making an appropriate amount available for refunds and compensation under paragraph (2)(b), the court may also make such orders as the court thinks fit for the purpose of ensuring that the amount remains available for the payment of:
  (a) compensation under section 961M, 1317H, 1317HA, 1317HB, 1317HC or 1317HE; or
  (b) refunds under section 1317GA.

## 127 Subsection 1317S(7)

Omit “section 1318”, substitute “section 1317QC or section 1318”.

## 128 Paragraph 1364(2)(w)

After “50 penalty units”, insert “for an individual or 500 penalty units for a body corporate”.



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## 129 Subsection 1364(2) (note)

Repeal the note, substitute:

Note: See also sections 1311B and 1311C in relation to the penalty applicable to an offence.

## 130 Paragraph 1369(1)(a)

Omit "section 1313", substitute "Part 9.4AB".

## 131 Subsection 1369(2)

Omit "section 1311", substitute "sections 1311B and 1311C".

## 132 Subsection 1369(3)

Omit "section 1313", substitute "Part 9.4AB".

## 133 Subsection 30-1(5) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units.

## 134 Subsection 35-5(2) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 135 Subsection 65-40(3) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units.

## 136 Subsection 70-10(4) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units.

## 137 Subsection 70-25(4) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units.



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### 138 Subsection 70-85(2) of Schedule 2 (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

### 139 Subsection 105-1(3) of Schedule 2

Omit "50 penalty units for an individual or 250 penalty units for a body corporate", substitute "50 penalty units for an individual or 500 penalty units for a body corporate".

### 140 Schedule 3

Repeal the Schedule, substitute:

# Schedule 3—Penalties

Note: See sections 1311 to 1311E.

**Penalties**

| Provision | Penalty |
|---|---|
| Section 111AU | 5 years imprisonment |
| Subsection 113(1) | 1 year imprisonment |
| Subsection 113(3) | 20 penalty units |
| Subsection 115(1) | 20 penalty units |
| Subsection 117(5) | 30 penalty units |
| Subsection 123(3) | 30 penalty units |
| Subsection 136(5) | 20 penalty units |
| Subsection 139(1) | 20 penalty units |
| Subsections 142(1) and (2) | 60 penalty units |
| Subsection 143(1) | 20 penalty units |
| Subsections 144(1) and (2) | 30 penalty units |
| Subsections 145(1) and (3) | 60 penalty units |
| Subsection 146(1) | 60 penalty units |
| Subsections 148(2), (3), (4) and (5) | 30 penalty units |
| Subsection 150(2) | 20 penalty units |
| Subsection 151(2) | 20 penalty units |
| Subsections 153(1) and (2) | 30 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 156(1) | 30 penalty units |
| Subsection 157(2) | 20 penalty units |
| Subsection 158(2) | 120 penalty units |
| Subsections 161A(2) and (3) | 30 penalty units |
| Subsection 162(3) | 20 penalty units |
| Subsection 163(5) | 30 penalty units |
| Subsection 165(2) | 120 penalty units |
| Section 168 | 30 penalty units |
| Subsection 170(3) | 30 penalty units |
| Subsections 172(1), (1A) and (2) | 30 penalty units |
| Subsections 173(1), (3) and (9) | 30 penalty units |
| Subsection 174(1) | 30 penalty units |
| Subsection 177(1) | 50 penalty units |
| Subsection 177(1AA) | 50 penalty units |
| Subsection 178A(1) | 60 penalty units |
| Subsection 178C(1) | 60 penalty units |
| Subsection 184(1) | 15 years imprisonment |
| Subsection 184(2) | 15 years imprisonment |
| Subsection 184(3) | 15 years imprisonment |
| Subsection 191(1) | 30 penalty units |
| Subsection 195(1) | 20 penalty units |
| Subsection 199B(1) | 20 penalty units |
| Subsection 200B(1) | (a) for an individual—6 months imprisonment, 180 penalty units, or both; and<br>(b) for a body corporate—1,800 penalty units |
| Subsection 200C(1) | (a) for an individual—6 months imprisonment, 180 penalty units, or both; and<br>(b) for a body corporate—1,800 penalty units |
| Section 200D | 180 penalty units |
| Subsection 201D(1) | 30 penalty units |
| Subsection 201D(2) | 20 penalty units |
| Subsections 201R(2) and (3) | 30 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 202B(1) | 20 penalty units |
| Subsections 203D(3) and (5) | 20 penalty units |
| Subsections 204A(1) and (2) | 20 penalty units |
| Subsections 204C(1) and (2) | 20 penalty units |
| Subsections 205B(1), (2), (4) and (5) | 120 penalty units |
| Subsections 205C(1) and (2) | 30 penalty units |
| Subsection 205E(2) | 30 penalty units |
| Subsection 205F(1) | 30 penalty units |
| Subsection 205G(9) | 2 years imprisonment |
| Subsection 205G(10) | 30 penalty units |
| Subsection 206A(1) | 5 years imprisonment |
| Subsections 206J(4), (6) and (7) | 60 penalty units |
| Subsection 206K(4) | 60 penalty units |
| Subsections 206L(3) and (4) | 60 penalty units |
| Subsection 206M(2) | 60 penalty units |
| Subsection 209(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Section 224 | 5 years imprisonment |
| Subsections 225(3), (4) and (5) | 20 penalty units |
| Subsection 235(1) | 120 penalty units |
| Section 237 | 6 months imprisonment |
| Section 242 | 3 months imprisonment |
| Subsection 246B(3) | 20 penalty units |
| Subsection 246D(6) | 20 penalty units |
| Subsections 246F(1) and (3) | 20 penalty units |
| Subsection 246G(1) | 20 penalty units |
| Subsection 247C(1) | 20 penalty units |
| Subsections 249E(3) and (4) | 20 penalty units |
| Subsection 249K(1) | 20 penalty units |
| Subsection 249Z(1) | 20 penalty units |
| Subsections 249L(1) and (2) | 30 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 250BB(2), (3) and (4) | 20 penalty units |
| Subsection 250BD(1) | 5 years imprisonment |
| Subsections 250N(1) and (2) | 30 penalty units |
| Subsections 250P(3) and (4) | 30 penalty units |
| Subsection 250PA(3) | 30 penalty units |
| Subsections 250PA(4) and (6) | 20 penalty units |
| Subsection 250PA(9) | 30 penalty units |
| Subsection 250R(2) | 30 penalty units |
| Subsection 250R(7) | 5 years imprisonment |
| Subsections 250RA(1) and (3) | 20 penalty units |
| Subsection 250S(1) | 20 penalty units |
| Subsection 250SA(1) | 20 penalty units |
| Subsection 250T(1) | 20 penalty units |
| Subsection 250T(4) | 30 penalty units |
| Subsection 250W(5) | 20 penalty units |
| Subsections 251A(1) to (5) | 30 penalty units |
| Subsections 251B(1), (3) and (4) | 20 penalty units |
| Subsections 252C(3) and (4) | 20 penalty units |
| Subsection 252H(1) | 20 penalty units |
| Subsection 252X(1) | 20 penalty units |
| Subsection 252Y(5) | 20 penalty units |
| Subsections 253M(1), (2) and (3) | 30 penalty units |
| Subsections 253N(1), (3) and (4) | 20 penalty units |
| Subsection 254H(4) | 20 penalty units |
| Subsection 254L(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 254N(2) | 20 penalty units |
| Subsection 254Q(13) | 20 penalty units |
| Section 254SA | 2 years imprisonment |
| Section 254T | 2 years imprisonment |
| Subsections 254X(1) and (2) | 60 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 254Y(1) | 20 penalty units |
| Subsection 256D(4) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 259B(6) | 20 penalty units |
| Subsection 259D(4) | 20 penalty units |
| Subsection 259F(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 260D(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 283AA(1) | 60 penalty units |
| Subsection 283AA(3) | 6 months imprisonment |
| Subsection 283AB(1) | 60 penalty units |
| Subsection 283AC(1) | 60 penalty units |
| Subsection 283AC(2) | 60 penalty units |
| Subsection 283BH(1) | 5 years imprisonment |
| Section 283BI | 6 months imprisonment |
| Section 283CE | 6 months imprisonment |
| Subsection 286(3) | 2 years imprisonment |
| Subsection 286(4) | 60 penalty units |
| Subsection 287(2) | 60 penalty units |
| Subsection 288(1) | 60 penalty units |
| Subsection 289(2) | 60 penalty units |
| Subsection 294(1) | 30 penalty units |
| Subsection 294B(1) | 30 penalty units |
| Subsection 307A(3) | 2 years imprisonment |
| Subsection 307A(4) | 50 penalty units |
| Subsection 307B(1) | 50 penalty units |
| Subsection 307B(3) | 50 penalty units |
| Subsections 307C(1) and (3) | 20 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 308(1), (2), (3), (3AA), (3AB), (3A), (3C) and (4) | 50 penalty units |
| Subsections 309(1), (2), (3), (4), (5), (5A) and (6) | 50 penalty units |
| Subsections 311(1), (2) and (3) | 1 year imprisonment |
| Subsection 312(1) | 60 penalty units |
| Subsections 313(1) and (2) | 30 penalty units |
| Subsections 314(1) and (1AB) | 30 penalty units |
| Subsections 314A(1), (3) and (7) | 30 penalty units |
| Subsections 316(2) and (3) | 30 penalty units |
| Subsections 316A(3) and (4) | 30 penalty units |
| Subsection 317(1) | 30 penalty units |
| Subsections 318(1), (3) and (4) | 60 penalty units |
| Subsections 319(1) and (1AA) | 120 penalty units |
| Subsection 320(1) | 120 penalty units |
| Subsections 321(1) and (1AA) | 30 penalty units |
| Subsections 322(1), (1A) and (2) | 30 penalty units |
| Subsection 323(1) | 60 penalty units |
| Subsection 323B(1) | 60 penalty units |
| Subsection 323D(3) | 30 penalty units |
| Section 324BA | 6 months imprisonment |
| Subsection 324BB(1) | 6 months imprisonment |
| Subsection 324BB(2) | 30 penalty units |
| Subsections 324BC(1) and (2) | 6 months imprisonment |
| Subsection 324BC(3) | 30 penalty units |
| Subsection 324CA(1) | 6 months imprisonment |
| Subsections 324CA(1A) and (2) | 30 penalty units |
| Subsection 324CB(1) | 6 months imprisonment |
| Subsections 324CB(1A), (2) and (4) | 30 penalty units |
| Subsection 324CC(1) | 6 months imprisonment |
| Subsections 324CC(1A), (2) and (4) | 30 penalty units |
| Subsection 324CE(1) | 6 months imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 324CE(1A) and (2) | 30 penalty units |
| Subsection 324CF(1) | 6 months imprisonment |
| Subsections 324CF(1A) and (2) | 30 penalty units |
| Subsection 324CG(1) | 6 months imprisonment |
| Subsections 324CG(1A) and (2) | 30 penalty units |
| Subsection 324CG(5) | 6 months imprisonment |
| Subsections 324CG(5A) and (6) | 30 penalty units |
| Section 324CI | 6 months imprisonment |
| Section 324CJ | 6 months imprisonment |
| Section 324CK | 6 months imprisonment |
| Subsections 324CM(1), (2) and (3) | 6 months imprisonment |
| Section 324DB | 6 months imprisonment |
| Subsection 324DC(1) | 6 months imprisonment |
| Subsection 324DC(2) | 30 penalty units |
| Subsections 324DD(1) and (2) | 6 months imprisonment |
| Subsection 324DD(3) | 30 penalty units |
| Subsection 325(4) | 6 months imprisonment |
| Subsection 327A(3) | 6 months imprisonment |
| Subsections 327B(1) and (3) | 6 months imprisonment |
| Subsection 327C(3) | 6 months imprisonment |
| Subsection 328A(4) | 6 months imprisonment |
| Subsection 328B(2) | 6 months imprisonment |
| Subsection 328C(3) | 6 months imprisonment |
| Subsection 328D(3) | 6 months imprisonment |
| Subsections 331AAA(1) and (3) | 6 months imprisonment |
| Subsections 331AAB(1) and (2) | 6 months imprisonment |
| Subsection 332A(2) | 20 penalty units |
| Subsection 332A(3) | 20 penalty units |
| Subsection 342B(1) | 30 penalty units |
| Subsection 344(2) | 15 years imprisonment |
| Subsections 346C(1) and (2) | 60 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 347A(1) | 20 penalty units |
| Subsections 347B(1) and (2) | 20 penalty units |
| Subsection 348D(1) | 60 penalty units |
| Subsection 349A(1) | 60 penalty units |
| Subsections 428(1), (2), (2B) and (2C) | 20 penalty units |
| Paragraph 429(2)(b) | 50 penalty units |
| Subsection 437D(5) | 6 months imprisonment |
| Subsection 438B(4) | (a) if the offence relates to a contravention of a provision other than subsection 438B(2A)—120 penalty units; and<br>(b) if the offence relates to a contravention of subsection 438B(2A)—20 penalty units |
| Subsection 438C(5) | 120 penalty units |
| Subsection 446C(4) | 60 penalty units |
| Subsection 448B(1) | 60 penalty units |
| Subsection 448C(1) | 60 penalty units |
| Subsections 450E(1) and (2) | 20 penalty units |
| Subsection 475(9) | (a) if the offence relates to a contravention of a provision other than subsection 475(4)—60 penalty units; and<br>(b) if the offence relates to a contravention of subsection 475(4)—50 penalty units |
| Subsection 486A(8) | 2 years imprisonment |
| Section 494 | 1 year imprisonment |
| Subsections 496(4), (5), (6), (7) and (8) | 20 penalty units |
| Subsection 497(1) | 3 months imprisonment |
| Subsection 497(4) | 50 penalty units |
| Subsection 497(7) | 20 penalty units |
| Subsection 530A(6) | 120 penalty units |
| Subsection 530B(3) | 1 year imprisonment |
| Subsection 530B(6) | 120 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 532(1), (2), (8) and (9) | 30 penalty units |
| Subsection 541(1) | 30 penalty units |
| Subsection 588G(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 590(1) | 2 years imprisonment |
| Subsection 590(5) | 1 year imprisonment |
| Subsection 592(1) | 120 penalty units |
| Subsection 592(6) | 2 years imprisonment |
| Subsection 595(1) | 30 penalty units |
| Subsection 596(1) | 2 years imprisonment |
| Subsection 596AB(1) | 15 years imprisonment |
| Subsection 596F(3) | 2 years imprisonment |
| Subsections 597(6), (7), (10A) and (13) | 2 years imprisonment |
| Subsection 597A(3) | 2 years imprisonment |
| Subsection 601AD(5) | 20 penalty units |
| Subsection 601BC(5) | 30 penalty units |
| Subsections 601BH(1) and (2) | 20 penalty units |
| Subsection 601BJ(3) | 20 penalty units |
| Subsection 601BK(1) | 20 penalty units |
| Subsection 601BP(1) | 20 penalty units |
| Subsection 601BR(1) | 20 penalty units |
| Subsections 601CW(9) and (10) | 30 penalty units |
| Subsection 601CZB(1) | 30 penalty units |
| Section 601CZC | 30 penalty units |
| Subsection 601DD(1) | 20 penalty units |
| Subsection 601DE(1) | 30 penalty units |
| Subsection 601DH(1) | 20 penalty units |
| Subsection 601ED(5) | 5 years imprisonment |
| Subsection 601FD(4) | 15 years imprisonment |
| Subsection 601FE(4) | 15 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 601FF(3) | 5 years imprisonment |
| Subsection 601FG(3) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 601FL(4) | 2 years imprisonment |
| Subsection 601FM(3) | 2 years imprisonment |
| Subsection 601FQ(6) | 2 years imprisonment |
| Subsection 601HD(1) | 60 penalty units |
| Subsections 601HG(1) and (3) | 20 penalty units |
| Subsections 601HG(4), (4A) and (4B) | 1 year imprisonment |
| Subsection 601HG(6) | 60 penalty units |
| Subsection 601HG(7) | 20 penalty units |
| Subsection 601JA(3) | 2 years imprisonment |
| Subsection 601JA(4) | 60 penalty units |
| Subsection 601JB(5) | 60 penalty units |
| Subsection 601JB(6) | 20 penalty units |
| Subsection 601JD(4) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Subsection 601KA(3) | 60 penalty units |
| Subsection 601SBB(1) | 50 penalty units |
| Subsection 601SBC(2) | 50 penalty units |
| Subsection 601SCB(1) | 50 penalty units |
| Subsection 601SCB(2) | 50 penalty units |
| Subsection 601SCB(3) | 1 year imprisonment |
| Subsection 601SCD(1) | (a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and<br>(b) for a body corporate—20,000 penalty units |
| Section 601TAA | 1 year imprisonment |
| Subsection 601TAB(1) | 1 year imprisonment |
| Subsection 601TBA(2) | 1 year imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 601UAA(1) | 15 years imprisonment |
| Subsection 601UAB(1) | 15 years imprisonment |
| Section 601VAB | 2 years imprisonment |
| Subsection 601VBD(8) | 1 year imprisonment |
| Subsection 601VCC(2) | 2 years imprisonment |
| Subsection 601WBE(5) | 50 penalty units |
| Section 601WCF | 1 year imprisonment |
| Section 601WCG | 1 year imprisonment |
| Subsection 601WDA(1) | 2 years imprisonment |
| Subsection 601WDA(2) | 2 years imprisonment |
| Subsection 601WDA(3) | 2 years imprisonment |
| Section 601XAB | 1 year imprisonment |
| Subsection 606(4A) | 5 years imprisonment |
| Subsection 606(4B) | 60 penalty units |
| Subsection 622(1) | 60 penalty units |
| Subsection 623(1) | 60 penalty units |
| Subsection 624(2) | 60 penalty units |
| Subsections 630(2), (3) and (4) | 60 penalty units |
| Subsection 631(1) | 2 years imprisonment |
| Subsection 631(2) | 5 years imprisonment |
| Subsection 633(1) (table items 4, 5, 7, 8, 9, 11, 12, 13 and 14) | 60 penalty units |
| Subsection 635(1) (table items 5, 7, 8, 10, 11, 12, 13 and 14) | 60 penalty units |
| Subsection 636(3) | 60 penalty units |
| Subsection 636(4) | 20 penalty units |
| Subsection 637(1) | 60 penalty units |
| Subsection 637(2) | 20 penalty units |
| Subsection 638(1) | 60 penalty units |
| Subsection 638(3) | 60 penalty units |
| Subsection 638(5) | 60 penalty units |
| Subsection 638(6) | 20 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 639(1) | 60 penalty units |
| Subsection 639(2) | 20 penalty units |
| Subsection 640(1) | 60 penalty units |
| Subsection 641(1) | 60 penalty units |
| Section 643 | 6 months imprisonment |
| Section 644 | 6 months imprisonment |
| Subsections 647(1), (2) and (3) | 60 penalty units |
| Subsection 648A(1) | 60 penalty units |
| Subsections 648E(1) and (2) | 60 penalty units |
| Subsections 648G(5) and (9) | 120 penalty units |
| Subsection 649C(2) | 60 penalty units |
| Subsection 650B(3) | 60 penalty units |
| Subsections 650E(5) and (6) | 60 penalty units |
| Subsection 650F(3) | 60 penalty units |
| Subsection 651A(4) | 60 penalty units |
| Subsection 651C(1) | 60 penalty units |
| Subsection 652C(3) | 60 penalty units |
| Subsection 654A(1) | 60 penalty units |
| Subsection 654C(1) | 60 penalty units |
| Subsection 654C(3) | 60 penalty units |
| Subsection 657F(1) | 60 penalty units |
| Subsections 661B(1) and (2) | 20 penalty units |
| Subsection 661D(1) | 60 penalty units |
| Subsection 662A(1) | 60 penalty units |
| Subsection 663A(1) | 60 penalty units |
| Subsections 664D(1), (2) and (3) | 60 penalty units |
| Subsections 664E(2), (3) and (4) | 60 penalty units |
| Subsection 665A(2) | 60 penalty units |
| Subsection 666A(1) | 60 penalty units |
| Subsections 666B(2) and (3) | 60 penalty units |
| Subsection 667A(3) | 60 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 668A(1) | 60 penalty units |
| Subsection 668A(2) | 20 penalty units |
| Subsections 668A(3) and (4) | 60 penalty units |
| Subsection 668B(1) | 60 penalty units |
| Subsection 670A(3) | 5 years imprisonment |
| Subsections 670C(1), (2) and (3) | 60 penalty units |
| Subsection 671B(8) | 2 years imprisonment |
| Subsection 671B(9) | 60 penalty units |
| Subsection 672B(1) | 60 penalty units |
| Subsection 672DA(1) | 30 penalty units |
| Subsections 672DA(2), (3), (3A) and (4) | 20 penalty units |
| Subsections 672DA(6), (7), (8) and (9) | 30 penalty units |
| Subsection 674(2) | 5 years imprisonment |
| Subsection 674(5) | 2 years imprisonment |
| Subsection 675(2) | 5 years imprisonment |
| Subsection 708AA(10) | 2 years imprisonment |
| Subsection 708A(9) | 2 years imprisonment |
| Subsection 721(5) | 5 years imprisonment |
| Subsection 722(1) | 60 penalty units |
| Subsection 722(2) | 20 penalty units |
| Subsections 723(1), (2) and (3) | 20 penalty units |
| Subsection 724(1) | 60 penalty units |
| Subsection 725(1) | 60 penalty units |
| Section 726 | 5 years imprisonment |
| Subsection 727(1) | 15 years imprisonment |
| Subsection 727(2) | 5 years imprisonment |
| Subsection 727(3) | 5 years imprisonment |
| Subsection 727(4) | 5 years imprisonment |
| Subsection 728(3) | 15 years imprisonment |
| Subsection 730(1) | 120 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 734(1) | 60 penalty units |
| Subsection 734(2) | 60 penalty units |
| Subsection 735(1) | 30 penalty units |
| Subsection 736(1) | 60 penalty units |
| Subsection 738L(3) | 5 years imprisonment |
| Subsections 738M(1), (2) and (3) | 20 penalty units |
| Subsection 738N(4) | 6 months imprisonment |
| Subsection 738P(1) | 6 months imprisonment |
| Subsection 738Q(1) | 50 penalty units |
| Subsection 738Q(5) | 1 year imprisonment |
| Subsection 738Q(7) | 6 months imprisonment |
| Subsections 738R(1) and (2) | 5 years imprisonment |
| Subsections 738V(1), (2) and (3) | 50 penalty units |
| Subsections 738X(2) and (3) | 50 penalty units |
| Subsection 738X(7) | 30 penalty units |
| Subsection 738Y(4) | 5 years imprisonment |
| Subsections 738ZA(1), (3), (4), (5), (6), (8) and (9) | 1 year imprisonment |
| Subsections 738ZB(2), (3) and (4) | 50 penalty units |
| Subsection 738ZC(1) | 30 penalty units |
| Subsection 738ZE(2) | 5 years imprisonment |
| Section 738ZF | 5 years imprisonment |
| Subsection 738ZG(1) | 30 penalty units |
| Subsection 791A(1) | 5 years imprisonment |
| Section 791B | 5 years imprisonment |
| Subsection 792B(1) | 2 years imprisonment |
| Subsection 792B(2) | 2 years imprisonment |
| Subsection 792B(3) | 2 years imprisonment |
| Subsection 792B(4) | 2 years imprisonment |
| Subsection 792B(5) | 2 years imprisonment |
| Subsection 792C(1) | 2 years imprisonment |
| Subsection 792D(1) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Section 792E | 2 years imprisonment |
| Subsection 792F(1) | 2 years imprisonment |
| Subsection 792F(2) | 50 penalty units |
| Subsection 792F(3) | 2 years imprisonment |
| Subsection 792G(1) | 2 years imprisonment |
| Subsection 792G(2) | 2 years imprisonment |
| Section 792I | 50 penalty units |
| Subsection 793D(3) | 2 years imprisonment |
| Subsection 794B(3) | 2 years imprisonment |
| Subsection 794D(3) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 794E(2) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 798C(3) | 2 years imprisonment |
| Subsection 798C(6) | 2 years imprisonment |
| Subsection 798D(4) | 2 years imprisonment |
| Subsection 798DA(4) | 2 years imprisonment |
| Subsection 820A(1) | 5 years imprisonment |
| Section 820B | 5 years imprisonment |
| Subsection 821B(1) | 2 years imprisonment |
| Subsection 821B(2) | 2 years imprisonment |
| Subsection 821B(3) | 2 years imprisonment |
| Subsection 821B(4) | 2 years imprisonment |
| Subsection 821BA(1) | 2 years imprisonment |
| Subsection 821C(1) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 821C(3) | 2 years imprisonment |
| Section 821D | 2 years imprisonment |
| Subsection 821E(1) | 2 years imprisonment |
| Subsection 821E(2) | 2 years imprisonment |
| Subsection 821E(3) | 2 years imprisonment |
| Subsection 822D(3) | 2 years imprisonment |
| Subsection 823B(3) | 2 years imprisonment |
| Subsection 823D(5) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 823E(3) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Section 850C | 4 years imprisonment |
| Subsection 851D(8) | 2 years imprisonment |
| Subsection 852B(2) | 4 years imprisonment |
| Subsection 853F(1) | 5 years imprisonment |
| Subsection 853F(2) | 5 years imprisonment |
| Subsection 854A(4) | 2 years imprisonment |
| Subsection 892B(1) | 5 years imprisonment |
| Subsection 892B(3) | 5 years imprisonment |
| Subsection 892H(1) | 5 years imprisonment |
| Subsection 892H(2) | 5 years imprisonment |
| Subsection 892H(3) | 5 years imprisonment |
| Subsection 892H(6) | 1 year imprisonment |
| Subsection 892H(7) | 1 year imprisonment |
| Subsection 892K(2) | 5 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 904B(1) and (5) | 1,000 penalty units |
| Subsections 904C(1) and (3) | 100 penalty units |
| Subsection 904D(2) | 100 penalty units |
| Section 904E | 100 penalty units |
| Subsection 904G(5) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 904H(3) | 100 penalty units |
| Subsection 904K(4) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 905A(2) | (a) for an individual—2 years imprisonment, or 500 penalty units, or both; and<br>(b) for a body corporate—5,000 penalty units |
| Section 907A | 2 years imprisonment |
| Subsection 911A(1) | 5 years imprisonment |
| Subsection 911B(1) | 5 years imprisonment |
| Section 911C | 2 years imprisonment |
| Subsection 912C(3) | 2 years imprisonment |
| Subsection 912D(1B) | 2 years imprisonment |
| Subsection 912D(2) | 1 year imprisonment |
| Subsection 912E(1) | 2 years imprisonment |
| Subsection 912F(1) | 20 penalty units |
| Subsection 916A(3A) | 2 years imprisonment |
| Subsection 916B(2A) | 2 years imprisonment |
| Subsection 916B(5A) | 1 year imprisonment |
| Subsection 916C(3) | 2 years imprisonment |
| Subsection 916D(2A) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 916F(1) | 6 months imprisonment |
| Subsection 916F(1A) | 6 months imprisonment |
| Subsection 916F(3) | 60 penalty units |
| Subsection 916G(2) | 1 year imprisonment |
| Subsection 916G(3) | 1 year imprisonment |
| Subsection 920C(3) | 5 years imprisonment |
| Subsection 922M(3) | 50 penalty units |
| Subsection 923A(1) | (a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 923B(1) | (a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 923C(1) | (a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; or<br>(b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 923C(2) | (a) for an individual—10 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—100 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 942B(8) | 1 year imprisonment |
| Subsection 942C(8) | 1 year imprisonment |
| Section 942E | 2 years imprisonment |
| Section 943F | 2 years imprisonment |
| Subsection 946AA(4) | 50 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsections 946B(3A) and (9) | 50 penalty units |
| Subsection 949A(2) | 2 years imprisonment |
| Subsection 949A(5) | 5 years imprisonment |
| Subsection 949B(2) | 1 year imprisonment |
| Subsection 949B(4) | 1 year imprisonment |
| Subsection 952C(1) | 50 penalty units |
| Subsection 952C(3) | 5 years imprisonment |
| Subsection 952D(1) | 15 years imprisonment |
| Subsection 952D(2) | 15 years imprisonment |
| Subsection 952E(6) | 2 years imprisonment |
| Subsection 952F(2) | 15 years imprisonment |
| Subsection 952F(3) | 15 years imprisonment |
| Subsection 952F(4) | 15 years imprisonment |
| Subsection 952G(2) | 2 years imprisonment |
| Subsection 952G(4) | 2 years imprisonment |
| Subsection 952G(6) | 2 years imprisonment |
| Subsection 952H(2) | 5 years imprisonment |
| Subsection 952I(1) | 30 penalty units |
| Subsection 952I(2) | 30 penalty units |
| Subsection 952I(3) | 30 penalty units |
| Subsection 952I(4) | 30 penalty units |
| Subsection 952J(1) | 30 penalty units |
| Section 952K | 5 years imprisonment |
| Subsection 952L(1) | 15 years imprisonment |
| Subsection 952L(2) | 5 years imprisonment |
| Subsection 952L(3) | 5 years imprisonment |
| Section 952M | 5 years imprisonment |
| Subsection 982C(1) | 2 years imprisonment |
| Subsection 982C(2) | 2 years imprisonment |
| Section 982D | 2 years imprisonment |
| Section 983C | 6 months imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 984B(1) | (a) if the offence relates only to a contravention of the requirements referred to in paragraph 984B(1)(a)—50 penalty units; and<br>(b) otherwise—2 years imprisonment |
| Subsection 985D(1) | 50 penalty units |
| Subsection 985J(1) | 50 penalty units |
| Subsection 985J(2) | 50 penalty units |
| Subsection 985J(4) | 50 penalty units |
| Subsection 985K(1) | 2 years imprisonment |
| Subsection 988A(1) | 5 years imprisonment |
| Subsection 989B(1) | 5 years imprisonment |
| Subsection 989B(2) | 5 years imprisonment |
| Subsection 989B(3) | 5 years imprisonment |
| Subsection 989CA(3) | 2 years imprisonment |
| Subsection 989CA(4) | 50 penalty units |
| Subsection 990B(1) | 5 years imprisonment |
| Subsection 990B(2) | 5 years imprisonment |
| Subsection 990B(6) | 6 months imprisonment |
| Subsection 990D(1) | 2 years imprisonment |
| Subsection 990D(2) | 2 years imprisonment |
| Paragraph 990F(a) | 2 years imprisonment |
| Subsection 990I(3) | 2 years imprisonment |
| Subsection 990K(1) | 1 year imprisonment |
| Subsection 991B(2) | 1 year imprisonment |
| Subsection 991E(1) | 1 year imprisonment |
| Subsection 991E(3) | 1 year imprisonment |
| Subsection 991F(1) | 6 months imprisonment |
| Subsection 991F(2) | 6 months imprisonment |
| Subsection 991F(3) | 6 months imprisonment |
| Subsection 992A(1) | 6 months imprisonment |
| Subsection 992A(3) | 6 months imprisonment |
| Subsection 992AA(1) | 6 months imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 993B(1) | 50 penalty units |
| Subsection 993B(3) | 15 years imprisonment |
| Subsection 993C(1) | 50 penalty units |
| Subsection 993C(3) | 5 years imprisonment |
| Subsection 993D(2) | 5 years imprisonment |
| Subsection 993D(3) | 50 penalty units |
| Subsection 1012DAA(10) | 2 years imprisonment |
| Subsection 1012DA(9) | 2 years imprisonment |
| Subsection 1012H(2) | 2 years imprisonment |
| Subsection 1013I(4) | 2 years imprisonment |
| Subsection 1013IA(5) | 2 years imprisonment |
| Subsection 1013K(1) | 2 years imprisonment |
| Subsection 1013K(2) | 2 years imprisonment |
| Subsection 1015B(1) | 2 years imprisonment |
| Subsection 1015D(2) | 2 years imprisonment |
| Subsection 1015D(3) | 2 years imprisonment |
| Subsection 1015D(4) | 2 years imprisonment |
| Subsection 1015E(1) | 2 years imprisonment |
| Subsection 1016A(2) | 5 years imprisonment |
| Subsection 1016A(3) | 5 years imprisonment |
| Subsection 1016B(1) | 2 years imprisonment |
| Section 1016C | 2 years imprisonment |
| Subsection 1016D(1) | 2 years imprisonment |
| Paragraph 1016D(2)(d) | 2 years imprisonment |
| Subsection 1016E(2) | 2 years imprisonment |
| Subsection 1017B(1) | 5 years imprisonment |
| Subsection 1017C(2) | 2 years imprisonment |
| Subsection 1017C(2A) | 2 years imprisonment |
| Subsection 1017C(3) | 2 years imprisonment |
| Subsection 1017C(3A) | 2 years imprisonment |
| Subsection 1017C(5) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 1017D(1) | 2 years imprisonment |
| Subsection 1017DA(3) | 50 penalty units |
| Subsection 1017E(3) | 5 years imprisonment |
| Subsection 1017E(4) | 5 years imprisonment |
| Subsection 1017F(2) | 2 years imprisonment |
| Subsection 1017G(1) | 5 years imprisonment |
| Subsection 1018A(1) | 2 years imprisonment |
| Subsection 1018A(2) | 2 years imprisonment |
| Subsection 1018B(1) | 2 years imprisonment |
| Subsection 1020AB(3) | 6 months imprisonment |
| Subsection 1020AC(2) | 6 months imprisonment |
| Subsection 1020AD(2) | 6 months imprisonment |
| Section 1020AE | 6 months imprisonment |
| Subsection 1020AI(3) | 50 penalty units |
| Subsection 1020AI(5) | 2 years imprisonment |
| Subsection 1020AI(7) | 5 years imprisonment |
| Section 1020AJ | 2 years imprisonment |
| Subsection 1020A(4) | 5 years imprisonment |
| Subsection 1020BAA(1) | 5 years imprisonment |
| Subsection 1020B(2) | (a) for a first offence—6 months imprisonment; and<br>(b) for a further offence—2 years imprisonment |
| Subsection 1020E(8) | 2 years imprisonment |
| Subsection 1020E(9) | 2 years imprisonment |
| Subsection 1021C(1) | 50 penalty units |
| Subsection 1021C(3) | 5 years imprisonment |
| Subsection 1021D(1) | 15 years imprisonment |
| Subsection 1021D(2) | 15 years imprisonment |
| Subsection 1021E(5) | 2 years imprisonment |
| Subsection 1021F(1) | 5 years imprisonment |
| Subsection 1021FA(1) | 5 years imprisonment |
| Subsection 1021FA(2) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 1021FB(1) | 5 years imprisonment |
| Subsection 1021FB(2) | 5 years imprisonment |
| Subsection 1021FB(3) | 2 years imprisonment |
| Subsection 1021FB(6) | 2 years imprisonment |
| Subsection 1021G(2) | 5 years imprisonment |
| Subsection 1021H(1) | 30 penalty units |
| Subsection 1021I(1) | 5 years imprisonment |
| Subsection 1021J(1) | 5 years imprisonment |
| Subsection 1021J(2) | 5 years imprisonment |
| Subsection 1021J(3) | 5 years imprisonment |
| Subsection 1021K(1) | 5 years imprisonment |
| Subsection 1021L(1) | 5 years imprisonment |
| Subsection 1021L(2) | 5 years imprisonment |
| Subsection 1021M(1) | 50 penalty units |
| Subsection 1021M(3) | 2 years imprisonment |
| Section 1021N | 2 years imprisonment |
| Subsection 1021NA(1) | 2 years imprisonment |
| Subsection 1021NA(2) | 5 years imprisonment |
| Subsection 1021NA(3) | 2 years imprisonment |
| Subsection 1021NB(1) | 2 years imprisonment |
| Subsection 1021NB(2) | 5 years imprisonment |
| Subsection 1021NB(3) | 2 years imprisonment |
| Subsections 1021NC(1) and (2) | 2 years imprisonment |
| Subsection 1021NC(3) | 5 years imprisonment |
| Subsection 1021NC(4) | 2 years imprisonment |
| Subsection 1021O(1) | 60 penalty units |
| Subsection 1021O(3) | 5 years imprisonment |
| Subsection 1021P(1) | 2 years imprisonment |
| Subsection 1021P(2) | 2 years imprisonment |
| Subsection 1021P(3) | 50 penalty units |
| Subsection 1021P(4) | 2 years imprisonment |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 1021P(5) | 50 penalty units |
| Subsection 1021P(6) | 50 penalty units |
| Section 1041A | 15 years imprisonment |
| Subsection 1041B(1) | 15 years imprisonment |
| Subsection 1041C(1) | 15 years imprisonment |
| Section 1041D | 15 years imprisonment |
| Subsection 1041E(1) | 15 years imprisonment |
| Subsection 1041F(1) | 15 years imprisonment |
| Section 1041G | 15 years imprisonment |
| Subsection 1043A(1) | 15 years imprisonment |
| Subsection 1043A(2) | 15 years imprisonment |
| Subsection 1052B(3) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 1052BA(4) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 1052C(6) | (a) for an individual—100 penalty units for each day, or part of a day, in respect of which the offence is committed; and<br>(b) for a body corporate—1,000 penalty units for each day, or part of a day, in respect of which the offence is committed |
| Subsection 1070B(1) | 30 penalty units |
| Subsection 1070C(1) | 30 penalty units |
| Subsection 1070D(3) | 30 penalty units |
| Subsection 1071B(2) | 30 penalty units |
| Section 1071E | 30 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 1072E(11) | 30 penalty units |
| Subsection 1072H(1) | 30 penalty units |
| Subsection 1072H(3) | 30 penalty units |
| Subsection 1072H(4) | 30 penalty units |
| Subsection 1072H(5) | 30 penalty units |
| Subsection 1072H(6) | 30 penalty units |
| Subsection 1101B(10) | 2 years imprisonment |
| Subsection 1101C(1) | 1 year imprisonment |
| Subsection 1101C(2) | 1 year imprisonment |
| Subsection 1101C(3) | 1 year imprisonment |
| Subsection 1101E(1) | 2 years imprisonment |
| Subsection 1101F(1A) | 2 years imprisonment |
| Subsection 1101F(1) | 2 years imprisonment |
| Section 1101G | 1 year imprisonment |
| Subsection 1200N(7) | 2 years imprisonment |
| Subsection 1200N(8) | 2 years imprisonment |
| Subsection 1200Q(1) | 5 years imprisonment |
| Subsection 1200Q(2) | 5 years imprisonment |
| Section 1200S | 2 years imprisonment |
| Subsection 1200U(6) | 2 years imprisonment |
| Subsection 1200U(7) | 2 years imprisonment |
| Subsection 1212C(1) | 60 penalty units |
| Subsection 1215D(2) | 2 years imprisonment |
| Subsection 1215D(3) | 2 years imprisonment |
| Subsection 1215D(4) | 2 years imprisonment |
| Subsections 1274(1) and (2) | 1 year imprisonment |
| Subsections 1274(9), (13) and (16) | 120 penalty units |
| Subsections 1299F(1), (3) and (5) | 30 penalty units |
| Subsection 1299G(1) | 20 penalty units |
| Subsection 1299G(4) | 30 penalty units |
| Subsection 1300(2A) | 30 penalty units |



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| **Penalties** | |
|---|---|
| **Provision** | **Penalty** |
| Subsection 1300(3) | 20 penalty units |
| Subsection 1307(1) | 5 years imprisonment |
| Subsection 1307(2) | 5 years imprisonment |
| Subsection 1308(1) | 20 penalty units |
| Subsection 1308(2) | 5 years imprisonment |
| Subsection 1308(4) | 2 years imprisonment |
| Subsection 1308(8) | 5 years imprisonment |
| Subsection 1309(11) | (a) in relation to a contravention of subsection 1309(1)—5 years imprisonment; and<br>(b) in relation to a contravention of subsection 1309(2)—2 years imprisonment |
| Section 1310 | 2 years imprisonment |
| Subsections 1317AC(1), (2) and (3) | 6 months imprisonment |
| Subsection 1317AE(1) | 30 penalty units |
| Subsection 1323(9) | 60 penalty units |
| Subsection 1412(3) | 2 years imprisonment |
| Subsection 1424(3) | 2 years imprisonment |
| Section 1432 | 30 penalty units |
| Subsection 1436(2) | 30 penalty units |
| Subsection 1438(6) | 50 penalty units |

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## 141 Subclause 25(5) of Schedule 4 (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 142 Subclause 29(7) of Schedule 4 (penalty)

Repeal the penalty, substitute:

Penalty:



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(a) for an individual—5 years imprisonment, 2,000 penalty units, or both; and
(b) for a body corporate—20,000 penalty units.

## 143 Subclause 33(1) of Schedule 4 (penalty)

Repeal the penalty, substitute:

Penalty: 6 months imprisonment.

## 144 Paragraph 36(2)(i) of Schedule 4

Omit “25 penalty units”, substitute “30 penalty units”.

## 145 Paragraph 36(2)(j) of Schedule 4

Omit “10 penalty units”, substitute “30 penalty units”.



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## Part 2—Application and transitional provisions

### *Corporations Act 2001*

#### 146 In the appropriate position in Chapter 10

Insert:

# Part 10.36—Application and transitional provisions relating to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

#### 1655 Definitions

In this Part:

***amending Act*** means the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

***commencement day*** means the day on which Schedule 1 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commences.

#### 1656 Application—offences

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

#### 1657 Application—civil penalty provisions

Subject to this Part, the amendments made by Schedule 1 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.



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## 1658 Application—offence provisions repealed and substituted with conduct rules with multiple consequences

To avoid doubt, the amendments made by items 82, 86, 87, 94, 100, 101 and 102 of Schedule 1 to the amending Act apply in relation to the commission of an offence or the contravention of a civil penalty provision under the sections inserted by those items if the conduct constituting the commission of the offence or the contravention of the civil penalty provision occurs wholly on or after the commencement day.

## 1659 Application—infringement notices

(1) An infringement notice may be given on or after the commencement day under section 1317DAM of the Act, as inserted by item 113 of Schedule 1 to the amending Act, in relation to an alleged contravention of a provision whether the alleged contravention occurred before, on or after the commencement day.

(2) Despite the repeal of section 1313 of the Act by item 111 of Schedule 1 to the amending Act, the Act continues to apply in relation to notices given under that section before the commencement day as if:
   (a) that section, and any regulations made under that section, had not been repealed; and
   (b) section 1311 had not been amended.

## 1660 Application—definition of dishonesty

(1) The amendment of the definition of ***dishonesty*** in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies in relation to a decision whether to convict a person of an offence under this Act for which dishonesty is an element, if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

(2) The amendment of the definition of ***dishonesty*** in section 9 of the Act made by item 7 of Schedule 1 to the amending Act applies:
   (a) in relation to the disqualification of a person from managing corporations under section 206B of the Act—to convictions



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for an offence involving dishonesty that occur on or after the commencement day; and

(b) in relation to a decision under section 913B of the Act whether to grant an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(c) in relation to a decision under section 915B of the Act whether to suspend or cancel an Australian financial services licence—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(d) in relation to a decision under section 920A of the Act whether to make a banning order—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(e) in relation to a decision to register a person as a liquidator under section 20-20 of Schedule 2 to the Act—to decisions made on or after the commencement day (whether conviction for the offence involving dishonesty occurs before on or after the commencement day); and

(f) in relation to the obligation on a registered liquidator under section 35-1 of the Schedule 2 to the Act to lodge notice with ASIC of a conviction for an offence involving fraud or dishonesty—to convictions that occur on or after the commencement day; and

(g) in relation to a decision under section 40-25 of Schedule 2 to the Act to suspend the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(h) in relation to a decision under section 40-30 of Schedule 2 to the Act to cancel the registration of a person as a liquidator—to convictions for an offence involving dishonesty whether the conviction occurs before, on or after the commencement day; and

(i) in relation to a decision under section 40-40 of Schedule 2 to the Act to give a show cause notice—to convictions for an



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offence involving dishonesty whether the conviction occurs before, on or after the commencement day.



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# Schedule 2—Amendment of the Australian Securities and Investments Commission Act 2001

## Part 1—Amendments

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

#### 1 Subsection 5(1)

Insert:

***benefit derived and detriment avoided***:

(a) because of an offence—has the meaning given by section 93F; and

(b) because of the contravention of a civil penalty provision—has the meaning given by section 12GBCE.

#### 2 Subsection 5(1) (definition of *contravention*)

Repeal the definition, substitute:

***contravention***:

(a) in relation to an offence against a law—includes an ancillary offence relating to the offence against the law; and

(b) in relation to a civil penalty provision—has a meaning affected by section 12GBCL.

#### 3 Subsection 12BA(1)

Insert:

***civil penalty provision*** has the meaning given by subsection 12GBA(6).

***individual fine formula*** means the formula set out in subsection 93D(3).

#### 4 Subsection 12BA(1) (definition of *infringement notice*)

Omit “12GXA”, substitute “12GX”.



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## 5 Subsection 12BA(1) (definitions of *infringement notice compliance period* and *infringement notice provision*)

Repeal the definitions.

## 6 Subsection 12BA(1)

Insert:

***payment period*** for an infringement notice, has the meaning given by section 12GXC.

***pecuniary penalty order*** has the meaning given by subsection 12GBB(4).

***relinquishment order*** has the meaning given by subsection 12GBCC(1).

***subject to an infringement notice*** under Subdivision GB of Division 2 of Part 2, has the meaning given by section 12GXA.

## 7 Subsections 12GB(1), (1A) and (1B)

Repeal the subsections, substitute:

(1) A person commits an offence if the person:
  (a) contravenes; or
  (b) attempts to contravene; or
  (c) is involved in a contravention of;

a provision of Subdivision D (sections 12DA to 12DN) other than section 12DA.

Penalty: 2,000 penalty units.

(1A) Subsections 11.2(2) to (5) of the *Criminal Code* apply in relation to paragraph (1)(c) of this section, to the extent that the paragraph relates to aiding, abetting, counselling or procuring a person to contravene Subdivision D (sections 12DA to 12DN) other than section 12DA, in the same way as they apply in relation to subsection 11.2(1) of the *Criminal Code*.

(1B) Subsections 11.5(2) to (5) of the *Criminal Code* apply in relation to paragraph (1)(c) of this section, to the extent that the paragraph relates to conspiring with others to contravene Subdivision D



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(sections 12DA to 12DN) other than section 12DA, in the same way as they apply in relation to subsection 11.5(1) of the *Criminal Code*.

## 8 Sections 12GBA to 12GBC

Repeal the sections, substitute:

### 12GBA Declaration of contravention of civil penalty provision

*Application for declaration of contravention*

(1) ASIC may apply to a Court for a declaration that a person has contravened a civil penalty provision.

(2) ASIC must make the application within 6 years of the alleged contravention.

*Declaration of contravention*

(3) The Court must make the declaration if it is satisfied that the person has contravened the provision.

(4) The declaration must specify the following:
  (a) the Court that made the declaration;
  (b) the civil penalty provision that was contravened;
  (c) the person who contravened the provision;
  (d) the conduct that constituted the contravention.

*Declaration of contravention conclusive evidence*

(5) The declaration is conclusive evidence of the matters referred to in subsection (4).

*Meaning of* ***civil penalty provision***

(6) The following provisions are ***civil penalty provisions***:
  (a) a provision of Subdivision C;
  (b) a provision of Subdivision D (other than section 12DA);
  (c) a provision of Subdivision GC.



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## 12GBB Pecuniary penalty orders

*Application for order*

(1) ASIC may apply to a Court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

(2) ASIC must make the application within 6 years of the alleged contravention.

*Court may order person to pay pecuniary penalty*

(3) If a declaration has been made under section 12GBA that the person has contravened the provision, the Court may order the person to pay to the Commonwealth a pecuniary penalty that the Court considers is appropriate (but not more than the amount specified in section 12GBC).

(4) An order under subsection (3) is a ***pecuniary penalty order***.

*Determining pecuniary penalty*

(5) In determining the pecuniary penalty, the Court must take into account all relevant matters, including:
   (a) the nature and extent of the contravention; and
   (b) the nature and extent of any loss or damage suffered because of the contravention; and
   (c) the circumstances in which the contravention took place; and
   (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

## 12GBC Maximum pecuniary penalty

The pecuniary penalty must not be more than the pecuniary penalty applicable to the contravention of the civil penalty provision.



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## 12GBCA Pecuniary penalty applicable

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*

(1) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
  (a) the penalty specified for the civil penalty provision; and
  (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

(2) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:
  (a) the penalty specified for the civil penalty provision, multiplied by 10; and
  (b) if the Court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
  (c) either:
    (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

*Contrary intention*

(3) This section applies in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the contravention. In that case, the ***penalty applicable*** is the penalty specified for the civil penalty provision.



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## 12GBCB Civil enforcement of pecuniary penalty order

(1) A pecuniary penalty is a debt payable to the Commonwealth.

(2) The Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

## 12GBCC Relinquishing the benefit derived from engaging in conduct resulting in a pecuniary penalty order

*Relinquishment order*

(1) A Court may order a person to pay the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision. The order is a ***relinquishment order***.

(2) The Court may make a relinquishment order:
   (a) on its own initiative, during proceedings before the Court; or
   (b) on application by ASIC, made within 6 years after the alleged contravention.

*Relationship between relinquishment orders and pecuniary penalty orders*

(3) To avoid doubt, the Court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.

Note: The relationship between relinquishment orders and proceedings for an offence are dealt with in sections 12GBCG, 12GBCH, 12GBCJ and 12GBCK.

## 12GBCD Civil enforcement of relinquishment order

(1) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.

(2) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person



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to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

### 12GBCE Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision

The ***benefit derived and detriment avoided*** because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

### 12GBCF Civil evidence and procedure rules for declarations of contravention, pecuniary penalty orders and relinquishment orders

A Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a declaration of contravention, a pecuniary penalty order or a relinquishment order.

### 12GBCG Civil proceedings after criminal proceedings

A Court must not make a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### 12GBCH Criminal proceedings during civil proceedings

(1) Proceedings for a declaration of contravention, a pecuniary penalty order or a relinquishment order against a person for a contravention of a civil penalty provision are stayed if:

(a) criminal proceedings are commenced or have already been commenced against the person for an offence; and

(b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.



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(2) The proceedings for the declaration or order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:
  (a) the civil proceedings are dismissed; and
  (b) costs must not be awarded in relation to the civil proceedings.

## 12GBCJ Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order has been made against the person in relation to the contravention.

## 12GBCK Evidence given in civil proceedings not admissible in criminal proceedings

(1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
  (a) the individual previously gave the information or produced the documents in proceedings for a declaration of contravention, a pecuniary penalty order or a relinquishment order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
  (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the pecuniary penalty order.

## 12GBCL Attempt and involvement in contravention treated in same way as actual contravention

A person who:
  (a) attempts to contravene a civil penalty provision; or



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(b) is involved in a contravention of a civil penalty provision;

is taken to have ***contravened*** the provision.

## 12GBCM Continuing contraventions of civil penalty provisions

(1) If an act or thing is required under a civil penalty provision to be done:

(a) within a particular period; or

(b) before a particular time;

then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:

(a) within a particular period; or

(b) before a particular time;

commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

## 12GBCN State of mind

(1) In proceedings for a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order against a person for a contravention of a civil penalty provision, it is not necessary to prove:

(a) the person's intention; or

(b) the person's knowledge; or

(c) the person's recklessness; or

(d) the person's negligence; or

(e) any other state of mind of the person.

(2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.

(3) Subsection (1) does not affect the operation of section 12GI (which is about mistake of fact and other matters).



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(4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

### 12GBCP Exceptions etc. to civil penalty provisions—burden of proof

(1) If, in proceedings for a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

(2) In subsection (1), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## 9 Paragraph 12GBD(1)(a)

Repeal the paragraph, substitute:

(a) a liability to pay an amount under:

(i) a pecuniary penalty order made under section 12GBB; or

(ii) a relinquishment order made under section 12GBCC;

## 10 Subsection 12GBD(1) (penalty)

Repeal the penalty, substitute:

Penalty: 300 penalty units.

## 11 Subsection 12GBD(5)

Omit “5 penalty units”, substitute “30 penalty units”.

## 12 Section 12GCA

Repeal the section, substitute:



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### 12GCA Preference must be given to compensate persons who suffer damage as a result of contravention

(1) This section applies if a court considers that it is appropriate to:
  (a) make a pecuniary penalty order against a person in relation to the contravention of a civil penalty provision; or
  (b) make a relinquishment order against a person in relation to the contravention of a civil penalty provision; or
  (c) impose a fine against a person in relation to a commission of an offence constituted by the same conduct as the conduct constituting a contravention mentioned in paragraph (a) or (b).

(2) In making the pecuniary penalty order or relinquishment order or imposing the fine, the court:
  (a) must consider the effect that making the order or imposing the fine would have on the amount available to pay compensation to persons who might reasonably be expected to be entitled to recover compensation for loss or damage suffered as a result of the contravention; and
  (b) give preference to making an appropriate amount available for compensation.

(3) If the court gives preference to making an appropriate amount available for compensation under paragraph (2)(b), the court may also make such orders as the court thinks fit for the purpose of ensuring that the amount remains available for the payment of compensation.

## 13 Section 12GG

Omit “section 12GBC,”, substitute “section 12GBA, 12GBB, 12GBCC,”.

## 14 Subsection 12GI(5)

Repeal the subsection, substitute:

(5) If, in proceedings under section 12GBA or 12GBB against a person other than a body corporate, it appears to the Court that the person has, or may have, engaged in conduct in contravention of a civil penalty provision but that the person acted honestly and



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reasonably and, having regard to all the circumstances of the case, ought fairly to be excused, the Court may relieve the person either wholly or partly from liability to pay a pecuniary penalty under that section.

## 15 Paragraph 12GLB(1)(a)

Omit "section 12GBA", substitute "section 12GBB".

## 16 Subsection 12GN(5)

Repeal the subsection, substitute:

(5) A person who contravenes or fails to comply with an order by the Court under this section that is applicable to the person is guilty of an offence.

Penalty: 200 penalty units.

## 17 Subdivision GB of Division 2 of Part 2

Repeal the Subdivision, substitute:

### Subdivision GB—Infringement notices

#### 12GX When an infringement notice may be given

(1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Subdivision, ASIC may give the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.

(4) ASIC may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  (b) the person fails or refuses to do that thing within that period or before that time; and



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(c) the failure or refusal occurs on more than 1 day; and
(d) each contravention is constituted by the failure or refusal on one of those days.

(5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

## 12GXA Provisions subject to an infringement notice

The following provisions are ***subject to an infringement notice*** under this Subdivision:
(a) a provision of Subdivision C;
(b) a provision of Subdivision D, other than section 12DA or 12DE, subsection 12DG(1) or section 12DI or 12DM;
(c) a provision of Subdivision GC.

## 12GXB Matters to be included in an infringement notice

(1) An infringement notice must:
(a) be identified by a unique number; and
(b) state the day on which it is given; and
(c) state the name of the person to whom the notice is given; and
(d) state the name and contact details of the person who gave the notice; and
(e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
(i) the provision that was allegedly contravened; and
(ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
(iii) the time (if known) and day of, and the place of, each alleged contravention; and
(f) state the amount that is payable under the notice; and
(g) give an explanation of how payment of the amount is to be made; and
(h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the



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period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and

(i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

(j) state that payment of the amount is not an admission of guilt or liability; and

(k) state that the person may apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

(l) state that the person may choose not to pay the amount and, if the person does so:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty



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order may be brought in relation to the alleged contravention; and

(m) set out how the notice can be withdrawn; and

(n) state that if the notice is withdrawn:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.

(2) The amount to be stated in the notice for the purposes of paragraph (1)(f) must be equal to the number of penalty units worked out using the following table:

**Number of penalty units**

| Item | If the infringement notice is for an alleged contravention of ... | the number of penalty units is ... |
|---|---|---|
| 1 | a provision of Subdivision C or D (other than section 12DA or 12DE, subsection 12DG(1) or section 12DI or 12DM) | (a) if the person is a body corporate—60; or<br>(b) if the person is not a body corporate—12. |
| 2 | section 12GYB | (a) if the person is a body corporate—30; or<br>(b) if the person is not a body corporate—6. |
| 3 | section 12GYC | (a) if the person is a body |



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| Number of penalty units | | |
|---|---|---|
| **Item** | **If the infringement notice is for an alleged contravention of ...** | **the number of penalty units is ...** |
| | | corporate—50; or<br>(b) if the person is not a body corporate—10. |

## 12GXC Payment period

*Usual payment period*

(1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

*Payment period extended under section 12GXD*

(2) If, under section 12GXD, ASIC extends the payment period for the notice, the ***payment period*** is as extended.

(3) If, under section 12GXD, ASIC refuses to extend the payment period for the notice, the ***payment period*** ends on the later of the following days:
   (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;
   (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;
   (c) the day that is 7 days after the day the application is taken to have been refused under subsection 12GXD(4).

*Instalments*

(4) If, under section 12GXE, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
   (a) the last day on which an instalment is to be paid under the arrangement;



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(b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.

(5) If, under section 12GXE, ASIC refuses to make an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:

(a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;

(b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 12GXE(4).

*Payment period if ASIC refuses to withdraw infringement notice*

(6) If ASIC refuses a representation made under section 12GXF for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:

(a) the last day of the period that, without the withdrawal, would be the payment period for the notice;

(b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;

(c) the day that is 7 days after the day on which, under subsection 12GXF(5), ASIC is taken to have refused to withdraw the infringement notice.

## 12GXD Extension of time to pay amount

(1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.

(2) ASIC may, in writing, extend the payment period for an infringement notice:

(a) if a person makes an application in accordance with subsection (1); or

(b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.



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(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) grant or refuse to grant an extension of the payment period for the infringement notice;
  (b) give the applicant notice in writing of ASIC's decision.

(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may extend the payment period more than once under subsection (2).

## 12GXE Payment by instalments

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.

(2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
  (a) if a person makes an application in accordance with subsection (1); or
  (b) on ASIC's own initiative.

  ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
  (b) give the applicant notice in writing of ASIC's decision;
  (c) if ASIC decides to make the arrangement, specify in the notice:
    (i) the day by which each instalment is to be paid; and
    (ii) the amount of each instalment.



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(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

(6) If:
  (a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and
  (b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;

ASIC must refund to the person the amount of any instalments paid.

## 12GXF Withdrawal of an infringement notice

*Representations seeking withdrawal of notice*

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

(2) ASIC may withdraw an infringement notice given to a person:
  (a) if the person makes representations to ASIC in accordance with subsection (1); or
  (b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):
  (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  (b) if ASIC decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and



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(c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.

(4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:
  (a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and
  (b) may take into account the following:
    (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
    (ii) the circumstances of the alleged contravention;
    (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
    (iv) any other matter ASIC considers relevant.

(5) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to withdraw the infringement notice; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

*Notice of withdrawal*

(6) The withdrawal notice must state:
  (a) the person's name and address; and
  (b) the day the infringement notice was given; and
  (c) the identifying number of the infringement notice; and
  (d) that the infringement notice is withdrawn; and
  (e) that:
    (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order



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may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

(7) If:

(a) ASIC withdraws the infringement notice; and

(b) the person has already paid the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.

## 12GXG Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:

(a) any liability of the person for the alleged contravention is discharged; and

(b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and

(c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and

(d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and

(e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and

(f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.



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(2) Subsection (1) does not apply if the notice has been withdrawn.

### 12GXH Effect of this Subdivision

This Subdivision does not:

(a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Subdivision; or

(b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Subdivision if:

(i) the person does not comply with an infringement notice given to the person for the contravention; or

(ii) an infringement notice is not given to the person for the contravention; or

(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Subdivision; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Subdivision.

## 18 Subsection 22(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 19 Subsection 25(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 20 Subsection 26(1) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.



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## 21 Subsection 39A(2) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 22 Subsection 39C(8) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 23 Subsection 47(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 24 Subsection 56(3) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 25 Subsection 63(1) (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 26 Subsection 63(2) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

## 27 Subsection 63(3) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 28 Subsection 63(4) (penalty)

Repeal the penalty, substitute:

Penalty: 20 penalty units.



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## 29 Subsection 64(1) (penalty)

Repeal the penalty, substitute:

Penalty: 5 years imprisonment.

## 30 Subsection 64(2) (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 31 Subsection 65(1) (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 32 Subsection 65(2) (penalty)

Repeal the penalty, substitute:

Penalty: 1 year imprisonment.

## 33 Subsection 66(1) (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 34 Subsection 66(2) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

## 35 Subsection 67(1) (penalty)

Repeal the penalty, substitute:

Penalty: 5 years imprisonment.

## 36 Subsection 69(3) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.



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### 37 Subsection 75(5) (penalty)

Repeal the penalty, substitute:

Penalty: 60 penalty units.

### 38 Subsection 91(3) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

### 39 After Part 3A

Insert:

## Part 3B—Criminal penalties

### 93C Penalty for committing an offence

A person who commits an offence against this Act is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.

### 93D Penalty applicable to an offence committed by an individual

(1) The ***penalty applicable*** to an offence committed by an individual is:
  (a) for an offence for which a fine is the only penalty specified—the fine specified; and
  (b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.

(2) If:
  (a) a term of imprisonment is the only penalty specified for an offence; and
  (b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is worked out using the individual fine formula.

(3) The ***individual fine formula*** is:



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$$\text{Term of imprisonment, expressed in months} \times 10$$

(4) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greater of:

(c) 4,500 penalty units; and

(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.

(5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

## 93E Penalty applicable to an offence committed by a body corporate

(1) The ***penalty applicable*** to an offence committed by a body corporate is:

(a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and

(b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.

(2) If:

(a) a term of imprisonment is the only penalty specified as the penalty; and

(b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.

(3) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greatest of:



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(c) 45,000 penalty units; and
(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and
(e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

## 93F Meaning of *benefit derived and detriment avoided* because of an offence

The ***benefit derived and detriment avoided*** because of an offence is the sum of:
(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the commission of the offence; and
(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the commission of the offence.

## 93G Where is the penalty for an offence specified?

(1) The penalty ***specified*** for an offence is the penalty specified for the provision under which the offence is created, or a provision or provisions in which that provision is included.

(2) To avoid doubt, a penalty is not ***specified*** for an offence if it is a consequence for committing the offence that is not a punishment on conviction for the offence.

(3) Without limiting subsection (2), each of the following is a consequence for committing an offence that is not a punishment on conviction for the offence:



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(a) the availability of a pecuniary penalty order for the contravention of a civil penalty provision that relates to the same conduct as that which gave rise to the offence;
(b) the availability of an infringement notice in relation to an alleged commission of the offence;
(c) the availability of administrative consequences as a result of the commission of the offence, such as:
  (i) disqualification from any office; or
  (ii) consequences in relation to a licence; or
  (iii) other actions that may be taken by ASIC under the Corporations legislation;
(d) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an order to refund money, pay compensation, relinquish a benefit or make any other payment if the offence is committed;
(e) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an injunction or any other order directing a person to take, or refrain from taking, action if the offence is committed.

### 93H If no penalty is specified

If no penalty is specified for an offence:
(a) the offence is an offence of strict liability; and
(b) 20 penalty units is taken to be the penalty specified for the offence.

## 40 Subsection 125(3) (penalty)

Repeal the penalty, substitute:

Penalty: 1 year imprisonment.

## 41 Subsections 127(4E), (4EA), (4EB) and (4F) (penalty)

Repeal the penalty, substitute:

Penalty: 2 years imprisonment.

## 42 Subsection 198(1) (penalty)

Repeal the penalty, substitute:



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Penalty: 30 penalty units.

## 43 Subsection 199(1) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 44 Subsection 200(1) (penalty)

Repeal the penalty, substitute:

Penalty: 1 year imprisonment.

## 45 Subsection 200(2) (penalty)

Repeal the penalty, substitute:

Penalty: 120 penalty units.

## 46 Subsection 216(7) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 47 Subsection 219(4) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 48 Subsection 220(1) (penalty)

Repeal the penalty, substitute:

Penalty: 3 months imprisonment.

## 49 Subsection 220(2) (penalty)

Repeal the penalty, substitute:

Penalty: 30 penalty units.

## 50 Subsection 225A(9) (penalty)

Repeal the penalty, substitute:



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Penalty: 20 penalty units.



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## Part 2—Application and transitional provisions

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

#### 51 In the appropriate position

Insert:

# Part 27—Application and transitional provisions relating to the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

#### 320 Definitions

In this Part:

***amending Act*** means the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

***commencement day*** means the day on which Schedule 2 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commences.

#### 321 Application—offences

Subject to this Part, the amendments made by Schedule 2 to the amending Act apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.

#### 322 Application—civil penalty provisions

Subject to this Part, the amendments made by Schedule 2 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.



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## 323 Application—infringement notices

(1) An infringement notice may be given on or after the commencement day under section 12GX of the Act, as inserted by item 17 of Schedule 2 to the amending Act, in relation to an alleged contravention of a provision whether the alleged contravention occurred before, on or after the commencement day.

(2) Despite the repeal of Subdivision GB of Division 2 of Part 2 of the Act by item 17 of Schedule 2 to the amending Act, the Act continues to apply in relation to notices given under that Subdivision before the commencement day as if that Subdivision and any regulations made under that Subdivision had not been repealed.



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# Schedule 3—Amendment of the National Consumer Credit Protection Act 2009

## Part 1—Amendments of the infrastructure provisions for civil penalties, offences and infringement notices

### *National Consumer Credit Protection Act 2009*

#### 1 Subsection 5(1)

Insert:

***annual turnover***, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

(b) supplies that are input taxed; or

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or

(e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

***benefit derived and detriment avoided***:

(a) because of an offence—has the meaning given by section 288E; and

(b) because of a contravention of a civil penalty provision—has the meaning given by section 167D.



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## 2 Subsection 5(1) (definition of *contravention*)

Repeal the definition, substitute:

***contravention***:

(a) in relation to an offence against a law—includes an ancillary offence relating to the offence against the law; and

(b) in relation to a civil penalty provision—has a meaning affected by section 169.

## 3 Subsection 5(1)

Insert:

***individual fine formula*** means the formula set out in subsection 288C(3).

***infringement notice*** means a notice given under section 288J.

***payment period***, in relation to an infringement notice, has the meaning given by section 288M.

***pecuniary penalty order*** means an order made under section 167.

***relinquishment order*** means an order made under subsection 167C(1).

***subject to an infringement notice***, in relation to an offence provision or civil penalty provision, has the meaning given by section 288K.

## 4 At the end of section 47

Add:

*Civil penalty for non-compliance*

(4) The licensee must not contravene paragraph (1)(a), (b), (e), (f), (g), (h), (i), (j), (k), (l) or (m).

Civil penalty: 5,000 penalty units.

Note: Contravening paragraphs (1)(c) (obligation to comply with conditions on the licence) and (d) (compliance with the credit legislation) has consequences under other provisions.



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## 5 Subsection 167(2)

Omit "(but not more than the amount specified in subsection (3))", substitute "(but not more than the amount specified in section 167A)".

## 6 Subsections 167(3) and (4)

Repeal the subsections, substitute:

*Determining pecuniary penalty*

(3) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered because of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by a court (including a court in foreign country) to have engaged in similar conduct.

*Civil enforcement of penalty*

(4) A pecuniary penalty is a debt payable to the Commonwealth.

(5) The Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgement debt.

## 7 At the end of Division 2 of Part 4-1

Add:

### 167A Maximum pecuniary penalty

The pecuniary penalty must not be more than the pecuniary penalty applicable to the contravention of the civil penalty provision.



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## 167B Pecuniary penalty applicable

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*

(1) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
  (a) the penalty specified for the civil penalty provision; and
  (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

Note: See section 14 in relation to contraventions by partners in a partnership and section 15 in relation to contraventions by multiple trustees.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

(2) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:
  (a) the penalty specified for the civil penalty provision, multiplied by 10; and
  (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
  (c) either:
    (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

*Contrary intention*

(3) This section applies in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the pecuniary penalty applicable to the contravention. In that case, the ***pecuniary***



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***penalty applicable*** is the penalty specified for the civil penalty provision.

## 167C Relinquishing the benefit derived from contravening a civil penalty provision

*Relinquishment order*

(1) A court may order a person to pay the Commonwealth an amount equal to the benefit derived and detriment avoided because of a contravention of a civil penalty provision if a declaration of contravention by the person has been made under section 166. The order is a ***relinquishment order***.

(2) The court may make a relinquishment order:
  (a) on its own initiative during proceedings before the court; or
  (b) on application by ASIC, made within 6 years after the alleged contravention.

*Relationship between relinquishment orders and pecuniary penalty orders*

(3) To avoid doubt, the court may make a relinquishment order in relation to the contravention of a civil penalty provision even if a pecuniary penalty order could be, or has been, made in relation to the contravention of the civil penalty provision.

Note: The relationship between relinquishment orders and proceedings for an offence are dealt with in sections 171, 172, 173 and 174.

*Civil enforcement of relinquishment order*

(4) The amount payable under a relinquishment order is a debt payable to ASIC on behalf of the Commonwealth.

(5) ASIC or the Commonwealth may enforce a relinquishment order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.



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### 167D Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision

The ***benefit derived and detriment avoided*** because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits that one or more persons obtained that are reasonably attributable to the contravention; and

(b) the total value of all detriments that one or more persons avoided that are reasonably attributable to the contravention.

## 8 Section 169

Repeal the section, substitute:

### 169 Attempt and involvement in contravention treated in same way as actual contravention

A person who:

(a) attempts to contravene a civil penalty provision; or

(b) is involved in a contravention of a civil penalty provision;

is taken to have ***contravened*** the provision.

## 9 Section 171

Omit "or a pecuniary penalty order", substitute ", a pecuniary penalty order or a relinquishment order".

## 10 Subsection 172(1)

Omit "or a pecuniary penalty order", substitute ", a pecuniary penalty order or a relinquishment order".

## 11 Subsection 172(2)

Repeal the subsection, substitute:

(2) The proceedings for the declaration or order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:

(a) the civil proceedings are dismissed; and

(b) costs must not be awarded in relation to the civil proceedings.



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## 12 Section 173

Omit "or a pecuniary penalty order", substitute ", a pecuniary penalty order or a relinquishment order".

## 13 Paragraph 174(1)(a)

Omit "or a pecuniary penalty order", substitute ", a pecuniary penalty order or a relinquishment order".

## 14 Section 175

Before "If a person", insert "(1)".

## 15 At the end of section 175 (after the note)

Add:

(2) If a relinquishment order is made against a person under section 167C in relation to particular conduct, the person is not liable to a relinquishment order under the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001* in relation to that conduct.

## 16 At the end of Division 3 of Part 4-1

Add:

### 175A Continuing contraventions of civil penalty provisions

(1) If an act or thing is required under a civil penalty provision to be done:
  (a) within a particular period; or
  (b) before a particular time;
then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
  (a) within a particular period; or
  (b) before a particular time;



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commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

## 175B State of mind

(1) In proceedings for a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
  (a) the person's intention; or
  (b) the person's knowledge; or
  (c) the person's recklessness; or
  (d) the person's negligence; or
  (e) any other state of mind of the person.

(2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.

(3) Subsection (1) does not affect the operation of section 175C (which is about mistake of fact).

(4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.

## 175C Mistake of fact

(1) A person is not liable to have a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order made against the person for a contravention of a civil penalty provision if:
  (a) at or before the time of the conduct constituting the contravention, the person:
    (i) considered whether or not facts existed; and
    (ii) was under a mistaken but reasonable belief about those facts; and
  (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.



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(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings bears an evidential burden in relation to that matter.

(4) In subsection (3), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

### 175D Exceptions etc. to civil penalty provisions—burden of proof

(1) If, in proceedings for a declaration of contravention, a pecuniary penalty order, a relinquishment order or any other order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.

(2) In subsection (1), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

### 175E Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:
  (a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or
  (b) within the employee's, agent's, or officer's actual or apparent authority;



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the element must also be attributed to the body corporate.

## 17 Section 181

Repeal the section, substitute:

### 181 Preference must be given to compensate consumers

(1) This section applies if a court considers that it is appropriate to:
  (a) make a pecuniary penalty order against a person in relation to a contravention of a civil penalty provision; or
  (b) make a relinquishment order against a person in relation to a contravention of a civil penalty provision; or
  (c) impose a fine against a person in relation to a commission of an offence constituted by the same conduct as the conduct constituting the contravention of the pecuniary penalty order.

(2) In making the pecuniary penalty order or relinquishment order or imposing the fine, the court:
  (a) must consider the effect that making the order or imposing the fine would have on the amount available to pay compensation to which persons might reasonably be expected to be entitled under section 178, 179 or 180; and
  (b) give preference to making an appropriate amount available for compensation under those sections.

(3) If the court gives preference to making an appropriate amount available for compensation under paragraph (2)(b), the court may also make such orders as the court thinks fit for the purpose of ensuring that the amount remains available for the payment of compensation under section 178, 179 or 180.

## 18 Subsection 207(2) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 20 penalty units.

## 19 After Part 6-5

Insert:



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# Part 6-5A—Penalties for offences

## Division 1—Introduction

### 288A Guide to this Part

This Part is about the penalties applicable to offences against this Act.

Division 2 includes rules about the penalties applicable to offences committed by individuals or bodies corporate. These penalties are worked out in relation to the penalty specified for the offence.

## Division 2—Penalty for committing an offence

### 288B Penalty for committing an offence

A person who commits an offence against this Act is punishable on conviction by a penalty not exceeding the penalty applicable to the offence.

### 288C Penalty applicable to an offence committed by an individual

(1) The ***penalty applicable*** to an offence committed by an individual is:
  (a) for an offence for which a fine is the only penalty specified—the fine specified; and
  (b) for an offence for which a term of imprisonment is the only penalty specified—either the term of imprisonment, the fine worked out under this section, or both.

(2) If:
  (a) a term of imprisonment is the only penalty specified for an offence; and
  (b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula.



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(3) The ***individual fine formula*** is:

$$\text{Term of imprisonment, expressed in months} \times 10$$

(4) If:

(a) a term of imprisonment is the only penalty specified for the offence; and

(b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greater of:

(c) 4,500 penalty units; and

(d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3.

Note: See section 14 in relation to contraventions by partners in a partnership and section 15 in relation to contraventions by multiple trustees.

(5) This section applies in relation to an offence committed by an individual unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

## 288D Penalty applicable to an offence committed by a body corporate

(1) The ***penalty applicable*** to an offence committed by a body corporate is:

(a) for an offence for which a fine is the only penalty specified—the fine specified multiplied by 10; and

(b) for an offence for which a term of imprisonment is the only penalty specified—the fine worked out under this section.

(2) If:

(a) a term of imprisonment is the only penalty specified for an offence; and

(b) the term of imprisonment is less than 10 years;

the fine mentioned in paragraph (1)(b) is the number of penalty units worked out using the individual fine formula, multiplied by 10.



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(3) If:
  (a) a term of imprisonment is the only penalty specified for an offence; and
  (b) the term of imprisonment is 10 years or more;

the fine mentioned in paragraph (1)(b) is the greatest of:
  (c) 45,000 penalty units; and
  (d) if the court can determine the benefit derived and detriment avoided because of the offence—that amount multiplied by 3; and
  (e) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate committed, or began committing, the offence.

(4) This section applies in relation to an offence committed by a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the offence. In that case, the ***penalty applicable*** is the penalty specified for the offence.

## 288E Meaning of *benefit derived and detriment avoided* because of an offence

The ***benefit derived and detriment avoided*** because of an offence is the sum of:
  (a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the commission of the offence; and
  (b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the commission of the offence.

## 288F Where is the penalty for an offence specified?

(1) The penalty ***specified*** for an offence is the penalty, pecuniary or otherwise, specified in any provision of this Act for the offence.

(2) To avoid doubt, a penalty is not ***specified*** for an offence if it is a consequence for committing the offence that is not a punishment on conviction for the offence.



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(3) Without limiting subsection (2), each of the following is a consequence for committing an offence that is not a punishment on conviction for the offence:
  (a) the availability of a pecuniary penalty order for the contravention of a civil penalty provision that relates to the same conduct as that which gave rise to the offence;
  (b) the availability of an infringement notice in relation to an alleged commission of the offence;
  (c) the availability of administrative consequences as a result of the commission of the offence, such as:
    (i) disqualification from any office; or
    (ii) consequences in relation to a licence; or
    (iii) other actions that may be taken by ASIC under this Act or any other Act;
  (d) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an order to refund money, pay compensation, relinquish a benefit or make any other payment if the offence is committed;
  (e) the availability under any law of the Commonwealth or of a State or Territory (including the general law) of an injunction or any other order directing a person to take, or refrain from taking, action if the offence is committed.

## 288G If no penalty is specified

If no penalty is specified for an offence:
  (a) the offence is an offence of strict liability; and
  (b) 20 penalty units is taken to be the penalty specified for the offence.



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# Part 6-5B—Infringement notices

## Division 1—Introduction

### 288H Guide to this Part

This Part is about the use of infringement notices where ASIC reasonably believes that a provision has been contravened.

Division 2 authorises ASIC to give an infringement notice in relation to a contravention of certain provisions. A person who is given an infringement notice can choose to pay an amount as an alternative to having court proceedings brought against the person for the contravention. If the person does not choose to pay the amount, proceedings can be brought against the person for the contravention.

## Division 2—Infringement notices

### 288J When an infringement notice may be given

(1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Part, ASIC may give the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.

(4) ASIC may give a person a single infringement notice relating to multiple contraventions of a single provision if:
  (a) the provision requires the person to do a thing within a particular period or before a particular time; and
  (b) the person fails or refuses to do that thing within that period or before that time; and
  (c) the failure or refusal occurs on more than 1 day; and



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(d) each contravention is constituted by the failure or refusal on one of those days.

(5) If an alleged contravention would, if proved, constitute both a contravention of a civil penalty provision and of an offence provision, the infringement notice must relate to the alleged contravention of the offence provision.

## 288K Provisions subject to an infringement notice

(1) The following provisions are ***subject to an infringement notice*** under this Part:
  (a) strict liability offences against this Act;
  (b) other prescribed offences against this Act;
  (c) prescribed civil penalty provisions;
  (d) prescribed provisions of the National Credit Code containing key requirements (as defined for the purposes of the National Credit Code).

(2) This Part applies in relation to a provision prescribed under paragraph (1)(d) in the same way as it applies in relation to a civil penalty provision.

## 288L Matters to be included in an infringement notice

(1) An infringement notice must:
  (a) be identified by a unique number; and
  (b) state the day on which it is given; and
  (c) state the name of the person to whom the notice is given; and
  (d) state the name and contact details of the person who gave the notice; and
  (e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:
    (i) the provision that was allegedly contravened; and
    (ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and
    (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  (f) state the amount that is payable under the notice; and



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(g) give an explanation of how payment of the amount is to be made; and

(h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and

(i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

(j) state that payment of the amount is not an admission of guilt or liability; and

(k) state that the person may apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

(l) state that the person may choose not to pay the amount and, if the person does so:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order



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may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(m) set out how the notice can be withdrawn; and

(n) state that if the notice is withdrawn:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.

(2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:

(a) for a single contravention of an offence provision—one-fifth of the maximum penalty that a court could impose on the person for the contravention; and

(b) for multiple contraventions of an offence provision—the amount worked out under paragraph (a) for a single contravention multiplied by the number of contraventions; and

(c) for a single contravention of a civil penalty provision—50 penalty units for an individual and 250 penalty units for a body corporate; and



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(d) for multiple contraventions of a civil penalty provision—the amount worked out under paragraph (c) for a single contravention multiplied by the number of contraventions.

## 288M Payment period

*Usual payment period*

(1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.

*Payment period extended under section 288N*

(2) If, under section 288N, ASIC extends the payment period for the notice, the ***payment period*** is as extended.

(3) If ASIC refuses an application under subsection 288N(1) for an extension of the payment period for the notice, the ***payment period*** ends on the later of the following days:
   (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;
   (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;
   (c) the day that is 7 days after the day the application is taken to have been refused under subsection 288N(4).

*Instalments*

(4) If, under section 288P, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
   (a) the last day on which an instalment is to be paid under the arrangement;
   (b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.

(5) If ASIC refuses an application made under subsection 288P(1) to make an arrangement for the amount payable under the notice to be



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paid by instalments, the ***payment period*** ends on the earlier of the following days:

(a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;

(b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;

(c) the day that is 7 days after the day the application is taken to have been refused under subsection 288P(4).

*Payment period if ASIC refuses to withdraw infringement notice*

(6) If ASIC refuses a representation made under subsection 288Q(1) for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:

(a) the last day of the period that, without the withdrawal, would be the payment period for the notice;

(b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;

(c) the day that is 7 days after the day on which, under subsection 288Q(5), ASIC is taken to have refused to withdraw the infringement notice.

## 288N Extension of time to pay amount

(1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.

(2) ASIC may, in writing, extend the payment period for an infringement notice:

(a) if a person makes an application in accordance with subsection (1); or

(b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:

(a) grant or refuse to grant an extension of the payment period for the infringement notice;

(b) give the applicant notice in writing of ASIC's decision.



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(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may extend the payment period more than once under subsection (2).

## 288P Payment by instalments

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.

(2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
  (a) if a person makes an application in accordance with subsection (1); or
  (b) on ASIC's own initiative.

  ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
  (b) give the applicant notice in writing of ASIC's decision;
  (c) if ASIC decides to make the arrangement, specify in the notice:
    (i) the day by which each instalment is to be paid; and
    (ii) the amount of each instalment.

(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.



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(5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

(6) If:
  (a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and
  (b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;

ASIC must refund to the person the amount of any instalments paid.

## 288Q Withdrawal of an infringement notice

*Representations seeking withdrawal of notice*

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

(2) ASIC may withdraw an infringement notice given to a person:
  (a) if the person makes representations to ASIC in accordance with subsection (1); or
  (b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):
  (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  (b) if ASIC decides to withdraw the notice—give the person to whom the notice was issued a withdrawal notice in accordance with subsection (6); and
  (c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.

(4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:



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(a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and
(b) may take into account the following:
(i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
(ii) the circumstances of the alleged contravention;
(iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
(iv) any other matter ASIC considers relevant.

(5) If ASIC does not comply with subsection (3):
(a) ASIC is taken to have refused to withdraw the infringement notice; and
(b) the refusal is taken to have occurred on the last day of the 14 day period.

*Notice of withdrawal*

(6) The withdrawal notice must state:
(a) the person's name and address; and
(b) the day the infringement notice was given; and
(c) the identifying number of the infringement notice; and
(d) that the infringement notice is withdrawn; and
(e) that:
(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.



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*Refund of amount if infringement notice withdrawn*

(7) If:
  (a) ASIC withdraws the infringement notice; and
  (b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.

## 288R Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:
  (a) any liability of the person for the alleged contravention is discharged; and
  (b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and
  (c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and
  (d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and
  (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

## 288S Effect of this Part

This Part does not:



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(a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
(b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Part if:
  (i) the person does not comply with an infringement notice given to the person for the contravention; or
  (ii) an infringement notice is not given to the person for the contravention; or
  (iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or
(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Part; or
(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Part.

### 20 Part 6-6 (heading)

Repeal the heading, substitute:

## Part 6-6—Offences under this Chapter

### 21 Section 331

Repeal the section.

### 22 Subsection 18C(3) of the *National Credit Code*

Omit "250 penalty units", substitute "500 penalty units".

### 23 Subsection 18C(4) of the *National Credit Code*

Repeal the subsection, substitute:

(4) The civil penalty for a contravention of a regulation made for the purposes of subsection (1) by an individual is 5,000 penalty units. However, section 167B of the National Credit Act applies in the



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same way as it would apply if the regulation contravened were a civil penalty provision under that Act.

## 24 Subsections 24(1) and (1A) of the *National Credit Code* (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 25 Subsection 24(2) of the *National Credit Code*

Repeal the subsection (including the note), substitute:

*Offence*

(2) A person commits an offence of strict liability if:
  (a) the person is subject to a requirement under subsection (1) or (1A); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

## 26 Subsection 30B(3) of the *National Credit Code*

Omit “250 penalty units”, substitute “500 penalty units”.

## 27 Subsection 30B(4) of the *National Credit Code*

Repeal the subsection, substitute:

(4) The civil penalty for a contravention of a regulation made for the purposes of subsection (1) by an individual is 5,000 penalty units. However, section 167B of the National Credit Act applies in the same way as it would apply if the regulation contravened were a civil penalty provision under that Act.

## 28 Subsection 39B(1) of the *National Credit Code*

Repeal the subsection, substitute:

(1) If there is a default in payment under a small amount credit contract, the credit provider in relation to the contract must not (whether by repayments under the contract or otherwise) recover



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more than twice the adjusted credit amount in relation to the contract.

Civil penalty: 5,000 penalty units.

## 29 Section 116 of the *National Credit Code*

Before "On application", insert "(1)".

## 30 Section 116 of the *National Credit Code*

Omit "$500,000", substitute "5,000 penalty units for an individual".

## 31 At the end of section 116 of the *National Credit Code*

Add:

(2) However, section 167B of the National Credit Act applies in the same way in relation to the contravention of a key requirement as it would apply in relation to a civil penalty provision under that Act.

## 32 Before subsection 154(1) of the *National Credit Code*

Insert:

*Prohibition on making false or misleading representations*

## 33 Subsection 154(1) of the *National Credit Code* (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 34 After subsection 154(1) of the *National Credit Code*

Insert:

*Offence*

(1A) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.



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## 35 Subsection 154(2) of the *National Credit Code*

Omit "It is a defence to prosecution for an offence against this section if", substitute "For the purposes of subsections (1) and (1A), it is a defence if".

## 36 Subsection 154(3) of the *National Credit Code* (heading)

Repeal the heading, substitute:

*Right to recover loss*

## 37 Section 155 of the *National Credit Code*

Repeal the section, substitute:

### 155 Harassment

*Prohibition on harassment*

(1) A credit provider or supplier must not harass a person in attempting to get that person to apply for credit or to enter into a credit contract or a related transaction.

Civil penalty: 5,000 penalty units.

*Offence*

(2) A person commits an offence if:
  (a) the person is subject to a requirement under subsection (1); and
  (b) the person engages in conduct; and
  (c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

## 38 Before subsection 156(1) of the *National Credit Code*

Insert:



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*Prohibition on canvassing credit at home*

## 39 Subsection 156(1) of the *National Credit Code* (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 40 After subsection 156(1) of the *National Credit Code*

Insert:

*Offence*

(1A) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.

## 41 Subsections 174(3) and (4) of the *National Credit Code*

Repeal the subsections (including the note), substitute:

(3) A lessor must not enter into a consumer lease that contravenes a requirement of this section.

Civil penalty: 5,000 penalty units.

(4) A lessor commits an offence of strict liability if the lessor enters into a consumer lease that contravenes a requirement of this section.

Criminal penalty: 100 penalty units.

## 42 Subsection 179U(1) of the *National Credit Code* (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 43 After subsection 179U(1) of the *National Credit Code*

Insert:



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(1A) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Criminal penalty: 50 penalty units.

## 44 Subsection 179U(2) of the *National Credit Code*

Omit "It is a defence to prosecution for an offence against this section if", substitute "For the purposes of subsections (1) and (1A), it is a defence if".

## 45 Section 179V of the *National Credit Code*

Before "A lessor", insert "(1)".

## 46 Section 179V of the *National Credit Code* (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 47 At the end of section 179V of the *National Credit Code*

Add:

(2) A person commits an offence if:
(a) the person is subject to a requirement under subsection (1); and
(b) the person engages in conduct; and
(c) the conduct contravenes the requirement.

Criminal penalty: 100 penalty units.



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# Part 2—Amendments of penalties under civil penalty provisions

## *National Consumer Credit Protection Act 2009*

### 48 The whole of the Act (including the *National Credit Code*)

Omit (wherever occurring):

Civil penalty: 2,000 penalty units.

substitute:

Civil penalty: 5,000 penalty units.



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# Part 3—Amendments of penalties under offences

## *National Consumer Credit Protection Act 2009*

### 49 Amendments of listed provisions

**Further amendments**

| Item | Provision | Omit | Substitute |
|---|---|---|---|
| 1 | Subsection 29(2) | 200 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 2 | Subsection 30(3) | 50 penalty units, or 1 year imprisonment, or both. | 1 year imprisonment. |
| 3 | Subsection 31(2) | 200 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 4 | Subsection 32(2) | 50 penalty units, or 1 year imprisonment, or both. | 1 year imprisonment. |
| 5 | Subsection 49(7) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 6 | Subsection 49(8) | 10 penalty units. | 20 penalty units. |
| 7 | Subsection 50(3) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 8 | Subsection 50(4) | 10 penalty units. | 20 penalty units. |
| 9 | Subsection 51(3) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 10 | Subsection 52(3) | 10 penalty units. | 20 penalty units. |
| 11 | Subsection 69(2) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 12 | Subsection 70(2) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 13 | Subsection 71(6) | 25 penalty units, or 6 months imprisonment, or both. | 60 penalty units. |
| 14 | Subsection 73(6) | 50 penalty units, or 1 year imprisonment, or both. | 1 year imprisonment. |
| 15 | Subsection 82(2) | 100 penalty units, or 2 years imprisonment, or both. | 5 years imprisonment. |



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**Further amendments**

| Item | Provision | Omit | Substitute |
|---|---|---|---|
| 16 | Subsection 88(3) | 200 penalty units, or 5 years imprisonment, or both. | 5 years imprisonment. |
| 17 | Subsection 95(4) | 50 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 18 | Subsection 98(4) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 19 | Subsection 99(4) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 20 | Subsection 100(5) | 200 penalty units, or 5 years imprisonment, or both. | 5 years imprisonment. |
| 21 | Subsection 102(4) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 22 | Subsection 104(3) | 50 penalty units, or 1 year imprisonment, or both. | 1 year imprisonment. |
| 23 | Subsection 122(2) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 24 | Subsection 123(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 25 | Subsection 124(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 26 | Subsection 133(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 27 | Subsection 133BE(3) | 10 penalty units. | 20 penalty units. |
| 28 | Subsection 133BO(4) | 10 penalty units. | 20 penalty units. |
| 29 | Subsection 145(2) | 25 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 30 | Subsection 146(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 31 | Subsection 147(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 32 | Subsection 156(6) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 33 | Subsection 160D(2) | 100 penalty units, or 2 years imprisonment, or both. | 5 years imprisonment. |
| 34 | Subsection 218(6) | 50 penalty units, or 1 year | 120 penalty units. |



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**Further amendments**

| Item | Provision | Omit | Substitute |
|---|---|---|---|
| | | imprisonment, or both. | |
| 35 | Subsection 220(4) | 50 penalty units, or 1 year imprisonment, or both. | 120 penalty units. |
| 36 | Subsection 225(3) | 200 penalty units, or imprisonment for 5 years, or both. | 5 years imprisonment. |
| 37 | Subsection 225(4) | 200 penalty units, or imprisonment for 5 years, or both. | 5 years imprisonment. |
| 38 | Subsection 225(6) | 5 penalty units. | 20 penalty units. |
| 39 | Subsection 227(2) | 50 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 40 | Subsection 228(2) | 50 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 41 | Subsection 229(2) | 50 penalty units, or 6 months imprisonment, or both. | 6 months imprisonment. |
| 42 | Subsection 240(2) | 100 penalty units, or imprisonment for 2 years, or both. | 2 years imprisonment. |
| 43 | Subsection 256(2) | 10 penalty units, or 3 months imprisonment, or both. | 30 penalty units. |
| 44 | Subsection 259(2) | 10 penalty units, or 3 months imprisonment, or both. | 30 penalty units. |
| 45 | Subsection 260(1) | 10 penalty units, or 3 months imprisonment, or both. | 30 penalty units. |
| 46 | Subsection 282(3) | 10 penalty units or 3 months imprisonment or both. | 30 penalty units. |
| 47 | Subsection 290(1) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 48 | Subsection 290(2) | 10 penalty units, or 3 months imprisonment, or both. | 30 penalty units. |
| 49 | Subsection 290(3) | 5 penalty units. | 20 penalty units. |
| 50 | Subsection 291(1) | 100 penalty units, or 2 years imprisonment, or both. | 5 years imprisonment. |
| 51 | Subsection 291(2) | 10 penalty units, or 3 months imprisonment, or both. | 2 years imprisonment. |
| 52 | Subsection 292(1) | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |



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| **Further amendments** | | | |
|---|---|---|---|
| **Item** | **Provision** | **Omit** | **Substitute** |
| 53 | Subsection 292(3) | 25 penalty units, or 6 months imprisonment, or both. | 1 year imprisonment. |
| 54 | Subsection 293(1) | 50 penalty units, or 1 year imprisonment, or both. | 1 year imprisonment. |
| 55 | Subsection 293(2) | 50 penalty units, or 1 year imprisonment, or both. | 120 penalty units. |
| 56 | Subsection 294(1) | 200 penalty units, or 5 years imprisonment, or both. | 5 years imprisonment. |
| 57 | Subsection 296(3) | 10 penalty units, or 3 months imprisonment, or both. | 3 months imprisonment. |
| 58 | Subsection 301(4) | 25 penalty units, or 6 months imprisonment, or both. | 60 penalty units. |
| 59 | Subsection 319(3) | 50 penalty units, or 1 year imprisonment, or both. | 120 penalty units. |
| 60 | Subsection 13(6) of the *National Credit Code* | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |
| 61 | Subsection 172(6) of the *National Credit Code* | 100 penalty units, or 2 years imprisonment, or both. | 2 years imprisonment. |



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## Part 4—Application and transitional provisions

### *National Consumer Credit Protection (Transitional and Consequential Provisions) Act 2009*

#### 50 In the appropriate position

Insert:

# Schedule 8—Application and transitional provisions for the Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019

## Part 1—Definitions

#### 1 Definitions

In this Schedule:

***amending Act*** means the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019*.

***commencement day*** means the day on which Schedule 3 to the *Treasury Laws Amendment (Strengthening Corporate and Financial Sector Penalties) Act 2019* commences.

## Part 2—Application and transitional provisions

#### 2 Application—offences

Subject to this Part, the amendments made by Schedule 3 to the amending Act apply in relation to the commission of an offence if the conduct constituting the commission of the offence occurs wholly on or after the commencement day.



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## 3 Application—civil penalties

Subject to this Part, the amendments made by Schedule 3 to the amending Act apply in relation to the contravention of a civil penalty provision if the conduct constituting the contravention of the provision occurs wholly on or after the commencement day.

## 4 Application—infringement notices

(1) An infringement notice may be given on or after the commencement day under section 288J of the Act, as inserted by item 19 of Schedule 3 to the amending Act, in relation to an alleged contravention of a provision whether the alleged contravention occurred before, on or after the commencement day.

(2) Despite the repeal of section 331 of the National Consumer and Credit Protection Act 2009 by item 21 of Schedule 3 to the amending Act, and regulations made under that section, the Act continues to apply in relation to notices given under those regulations before the commencement day as if that section and regulations had not been repealed.



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# Schedule 4—Amendment of the Insurance Contracts Act 1984

## Part 1—Amendments

### *Insurance Contracts Act 1984*

#### 1 Subsection 11(1)

Insert:

***annual turnover***, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

(a) supplies made from any of those bodies corporate to any other of those bodies corporate; or

(b) supplies that are input taxed; or

(c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or

(d) supplies that are not made in connection with an enterprise that the body corporate carries on; or

(e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

***benefit derived and detriment avoided*** because of an offence has the meaning given by section 75F.

***civil penalty provision***: a subsection of this Act (or a section of this Act that is not divided into subsections) is ***a civil penalty provision*** if:

(a) the words "civil penalty" and one or more amounts in penalty units are set out at the foot of the subsection (or section); or

(b) another provision of this Act specifies that the subsection (or section) is a civil penalty provision.



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***contravention***:

(a) in relation to an offence against a law—includes an ancillary offence relating to the offence against the law; and

(b) in relation to a civil penalty provision—has a meaning affected by section 75Q.

***infringement notice*** means a notice given under section 75W.

***involved***, in relation to a contravention, has the same meaning as in the *Corporations Act 2001*.

***payment period***, in relation to an infringement notice, has the meaning given by section 75Z.

***pecuniary penalty order*** has the meaning given by subsection 75B(4).

***relevant court*** means:

(a) the Federal Court of Australia; or

(b) the Federal Circuit Court of Australia; or

(c) the Supreme Court of a State or Territory.

***subject to an infringement notice***, in relation to an offence provision or civil penalty provision, has the meaning given by section 75X.

## 2 After subsection 13(2)

Insert:

(2A) An insurer under a contract of insurance contravenes this subsection if the insurer fails to comply with the provision implied in the contract by subsection (1).

Civil penalty: 5,000 penalty units.

## 3 At the end of subsection 33C(1)

Add:

Civil penalty: 5,000 penalty units.



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### 4 After Part IX

Insert:

# Part IXA—Enforcement

## Division 1—Civil penalty provisions

### Subdivision A—Obtaining a pecuniary penalty order

#### 75A Declaration of contravention of civil penalty provision

*Application for declaration of contravention*

(1) ASIC may apply to a relevant court for a declaration that the person contravened the provision.

(2) ASIC must make the application within 6 years of the alleged contravention.

*Declaration of contravention*

(3) The court must make the declaration if it is satisfied that the person has contravened the provision.

(4) The declaration must specify the following:
  (a) the court that made the declaration;
  (b) the civil penalty provision that was contravened;
  (c) the person who contravened the provision;
  (d) the conduct that constituted the contravention.

*Declaration of contravention conclusive evidence*

(5) The declaration is conclusive evidence of the matters referred to in subsection (4).



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## 75B Pecuniary penalty orders

*Application for order*

(1) ASIC may apply to a relevant court for an order that a person, who is alleged to have contravened a civil penalty provision, pay the Commonwealth a pecuniary penalty.

(2) ASIC must make the application within 6 years of the alleged contravention.

*Court may order person to pay pecuniary penalty*

(3) If a declaration has been made under section 75A that the person has contravened the provision, the court may order the person to pay to the Commonwealth a pecuniary penalty that the court considers is appropriate (but not more than the amount specified in section 75C).

(4) An order under subsection (3) is a ***pecuniary penalty order***.

*Determining pecuniary penalty*

(5) In determining the pecuniary penalty, the court must take into account all relevant matters, including:
  (a) the nature and extent of the contravention; and
  (b) the nature and extent of any loss or damage suffered because of the contravention; and
  (c) the circumstances in which the contravention took place; and
  (d) whether the person has previously been found by a court (including a court in a foreign country) to have engaged in any similar conduct.

## 75C Maximum pecuniary penalty

The pecuniary penalty must not be more than the pecuniary penalty applicable to the contravention of the civil penalty provision.



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## 75D Pecuniary penalty applicable

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by an individual*

(1) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by an individual is the greater of:
  (a) the penalty specified for the civil penalty provision; and
  (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3.

*Pecuniary penalty applicable to the contravention of a civil penalty provision—by a body corporate*

(2) The ***pecuniary penalty applicable*** to the contravention of a civil penalty provision by a body corporate is the greatest of:
  (a) the penalty specified for the civil penalty provision, multiplied by 10; and
  (b) if the court can determine the benefit derived and detriment avoided because of the contravention—that amount multiplied by 3; and
  (c) either:
    (i) 10% of the annual turnover of the body corporate for the 12-month period ending at the end of the month in which the body corporate contravened, or began to contravene, the civil penalty provision; or
    (ii) if the amount worked out under subparagraph (i) is greater than an amount equal to 2.5 million penalty units—2.5 million penalty units.

*Contrary intention*

(3) This section applies in relation to a contravention of a civil penalty provision by an individual or a body corporate unless there is a contrary intention under this Act in relation to the penalty applicable to the contravention. In that case, the ***penalty applicable*** is the penalty specified for the civil penalty provision.



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## 75E Civil enforcement of pecuniary penalty orders

(1) A pecuniary penalty is a debt payable to the Commonwealth.

(2) The Commonwealth may enforce a pecuniary penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

## 75F Meaning of *benefit derived and detriment avoided* because of a contravention of a civil penalty provision

The ***benefit derived and detriment avoided*** because of a contravention of a civil penalty provision is the sum of:

(a) the total value of all benefits obtained by one or more persons that are reasonably attributable to the contravention; and

(b) the total value of all detriments avoided by one or more persons that are reasonably attributable to the contravention.

## 75G Conduct contravening more than one civil penalty provision

(1) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this Division against a person in relation to the contravention of any one or more of those provisions.

(2) However, the person is not liable to more than one pecuniary penalty under this Division in relation to the same conduct.

## 75H Multiple contraventions

(1) A relevant court may make a single pecuniary penalty order against a person for multiple contraventions of a civil penalty provision if proceedings for the contraventions are founded on the same facts, or if the contraventions form, or are part of, a series of contraventions of the same or a similar character.

Note: For continuing contraventions of civil penalty provisions, see section 75R.



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(2) However, the penalty must not exceed the sum of the maximum penalties that could be ordered if a separate penalty were ordered for each of the contraventions.

### 75J Proceedings may be heard together

A relevant court may direct that 2 or more proceedings for pecuniary penalty orders are to be heard together.

### 75K Civil evidence and procedure rules for pecuniary penalty orders

A relevant court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a pecuniary penalty order.

## Subdivision B—Civil proceedings and criminal proceedings

### 75L Civil proceedings after criminal proceedings

A relevant court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is the same, or substantially the same, as the conduct constituting the contravention.

### 75M Criminal proceedings during civil proceedings

(1) Proceedings for a declaration of contravention or a pecuniary penalty order against a person for a contravention of a civil penalty provision are stayed if:
  (a) criminal proceedings are commenced or have already been commenced against the person for an offence; and
  (b) the offence is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order (the ***civil proceedings***) may be resumed if the person is not convicted of the offence. Otherwise:
  (a) the civil proceedings are dismissed; and



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(b) costs must not be awarded in relation to the civil proceedings.

### 75N Criminal proceedings after civil proceedings

Criminal proceedings may be commenced against a person for conduct that is the same, or substantially the same, as conduct that would constitute a contravention of a civil penalty provision regardless of whether a declaration of contravention or a pecuniary penalty order has been made against the person in relation to the contravention.

### 75P Evidence given in civil proceedings not admissible in criminal proceedings

(1) Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:
   (a) the individual previously gave the information or produced the documents in proceedings for a declaration of contravention or a pecuniary penalty order against the individual for an alleged contravention of a civil penalty provision (whether or not the order was made); and
   (b) the conduct alleged to constitute the offence is the same, or substantially the same, as the conduct alleged to constitute the contravention.

(2) However, subsection (1) does not apply to criminal proceedings in relation to the falsity of the evidence given by the individual in the proceedings for the declaration of contravention or the pecuniary penalty order.

## Subdivision C—Miscellaneous

### 75Q Attempt and involvement in contravention treated in same way as actual contravention

A person who:
   (a) attempts to contravene a civil penalty provision; or
   (b) is involved in a contravention of a civil penalty provision;

is taken to have ***contravened*** the provision.



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## 75R Continuing contraventions of civil penalty provisions

(1) If an act or thing is required under a civil penalty provision to be done:
  (a) within a particular period; or
  (b) before a particular time;
then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

(2) A person who contravenes a civil penalty provision that requires an act or thing to be done:
  (a) within a particular period; or
  (b) before a particular time;
commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant pecuniary penalty order is made or any later day).

## 75S State of mind

(1) In proceedings for a declaration of contravention or a pecuniary penalty order against a person for a contravention of a civil penalty provision, it is not necessary to prove:
  (a) the person's intention; or
  (b) the person's knowledge; or
  (c) the person's recklessness; or
  (d) the person's negligence; or
  (e) any other state of mind of the person.

(2) Subsection (1) does not apply to the extent that the proceedings relate to attempting to contravene a civil penalty provision, or being involved in a contravention of a civil penalty provision.

(3) Subsection (1) does not affect the operation of section 75T (which is about mistake of fact).

(4) Subsection (1) does not apply to the extent that the civil penalty provision, or a provision that relates to the civil penalty provision, expressly provides otherwise.



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## 75T Mistake of fact

(1) A person is not liable to have a declaration of contravention or a pecuniary penalty order made against the person for a contravention of a civil penalty provision if:
  (a) at or before the time of the conduct constituting the contravention, the person:
    (i) considered whether or not facts existed; and
    (ii) was under a mistaken but reasonable belief about those facts; and
  (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.

(2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
  (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
  (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

(3) A person who wishes to rely on subsection (1) or (2) in proceedings for a declaration of contravention or a pecuniary penalty order bears an evidential burden in relation to that matter.

(4) In subsection (3), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

## 75U Exceptions etc. to civil penalty provisions—burden of proof

(1) If, in proceedings for a declaration of contravention or a pecuniary penalty order against a person for a contravention of a civil penalty provision, the person wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating the civil penalty provision, then the person bears an evidential burden in relation to that matter.



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(2) In subsection (1), ***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

### 75V Civil penalty provisions contravened by employees, agents or officers

If an element of a civil penalty provision is done by an employee, agent or officer of a body corporate acting:

(a) within the actual or apparent scope of the employee's, agent's, or officer's employment; or

(b) within the employee's, agent's, or officer's actual or apparent authority;

the element must also be attributed to the body corporate.

## Division 2—Infringement notices

### 75W When an infringement notice may be given

(1) If ASIC believes on reasonable grounds that a person has contravened a provision subject to an infringement notice under this Division, ASIC may give the person an infringement notice for the alleged contravention.

(2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

(3) A single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies.

(4) An infringement officer may give a person a single infringement notice relating to multiple contraventions of a single provision if:

(a) the provision requires the person to do a thing within a particular period or before a particular time; and

(b) the person fails or refuses to do that thing within that period or before that time; and

(c) the failure or refusal occurs on more than 1 day; and

(d) each contravention is constituted by the failure or refusal on one of those days.



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(5) If a single provision can constitute both a civil penalty provision and an offence provision, the infringement notice must relate to the provision as an offence provision.

## 75X Provisions subject to an infringement notice

The following provisions are ***subject to an infringement notice*** under this Division:

(a) prescribed offences;

(b) prescribed civil penalty provisions.

## 75Y Matters to be included in an infringement notice

(1) An infringement notice must:

(a) be identified by a unique number; and

(b) state the day on which it is given; and

(c) state the name of the person to whom the notice is given; and

(d) state the name and contact details of the person who gave the notice; and

(e) give brief details of the alleged contravention, or each alleged contravention, to which the notice relates, including:

(i) the provision that was allegedly contravened; and

(ii) the maximum penalty that a court could impose for each contravention, if the provision were contravened; and

(iii) the time (if known) and day of, and the place of, each alleged contravention; and

(f) state the amount that is payable under the notice; and

(g) give an explanation of how payment of the amount is to be made; and

(h) state that the payment period for the notice will be 28 days, beginning on the day on which the notice is given, unless the period is extended, an arrangement is made for payment by instalments or the notice is withdrawn; and

(i) state that, if the person to whom the notice is given pays the amount within the payment period, then (unless the notice is withdrawn):

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil



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penalty provision—the person will not be liable to be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person is not liable to be prosecuted in a court, and proceedings seeking a pecuniary penalty order will not be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order will not be brought in relation to the alleged contravention; and

(j) state that payment of the amount is not an admission of guilt or liability; and

(k) state that the person may apply to ASIC to have the period in which to pay the amount extended or for an arrangement to pay the amount by instalments; and

(l) state that the person may choose not to pay the amount and, if the person does so:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or

(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(m) set out how the notice can be withdrawn; and

(n) state that if the notice is withdrawn:

(i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or



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(ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or

(iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention; and

(o) state that the person may make written representations to ASIC seeking the withdrawal of the notice.

(2) The amount to be stated in the notice for the purposes of paragraph (1)(f) is:

(a) for a single contravention of an offence provision—half the maximum penalty that a court could impose on the person for the contravention; and

(b) for multiple contraventions of an offence provision—the amount worked out under paragraph (a) for a single contravention multiplied by the number of contraventions; and

(c) for a single contravention of a civil penalty provision—12 penalty units for an individual and 60 penalty units for a body corporate; and

(d) for multiple contraventions of a civil penalty provision—the amount worked out under paragraph (c) for a single contravention multiplied by the number of contraventions.

## 75Z Payment period

*Usual payment period*

(1) The ***payment period*** for an infringement notice begins on the day after the notice is given and, unless otherwise specified in this section, continues for 28 days.



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*Payment period extended under section 75ZA*

(2) If, under section 75ZA, ASIC extends the payment period for the notice, the ***payment period*** is as extended.

(3) If ASIC refuses an application under subsection 75ZA(1) for an extension of the payment period for the notice, the ***payment period*** ends on the later of the following days:
   (a) the last day of the period that, without the extension that has been refused, would be the payment period for the notice;
   (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to extend;
   (c) the day that is 7 days after the day the application is taken to have been refused under subsection 75ZA(4).

*Instalments*

(4) If, under section 75ZB, ASIC makes an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
   (a) the last day on which an instalment is to be paid under the arrangement;
   (b) if the person fails to pay an instalment in accordance with the arrangement, the last day on which the missed instalment was to be paid.

(5) If ASIC refuses an application made under subsection 75ZB(1) to make an arrangement for the amount payable under the notice to be paid by instalments, the ***payment period*** ends on the earlier of the following days:
   (a) the last day of the period that, without the instalment arrangement, would be the payment period for the notice;
   (b) the day that is 7 days after the day the applicant was given notice of ASIC's decision not to make the arrangement;
   (c) the day that is 7 days after the day the application is taken to have been refused under subsection 75ZB(4).



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*Payment period if ASIC refuses to withdraw infringement notice*

(6) If ASIC refuses a representation made under subsection 75ZC(1) for the notice to be withdrawn, the ***payment period*** ends on the later of the following days:
  (a) the last day of the period that, without the withdrawal, would be the payment period for the notice;
  (b) the day that is 7 days after the day the person was given notice of ASIC's decision not to withdraw the notice;
  (c) the day that is 7 days after the day on which, under subsection 75ZC(5), ASIC is taken to have refused to withdraw the infringement notice.

## 75ZA Extension of time to pay amount

(1) A person to whom an infringement notice has been given may, during the payment period for the notice, apply to ASIC for an extension of the payment period for the notice.

(2) ASIC may, in writing, extend the payment period for an infringement notice:
  (a) if a person makes an application in accordance with subsection (1); or
  (b) on ASIC's own initiative.

  ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) grant or refuse to grant an extension of the payment period for the infringement notice;
  (b) give the applicant notice in writing of ASIC's decision.

(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to grant an extension of the payment period for the infringement notice; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may extend the payment period more than once under subsection (2).



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## 75ZB Payment by instalments

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, apply to ASIC to make an arrangement to pay the amount payable under the infringement notice by instalments.

(2) ASIC may, in writing, make an arrangement for a person to pay the amount payable under an infringement notice by instalments:
  (a) if a person makes an application in accordance with subsection (1); or
  (b) on ASIC's own initiative.

  ASIC may do so before or after the end of the payment period.

(3) ASIC must do each of the following within 14 days after an application in accordance with subsection (1) is made:
  (a) decide to make, or refuse to make, an arrangement for the applicant to pay the amount payable under the infringement notice by instalments;
  (b) give the applicant notice in writing of ASIC's decision;
  (c) if ASIC decides to make the arrangement, specify in the notice:
    (i) the day by which each instalment is to be paid; and
    (ii) the amount of each instalment.

(4) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

(5) ASIC may vary an arrangement for a person to pay the amount payable under an infringement notice by instalments.

(6) If:
  (a) a person does not pay all of the instalments in accordance with an arrangement made under this section; and
  (b) the person is prosecuted, or proceedings seeking a pecuniary penalty order are brought, for the alleged contravention;



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ASIC must refund to the person the amount of any instalments paid.

## 75ZC Withdrawal of an infringement notice

*Representations seeking withdrawal of notice*

(1) A person to whom an infringement notice has been given may, within 28 days after the infringement notice is given, make written representations to ASIC seeking the withdrawal of the notice.

*Withdrawal of notice*

(2) ASIC may withdraw an infringement notice given to a person:
  (a) if the person makes representations to ASIC in accordance with subsection (1); or
  (b) on ASIC's own initiative.

ASIC may do so before or after the end of the payment period.

(3) ASIC must, within 14 days after a representation is made in accordance with subsection (1):
  (a) decide to withdraw, or refuse to withdraw, the infringement notice; and
  (b) if ASIC decides to withdraw the notice—give the applicant a withdrawal notice in accordance with subsection (6); and
  (c) if ASIC decides to refuse to withdraw the notice—give the applicant notice of that fact.

(4) When deciding whether to withdraw, or refuse to withdraw, an infringement notice, ASIC:
  (a) must take into account any written representations seeking the withdrawal that were given by the person to ASIC; and
  (b) may take into account the following:
    (i) whether a court has previously imposed a penalty on the person for a contravention of a provision of this Act;
    (ii) the circumstances of the alleged contravention;
    (iii) whether the person has paid an amount, stated in an earlier infringement notice, for a contravention of a provision of this Act;
    (iv) any other matter ASIC considers relevant.



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(5) If ASIC does not comply with subsection (3):
  (a) ASIC is taken to have refused to make an arrangement for the applicant to pay the amount payable under the infringement notice by instalments; and
  (b) the refusal is taken to have occurred on the last day of the 14 day period.

*Notice of withdrawal*

(6) Notice of the withdrawal of the infringement notice must be given to the person. The withdrawal notice must state:
  (a) the person's name and address; and
  (b) the day the infringement notice was given; and
  (c) the identifying number of the infringement notice; and
  (d) that the infringement notice is withdrawn; and
  (e) that:
    (i) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court for the alleged contravention; or
    (ii) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may be prosecuted in a court, or proceedings seeking a pecuniary penalty order may be brought, in relation to the alleged contravention; or
    (iii) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may be brought in relation to the alleged contravention.

*Refund of amount if infringement notice withdrawn*

(7) If:
  (a) ASIC withdraws the infringement notice; and
  (b) the person has already paid all or part of the amount stated in the notice;

ASIC must refund to the person an amount equal to the amount paid.



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## 75ZD Effect of payment of amount

(1) If the person to whom an infringement notice for an alleged contravention of a provision is given pays the amount stated in the notice before the end of the payment period for the notice:
  (a) any liability of the person for the alleged contravention is discharged; and
  (b) if the alleged contravention is of an offence provision and would not also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court for the alleged contravention; and
  (c) if the alleged contravention is of an offence provision and would also constitute a contravention of a civil penalty provision—the person may not be prosecuted in a court, and proceedings seeking a pecuniary penalty order may not be brought, in relation to the alleged contravention; and
  (d) if the alleged contravention is of a civil penalty provision—proceedings seeking a pecuniary penalty order may not be brought in relation to the alleged contravention; and
  (e) the person is not regarded as having admitted guilt or liability for the alleged contravention; and
  (f) if the provision is an offence provision—the person is not regarded as having been convicted of the alleged offence.

(2) Subsection (1) does not apply if the notice has been withdrawn.

## 75ZE Effect of this Division

This Division does not:
  (a) require an infringement notice to be given to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or
  (b) affect the liability of a person for an alleged contravention of a provision subject to an infringement notice under this Division if:
    (i) the person does not comply with an infringement notice given to the person for the contravention; or
    (ii) an infringement notice is not given to the person for the contravention; or



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(iii) an infringement notice is given to the person for the contravention and is subsequently withdrawn; or

(c) prevent the giving of 2 or more infringement notices to a person for an alleged contravention of a provision subject to an infringement notice under this Division; or

(d) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice under this Division.



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# Part 2—Application provisions

## 5 Application of Part 1

The amendments made by this Schedule apply in relation to a contravention, or alleged contravention, of a civil penalty provision if the conduct constituting the contravention, or alleged contravention, of the provision occurs wholly on or after the day on which this Schedule commences.



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# Schedule 5—Contingent amendments

## Part 1—Amendments contingent on the Corporations Amendment (Strengthening Protections for Employee Entitlements) Act 2019

### *Corporations Act 2001*

#### 1 In the appropriate position in subsection 1317E(3)

Insert:

| | | |
|---|---|---|
| subsections 596AC(1), (2), (3) and (4) | avoiding employee entitlements | corporation/scheme |

#### 2 Schedule 3 (table item dealing with subsection 596AB(1))

Repeal the item, substitute:

| | |
|---|---|
| Subsections 596AB(1), (1A), (1B) and (1C) | 15 years imprisonment |



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# Part 2—Amendments contingent on the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Act 2019

## *National Consumer Credit Protection Act 2009*

### 3 Subsection 133CR(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 4 Subsection 133CR(3) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 5 Section 133CT (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 6 Subsection 133CU(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 7 Section 133CW (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 8 Subsections 133CZA(2), (3) and (4) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 9 Subsections 133CZC(1) and (2) (penalty)

Repeal the penalty, substitute:



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Civil penalty: 5,000 penalty units.

### 10 Subsection 133CZG(6) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 11 Subsection 133CZG(7) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 6 months imprisonment.

### 12 Subsection 133CZH(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 13 Subsection 133CZH(3) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 6 months imprisonment.

### 14 Subsection 133CZI(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

### 15 Subsection 133CZI(3) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 6 months imprisonment.



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# Part 3—Amendments contingent on the commencement of Schedule 5 to the Treasury Laws Amendment (Banking Measures No. 1) Act 2018

## Division 1—Amendments contingent on the commencement of Division 2 of Part 2 of Schedule 5 to the Treasury Laws Amendment (Banking Measures No. 1) Act 2018

### *National Consumer Credit Protection Act 2009*

#### 16 Subsection 133BF(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 17 Subsection 133BFA(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 18 Subsection 133BFB(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 19 Subsection 133BFC(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.



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## Division 2—Amendments contingent on the commencement of Parts 3 and 4 of Schedule 5 to the Treasury Laws Amendment (Banking Measures No. 1) Act 2018

### *National Consumer Credit Protection Act 2009*

#### 20 Subsection 133BS(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 21 Subsection 133BT(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 22 Subsection 133BU(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 23 Subsection 133BV(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 24 Subsection 133BW(2) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.



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# Part 4—Amendments contingent on the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019

## Division 1—Amendments contingent on Schedule 1 to the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019

### *Corporations Act 2001*

#### 25 In the appropriate position in subsection 1317E(3)

Insert:

| | | |
|---|---|---|
| subsections 994B(2) and (9) | failure to make and make available target market determinations for financial products | financial services |
| subsection 994C(2) | failure to review target market determinations | financial services |
| subsection 994C(4) | engaging in retail product distribution conduct in relation to financial products before review of target market determinations | financial services |
| subsection 994C(5) | failure to inform regulated persons of obligations not to engage in retail product distribution conduct in relation to financial products before review of target market determinations | financial services |
| subsection 994C(7) | engaging in retail product distribution conduct in relation to financial products before review of target market determinations | financial services |
| section 994D | engaging in retail product distribution conduct where no target market determination | financial services |
| subsections 994E(1) | ensuring that retail product distribution | financial services |



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| | | |
|---|---|---|
| and (3) | conduct is consistent with target market determinations | |
| subsections 994F(1) and (3) | failure to keep records | financial services |
| subsections 994F(4), (5) and (6) | failure to report complaints and other information | financial services |
| subsection 994F(8) | failure to comply with requirements of regulations | financial services |
| section 994G | failure to notify ASIC | financial services |
| subsection 994H(3) | failure to provide information to ASIC on request | financial services |
| subsections 994J(7) and (8) | failure to comply with stop order obligations | financial services |

## 26 In the appropriate position in Schedule 3

Insert:

| | |
|---|---|
| Subsection 994B(2) | 5 years imprisonment |
| Subsection 994B(9) | 1 year imprisonment |
| Subsection 994C(2) | 1 year imprisonment |
| Subsections 994C(3), (5) and (6) | 5 years imprisonment |
| Section 994D | 5 years imprisonment |
| Subsections 994E(1) and (3) | 5 years imprisonment |
| Subsections 994F(1), (3), (4), (5), (6) and (8) | 1 year imprisonment |
| Section 994G | 2 years imprisonment |
| Subsection 994H(3) | 2 years imprisonment |
| Subsections 994J(7) and (8) | 2 years imprisonment |



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## Division 2—Amendments contingent on Schedule 2 to the Treasury Laws Amendment (Design and Distribution Obligations and Product Intervention Powers) Act 2019

### *Corporations Act 2001*

#### 27 In the appropriate position in subsection 1317E(3)

Insert:

| | | |
|---|---|---|
| subsection 1023P(1) | engaging in conduct contrary to a product intervention order | financial services |
| subsection 1023P(2) | failure to notify retail clients | financial services |
| subsection 1023P(4) | failure to take reasonable steps to make others aware of product intervention order | financial services |

#### 28 In the appropriate position in Schedule 3

Insert:

| | |
|---|---|
| Subsections 1023P(1), (2) and (4) | 5 years imprisonment |

### *National Consumer Credit Protection Act 2009*

#### 29 Subsection 301P(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

#### 30 Subsection 301P(2) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 5 years imprisonment.

#### 31 Subsection 301P(3) (penalty)

Repeal the penalty, substitute:



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Civil penalty: 5,000 penalty units.

## 32 Subsection 301P(4) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 5 years imprisonment.

## 33 Subsection 301P(6) (penalty)

Repeal the penalty, substitute:

Civil penalty: 5,000 penalty units.

## 34 Subsection 301P(7) (penalty)

Repeal the penalty, substitute:

Criminal penalty: 5 years imprisonment.



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# Part 5—Amendments contingent on Schedule 6 to the Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 1) Act 2019

## *Corporations Act 2001*

### 35 Schedule 3 (table items dealing with subsections 1021NC(1), (2), (3) and (4))

Repeal the items.



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# Part 6—Amendments contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2019

## *Insurance Contracts Act 1984*

### 36 Subsection 11(1) (paragraph (b) of the definition of *relevant court*)

Repeal the paragraph, substitute:

(b) Federal Circuit and Family Court of Australia (Division 2);

[*Minister's second reading speech made in—*
*House of Representatives on 24 October 2018*
*Senate on 3 December 2018*]

(223/18)



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