



Company Law Review Act 1998

Act No. 61 of 1998 as amended

[This Act was amended by Act No. 156 of 1999]
[Schedule 9 (item 1) repealed and substituted the heading
preceding item 1 of Schedule 4.
This amendment commenced on 29 June 1998.]

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An Act to amend the Corporations Law, and for related purposes

1 Short title etc. [see Note 1]

- (1) This Act may be cited as the *Company Law Review Act 1998*.
- (2) In this Act:

Corporations Law means the Corporations Law set out in section 82 of the *Corporations Act 1989*.

2 Commencement [see Note 1]

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), section 3 and Schedules 1, 2, 3 and 4 commence on a day to be fixed by Proclamation.
- (3) If that section and those Schedules do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (4) The amendments in Schedules 1, 2, 3 and 4 commence on the day determined under subsections (2) and (3) in this order:
 - (a) first, items 29, 30 and 199 of Schedule 3;
 - (b) then, the items in Schedules 1, 2 and 4 and the remaining items in Schedule 3 (other than items 32, 85, 158 and 198);
 - (c) then, items 32, 85, 158 and 198 of Schedule 3.
- (5) Schedule 5 commences immediately after section 1 of the *Taxation Laws Amendment (Company Law Review) Act 1998* commences.

3 Schedules

Subject to section 2, the Corporations Law and each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Main amendments of the Corporations Law

1 Part 1.5, the heading to Chapter 2 and Parts 2.1, 2.2, 2.3 and 2.4

Repeal the Parts and heading, substitute:

Part 1.5—Small business guide

This guide summarises the main rules in the Corporations Law that apply to proprietary companies limited by shares—the most common type of company used by small business. The guide gives a general overview of the Corporations Law as it applies to those companies and directs readers to the operative provisions in the Law.

The notes in square brackets at the end of paragraphs in the guide indicate the main provisions of the Corporations Law, the regulations made under the Law, and Australian Securities Commission Practice Notes that are relevant to the information in the paragraphs.

Other Commonwealth, State and Territory laws also impose obligations on proprietary companies and their operators.

1 What registration means

1.1 Separate legal entity that has its own powers

As far as the law is concerned, a company has a separate legal existence that is distinct from that of its owners, managers, operators, employees and agents. A company has its own property, its own rights and its own obligations. A company's money and other assets belong to the company and must be used for the company's purposes.

A company has the powers of an individual, including the powers to:

- own and dispose of property and other assets

- enter into contracts
- sue and be sued.

Once a company is registered, its separate legal status, property, rights and liabilities continue until the ASC (Australian Securities Commission) deregisters the company.

[sections 119, 124–125, 601AA–601AD]

1.2 Limited liability of shareholders

Shareholders of a company are not liable (in their capacity as shareholders) for the company's debts. As shareholders, their only obligation is to pay the company any amount unpaid on their shares if they are called upon to do so. However, particularly if a shareholder is also a director, this limitation may be affected by other laws and the commercial practices discussed in 1.3 and 1.4.

[section 516]

1.3 Director's liability for company's debts

A director of a company may be liable for debts incurred by the company at a time when the company itself is unable to pay those debts as they fall due.

A director of a company may be liable to compensate the company for any losses the company suffers from a breach of certain of the director's duties to the company (see 5.3).

In addition to having liability for the company's debts or to pay compensation to the company, a director may also be subject to a civil penalty.

If a company holds property on trust, a director of the company may be liable in some circumstances for liabilities incurred by the company as trustee.

[sections 232, 233, 344, 588G, 588J, 588M, 1317HA, 1317HD]

1.4 Director's liability as guarantor/security over personal assets

As a matter of commercial practice, a bank, trade creditor or anyone else providing finance or credit to a company may ask a director of the company:

- for a personal guarantee of the company's liabilities; and
- for some form of security over their house or personal assets to secure the performance by the company of its obligations.

The director of a company may, for example, be asked by a bank to give a mortgage over their house to secure the company's repayment of a loan. If the company does not repay the loan as agreed with the bank, the director may lose the house.

1.5 Continuous existence

A company continues to exist even if 1 or more of its shareholders or directors sells their shares, dies or leaves the company. If a company has only 1 shareholder who is also the only director of the company and that person dies, their personal representative is able to ensure that the company continues to operate.

[sections 119, 224A]

1.6 Rules for the internal management of a company

The Law contains a basic set of rules for the internal management of a company (appointments, meetings etc.).

Some of these rules are mandatory for all companies. There are a few special rules for single shareholder/single director companies.

Other internal management rules in the Law are replaceable rules. The replaceable rules do not apply to:

- a single shareholder/single director company; or
- a company that had a constitution before the introduction of the replaceable rules regime and has not repealed it.

A company does not need to have a separate constitution of its own; it can simply take advantage of the rules in the Law. The company will need a constitution only if it wants to displace, modify or add to the replaceable rules.

[sections 134–141, 224B]

1.7 How a company acts

A company does not have a physical existence. It must act through other people.

Individual directors, the company secretary, company employees or agents may be authorised to enter into contracts that bind the company (see 7).

In some circumstances, a company will be bound by something done by another person (see 1.8).

1.8 Directors

The directors of a company are responsible for managing the company's business. It is a replaceable rule (see 1.6) that generally the directors may exercise all the powers of the company except a power that the Law, a replaceable rule or a provision of the company's constitution (if any) requires the company to exercise in general meeting.

The only director of a company who is also the only shareholder is responsible for managing the company's business and may exercise all of the company's powers.

The Law sets out rules dealing with the calling and conduct of directors' meetings. Directors must keep a written record (minutes) of their resolutions and meetings.

There are 2 ways that directors may pass resolutions:

- at a meeting; or
- by having all of the directors record and sign their decision.

If a company has only 1 director, the sole director may also pass a resolution by recording and signing their decision.

[sections 224B, 226A, 248A–248G, 251A]

1.9 Shareholders

The shareholders of a company own the company, but the company has a separate legal existence and the company's assets belong to the company.

Shareholders can make decisions about the company by passing a resolution, usually at a meeting. A “special resolution” usually involves more important questions affecting the company as a whole or the rights of some or all of its shareholders.

There are 2 ways that shareholders may pass a resolution:

- at a meeting; or
- by having all of the shareholders record and sign their decision.

If a meeting is held, an ordinary resolution must be passed by a majority of the votes cast by shareholders of the company entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed). A special resolution must be passed by at least 75% of the votes cast by shareholders of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

The sole shareholder of a company may pass a resolution by recording and signing their decision.

A company must keep a written record (minutes) of the members’ resolutions and meetings.

[sections 9 (*special resolution*), 249A, 249B, 249L, 251A]

1.10 What others can assume about the company

Anyone who does any business with the company is entitled to assume that the company has a legal right to conduct that business unless the person knows, or suspects, otherwise. For example, an outsider dealing with the company is entitled to assume:

- that a person who is shown in a notice lodged with the ASC as being the director or company secretary of a company has been properly appointed and is authorised to act for the company; and
- that a person who is held out by the company to be a director, company secretary or agent of the company has been properly appointed and is authorised to act for the company.

[sections 128–130]

2 The company structure for small business

2.1 Proprietary company for small business

Generally, a proprietary company limited by shares is the most suitable company for use by small business. Such a proprietary company must have a least 1 shareholder but no more than 50 shareholders (not counting employee shareholders). It may have 1 or more directors.

[sections 112–113]

3 Setting up a new company

The operators of small businesses can either buy “shelf” companies or set up new companies themselves.

3.1 “Shelf” companies

The operator of a small business may find it more convenient to buy a “shelf” company (a company that has already been registered but has not traded) from businesses which set up companies for this purpose or from some legal or accounting firms.

3.2 Setting up a company

To set up a new company themselves, the operator must apply to the ASC for registration of the company.

A proprietary company limited by shares must have at least 1 shareholder.

To obtain registration, a person must lodge a properly completed application form with the ASC. The form must set out certain information including details of every person who has consented to be a shareholder, director or company secretary of the company.

The company comes into existence when the ASC registers it.

[sections 117–119, 135–136, 140]

3.3 ACN and name

When a company is registered, the ASC allocates to it a unique 9 digit number called the Australian Company Number (ACN). (For use of the ACN see 4.1).

In practice, a new company must have a name that is different from the name of a company that is already registered. A proprietary company limited by shares must have the words “Proprietary Limited” as part of its name. Those words can be abbreviated to “Pty Ltd”.

A proprietary company may adopt its ACN as its name. If it does so, its name must also contain the words “Australian Company Number” (which can be abbreviated to “ACN”). For example, the company’s name might be “ACN 123 456 789 Pty Ltd”.

[sections 119, 147–161]

3.4 Contracts entered into before the company is registered

A company can ratify a contract entered into by someone on its behalf or for its benefit before it was registered. If the company does not ratify the contract, the person who entered into the contract may be personally liable.

[sections 131–133]

3.5 First shareholders, directors and company secretary

A person listed with their consent as a shareholder, director or company secretary in the application for registration of the company becomes a shareholder, director or company secretary of the company on its registration.

The same person may be both a director of the company and the company secretary.

See 5.1 and 5.2 for directors and 5.4 for company secretaries. See 6.1 for shareholders.

[section 120]

3.6 Issuing shares

It is a replaceable rule (see 1.6) that, before issuing new shares, a company must first offer them to the existing shareholders in the proportions that the shareholders already hold. A company may issue shares at a price it determines.

[sections 254B, 254D]

3.7 Registered office

A company must have a registered office in Australia and must inform the ASC of the location of the office. A post office box cannot be the registered office of a company. The purpose of the registered office is to have a place where all communications and notices to the company may be sent.

If the company does not occupy the premises where its registered office is located, the occupier of the premises must agree in writing to having the company's registered office located there.

A proprietary company is not required to open its registered office to the public but this does not affect its obligation to make documents available for inspection.

The company must notify the ASC of any change of address of its registered office.

[sections 100, 142, 143, 173, 1300]

3.8 Principal place of business

If a company has a principal place of business that is different to its registered office, it must notify the ASC of the address of its principal place of business and of any changes to that address.

[sections 117, 146]

3.9 Registers kept by the company

A company must keep registers, including a register of shareholders and a register of charges. A company must keep its registers at:

- the company's registered office; or
- the company's principal place of business; or

- a place (whether on premises of the company or of someone else) where the work in maintaining the register is done; or
- another place approved by the ASC.

A register may be kept either in a bound or looseleaf book or on computer.

If a register is kept on computer, its contents must be capable of being printed out in hard copy.

[sections 172, 1300–1302, 1306]

3.10 Register of shareholders

A company must keep in its register of shareholders such information as:

- the names and addresses of its shareholders; and
- details of shares held by individual shareholders.

[sections 168–169]

3.11 Register of charges

A company must keep a register of charges if the company gives a bank, trade creditor or anybody else a charge over company assets.

[section 271]

4 Continuing obligations after the company is set up

The Corporations Law and other laws impose obligations on companies themselves and on their directors and company secretaries. Some of the more important obligations imposed under the Corporations Law are discussed below.

4.1 Use of company name and ACN

The name of a company must be shown at all the company's business premises (including its registered office) that are open to the public. The company's name and its ACN must appear:

- on some of its public documents; and
- on its cheques and negotiable instruments; and

- on all documents lodged with the ASC; and
- if it has one, on its common seal.

[sections 123, 144, 147–156,
Australian Securities Commission Practice Note 47]

4.2 Annual return

A company must lodge with the ASC an annual return which contains such information as:

- names and addresses of each director and company secretary; and
- issued shares and options granted; and
- details of its shareholders; and
- address of its registered office; and
- address of its principal place of business; and
- a statement that the directors have resolved in the last month that, in the directors' opinion, there are reasonable grounds to believe the company will be able to pay its debts as and when they become payable (but if the company has lodged an annual financial report with the ASC within the last 12 months, it does not need to include this statement).

An annual return may be lodged with the ASC on a printed form or, if an agreement is in place to lodge electronically, in accordance with the agreement.

The ASC may send a partially completed annual return to a company that wants to lodge its annual return on a printed form for the company to check, amend if necessary, verify and send back to the ASC. However, a company must lodge an annual return with the ASC even if the ASC does not send a partially completed annual return to the company.

[sections 345–348, 352]

4.3 Annual fee

A company must pay an annual fee to the ASC on lodgment of the annual return.

[Corporations (Fees) Regulations]

4.4 Notification to ASC of changes

The company must notify the ASC if certain basic changes to the company occur. The following table sets out these notification requirements.

Notification requirements				
	If ...	the company must notify the ASC of the change ...	using Form No. ...	see section ...
1.	a company issues shares	within 1 month after the issue	207	254X
2.	a company changes the location of a register	within 7 days after the change	909	172, 1302
3.	a company changes the address of its registered office or principal place of business	within 14 days after the change	203	142, 146
4.	a company changes its directors or company secretary	within 14 days after the change	304	242
5.	there is a change in the name or address of the company's directors or secretary	within 14 days after the change	304	242
6.	a company creates certain kinds of charges	within 45 days after the charge is created	309	263

5 Company directors and company secretaries*5.1 Who can be a director*

Only an individual who is at least 18 years old can be a director. If a company has only 1 director, they must ordinarily reside in Australia. If a company has more than 1 director, at least 1 of the directors must ordinarily reside in Australia.

A director must consent in writing to holding the position of director. The company must keep the consent and must notify the ASC of the appointment.

In some circumstances, the Corporations Law imposes the duties and obligations of a director on a person who, although not formally appointed as a director of a company, nevertheless acts as a director or gives instructions to the formally appointed directors as to how they should act.

The Court or the ASC may prohibit a person from being a director or from otherwise being involved in the management of a company if, for example, the person has breached the Corporations Law.

A person needs the Court's permission to be a director if the person has been convicted of certain offences or is, in some circumstances, unable to pay their debts as they fall due.

Generally, a director may resign by giving notice of the resignation to the company. The company must notify the ASC of a director's resignation. A director who resigns may also notify the ASC of the resignation.

[sections 60, 221, 222A, 224, 228–230, 242, 242C, 599, 600, 1317EA(3)]

5.2 Appointment of new directors

It is a replaceable rule (see 1.6) that shareholders may appoint directors by resolution at a general meeting.

[section 224C]

5.3 Duties and liabilities of directors

In managing the business of a company (see 1.7), each of its directors is subject to a wide range of duties under the Corporations Law and other laws. Some of the more important duties are:

- to act in good faith
- to act in the best interests of the company
- to avoid conflicts between the interests of the company and the director's interests

- to act honestly
- to exercise care and diligence
- to prevent the company trading while it is unable to pay its debts
- if the company is being wound up—to report to the liquidator on the affairs of the company
- if the company is being wound up—to help the liquidator (by, for example, giving to the liquidator any records of the company that the director has).

A director who fails to perform their duties:

- may be guilty of a criminal offence with a penalty of \$200,000 or imprisonment for up to 5 years, or both; and
- 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
- may be personally liable to compensate the company or others for any loss or damage they suffer; and
- may be prohibited from managing a company.

A director's obligations may continue even after the company has been deregistered.

[sections 232, 475, 530A, 588G, 596, 601AD, 601AH, 1317FA, 1317HA, 1317HB, 1317HD]

5.4 Company secretaries

A company must have a company secretary. The directors appoint the company secretary. A company secretary must be at least 18 years old. If a company has only 1 company secretary, they must ordinarily reside in Australia. If a company has more than 1 company secretary, at least 1 of them must ordinarily reside in Australia.

A company secretary must consent in writing to holding the position of company secretary. The company must keep the consent and must notify the ASC of the appointment.

The same person may be both a director of a company and the company secretary.

Generally, a company secretary may resign by giving written notice of the resignation to the company. The company must notify the ASC of a company secretary's resignation. A company secretary who resigns may also notify the ASC of the resignation.

The company secretary is an officer of the company and, in that capacity, may be subject to the requirements imposed by the Corporations Law on company officers. The company secretary has specific responsibilities under the Corporations Law, including responsibility for ensuring that the company notifies the ASC about changes to the identities, names and addresses of the company's directors and company secretaries and that the company lodges its annual return.

A company secretary's obligations may continue even after the company has been deregistered.

[sections 83, 142, 222A, 240, 242, 242C, 345, 601AD, 601AH]

6 Shares and shareholders

A proprietary company limited by shares must have a share capital and at least 1 shareholder. The ASC may apply to a Court to have a company wound up if it does not have any shareholders.

[sections 461–462]

6.1 Becoming a shareholder and ceasing to be a shareholder

A person may become a shareholder of a company in several ways, including the following:

- the person being listed as a shareholder of the company in the application for registration of the company
- the company issuing shares to the person
- the person buying shares in the company from an existing shareholder and the company registering the transfer.

Some of the ways in which a person ceases to be a shareholder are:

- the person sells all of their shares in the company and the company registers the transfer of the shares
- the company buys back all the person's shares
- the ASC cancels the company's registration.

[sections 117, 120, 601AA–601AD]

6.2 Classes of shares

A company may have different classes of shares. The rights and restrictions attached to the shares in a class distinguish it from other classes of shares.

[sections 254A–254B]

6.3 Meetings of shareholders

Directors have the power to call meetings of all shareholders or meetings of only those shareholders who hold a particular class of shares.

Shareholders who hold at least 5% of the votes which may be cast at a general meeting of a company have the power to call and hold a meeting themselves or to require the directors to call and hold a meeting. Meetings may be held regularly or to resolve specific questions about the management or business of the company.

The Law sets out rules dealing with shareholders' meetings.

A shareholder of a company may ask the company for a copy of the record of a meeting or of a decision of shareholders taken without a meeting.

[sections 249A–251B]

6.4 Voting rights

Different rights to vote at meetings of shareholders may attach to different classes of shares. It is a replaceable rule (see 1.6) that, subject to those different rights, each shareholder has 1 vote on a show of hands and, on a poll, 1 vote for each share held.

[sections 250E, 254A–254B]

6.5 Buying and selling shares

A shareholder may sell their shares but only if the sale would not breach the company's constitution (if any). It is a replaceable rule (see 1.6) that the directors have a discretion to refuse to register a transfer of shares.

[sections 1091D–1091E]

7 Signing company documents

A company's power to sign, discharge and otherwise deal with contracts can be exercised by an individual acting with the company's authority and on its behalf. A company can deal with contracts without using a common seal.

A company may execute a document by having it signed by:

- 2 directors of the company; or
- a director and the company secretary; or
- for a company with a sole director who is also the sole secretary—that director.

If the document is to have effect as a deed, it should be expressed to be a deed.

[sections 126–127, 240]

A company is not required to have a common seal. If it does, the seal must show the company's name and its ACN. The seal is equivalent to the company's signature and may be used on important company documents such as mortgages.

[sections 123, 127(2)]

8 Funding the company's operations

The shareholders may fund the company's operations by lending money to the company or by taking up other shares in the company. Except if it is raising funds from its own employees or shareholders, a proprietary company must not engage in any fundraising activity that would require the company to lodge a prospectus with the ASC (for example, advertising in a newspaper inviting people to invest in the company).

The company may also borrow money from banks and other financial organisations.

Anyone who has lent money, or provided credit, to the company may ask for a mortgage or charge over the company's assets to secure the performance by the company of its obligations.

[sections 113, 124]

9 Returns to shareholders

Shareholders can take money out of the company in a number of ways, but only if the company complies with its constitution (if any), the Corporations Law and all other relevant laws. If a company pays out money in a way that results in the company being unable to pay its debts as they fall due, its directors may be liable:

- to pay compensation; and
- for criminal and civil penalties.

[sections 588G, 1317FA, 1317HA, 1317HB, 1317HD]

9.1 Dividends

Dividends are payments to shareholders out of the company's after tax profits. It is a replaceable rule (see 1.6) that the directors decide whether the company should pay a dividend.

[sections 254T, 254U]

9.2 Buy-back of shares

A company can buy back shares from shareholders.

[sections 257A–257J]

9.4 Distribution of surplus assets on winding up

If a company is wound up and there are any assets left over after all the company's debts have been paid, the surplus is distributed to shareholders in accordance with the rights attaching to their shares.

10 Annual financial reports and audit

10.1 *The small/large distinction*

The accounting requirements imposed on a proprietary company under the Corporations Law depend on whether the company is classified as small or large. A company's classification can change from 1 financial year to another as its circumstances change.

A company is classified as small for a financial year if it satisfies at least 2 of the following tests:

- gross operating revenue of less than \$10 million for the year
- gross assets of less than \$5 million at the end of the year
- fewer than 50 employees at the end of the year.

A company that does not satisfy at least 2 of these tests is classified as large.

[section 45A]

As the great majority of proprietary companies are small under these tests, the discussion below deals mainly with the accounting requirements for small proprietary companies.

[sections 286–301]

10.2 *Financial records*

Under the Corporations Law, all proprietary companies must keep sufficient financial records to record and explain their transactions and financial position and to allow true and fair financial statements to be prepared and audited. **Financial record** here means some kind of systematic record of the company's financial transactions—not merely a collection of receipts, invoices, bank statements and cheque butts. Financial records may be kept on computer.

[sections 286–289]

10.3 *Preparing annual financial reports and directors' reports*

The Corporations Law requires a small proprietary company to prepare an annual financial report (an annual profit and loss statement, a balance sheet and a statement of cash flows) and a

directors' report (about the company's operations, dividends paid or recommended, options issued etc.) if:

- the shareholders with at least 5% of the votes in the company direct it to do so; or
- the ASC directs it to do so.

Unless the shareholders' direction specifies otherwise, the company must prepare the annual financial report in accordance with the applicable accounting standards.

Although the Corporations Law itself may not require a small proprietary company to prepare a financial report except in the circumstances mentioned, the company may need to prepare the annual financial reports for the purposes of other laws (for example, income tax laws). Moreover, good business practice may also make it advisable for the company to prepare the financial reports so that it can monitor and better manage its financial position.

Large proprietary companies must prepare annual financial reports and a directors' report, have the financial report audited and send both reports to shareholders. They must also lodge the annual financial reports with the ASC unless exempted.

[sections 286–301, 319–320]

11 Disagreements within the company

11.1 Special problems faced by minority shareholders

There are remedies available to a shareholder of a company if:

- the affairs of the company are being conducted in a way that is unfair to that shareholder or to other shareholders of the company; or
- the affairs of the company are being conducted in a way that is against the interests of the company as a whole.

A Court may, for example, order the winding up of a company or the appointment of a receiver.

[sections 246AA, 461]

11.2 Buy-back of shares

A company may buy back the shares of a shareholder who wants to sever their relationship with the company.

[sections 257A–257J]

11.3 Selling shares

A shareholder in a company who wants to sever their relationship with the company may decide to sell their shares. However, the shareholder may not be able to sell their shares readily—particularly if they want to sell their shares to someone who is not an existing shareholder. Some of the difficulties they may face in that case are:

- under the replaceable rules the directors have a discretion to refuse to transfer the shares; and
- restrictions in the company’s constitution (if any) on transferring shares.

[sections 995, 1018, 1091D–1091E]

12 Companies in financial trouble

12.1 Voluntary administration

If a company experiences financial problems, the directors may appoint an administrator to take over the operations of the company to see if the company’s creditors and the company can work out a solution to the company’s problems.

If the company’s creditors and the company cannot agree, the company may be wound up (see 12.3).

[Part 5.3A]

12.2 Receivers

A receiver, or receiver and manager, may be appointed by order of a Court or under an agreement with a secured creditor to take over some or all of the assets of a company. Generally this would occur if the company is in financial difficulty. A receiver may be appointed, for example, because an amount owed to a secured creditor is overdue.

[Part 5.2]

12.3 Winding up and distribution

A company may be wound up by order of a Court, or voluntarily if the shareholders of the company pass a special resolution to do so.

A liquidator is appointed:

- when a Court orders a company to be wound up; or
- the shareholders of a company pass a resolution to wind up the company.

[Part 5.2, section 495]

12.4 Liquidators

A liquidator is appointed to administer the winding up of a company. The liquidator's main functions are:

- to take possession of the company's assets; and
- to determine debts owed by the company and pay the company's creditors; and
- to distribute to shareholders any assets of the company left over after paying creditors (any distribution to shareholders is made according to the rights attaching to their shares); and
- finally, to have the company deregistered.

[Parts 5.4B, 5.5]

12.5 Order of payment of debts

Generally, creditors who hold security over company assets are paid first.

[Division 6 of Part 5.6]

12.6 Cancellation of registration

If a company has ceased trading or has been wound up, it remains on the register until the ASC cancels the company's registration. Once a company is deregistered, it ceases to exist.

[sections 601AA–601AB, 601AH]

Chapter 2A—Registering a company

Part 2A.1—What companies can be registered

112 Types of companies

Types of companies

- (1) The following types of companies can be registered under this Law:

Proprietary companies	Limited by shares
	Unlimited with share capital
Public companies	Limited by shares
	Limited by guarantee
	Unlimited with share capital
	No liability company

Note: Other types of companies that were previously allowed continue to exist under section 1413.

No liability companies

- (2) A company may be registered as a no liability company only if:
- (a) the company has a share capital; and
 - (b) the company's constitution states that its sole objects are mining purposes; and
 - (c) the company has no contractual right under its constitution to recover calls made on its shares from a shareholder who fails to pay them.

Note 1: Section 9 defines *mining purposes* and *minerals*.

Note 2: Special provisions on no liability companies are found in the sections referred to in the following table:

No liability company provisions		
item	topic	sections
1	names	148, 156, 162
2	terms of issue of shares	254B
3	liability on partly-paid shares	254M
4	calls	254P-254R
5	winding up	477-478, 483, 514
6	registering a body as a company	610BA
7	transitional	1413

- (3) A no liability company must not engage in activities that are outside its mining purposes objects.
- (4) The directors of a no liability company must not:
 - (a) let the whole or proportion of a mine or claim on tribute; or
 - (b) make any contract for working any land on tribute;
 unless:
 - (c) the letting or contract is approved by a special resolution; or
 - (d) no such letting or contract has been made within the period of 2 years immediately preceding the proposed letting or contract.
- (5) An act or transaction is not invalid merely because of a contravention of subsection (3) or (4).

113 Proprietary companies

- (1) A company must have no more than 50 non–employee shareholders if it is to:
 - (a) be registered as a proprietary company; or
 - (b) change to a proprietary company; or
 - (c) remain registered as a proprietary company.

Note: Proprietary companies have different financial reporting obligations depending on whether they are small proprietary companies or large proprietary companies (see section 45A and Part 2M.3).

- (2) In applying subsection (1):
- (a) count joint holders of a particular parcel of shares as 1 person; and
 - (b) an employee shareholder is:
 - (i) a shareholder who is an employee of the company or of a subsidiary of the company; or
 - (ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.
- (3) A proprietary company must not engage in any activity that would require the lodgment with the ASC of a prospectus under Part 7.12, except for an offer of its shares to:
- (a) existing shareholders of the company; or
 - (b) employees of the company or of a subsidiary of the company.
- (4) An act or transaction is not invalid merely because of a contravention of subsection (3).

Note: If a proprietary company contravenes this section, the ASC may require it to change to a public company (see section 165).

114 Minimum of 1 member

A company needs to have at least 1 member.

115 Restrictions on size of partnerships and associations

A person must not participate in the formation of a partnership or association which has as an object gain for itself or for any of its members and which either:

- (a) has more than 20 members; or
- (b) has more than the number of members it is allowed to have under an application order made by the Minister under Part 1.3;

unless the partnership or association is incorporated or formed under an Australian law.

Note: For the effect of a contravention of this section, see section 103.

116 Trade unions cannot be registered

A trade union cannot be registered under this Law.

Part 2A.2—How a company is registered**117 Applying for registration***Lodging application*

- (1) To register a company, a person must lodge an application with the ASC.

Note: For the types of companies that can be registered, see section 112.

Contents of the application

- (2) The application must state the following:
- (a) the type of company that is proposed to be registered under the Corporations Law of this jurisdiction
 - (b) the company's proposed name (unless the ACN is to be used in its name)
 - (c) the name and address of each person who consents to become a member
 - (d) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a director
 - (e) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary
 - (f) the address of each person who consents in writing to become a director or company secretary
 - (g) the address of the company's proposed registered office
 - (h) for a public company—the proposed opening hours of its registered office (if they are not the standard opening hours)
 - (j) the address of the company's proposed principal place of business (if it is not the address of the proposed registered office)
 - (k) for a company limited by shares or an unlimited company—the following:

- (i) the number, class and nominal value of the shares that each member referred to in paragraph (c) agrees in writing to take up
- (ii) the amount (if any) paid, taken to be paid or due and payable on the issue of each share
- (l) for a public company that is limited by shares or is an unlimited company, if shares will be issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application
- (m) for a company limited by guarantee—the proposed amount of the guarantee that each member agrees to in writing.

Note 1: Paragraph (b)—sections 147 and 152 deal with the availability and reservation of names.

Note 2: Paragraph (f)—the address that must be stated is usually the residential address, although an alternative address can sometimes be stated instead (see section 242AA).

Note 3: Paragraph (g)—if the company is not to be the occupier of premises at the address of its registered office, the application must state that the occupier has consented to the address being specified in the application and has not withdrawn that consent (see section 100).

Note 4: Paragraph (h)—for *standard opening hours*, see section 9.

- (3) If the company is to be a public company and is to have a constitution on registration, a copy of the constitution must be lodged with the application.
- (4) The application must be in the prescribed form.
- (5) An applicant must have the consents and agreements referred to in subsection (2) when the application is lodged. After the company is registered, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.

118 ASC gives company ACN, registers company and issues certificate

Registration

- (1) If an application is lodged under section 117, the ASC may:
-

- (a) give the company an ACN; and
- (b) register the company; and
- (c) issue a certificate that states:
 - (i) the company's name; and
 - (ii) the company's ACN; and
 - (iii) the company's type; and
 - (iv) that the company is registered as a company under the Corporations Law of this jurisdiction; and
 - (v) the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

ASC must keep record of registration

- (2) The ASC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with the ASC.

119 Company comes into existence on registration

A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company's name is the name specified in the certificate of registration.

Note: The company remains in existence until it is deregistered (see Chapter 5A).

120 Members, directors and company secretary of a company

- (1) A person becomes a member, director or company secretary of a company on registration if the person is specified in the application with their consent as a proposed member, director or company secretary of the company.
- (2) The shares to be taken up by the members as specified in the application are taken to be issued to the members on registration of the company. The shares have the nominal value specified for them in the application.

Note: A member's name must be entered in the register of members (see section 169).

121 Registered office

The address specified in the application for registration for the company's proposed registered office becomes the address of the company's registered office on registration.

122 Expenses incurred in promoting and setting up company

The expenses incurred before registration in promoting and setting up a company may be paid out of the company's assets.

123 Company may have common seal

- (1) A company may have a common seal. If a company does have a common seal, the company must set out on it:
 - (a) for a company that has its ACN in its name—the company's name; or
 - (b) otherwise—the company's name, the expression "Australian Company Number" and the company's ACN.

Note 1: A company may make contracts and execute documents without using a seal (see sections 126 and 127).

Note 2: For abbreviations that can be used on a seal, see section 149.

- (2) A company may have a duplicate common seal. The duplicate must be a copy of the common seal with the words "duplicate seal", "share seal" or "certificate seal" added.
- (3) A person must not use, or authorise the use of, a seal that purports to be the common seal of a company or a duplicate if the seal does not comply with the requirements set out in subsection (1) or (2).

Chapter 2B—Basic features of a company

Part 2B.1—Company powers and how they are exercised

124 Legal capacity and powers of a company

- (1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:
 - (a) issue and cancel shares in the company
 - (b) issue debentures
 - (c) grant options over unissued shares in the company
 - (d) distribute any of the company's property among the members, in kind or otherwise
 - (e) give security by charging uncalled capital
 - (f) grant a floating charge over the company's property
 - (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction
 - (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

Note: For a company's power to issue bonus, partly-paid, preference and redeemable preference shares, see section 254A.

- (2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.

125 Constitution may limit powers and set out objects

- (1) If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution.
- (2) If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to or beyond any objects in the company's constitution.

126 Agent exercising a company's power to make contracts

- (1) A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's

express or implied authority and on behalf of the company. The power may be exercised without using a common seal.

- (2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

127 Execution of documents (including deeds) by the company itself

- (1) A company may execute a document without using a common seal if the document is signed by:
- (a) 2 directors of the company; or
 - (b) a director and a company secretary of the company; or
 - (c) for a proprietary company that has a sole director who is also the sole company secretary—that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(5) for dealings in relation to the company.

- (2) A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:
- (a) 2 directors of the company; or
 - (b) a director and a company secretary of the company; or
 - (c) for a proprietary company that has a sole director who is also the sole company secretary—that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the company.

- (3) A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).
- (4) This section does not limit the ways in which a company may execute a document (including a deed).

Part 2B.2—Assumptions people dealing with companies are entitled to make

128 Entitlement to make assumptions

- (1) A person is entitled to make the assumptions in section 129 in relation to dealings with a company. The company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (2) A person is entitled to make the assumptions in section 129 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from a company. The company and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.
- (3) The assumptions may be made even if an officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings.
- (4) A person is not entitled to make an assumption in section 129 if at the time of the dealings they knew or suspected that the assumption was incorrect.

129 Assumptions that can be made under section 128

Constitution and replaceable rules complied with

- (1) A person may assume that the company's constitution (if any), and any provisions of this Law that apply to the company as replaceable rules, have been complied with.

Director or company secretary

- (2) A person may assume that anyone who appears, from information provided by the company that is available to the public from the ASC, to be a director or a company secretary of the company:
 - (a) has been duly appointed; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or company secretary of a similar company.

Officer or agent

- (3) A person may assume that anyone who is held out by the company to be an officer or agent of the company:
- (a) has been duly appointed; and
 - (b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar company.

Proper performance of duties

- (4) A person may assume that the officers and agents of the company properly perform their duties to the company.

Document duly executed without seal

- (5) A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1). For the purposes of making the assumption, a person may also assume that anyone who signs the document and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

Document duly executed with seal

- (6) A person may assume that a document has been duly executed by the company if:
- (a) the company's common seal appears to have been fixed to the document in accordance with subsection 127(2); and
 - (b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.

For the purposes of making the assumption, a person may also assume that anyone who witnesses the fixing of the common seal and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

Officer or agent with authority to warrant that document is genuine or true copy

- (7) A person may assume that an officer or agent of the company who has authority to issue a document or a certified copy of a document
-

on its behalf also has authority to warrant that the document is genuine or is a true copy.

- (8) Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

130 Information available to the public from the ASC does not constitute constructive notice

- (1) A person is not taken to have information about a company merely because the information is available to the public from the ASC.
- (2) Subsection (1) does not apply in relation to a document that has been lodged with the ASC to the extent that the document relates to a charge that is registrable under this Law.

Part 2B.3—Contracts before registration

131 Contracts before registration

- (1) If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a company before it is registered, the company becomes bound by the contract and entitled to its benefit if the company, or a company that is reasonably identifiable with it, is registered and ratifies the contract:
- (a) within the time agreed to by the parties to the contract; or
 - (b) if there is no agreed time—within a reasonable time after the contract is entered into.
- (2) The person is liable to pay damages to each other party to the pre-registration contract if the company is not registered, or the company is registered but does not ratify the contract or enter into a substitute for it:
- (a) within the time agreed to by the parties to the contract; or
 - (b) if there is no agreed time—within a reasonable time after the contract is entered into.

The amount that the person is liable to pay to a party is the amount the company would be liable to pay to the party if the company had ratified the contract and then did not perform it at all.

- (3) If proceedings are brought to recover damages under subsection (2) because the company is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it considers appropriate in the circumstances, including ordering the company to do 1 or more of the following:
 - (a) pay all or part of the damages that the person is liable to pay
 - (b) transfer property that the company received because of the contract to a party to the contract
 - (c) pay an amount to a party to the contract.
- (4) If the company ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the company is ordered to pay.

132 Person may be released from liability but is not entitled to indemnity

- (1) A party to the pre-registration contract may release the person from all or part of their liability under section 131 to the party by signing a release.
- (2) Despite any rule of law or equity, the person does not have any right of indemnity against the company in respect of the person's liability under this Part. This is so even if the person was acting, or purporting to act, as trustee for the company.

133 This Part replaces other rights and liabilities

This Part replaces any rights or liabilities anyone would otherwise have on the pre-registration contract.

Part 2B.4—Replaceable rules and constitution

134 Internal management of companies

A company's internal management may be governed by provisions of this Law that apply to the company as replaceable rules, by a constitution or by a combination of both.

Note: There are additional rules about internal management in ordinary provisions of this Law and also in the common law.

135 Replaceable rules*Companies to which replaceable rules apply*

- (1) A section or subsection (except subsection 129(1), this section and sections 140 and 141) whose heading contains the words:
 - (a) *replaceable rule*—applies as a replaceable rule to:
 - (i) each company that is registered after the commencement of this Part; and
 - (ii) any company registered before that commencement that repeals its constitution after that commencement; and
 - (b) *replaceable rule for proprietary companies and mandatory rule for public companies*—applies:
 - (i) as a replaceable rule to any proprietary company that is registered after the commencement of this Part; and
 - (ii) as a replaceable rule to any company that is registered after that commencement and that changes to a proprietary company (but only while it is a proprietary company); and
 - (iii) as a replaceable rule to any proprietary company registered before that commencement that repeals its constitution after that commencement; and
 - (iv) as an ordinary provision of this Law to any public company whenever registered.

The section or subsection does not apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 1: See section 224B for the special provisions that apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 2: A company may include in its constitution (by reference or otherwise) a replaceable rule that does not otherwise apply to it.

Company's constitution can displace or modify replaceable rules

- (2) A provision of a section or subsection that applies to a company as a replaceable rule can be displaced or modified by the company's constitution.

Failure to comply with replaceable rules

- (3) A failure to comply with the replaceable rules as they apply to a company is not of itself a contravention of this Law (so the provisions about criminal liability, civil liability and injunctions do not apply).

Note: Replaceable rules that apply to a company have effect as a contract (see section 140).

136 Constitution of a company

- (1) A company adopts a constitution:
- (a) on registration—if each person specified in the application for the company’s registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or
 - (b) after registration—if the company passes a special resolution adopting a constitution.

Note: The memorandum and articles of a company immediately before the commencement of this Part are taken together to make up the company’s constitution after commencement (see section 1414).

- (2) The company may modify or repeal its constitution, or a provision of its constitution, by special resolution.
- (3) The company’s constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.
- (4) Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.
- (5) A public company must lodge with the ASC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after it is passed. The company must also lodge with the ASC within that period:
- (a) if the company adopts a constitution—a copy of that constitution; or

- (b) if the company modifies its constitution—a copy of that modification.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

137 Date of effect of adoption, modification or repeal of constitution

- (1) A special resolution adopting, modifying or repealing a company's constitution takes effect:
 - (a) if no later date is specified in the resolution—on the date on which the resolution is passed; or
 - (b) on a later date specified in, or determined in accordance with, the resolution.
- (2) Subsection (1) does not apply to the date of effect of a special resolution passed in connection with a change of name, change of type or a variation or cancellation of class rights.

Note: For the date of effect of these changes, see subsection 157(3) (name), subsection 164(5) (type) and subsection 246D(3) and section 246E (class rights).

138 ASC may direct company to lodge consolidated constitution

The ASC may direct a company to lodge a consolidated copy of its constitution with the ASC.

139 Company must send copy of constitution to member

A company must send a copy of its constitution to a member of the company within 7 days if the member:

- (a) asks the company, in writing, for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the company.

140 Effect of constitution and replaceable rules

- (1) A company's constitution (if any) and any replaceable rules that apply to the company have effect as a contract:
 - (a) between the company and each member; and

- (b) between the company and each director and company secretary; and
 - (c) between a member and each other member;
- under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.
- (2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:
- (a) requires the member to take up additional shares; or
 - (b) increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the company; or
 - (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:
 - (i) in connection with the company's change from a public company to a proprietary company under Part 2B.7; or
 - (ii) to insert takeover approval provisions of a kind referred to in section 671.

141 Table of replaceable rules

The following table sets out the provisions of this Law that apply as replaceable rules.

Provisions that apply as replaceable rules

Directors		
1	Company may appoint a director	224C
2	Alternate directors	225A
3	Powers of directors	226A
4	Executing negotiable instruments	226B
5	Managing director	226C
6	Delegation to committees	226D
7	Proprietary company may remove director	226E
8	Director may resign by giving written notice to company	227A
9	Director interested in contract with proprietary company	231(1A)
10	Remuneration of directors	236A

Provisions that apply as replaceable rules		
Directors' meetings		
11	Circulating resolutions	248A
12	Calling directors' meetings	248C
13	Chairing directors' meetings	248E
14	Quorum at directors' meetings	248F
15	Passing of directors' resolutions	248G
Meetings of members		
16	Calling of meetings of members by a director	249C
17	Notice to joint members	249J(2)
18	When notice by post or fax is given	249J(4)
19	Notice of adjourned meetings	249M
20	Quorum	249T
21	Chairing meetings of members	249U
22	Business at adjourned meetings	249W(2)
23	Who can appoint a proxy	249X
	<i>[replaceable rule for proprietary companies only]</i>	
24	Proxy vote valid even if member dies, revokes appointment etc.	250C(2)
25	How many votes a member has	250E
26	Jointly held shares	250F
27	Objection to right to vote	250G
28	How voting is carried out	250J
29	When and how polls must be taken	250M
Company secretary		
30	Terms of office determined by directors	240(4A)
Inspection of books		
31	Company or directors may allow member to inspect books	247D
Shares		
32	Pre-emption for existing shareholders on issue of shares in proprietary company	254D
33	Other provisions about paying dividends	254U
34	Dividend rights for shares in proprietary companies	254W(2)
Transfer of shares		
35	Transmission of shares on death	1091AA
36	Transmission of shares on bankruptcy	1091AB

Provisions that apply as replaceable rules		
37	Transmission of shares on mental incapacity	<i>1091B</i>
38	Registration of transfers	<i>1091D</i>
39	Additional general discretion for directors of proprietary companies to refuse to register transfers	<i>1091E</i>
Share capital		
40	Capitalisation of profits	<i>254S</i>

Part 2B.5—Registered office and places of business

142 Registered office

- (1) A company must have a registered office in Australia.
Communications and notices to the company may be addressed to its registered office.

Note: A document may be served on a company by leaving it at, or posting it to, the company's registered office (see subsection 109X(1)).

- (2) A company must lodge notice of a change of address of its registered office with the ASC not later than 14 days after the date on which the change occurs. The notice must be in the prescribed form.

Note: If the company is not to be the occupier of premises at the address of its new registered office, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 100).

- (3) A notice of change of address takes effect from the later of:
- (a) the 7th day after the notice was lodged; or
 - (b) a later day specified in the notice as the date from which the change is to take effect.

143 ASC may change address of registered office to a director's address

- (1) A company that does not occupy the premises at the address of its registered office must be able to show to the ASC the occupier's written consent to the company's use of those premises as its registered office.

Note: The ASC can require the company to produce the consent (see section 100).

- (2) If the ASC becomes aware that the occupier of those premises:
 - (a) has not consented to the use of the premises as the address of the company's registered office; or
 - (b) has withdrawn the consent;the ASC may give written notice to a director of the company who resides in Australia that the ASC intends to change the address of the company's registered office to the director's address.
- (3) If the ASC is not notified of the address of the company's proposed new registered office under subsection 142(2) within 14 days after the notice under subsection (2) is sent, the ASC may change the address of the company's registered office to the director's address.

144 Company's name must be displayed at registered office etc.

- (1) A company must display its name prominently at every place at which the company carries on business and that is open to the public.
- (2) A public company must also display its name and the words "Registered Office" prominently at its registered office.

145 Opening hours of registered office of public company

- (1) The registered office of a public company must be open to the public:
 - (a) each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; or
 - (b) at least 3 hours chosen by the company between 9 am and 5 pm each business day.

- (2) If the company chooses its own opening hours, the hours must be specified:
 - (a) if the company is to have its own opening hours from its registration—in the application for registration of the company under section 117; or
 - (b) if the company changes its opening hours after its registration—in the most recent notice of change of opening hours lodged with the ASC under subsection (3).
- (3) The company must lodge notice of a change in the opening hours of its registered office with the ASC before the day on which a change occurs. The notice must be in the prescribed form.

146 Change of address of principal place of business

A company must lodge with the ASC notice of a change of the address of its principal place of business not later than 14 days after the date on which the change occurs. The notice must be in the prescribed form.

Part 2B.6—Names

Division 1—Selecting and using a name

147 When a name is available

Name is available unless identical or unacceptable

- (1) A name is available to a company unless the name is:
 - (a) identical (under rules set out in the regulations) to a name that is reserved or registered under this Law for another body; or
 - (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name; or
 - (c) unacceptable for registration under the regulations.

Minister may consent to a name being available to a company

- (2) The Minister may consent in writing to a name being available to a company even if the name is:
 - (a) identical to a name that is reserved or registered under this Law for another body; or
 - (b) unacceptable for registration under the regulations.
- (3) The Minister's consent may be given subject to conditions.

Note: If the company breaches a condition, the ASC may direct it to change its name under section 158.

148 A company's name

Company may use available name or ACN

- (1) A company may have as its name:
 - (a) an available name; or
 - (b) the expression "Australian Company Number" followed by the company's ACN.

The name must also include the words required by subsection (2) or (3).

Limited companies

- (2) A limited public company must have the word "Limited" at the end of its name unless section 150 or 151 applies. A limited proprietary company must have the words "Proprietary Limited" at the end of its name.

Unlimited proprietary companies

- (3) An unlimited proprietary company must have the word "Proprietary" at the end of its name.

No liability companies

- (4) A no liability company must have the words "No Liability" at the end of its name.

Public companies with “Proprietary” included in their name

- (5) A public company must not include the word “Proprietary” (or an abbreviation of it) in its name unless:
- (a) it was a public company before the commencement of this section; and
 - (b) the word “Proprietary” (or an abbreviation of it) was included in its name before that commencement.

149 Acceptable abbreviations

- (1) The abbreviations set out in the following table may be used:
- (a) instead of words that this Law requires to be part of a company’s name or to be included in a document or on a company’s common seal; and
 - (b) instead of words that are part of a company’s name; and
 - (c) with or without full stops.

Acceptable abbreviations		[operative table]
Word	Abbreviation	
1 Company	Co or Coy	
2 Proprietary	Pty	
3 Limited	Ltd	
4 No Liability	NL	
5 Australian	Aust	
6 Number	No	
7 and	&	
8 Australian Company Number	ACN	

- (2) If a company’s name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

150 Exception to requirement for using “Limited” in name

- (1) The ASC may register a company limited by guarantee without “Limited” in its name, or alter the registration of a company of that type by omitting “Limited” from its name, if its constitution:
- (a) requires the company to pursue charitable purposes only and to apply its income in promoting those purposes; and

- (b) prohibits the company making distributions to its members and paying fees to its directors; and
 - (c) requires the directors to approve all other payments the company makes to directors.
- (2) The company must notify the ASC as soon as practicable if any of those requirements or prohibitions in its constitution are not complied with or if its constitution is modified to remove any of those requirements or prohibitions.

**151 Exception to requirement for using “Limited” in name—
pre-existing licences**

- (1) A licence in force immediately before the commencement of this section that allowed a company to omit “Limited” from its name continues in force subject to subsection (3).
- (2) The company must notify the ASC as soon as practicable if it:
- (a) breaches a condition of the licence; or
 - (b) pursues objects or purposes that would have prevented it being granted the licence; or
 - (c) applies its profits or other income to promote objects or purposes that would have prevented it being granted the licence; or
 - (d) pays a dividend to its members; or
 - (e) modifies its constitution to allow it to do anything set out in paragraphs (a) to (d).
- (3) The ASC may revoke the company’s licence if the company does anything set out in paragraphs (2)(a) to (e).

152 Reserving a name

- (1) A person may lodge an application in the prescribed form with the ASC to reserve a name for a company. If the name is available, the ASC must reserve it.

Note: For available names, see section 147.

- (2) The reservation lasts for 2 months from the date when the application was lodged. An applicant may ask the ASC in writing

for an extension of the reservation during a period that the name is reserved, and the ASC may extend the reservation for 2 months.

- (3) The ASC must cancel a reservation if the applicant asks the ASC in writing to do so.

153 Using a name and ACN on documents

- (1) A company must set out its name on all its public documents and negotiable instruments.
- (2) Subject to sections 154 and 155, if the company's ACN is not used in its name, the company must also set out with its name, or with 1 of the references to its name, the expression "Australian Company Number" followed by its ACN. If the company's name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

Note 1: If a company has a common seal, its name and ACN must be set out on the seal (see section 123).

Note 2: A public company must display its name at its registered office. Every company must display its name at places at which the company carries on business and that are open to the public (see section 144).

Note 3: Section 149 provides that "ACN" is an acceptable abbreviation of "Australian Company Number".

154 Exception to requirement to have ACN on receipts

A company does not have to set out the expression "Australian Company Number" followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

155 Regulations may exempt from requirement to set out information on documents

The regulations may exempt a specified company, or a class of companies, from the requirement in subsection 153(2) to set out information on its public documents and negotiable instruments. The exemption may relate to specified documents or instruments, or a class of documents or instruments.

156 Carrying on business using “Limited”, “No Liability” or “Proprietary” in name

A person must not carry on business under a name or title that:

- (a) has the words “Limited” or “No Liability” (or an abbreviation of those words) at the end; or
 - (b) includes the word “Proprietary” (or an abbreviation of it);
- unless allowed or required to do so under an Australian law.

Division 2—Changing a company’s name

157 Company changing its name

- (1) If a company wants to change its name, it must:
 - (a) pass a special resolution adopting a new name; and
 - (b) lodge an application in the prescribed form with the ASC.

Note: The company may reserve a name before the resolution is passed or the application is lodged (see section 152).

- (2) The company must lodge a copy of the special resolution with the ASC within 14 days after it is passed.
- (3) If the proposed name is available, the ASC must change the company’s name by altering the details of the company’s registration to reflect the change. The change of name takes effect when the ASC alters the details of the company’s registration.

Note: For available names, see section 147.

158 ASC’s power to direct company to change its name

- (1) The ASC may direct a company in writing to change its name within 2 months if:
 - (a) the name should not have been registered; or
 - (b) the company has breached a condition under subsection 147(3) on the availability of the name.
- (2) The company must comply with the direction within 2 months after being given it by doing everything necessary to change its name under section 157.

- (3) If the company does not comply with subsection (2), the ASC may change the company's name to its ACN and any other words that section 148 requires, by altering the details of the company's registration to reflect the change.
- (4) A change of name under subsection (3) takes effect when the ASC alters the details of the company's registration.

159 ASC's power to include "Limited" in company's name

- (1) The ASC may change a company's name so that it includes the word "Limited" by altering the details of the company's registration to reflect the change if:
 - (a) the company contravenes any of the requirements or prohibitions in its constitution referred to in subsection 150(1); or
 - (b) the company modifies its constitution to remove any of those requirements or prohibitions; or
 - (c) the ASC revokes a licence referred to in section 151 that applies to the company.
- (2) The change of name takes effect when the ASC alters the details of the company's registration.

160 ASC must issue new certificate if company's name changes

If the ASC changes a company's name, it must give the company a new certificate of registration. The company's new name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

161 Effect of name change

- (1) A change of company name does not:
 - (a) create a new legal entity; or
 - (b) affect the company's existing property, rights or obligations; or
 - (c) render defective any legal proceedings by or against the company.
-

- (2) Any legal proceedings that could have been continued or begun by or against the company in its former name may be continued or begun by or against it in its new name.

Part 2B.7 Changing company type

162 Changing company type

- (1) A company may change to a company of a different type as set out in the following table by:
- (a) passing a special resolution resolving to change its type; and
 - (b) complying with sections 163 and 164.

Allowed conversions		[operative table]
This type of company may change. to this type of company	
1	proprietary company limited by shares	unlimited proprietary company unlimited public company public company limited by shares
2	unlimited proprietary company	proprietary company limited by shares <i>(but only if, within the last 3 years, it was not a limited company that became an unlimited company)</i> public company limited by shares <i>(but only if, within the last 3 years, it was not a limited company that became an unlimited company)</i> unlimited public company
3	public company limited by shares	unlimited public company unlimited proprietary company proprietary company limited by shares no liability company (see subsection (2))
4	company limited by guarantee	public company limited by shares unlimited public company proprietary company limited by shares unlimited proprietary company

Allowed conversions		[operative table]
This type of company may change. to this type of company
5	unlimited public company	public company limited by shares <i>(but only if, within the last 3 years, it was not a limited company that became an unlimited company)</i> proprietary company limited by shares <i>(but only if, within the last 3 years, it was not a limited company that became an unlimited company)</i> unlimited proprietary company
6	public no liability company	public company limited by shares <i>(but only if all the issued shares are fully paid up)</i> proprietary company limited by shares <i>(but only if all the issued shares are fully paid up)</i>

Note 1: A public company seeking to change to a proprietary company must comply with the requirements for proprietary companies set out in section 113.

Note 2: Other types of companies that were previously allowed can change type under section 1416.

- (2) A public company limited by shares may only convert to a no liability company if:
- (a) the company's constitution states that its sole objects are mining purposes; and
 - (b) under the constitution the company has no contractual right to recover calls made on its shares from a shareholder who fails to pay them; and
 - (c) all the company's issued shares are fully paid up.

Note: Section 9 defines *mining purposes* and *minerals*.

- (3) The company must lodge a copy of the special resolution with the ASC within 14 days after it is passed.

Unlimited company changing to limited company—resolution may deal with uncalled share capital and nominal value

- (4) A special resolution to change an unlimited company that has share capital to a company limited by shares may also do either or both of the following:

- (a) provide that a specified portion of its uncalled share capital may only be called up if the company is wound up
- (b) increase the nominal value of each of its shares.

Any increase in nominal value may only be called up if the company is wound up.

163 Applying for change of type

Lodging application

- (1) To change its type, a company must lodge an application with the ASC.

Contents of the application

- (2) The application must be accompanied by the following:

- (a) a copy of:

- (i) the special resolution that resolves to change the type of the company, specifies the new type and the company's new name (if a change of name is necessary); and
- (ii) any other special resolution passed in connection with the change of type

- (b) for a company limited by guarantee changing to a company limited by shares:

- (i) a statement signed by the directors of the company that in their opinion the company's creditors are not likely to be materially prejudiced by the change of type and that sets out their reasons for that opinion; and
- (ii) any special resolution dealing with an issue of shares according to section 167

- (c) for a company limited by shares or a company limited by guarantee changing to an unlimited company:

- (i) an assent to the change of type in the prescribed form signed by all the members of the company; and

- (ii) a statement signed by a director or a company secretary of the company that all the members of the company have signed the assent
- (d) for a proprietary company changing to a public company:
 - (i) a consolidated copy of the company's constitution (if any) as at the date of lodgment; and
 - (ii) a copy of each document (including an agreement or consent) or resolution that is necessary to ascertain the rights attached to issued or unissued shares of the company.

Note 1: The company must lodge a copy of any special resolution modifying its constitution passed after the application is lodged (see subsection 136(5)).

Note 2: The company must lodge information relating to any change of rights attached to its shares, or any division or conversion of its shares into new classes, occurring after the application is lodged (see section 246F).

Company limited by guarantee to company limited by shares

- (3) If shares will be issued to persons under paragraph 166(2)(c) on the change of type from a company limited by guarantee to a company limited by shares, the application must state:
 - (a) that the company has prepared a list that sets out the following details about each person to whom the shares will be issued and about the shares:
 - (i) name and address
 - (ii) the number, class and nominal value of the shares the person will take up
 - (iii) the amount (if any) paid, taken to be paid or due and payable on the issue of the shares; and
 - (b) the number, class and nominal value of the shares those persons will take up; and
 - (c) the amount (if any) paid, taken to be paid or due and payable on the issue of the shares
 - (d) if the shares will be issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares will be issued under a written contract and a copy of the contract is lodged with the application; and

- (e) that each of those persons who is not a member of the company when the application is made consents in writing to the inclusion in the list of the details about them that are referred to in paragraph (a).

The shares may be issued to existing members only, to new members only or to existing and new members.

Note: An offer of shares associated with a proposed change of type may be subject to the prospectus provisions (see section 1018).

- (4) The application must be in the prescribed form.
- (5) The company must have the consents referred to in paragraph (3)(e) (if any) when the application is lodged. The company must keep the consents.

164 ASC changes type of company

- (1) The ASC must give notice under subsection (3) that it intends to alter the details of the company's registration if:
 - (a) the ASC is satisfied that:
 - (i) the application complies with section 163; and
 - (ii) for an application by a company limited by guarantee to change to a company limited by shares—the company's creditors are not likely to be materially prejudiced by the change; and
 - (b) for an application by a company limited by guarantee to change to a company limited by shares that is accompanied by a copy of a special resolution dealing with an issue of shares according to section 167—the ASC is not of the opinion that the obligations that would attach to the shares are unreasonable compared with the obligations that attach to membership of the company limited by guarantee.
- (2) To make a decision under subparagraph (1)(a)(ii), the ASC may direct the company in writing to:
 - (a) notify some or all of its creditors of the proposed change in the way the ASC specifies; and
 - (b) invite those creditors to make submissions to the ASC.
- (3) The notice that the ASC intends to alter the details of the company's registration must be:

- (a) included on the ASC database; and
- (b) published in the *Gazette*.

The notice must also state that the ASC will alter the details of the company's registration 1 month after the notice has been published in the *Gazette* unless an order by a court or the Administrative Appeals Tribunal prevents it from doing so.

- (4) Subject to an order made by a court or the Administrative Appeals Tribunal within that month, after that month has passed the ASC must alter the details of the company's registration to reflect the company's new type.
- (5) A change of type under this section takes effect when the ASC alters the details of the company's registration. Despite subsection 246D(3) and section 246E, a special resolution passed in connection with the change of type also takes effect when the ASC alters the details of the company's registration.
- (6) The ASC must give the company a new certificate of registration after it alters the details of the company's registration. The company's name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

- (7) If the ASC alters the details of a company's registration under subsection (4), a court is not to make an order reversing the alteration of the details of the company's registration.

Note: The Administrative Appeals Tribunal cannot review the change of the company's type once the ASC has issued a new certificate of registration to the company (see subsection 1274(7A) and paragraph 1317C(b)).

165 ASC may direct a proprietary company to change to a public company in certain circumstances

- (1) The ASC may direct a proprietary company in writing to change to a public company within 2 months if it is satisfied that the company has contravened section 113 (requirements for proprietary companies).

- (2) The company must comply with the direction within 2 months after being given it by doing everything necessary to change to a public company under section 164.
- (3) If a proprietary company does not comply with subsection (2), the ASC may change the company from a proprietary to a public company by altering the details of the company's registration to reflect the company's new type.
- (4) A change of type under this section takes effect when the ASC alters the details of the company's registration.
- (5) The ASC must give the company a new certificate of registration after it alters the details of the company's registration under subsection (3). The company's name is the name specified in the certificate of registration issued under this section.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

166 Effect of change of type

- (1) A change of type does not:
 - (a) create a new legal entity; or
 - (b) affect the company's existing property, rights or obligations (except as against the members of the company in their capacity as members); or
 - (c) render defective any legal proceedings by or against the company or its members.
- (2) On the change of type of a company from a company limited by guarantee to a company limited by shares:
 - (a) the liability of each member and past member as a guarantor on the winding up of the company is extinguished; and
 - (b) the members cease to be members of the company; and
 - (c) if shares are to be issued to a person as specified in the list referred to in subsection 163(3):
 - (i) the shares are taken to be issued to that person; and
 - (ii) the person is taken to have consented to be a member of the company; and
 - (iii) the person becomes a member of the company.

Note: The company must maintain a register of members that complies with subsection 169(3).

167 Issue of shares by company or holding company—company limited by guarantee changing to company limited by shares

(1) If:

- (a) a company limited by guarantee changes type under this Part to a company limited by shares; and
- (b) that company, or another company that beneficially owns all the shares in that company, issues shares to a person who was a member of that company immediately before the change of type took effect;

the person becomes a member of the company issuing the shares if:

- (c) the issue of the shares is in accordance with the special resolution that accompanied the application to change type under subparagraph 163(2)(a)(ii); and
- (d) the shares are fully paid up; and
- (e) the business, assets and liabilities of the issuing company (together with its subsidiaries) when the shares are issued are substantially the same as the business, assets and liabilities of the company changing type (together with its subsidiaries) immediately before the change of type took effect.

(2) If shares are issued according to this section, a court is not to make an order reversing the issue of the shares.

2 Part 3.1

Repeal the Part.

3 Part 3.3

Repeal the Part.

4 Before Part 3.5

Insert:

Chapter 2F—Members' rights and remedies

246A Membership of a company

A person is a member of a company if they:

- (a) are a member of the company on its registration; or
- (b) agree to become a member of the company after its registration and their name is entered on the register of members; or
- (c) become a member of the company under section 167 (membership arising from conversion of a company from one limited by guarantee to one limited by shares).

Part 2F.1—Oppression

Part 2F.2—Class rights

246B Varying and cancelling class rights

If constitution sets out procedure

- (1) If a company has a constitution that sets out the procedure for varying or cancelling:
 - (a) for a company with a share capital—rights attached to shares in a class of shares; or
 - (b) for a company without a share capital—rights of members in a class of members;those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.

If constitution does not set out procedure

- (2) If a company does not have a constitution, or has a constitution that does not set out the procedure for varying or cancelling:
 - (a) for a company with a share capital—rights attached to shares in a class of shares; or
 - (b) for a company without a share capital—rights of members in a class of members;those rights may be varied or cancelled only by special resolution of the company and:

- (c) by special resolution passed at a meeting:
 - (i) for a company with a share capital of the class of members holding shares in the class; or
 - (ii) for a company without a share capital of the class of members whose rights are being varied or cancelled; or
 - (d) with the written consent of members with at least 75% of the votes in the class.
- (3) The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.

246C Certain actions taken to vary rights etc.

Company with share capital

- (1) If the shares in a class of shares in a company are divided into further classes, and after the division the rights attached to all of those shares are not the same:
 - (a) the division is taken to vary the rights attached to every share that was in the class existing before the division; and
 - (b) members who hold shares to which the same rights are attached after the division form a separate class.
- (2) If the rights attached to some of the shares in a class of shares in a company are varied:
 - (a) the variation is taken to vary the rights attached to every other share that was in the class existing before the variation; and
 - (b) members who hold shares to which the same rights are attached after the variation form a separate class.

Company without share capital

- (3) If the members in a class of members in a company without share capital are divided into further classes of members, and after the division the rights of all of those members are not the same:
 - (a) the division is taken to vary the rights of every member who was in the class existing before the division; and
 - (b) members who have the same rights after the division form a separate class.

- (4) If the rights of some of the members in a class of members in a company without a share capital are varied:
- (a) the variation is taken to vary the rights of every other member who was in the class existing before the variation; and
 - (b) members who have the same rights after the variation form a separate class.

Company with 1 class of shares issuing new class of shares

- (5) If a company with 1 class of shares issues new shares, the issue is taken to vary the rights attached to shares already issued if:
- (a) the rights attaching to the new shares are not the same as the rights attached to shares already issued; and
 - (b) those rights are not provided for in:
 - (i) the company's constitution (if any); or
 - (ii) a notice, document or resolution that is lodged with the ASC.
- (6) If a company issues new preference shares that rank equally with existing preference shares, the issue is taken to vary the rights attached to the existing preference shares unless the issue is authorised by:
- (a) the terms of issue of the existing preference shares; or
 - (b) the company's constitution (if any) as in force when the existing preference shares were issued.

246D Variation, cancellation or modification without unanimous support of class

- (1) If members in a class do not all agree (whether by resolution or written consent) to:
- (a) a variation or cancellation of their rights; or
 - (b) a modification of the company's constitution (if any) to allow their rights to be varied or cancelled;
- members with at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.

- (2) An application may only be made within 1 month after the variation, cancellation or modification is made.
- (3) The variation, cancellation or modification takes effect:
 - (a) if no application is made to the Court to have it set aside—1 month after the variation, cancellation or modification is made; or
 - (b) if an application is made to the Court to have it set aside—when the application is withdrawn or finally determined.
- (4) The members of the class who want to have the variation, cancellation or modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.
- (5) The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.
- (6) Within 14 days after the Court makes an order, the company must lodge a copy of it with the ASC.

246E Variation, cancellation or modification with unanimous support of class

If the members in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:

- (a) if no later date is specified in the resolution or consent—on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or consent.

246F Company must lodge documents and resolutions with the ASC

- (1) A company must lodge with the ASC a notice in the prescribed form setting out particulars of any of the following:
 - (a) a division of shares in the company into classes if the shares were not previously so divided
 - (b) a conversion of shares in a class of shares in the company into shares in another class.
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- (2) The notice must be lodged within 14 days after the division or conversion.
 - (3) A public company must lodge with the ASC a copy of each document (including an agreement or consent) or resolution that:
 - (a) does any of the following:
 - (i) attaches rights to issued or unissued shares
 - (ii) varies or cancels rights attaching to issued or unissued shares
 - (iii) varies or cancels rights of members in a class of members of a company that does not have a share capital
 - (iv) binds a class of members; and
 - (b) is not already lodged with the ASC.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.
 - (4) The document must be lodged within 14 days after it is made. The resolution must be lodged within 14 days after it is passed.

246G Member's copies of documents and resolutions

- (1) A member of a company may ask the company in writing for a copy of a document or resolution referred to in section 246F. The company must send the copy to the member.
- (2) If the company requires the member to pay for the copy, the company must send it:
 - (a) within 7 days after the company receives the payment; or
 - (b) within any longer period approved by the ASC.
- (3) The amount of any payment the company requires cannot exceed the prescribed amount.
- (4) If the company does not require payment for the copy, the company must send it:
 - (a) within 7 days after the member asks for it; or
 - (b) within any longer period approved by the ASC.

Part 2F.3—Inspection of books

247A Order for inspection of books of company or registered managed investment scheme

- (1) On application by a member of a company or registered managed investment scheme, the Court may make an order:
 - (a) authorising the applicant to inspect books of the company or scheme; or
 - (b) authorising another person (whether a member or not) to inspect books of the company or scheme on the applicant's behalf.

The Court may only make the order if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose.

- (2) A person authorised to inspect books may make copies of the books unless the Court orders otherwise.

247B Ancillary orders

If the Court makes an order under section 247A, the Court may make any other orders it considers appropriate, including either or both of the following:

- (a) an order limiting the use that a person who inspects books may make of information obtained during the inspection
- (b) an order limiting the right of a person who inspects books to make copies in accordance with subsection 247A(2).

247C Disclosure of information acquired in inspection

A person who inspects books on behalf of an applicant under section 247A must not disclose information obtained during the inspection unless the disclosure is to:

- (a) the ASC; or
- (b) the applicant.

**247D Company or directors may allow member to inspect books
(replaceable rule see section 135)**

The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

Chapter 2G—Meetings

Part 2G.1—Directors’ meetings

Division 1—Resolutions and declarations without meetings

**248A Circulating resolutions of companies with more than 1
director (replaceable rule see section 135)**

Resolutions

- (1) The directors of a company may pass a resolution without a directors’ meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

Copies

- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

When the resolution is passed

- (3) The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the company’s minute books (see section 251A).

248B Resolutions and declarations of 1 director proprietary companies

Resolutions

- (1) The director of a proprietary company that has only 1 director may pass a resolution by recording it and signing the record.

Declarations

- (2) The director of a proprietary company that has only 1 director may make a declaration by recording it and signing the record. Recording and signing the declaration satisfies any requirement in this Law that the declaration be made at a directors' meeting.

Note 1: For directors' declarations, see sections 231, 295 and 494.

Note 2: Passage of a resolution or the making of a declaration under this section must be recorded in the company's minute books (see section 251A).

Division 2—Directors' meetings

248C Calling directors' meetings (replaceable rule see section 135)

A directors' meeting may be called by a director giving reasonable notice individually to every other director.

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see section 225A).

248D Use of technology

A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

248E Chairing directors' meetings (replaceable rule see section 135)

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

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- (2) The directors must elect a director present to chair a meeting, or part of it, if:
 - (a) a director has not already been elected to chair the meeting;
or
 - (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

248F Quorum at directors' meetings (replaceable rule see section 135)

Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting.

Note 1: For special quorum rules for public companies, see sections 232A and 232B.

Note 2: For resolutions of 1 director proprietary companies without meetings, see section 248B.

248G Passing of directors' resolutions (replaceable rule see section 135)

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- (2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.

Part 2G.2—Meetings of members of companies

Division 1—Resolutions without meetings

249A Circulating resolutions of proprietary companies with more than 1 member

- (1) This section applies to resolutions of the members of proprietary companies that this Law or, if a company has a constitution, the company's constitution requires or permits to be passed at a

general meeting. It does not apply to a resolution under section 329 to remove an auditor.

- (2) A company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint members must sign.
- (3) Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- (4) The resolution is passed when the last member signs.
- (5) A company that passes a resolution under this section without holding a meeting satisfies any requirement in this Law:
 - (a) to give members information or a document relating to the resolution—by giving members that information or document with the document to be signed; and
 - (b) to lodge with the ASC a copy of a notice of meeting to consider the resolution—by lodging a copy of the document to be signed by members; and
 - (c) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution—by lodging a copy of the information or documents referred to in paragraph (a).
- (6) The passage of the resolution satisfies any requirement in this Law, or a company's constitution (if any), that the resolution be passed at a general meeting.
- (7) This section does not affect any rule of law relating to the assent of members not given at a general meeting.

Note 1: A body corporate representative may sign a circulating resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

249B Resolutions of 1 member companies

- (1) A company that has only 1 member may pass a resolution by the member recording it and signing the record.

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- (2) If this Law requires information or a document relating to the resolution to be lodged with the ASC, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Note 1: A body corporate representative may sign such a resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

Division 2—Who may call meetings of members

249C Calling of meetings of members by a director (replaceable rule—see section 135)

A director may call a meeting of the company's members.

249CA Calling of meetings of members of a listed company by a director

- (1) A director may call a meeting of the company's members.
- (2) This section applies only to a company that is:
 - (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (3) This section applies despite anything in the company's constitution.

249D Calling of general meeting by directors when requested by members

- (1) The directors of a company must call and arrange to hold a general meeting on the request of:
 - (a) members with at least 5% of the votes that may be cast at the general meeting; or
 - (b) at least 100 members who are entitled to vote at the general meeting.
- (2) The request must:
 - (a) be in writing; and
 - (b) state any resolution to be proposed at the meeting; and

- (c) be signed by the members making the request; and
 - (d) be given to the company.
- (3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
 - (4) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
 - (5) The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

249E Failure of directors to call general meeting

- (1) Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.
- (2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.
- (3) To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.
- (4) The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.
- (5) The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

249F Calling of general meetings by members

- (1) Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- (2) The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called.
- (3) The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

249G Calling of meetings of members by the Court

- (1) The Court may order a meeting of the company's members to be called if it is impracticable to call the meeting in any other way.
- (2) The Court may make the order on application by:
 - (a) any director; or
 - (b) any member who would be entitled to vote at the meeting.

Note: For the directions the Court may give for calling, holding or conducting a meeting it has ordered be called, see section 1319.

Division 3—How to call meetings of members**249H Amount of notice of meetings***General rule*

- (1) Subject to subsection (2), at least 21 days notice must be given of a meeting of a company's members. However, if a company has a constitution, it may specify a longer minimum period of notice.

Calling meetings on shorter notice

- (2) A company may call on shorter notice:
 - (a) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand; and
 - (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

A company cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).

Shorter notice not allowed—removing or appointing director

- (3) At least 21 days notice must be given of a meeting of the members of a public company at which a resolution will be moved to:
- (a) remove a director under section 227; or
 - (b) appoint a director in place of a director removed under that section; or
 - (c) to appoint or reappoint as a director under subsection 228(7) or (8)—a person who has attained the age of 72 years.

Shorter notice not allowed—removing auditor

- (4) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to remove an auditor under section 329.

249HA Amount of notice of meetings of listed company

- (1) Despite section 249H, at least 28 days notice must be given of a meeting of a company's members.
- (2) This section applies only to a company that is:
 - (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (3) This section applies despite anything in the company's constitution.

249J Notice of meetings of members to members and directors

Notice to members and directors individually

- (1) Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. If a share is held jointly, notice need only be given to 1 of the members.

Notice to joint members (replaceable rule—see section 135)

- (2) Notice to joint members must be given to the joint member named first in the register of members.

How notice is given

- (3) A company may give the notice of meeting to a member:
- (a) personally; or
 - (b) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
 - (d) by any other means that the company's constitution (if any) permits.

Note: A defect in the notice given may not invalidate a meeting (see section 1322).

When notice by post or fax is given (replaceable rule—see section 135)

- (4) A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

249K Auditor entitled to notice and other communications

A company must give its auditor:

- (a) notice of a general meeting in the same way that a member of the company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member of the company is entitled to receive.

Note 1: For when a company must have an auditor, see Part 2M.3.

Note 2: An auditor may appoint a representative to attend a meeting (see subsection 249V(4)).

249L Contents of notice of meetings of members

A notice of a meeting of a company's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution; and
- (d) if a member is entitled to appoint a proxy—contain a statement setting out the following information:
 - (i) that the member has a right to appoint a proxy
 - (ii) whether or not the proxy needs to be a member of the company
 - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

249M Notice of adjourned meetings (replaceable rule—see section 135)

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

Division 4—Members' rights to put resolutions etc. at general meetings

249N Members' resolutions

- (1) The following members may give a company notice of a resolution that they propose to move at a general meeting:
 - (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote at a general meeting.
- (2) The notice must:

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- (a) be in writing; and
 - (b) set out the wording of the proposed resolution; and
 - (c) be signed by the members proposing to move the resolution.
- (3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
 - (4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

249O Company giving notice of members' resolutions

- (1) If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (3) The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.
- (4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
- (5) The company need not give notice of the resolution:
 - (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

249P Members' statements to be distributed

- (1) Members may request a company to give to all its members a statement provided by the members making the request about:
 - (a) a resolution that is proposed to be moved at a general meeting; or
 - (b) any other matter that may be properly considered at a general meeting.
- (2) The request must be made by:
 - (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote at the meeting.
- (3) The request must be:
 - (a) in writing; and
 - (b) signed by the members making the request; and
 - (c) given to the company.
- (4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (5) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
- (6) After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
- (7) The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.
- (8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
- (9) The company need not comply with the request:

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- (a) if the statement is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Division 5—Holding meetings of members

249Q Purpose

A meeting of a company's members must be held for a proper purpose.

249R Time and place for meetings of members

A meeting of a company's members must be held at a reasonable time and place.

249S Technology

A company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 1322 for the consequences of a member not being given a reasonable opportunity to participate.

249T Quorum (replaceable rule—see section 135)

- (1) The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.

Note: For single member companies, see section 249B.

- (2) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 249X.

Note 2: For body corporate representatives, see section 250D.

- (3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified—the same day in the next week; and
 - (b) if the time is not specified—the same time; and
 - (c) if the place is not specified—the same place.
- (4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

249U Chairing meetings of members (replaceable rule—see section 135)

- (1) The directors may elect an individual to chair meetings of the company's members.
- (2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).
- (3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:
 - (a) a chair has not previously been elected by the directors to chair the meeting; or
 - (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).
- (4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

249V Auditor's right to be heard at general meetings

- (1) A company's auditor is entitled to attend any general meeting of the company.

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- (2) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
 - (3) The auditor is entitled to be heard even if:
 - (a) the auditor retires at the meeting; or
 - (b) the meeting passes a resolution to remove the auditor from office.
 - (4) The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

Note 1: At an AGM, members may ask the auditor questions (see section 250T).

Note 2: For when a company must have an auditor, see Part 2M.3.

249W Adjourned meetings

When resolution passed

- (1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

Business at adjourned meetings (replaceable rule—see section 135)

- (2) Only unfinished business is to be transacted at a meeting resumed after an adjournment

Division 6—Proxies and body corporate representatives

249X Who can appoint a proxy (replaceable rule for proprietary companies and mandatory rule for public companies—see section 135)

- (1) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.

- (3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

249Y Rights of proxies

Rights of proxies

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
 - (a) to speak at the meeting; and
 - (b) to vote (but only to the extent allowed by the appointment); and
 - (c) join in a demand for a poll.

Proxy's right to vote

- (2) If a company has a constitution, the constitution may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

Effect of member's presence on proxy's authority

- (3) A company's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not deal with this, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

249Z Company sending appointment forms or lists of proxies must send to all members

If a company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the member requested the form or list—the company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

250A Appointing a proxy

- (1) An appointment of a proxy is valid if it is signed by the member of the company making the appointment and contains the following information:
 - (a) the member's name and address
 - (b) the company's name
 - (c) the proxy's name or the name of the office held by the proxy
 - (d) the meetings at which the appointment may be used.An appointment may be a standing one.
- (2) If a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).
- (3) An undated appointment is taken to have been dated on the day it is given to the company.
- (4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
 - (c) if the proxy is the chair—the proxy must vote on a poll, and must vote that way; and

- (d) if the proxy is not the chair—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: A company's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 249Y(2)).

- (5) A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the company sending to members:
 - (a) a list of persons willing to act as proxies; or
 - (b) a proxy appointment form holding the person out as being willing to act as a proxy.
- (6) An appointment does not have to be witnessed.
- (7) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

250B Proxy documents

Documents to be received by company before meeting

- (1) For an appointment of a proxy for a meeting of a company's members to be effective, the following documents must be received by the company at least 48 hours before the meeting:
 - (a) the proxy's appointment
 - (b) if the appointment is signed by the appointor's attorney—the authority under which the appointment was signed or a certified copy of the authority.

Documents received following adjournment of meeting

- (2) If a meeting of a company's members has been adjourned, an appointment and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

Receipt of documents

- (3) A company receives an appointment authority when it is received at any of the following:
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- (a) the company's registered office
 - (b) a fax number at the company's registered office
 - (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

Constitution or notice of meeting may provide for different notification period

- (5) The company's constitution (if any) or the notice of meeting may reduce the period of 48 hours referred to in subsection (1) or (2).

250BA Proxy documents—listed companies

- (1) In a notice of meeting for a meeting of the members of a company, the company:
 - (a) must specify a place and a fax number; and
 - (b) may specify an electronic address;for the purposes of receipt of proxy appointments.
- (2) This section applies only to a company that is:
 - (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (3) This section applies despite anything in the company's constitution.

250C Validity of proxy vote

Proxy vote valid even if proxy cannot vote as member

- (1) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

Proxy vote valid even if member dies, revokes appointment etc. (replaceable rule—see section 135)

- (2) Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy

votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the share in respect of which the proxy was given.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3)).

250D Body corporate representative

- (1) A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
 - (a) at meetings of a company's members; or
 - (b) at meetings of creditors or debenture holders; or
 - (c) relating to resolutions to be passed without meetings.

The appointment may be a standing one.

- (2) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (3) A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- (4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Note: For resolutions of members without meetings, see sections 249A and 249B.

Division 7—Voting at meetings of members

250E How many votes a member has (replaceable rule—see section 135)*Company with share capital*

- (1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
 - (a) on a show of hands, each member has 1 vote; and
 - (b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

Company without share capital

- (2) Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

Chair's casting vote

- (3) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

250F Jointly held shares (replaceable rule—see section 135)

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

250G Objections to right to vote (replaceable rule—see section 135)

A challenge to a right to vote at a meeting of a company's members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

250H Votes need not all be cast in the same way

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

Note: For proxy appointments that specify the way the proxy is to vote on a particular resolution, see subsection 250A(4).

250J How voting is carried out (replaceable rule—see section 135)

- (1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.
- (1A) Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- (2) On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c)).

250K Matters on which a poll may be demanded

- (1) A poll may be demanded on any resolution.
- (2) If a company has a constitution, the constitution may provide that a poll cannot be demanded on any resolution concerning:
 - (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
- (3) A demand for a poll may be withdrawn.

250L When a poll is effectively demanded

- (1) At a meeting of a company's members, a poll may be demanded by:
 - (a) at least 5 members entitled to vote on the resolution; or
 - (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (c) the chair.

Note: A proxy may join in the demand for a poll (see paragraph 249Y(1)(c)).

- (2) If a company has a constitution, the constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.
- (3) The poll may be demanded:
 - (a) before a vote is taken; or
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- (4) The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

250M When and how polls must be taken (replaceable rule—see section 135)

- (1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

Division 8—AGMs of public companies

250N Public company must hold AGM

- (1) A public company must hold an annual general meeting (*AGM*) within 18 months after its registration.
- (2) A public company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.

Note: An AGM held to satisfy this subsection may also satisfy subsection (1).

- (3) An AGM is to be held in addition to any other meetings held by a public company in the year.

Note 1: The company's annual financial report, directors' report and auditor's report must be laid before the AGM (see section 317).

Note 2: The rules in sections 249C-250M apply to an AGM.

- (4) A public company that has only 1 member is not required to hold an AGM under this section.

250P Extension of time for holding AGM

- (1) A public company may lodge an application with the ASC to extend the period within which section 250N requires the company to hold an AGM.
- (2) If the company applies before the end of the period within which the company would otherwise be required to hold an AGM, the ASC may extend the period in writing. The ASC must specify the period of the extension.
- (3) A company granted an extension under subsection (2) must hold its AGM within the extended period.
- (4) The ASC may impose conditions on the extension and the company must comply with those conditions.

250R Business of AGM

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, directors' report and auditor's report
- (b) the election of directors
- (c) the appointment of the auditor
- (d) the fixing of the auditor's remuneration.

250S Questions and comments by members on company management at AGM

The chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the company.

250T Questions by members of auditors at AGM

If the company's auditor or their representative is at the meeting, the chair of an AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

Part 2G.3—Minutes and members' access to minutes**251A Minutes**

- (1) A company must keep minute books in which it records within 1 month:
 - (a) proceedings and resolutions of meetings of the company's members; and
 - (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
 - (c) resolutions passed by members without a meeting; and
 - (d) resolutions passed by directors without a meeting; and
 - (e) if the company is a proprietary company with only 1 director—the making of declarations by the director.

Note: For resolutions and declarations without meetings, see sections 248A, 248B, 249A and 249B.
- (2) The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
 - (a) the chair of the meeting
 - (b) the chair of the next meeting.
- (3) The company must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- (4) The director of a proprietary company with only 1 director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- (5) A company must keep its minute books at:

- (a) its registered office; or
 - (b) its principal place of business in Australia; or
 - (c) another place approved by the ASC.
- (6) A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

251AA Disclosure of proxy votes—listed companies

- (1) A company must record in the minutes of a meeting, in respect of each resolution in the notice of meeting, the total number of proxy votes exercisable by all proxies validly appointed and:
- (a) if the resolution is decided by a show of hands—the total number of proxy votes in respect of which the appointments specified that:
 - (i) the proxy is to vote for the resolution; and
 - (ii) the proxy is to vote against the resolution; and
 - (iii) the proxy is to abstain on the resolution; and
 - (iv) the proxy may vote at the proxy's discretion; and
 - (b) if the resolution is decided on a poll—the information specified in paragraph (a) and the total number of votes cast on the poll:
 - (i) in favour of the resolution; and
 - (ii) against the resolution; and
 - (iii) abstaining on the resolution.
- (2) A company that must notify the Exchange of a resolution passed by members at a meeting of the company must, at the same time, give the Exchange the information specified in subsection (1).
- (3) This section applies only to a company that is:
- (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (4) This section applies despite anything in the company's constitution.

251B Members' access to minutes

- (1) A company must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.
- (2) A member of a company may ask the company in writing for a copy of:
 - (a) any minutes of a meeting of the company's members or an extract of the minutes; or
 - (b) any minutes of a resolution passed by members without a meeting.
- (3) If the company does not require the member to pay for the copy, the company must send it:
 - (a) within 14 days after the member asks for it; or
 - (b) within any longer period that the ASC approves.
- (4) If the company requires payment for the copy, the company must send it:
 - (a) within 14 days after the company receives the payment; or
 - (b) within any longer period that the ASC approves.The amount of any payment the company requires cannot exceed the prescribed amount.

Part 2G.4—Meetings of members of registered managed investment schemes**Division 1—Who may call meetings of members****252A Calling of meetings of members by responsible entity**

The responsible entity of a registered scheme may call a meeting of the scheme's members.

252B Calling of meetings of members by responsible entity when requested by members

- (1) The responsible entity of a registered scheme must call and arrange to hold a meeting of the scheme's members to consider and vote on a proposed special or extraordinary resolution on the request of:
 - (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote on the resolution.
- (2) The request must:
 - (a) be in writing; and
 - (b) state any resolution to be proposed at the meeting; and
 - (c) be signed by the members proposing to move the resolution.
- (3) The request may be accompanied by a statement about the proposed resolution provided by the members making the request.
- (4) Separate copies of a document setting out the request and statement (if any) may be used for signing by members if the wording of the request and statement (if any) is identical in each copy.
- (5) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the responsible entity.
- (6) The responsible entity must call the meeting within 21 days after the request is given to it. The meeting is to be held not later than 2 months after the request is given to the responsible entity.
- (7) The responsible entity must give to each of the members a copy of the proposed resolution and statement (if any) at the same time, or as soon as practicable afterwards, as it gives notice of the meeting. The responsible entity must distribute the copies in the same way in which it gives notice of the meeting.
- (8) The responsible entity does not have to distribute a copy of the resolution or statement if either is more than 1,000 words long or defamatory.
- (9) The responsible entity is responsible for the expenses of calling and holding the meeting and making the distribution. The

responsible entity may meet those expenses from the scheme's assets.

252C Failure of responsible entity to call meeting of the scheme's members

- (1) Members with more than 50% of the votes carried by interests held by the members who make a request under section 252B may call and arrange to hold a meeting of the scheme's members and distribute the statement (if any) if the responsible entity does not do so within 21 days after the request is given to the responsible entity.
- (2) The meeting must be called and the statement is to be distributed in the same way—so far as is possible—in which meetings of the scheme's members may be called by the responsible entity and information is distributed to members by the responsible entity. The meeting must be held not later than 3 months after the request is given to the responsible entity.
- (3) To call the meeting the members requesting the meeting may ask the responsible entity under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the responsible entity must give the members requesting the meeting the copy of the register without charge.
- (4) The responsible entity must pay the reasonable expenses the members incurred because the responsible entity failed to call and arrange to hold the meeting and to make the distribution (if any). The responsible entity must not pay those expenses from the scheme's assets.

252D Calling of meetings of members by members

- (1) Members of a registered scheme who hold interests carrying at least 5% of the votes that may be cast at a meeting of the scheme's members may call and arrange to hold a meeting of the scheme's members to consider and vote on a proposed special resolution or a proposed extraordinary resolution. The members calling the meeting must pay the expenses of calling and holding the meeting.

- (2) The meeting must be called in the same way—so far as is possible—in which meetings of the scheme’s members may be called by the responsible entity.
- (3) The percentage of the votes carried by interests that members hold is to be worked out as at the midnight before the meeting is called.

252E Calling of meetings of members by the Court

- (1) The Court may order a meeting of a registered scheme’s members to be called to consider and vote on a proposed special or extraordinary resolution if it is impracticable to call the meeting in any other way.
- (2) The Court may make the order on application by:
 - (a) the responsible entity; or
 - (b) any member of the scheme who would be entitled to vote at the meeting.

Note: For the directions the Court may give for calling, holding or conducting a meeting it has ordered be called, see section 1319.

Division 2—How to call meetings of members

252F Amount of notice of meetings

At least 21 days notice must be given of a meeting of the members of a registered scheme. However, the scheme’s constitution may specify a longer minimum period of notice.

252G Notice of meetings of members to members, directors and auditors

Notice to members, directors and auditors individually

- (1) Written notice of a meeting of a registered scheme’s members must be given to:
 - (a) each member of the scheme entitled to vote at the meeting;
and
 - (b) each director of the responsible entity; and
 - (c) the auditor of the scheme; and
 - (d) the auditor of the scheme compliance plan.

If an interest is held jointly, notice need only be given to 1 of the members.

Notice to joint members

- (2) Unless the scheme's constitution provides otherwise, notice to joint members must be given to the joint member named first in the register of members.

How notice is given

- (3) Unless the scheme's constitution provides otherwise, the responsible entity may give notice of the meeting to a member:
- (a) personally; or
 - (b) by sending it by post to the address for the member in the register of members or an alternative address (if any) nominated by the member; or
 - (c) by sending it to the fax number or electronic address (if any) nominated by the member.

Note: A defect in the notice given may not invalidate a meeting (see section 1322).

When notice by post or fax is given

- (4) Unless the scheme's constitution provides otherwise, a notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

252H Auditors entitled to other communications

The responsible entity of a registered scheme must give the auditor of the scheme and the auditor of the scheme compliance plan any other communications relating to the meeting that a member of the scheme is entitled to receive.

252J Contents of notice of meetings of members

A notice of a meeting of a registered scheme's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and

- (b) state the general nature of the meeting's business; and
- (c) if a special or extraordinary resolution is to be proposed at the meeting—set out an intention to propose the special or extraordinary resolution and state the resolution; and
- (d) contain a statement setting out the following information:
 - (i) that the member has a right to appoint a proxy
 - (ii) that the proxy does not need to be a member of the registered scheme
 - (iii) that if the member appoints 2 proxies the member may specify the proportion or number of votes the proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

252K Notice of adjourned meetings

When a meeting is adjourned, new notice of the adjourned meeting must be given if the meeting is adjourned for 1 month or more.

Division 3—Members' rights to put resolutions etc. at meetings of members

252L Members' resolutions

- (1) The following members of a registered scheme may give the responsible entity notice of a special or extraordinary resolution that they propose to move at a meeting of the scheme's members:
 - (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote at a meeting of the scheme's members.
- (2) The notice must:
 - (a) be in writing; and
 - (b) set out the wording of the proposed resolution; and
 - (c) be signed by the members giving the notice.
- (3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

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- (4) The percentage of the votes that members have is to be worked out as at the midnight before the members give the notice.

252M Responsible entity giving notice of members' resolutions

- (1) If a responsible entity has been given notice of a special or extraordinary resolution under section 252L, the resolution is to be considered at the next meeting of the scheme's members that occurs more than 2 months after the notice is given.
- (2) The responsible entity must give all the members of the scheme notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (3) The responsible entity is responsible for the cost of giving members notice of the resolution if the responsible entity receives the notice in time to send it out to members with the notice of meeting.
- (4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the responsible entity in giving members notice of the resolution if the responsible entity does not receive the members' notice in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the scheme's members that the responsible entity is to meet the expenses out of the scheme's assets.
- (5) The responsible entity need not give notice of the resolution:
 - (a) if it is more than 1,000 words long or defamatory; or
 - (b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the responsible entity a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

252N Members' statements to be distributed

- (1) Members may request a responsible entity to give to all its members a statement provided by the members making the request about:
 - (a) a resolution that is proposed to be moved at a meeting of the scheme's members; or

- (b) any other matter that may be properly considered at a meeting of the scheme's members.
- (2) The request must be made by:
 - (a) members with at least 5% of the votes that may be cast on the resolution; or
 - (b) at least 100 members who are entitled to vote at the meeting.
- (3) The request must be:
 - (a) in writing; and
 - (b) signed by the members making the request; and
 - (c) given to the responsible entity.
- (4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (5) The percentage of the votes that members have is to be worked out as at the midnight before the request is given to the responsible entity.
- (6) After receiving the request, the responsible entity must distribute to all the members of the scheme a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (7) The responsible entity is responsible for the cost of making the distribution if the responsible entity receives the statement in time to send it out to members with the notice of meeting.
- (8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the responsible entity in making the distribution if the responsible entity does not receive the statement in time to send it out with the notice of meeting. A resolution may be passed at a meeting of the scheme's members that the responsible entity is to meet the expenses out of the scheme's assets.
- (9) The responsible entity need not comply with the request:
 - (a) if the statement is more than 1,000 words long or defamatory; or

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- (b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

Division 4—Holding meetings of members

252P Time and place for meetings of members

A meeting of a registered scheme's members must be held at a reasonable time and place.

252Q Technology

A responsible entity of a registered scheme may hold a meeting of the scheme's members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 1322 for the consequences of members not being given a reasonable opportunity to participate.

252R Quorum

- (1) This section applies to a registered scheme subject to the provisions of the scheme's constitution.
- (2) The quorum for a meeting of a registered scheme's members is 2 members and the quorum must be present at all times during the meeting.
- (3) In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 252V.

Note 2: For body corporate representatives, see section 253B.

- (4) A meeting of the scheme's members that does not have a quorum present within 30 minutes after the time for the start of the meeting set out in the notice of meeting is adjourned to the date, time and

place the responsible entity specifies. If the responsible entity does not specify 1 or more of those things, the meeting is adjourned to:

- (a) if the date is not specified—the same day in the next week;
and
 - (b) if the time is not specified—the same time; and
 - (c) if the place is not specified—the same place.
- (5) If no quorum is present at the resumed meeting within 30 minutes after the time for the start of the meeting, the meeting is dissolved.

252S Chairing meetings of members

- (1) The responsible entity may, in writing, appoint an individual to chair a meeting called under section 252A or 252B.
- (2) The members present at a meeting called under section 252A or 252B must elect a member present to chair the meeting (or part of it) if:
 - (a) a chair has not previously been appointed to chair the meeting; or
 - (b) a previously appointed chair is not available, or declines to act, for the meeting (or part of the meeting).
- (3) The members present at a meeting called under section 252C, 252D or 252E must elect a member present to chair the meeting. This is not so if the meeting is called under section 252E and the Court has directed otherwise under section 1319.

252T Auditors' right to be heard at meetings of members

- (1) The auditor of a registered scheme and the auditor of the scheme compliance plan are entitled to attend any meeting of the scheme's members.
- (2) An auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (3) An auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any meeting of the scheme's members.

252U Adjourned meetings

- (1) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- (2) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Division 5—Proxies and body corporate representatives**252V Who can appoint a proxy**

- (1) A member of a registered scheme who is entitled to attend and cast a vote at a meeting of the scheme's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (2) The appointment may specify the proportion or number of votes that the proxy may exercise.
- (3) A member may appoint 1 or 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- (4) Disregard any fractions of votes resulting from the application of subsection (2) or (3).

252W Rights of proxies*Rights of proxies*

- (1) A proxy appointed to attend and vote for a member has the same rights as the member:
 - (a) to speak at the meeting; and
 - (b) to vote (but only to the extent allowed by the appointment).

Proxy's right to vote

- (2) A registered scheme's constitution (if any) may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll (see section 253L).

Effect of member's presence on proxy's authority

- (3) A registered scheme's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not make such provision, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

252X Responsible entity sending appointment forms or lists of proxies must send to all members

If the responsible entity of a registered scheme sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the member requested the form or list—the responsible entity must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the responsible entity must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

252Y Appointing a proxy

- (1) An appointment of a proxy is valid if it is signed by the member of the registered scheme making the appointment and contains the following information:
 - (a) the member's name and address
 - (b) the scheme's name
 - (c) the proxy's name or the name of the office held by the proxy
 - (d) the meetings at which the appointment may be used.

An appointment may be a standing one

- (2) A registered scheme's constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).
- (3) An undated appointment is taken to have been dated on the day it is given to the responsible entity.

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- (4) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
 - (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
 - (c) if the proxy is the chair—the proxy must vote on a poll, and must vote that way; and
 - (d) if the proxy is not the chair—the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: The scheme's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 252W(2)).

- (5) A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the responsible entity sending to members:
 - (a) a list of persons willing to act as proxies; or
 - (b) a proxy appointment form holding the person out as being willing to act as a proxy.
- (6) An appointment does not have to be witnessed.
- (7) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

252Z Proxy documents

Section applies subject to scheme's constitution

- (1) Subsections (2), (3) and (4) apply to a registered scheme subject to the provisions of the scheme's constitution.

Documents to be received by responsible entity before meeting

- (2) For an appointment of a proxy for a meeting of the scheme's members to be effective, the following documents must be received by the responsible entity at least 48 hours before the meeting:

- (a) the proxy's appointment
- (b) if the appointment is signed by the appointor's attorney—the authority under which the appointment was signed or a certified copy of the authority.

Documents received following adjournment of meeting

- (3) If a meeting of the scheme's members has been adjourned, an appointment and any authority received by the responsible entity at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

Receipt of documents

- (3) A responsible entity receives an appointment authority when it is received at any of the following:
 - (a) the responsible entity's registered office
 - (b) a fax number at the responsible entity's registered office
 - (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

Ineffective appointments of fax or electronic notification

- (4) An appointment of a proxy is ineffective if:
 - (a) the responsible entity receives either or both the appointment or authority at a fax number or electronic address; and
 - (b) a requirement (if any) in the notice of meeting that:
 - (i) the transmission be verified in a way specified in the notice; or
 - (ii) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

Constitution or notice of meeting may provide for different notification period

- (5) The scheme's constitution or the notice of meeting may reduce the period of 48 hours referred to in subsection (2) or (3).

253A Validity of proxy vote

Proxy vote valid even if member dies, revokes appointment etc.

- (1) Unless the responsible entity has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (a) the appointing member dies; or
 - (b) the member is mentally incapacitated; or
 - (c) the member revokes the proxy's appointment; or
 - (d) the member revokes the authority under which the proxy was appointed by a third party; or
 - (e) the member transfers the interest in respect of which the proxy was given.

This subsection applies to a registered scheme subject to the provisions of the scheme's constitution.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 252W(3)).

Proxy vote valid even if proxy cannot vote as member

- (2) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

253B Body corporate representative

- (1) A body corporate may appoint an individual as a representative to exercise all or any of its powers at a meeting of a registered scheme's members. The appointment may be a standing one.
- (2) The appointment must set out what the representative is appointed to do and may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (3) A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

- (4) Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Division 6—Voting at meetings of members

253C How many votes a member has

- (1) On a show of hands, each member of a registered scheme has 1 vote.
- (2) On a poll, each member of the scheme has 1 vote for each dollar of the value of the total interests they have in the scheme.

Note 1: For rights to appoint proxies, see section 252V.

Note 2: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

253D Jointly held interests

If an interest in a registered scheme is held jointly and more than 1 member votes in respect of that interest, only the vote of the member whose name appears first in the register of members counts.

253E Responsible entity and associates cannot vote if interested in resolution

The responsible entity of a registered scheme and its associates are not entitled to vote their interest on a resolution at a meeting of the scheme's members if they have an interest in the resolution or matter other than as a member.

Note: The responsible entity and its associates may vote as proxies if their appointments specify the way they are to vote and they vote that way (see subsection 253A(2)).

253F How to work out the value of an interest

The value of an interest in a registered scheme is:

- (a) if it is quoted on a stock market of a stock exchange—the last sale price on that market on the trading day immediately before the day on which the poll is taken; or

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- (b) if it is not quoted on a stock market of a stock exchange and the scheme is liquid and has a withdrawal provision in its constitution—the amount that would be paid for the interest under that provision on the business day immediately before the day on which the poll is taken; or
 - (c) in any other case—the amount that the responsible entity determines in writing to be the price that a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

253G Objections to a right to vote

A challenge to a right to vote at a meeting of members of a registered scheme:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

253H Votes need not all be cast in the same way

On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

Note: For proxy appointments that specify the proxy is to vote on a particular resolution, see subsection 252Y(4).

253J How voting is carried out

- (1) A special or extraordinary resolution put to the vote at a meeting of a registered scheme's members must be decided on a poll.
- (2) Any other resolution put to the vote at a meeting of the scheme's members must be decided on a show of hands unless a poll is demanded. The resolution is passed on a poll if it has been passed by at least 50% of the votes cast by members entitled to vote on the resolution.
- (3) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 253L(3)(c)).

253K Matters on which a poll may be demanded

- (1) A poll may be demanded on any resolution.
- (2) A registered scheme's constitution may provide that a poll cannot be demanded on any resolution concerning:
 - (a) the election of the chair of a meeting; or
 - (b) the adjournment of a meeting.
- (3) A demand for a poll may be withdrawn.

253L When a poll is effectively demanded

- (1) At a meeting of a registered scheme's members, a poll may be demanded by:
 - (a) at least 5 members present entitled to vote on the resolution; or
 - (b) members present with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (c) the chair.
- (2) A registered scheme's constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.
- (3) The poll may be demanded:
 - (a) before a vote is taken; or
 - (b) before the voting results on a show of hands are declared; or
 - (c) immediately after the voting results on a show of hands are declared.
- (4) The percentage of votes that members have is to be worked out as at close of business on the day before the poll is demanded.

Division 7—Minutes and members' access to minutes

253M Minutes

- (1) A responsible entity of a registered scheme must keep minute books in which it records within 1 month:
 - (a) proceedings of meetings of the scheme's members; and
 - (b) resolutions of meetings of the scheme's members.
- (2) The responsible entity must ensure that minutes of a meeting are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting.
- (3) The responsible entity must keep the minute books at:
 - (a) its registered office; or
 - (b) its principal place of business in Australia; or
 - (c) another place approved by the ASC.
- (4) A minute that is so recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proved.

253N Members' access to minutes

- (1) The responsible entity of a registered scheme must ensure that the minute books for the meetings of the scheme's members are open for inspection by members free of charge.
- (2) A member of a registered scheme may ask the responsible entity in writing for a copy of any minutes of a meeting of the scheme's members or an extract of the minutes.
- (3) If the responsible entity does not require the member to pay for the copy, the responsible entity must send it:
 - (a) within 14 days after the member asks for it; or
 - (b) within any longer period that the ASC approves.
- (4) If the responsible entity requires payment for the copy, the responsible entity must send it:
 - (a) within 14 days after the responsible entity receives the payment; or
 - (b) within any longer period that the ASC approves.

The amount of any payment the responsible entity requires cannot exceed the prescribed amount.

Chapter 2H—Shares

254AA Shares to have nominal value

Shares of a company with share capital have a nominal value.

Note: See subsection 120(2) for the nominal value of the shares that are taken to be issued on registration of the company. See section 254CA for the nominal value of shares issued after registration.

Part 2H.1—Issuing and converting shares

254A Power to issue bonus, partly-paid, preference and redeemable preference shares

- (1) A company's power under section 124 to issue shares includes the power to issue:
 - (a) bonus shares (shares for whose issue no consideration is payable to the issuing company); and
 - (b) preference shares (including redeemable preference shares); and
 - (c) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).

Note 1: Subsections 246C(5) and (6) provide that in certain circumstances the issue of preference shares is taken to be a variation of class rights.

Note 2: Partly-paid shares are dealt with in sections 254M-254N.

- (2) A company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:
 - (a) repayment of capital
 - (b) participation in surplus assets and profits
 - (c) cumulative and non-cumulative dividends
 - (d) voting
 - (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

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- (3) Redeemable preference shares are preference shares that are issued on the terms that they are liable to be redeemed. They may be redeemable:
- (a) at a fixed time or on the happening of a particular event; or
 - (b) at the company's option; or
 - (c) at the shareholder's option.

Note: Redeemable preference shares are dealt with in sections 254J-254L.

254B Terms of issue

- (1) A company may determine:
- (a) the terms on which its shares are issued; and
 - (b) the rights and restrictions attaching to the shares.

Note 1: Details of any division of shares into classes or conversion of classes of shares must be given to the ASC by a notice in the prescribed form (see subsection 246F(1)).

Note 2: For public companies, any document or resolution that attaches rights to shares or varies or cancels rights attaching to shares must be lodged with the ASC (see subsection 246F(3)).

Note 3: Sections 246B-246G provide safeguards in cases where class rights are cancelled or varied.

No liability companies—special terms of issue

- (2) A share in a no liability company is issued on the following terms:
- (a) if a no liability company is wound up and a surplus remains, it must be distributed among the parties entitled to it in proportion to the number of shares held by them, irrespective of the amounts paid up on the shares; and
 - (b) a member who is in arrears in payment of a call on a share, but whose share has not been forfeited, is not entitled to participate in the distribution on the basis of holding that share until the amount owing in respect of the call has been fully paid and satisfied.

Companies incorporated as no liability companies—special terms of issue

- (3) If a company:
- (a) either:
 - (i) is a no liability company; or
-

- (ii) was initially registered as a no liability company and has changed its status under section 162 to another type of company; and
 - (b) ceases to carry on business within 12 months after its registration and is wound up;
- shares issued for cash rank (to the extent of the capital contributed by subscribing shareholders) in the winding up in priority to shares issued to vendors or promoters, or both, for consideration other than cash.
- (4) The holders of shares issued to vendors or promoters are not entitled to preference on the winding up of a company that:
 - (a) is a no liability company; or
 - (b) was initially registered as a no liability company and has changed its status under section 162 to another type of company.
- This is so despite anything in the company's constitution or the terms on which the shares are on issue.

254CA Nominal value of shares issued after registration

On the issue of shares by a company after registration, the shares may only have:

- (a) a nominal value that is the same as the nominal value of shares of the company that are already on issue; or
- (b) a nominal value provided for in the company's constitution (if any); or
- (c) a nominal value approved by a resolution of the company passed at a general meeting.

Note: The nominal value of the shares may subsequently be altered by consolidation or division of the shares under section 254H or as a result of a reduction in share capital under sections 256A-256F.

254CB Share premium

Issue of shares at a premium

- (1) A company may issue a share at a premium.

Note: Sections 256A-256F (reductions in share capital) apply to amounts paid by way of share premium as well as to amounts paid by way of nominal value.

Share premium account

- (2) When the company receives a premium for the issue of a share, an amount equal to the amount or value of the premium is transferred to the company's share premium account.

Payments out of the share premium account

- (3) The share premium account may be applied:
- (a) in paying up shares to be issued to members of the company as fully-paid bonus shares; or
 - (b) in paying up in whole or in part the balance unpaid on shares previously issued to members of the company; or
 - (c) in paying dividends if those dividends are satisfied by the issue of shares to members of the company; or
 - (d) in the case of a company that carries on life insurance business—by appropriation or transfer to any statutory fund established and maintained under the *Life Insurance Act 1995*; or
 - (e) in writing off:
 - (i) the preliminary expenses of the company; or
 - (ii) the expenses of, or the payment made in respect of or discount allowed on, any issue of shares in, or debentures of, the company; or
 - (f) in providing consideration payable by the company on a buy-back of its shares; or
 - (g) in providing the premium payable on redemption of debentures or redeemable preference shares.

254CC Issue of shares at a discount

- (1) A no liability company may issue shares at a discount.
- (2) A company other than a no liability company may only issue shares at a discount if:
- (a) the shares are in a class of shares already issued; and
 - (b) the issue of the shares at a discount is:
 - (i) authorised by resolution passed in general meeting of the company; and
 - (ii) confirmed by order of the Court; and

- (c) the resolution specifies the maximum rate of discount at which the shares may be issued; and
 - (d) the shares are issued within:
 - (i) 1 month after the day on which the issue is confirmed by the Court; or
 - (ii) that period as extended by the Court; and
 - (e) the shares are first offered to every holder of shares in that class in proportion to the number of shares in that class already held.
- (3) The Court may confirm the issue if it considers it appropriate to do so having regard to all the circumstances of the case and may confirm the issue on the terms and conditions it considers appropriate.
- (4) An offer made for the purposes of paragraph (2)(e) must be made in a notice that specifies:
- (a) the number of shares to which the member is entitled; and
 - (b) the period (ending not less than 21 days after the date of the notice) within which the offer may be accepted.
- (5) If an offer for shares made in accordance with subsection (4) is not accepted within the period specified in the notice, the shares may be issued on terms not more favourable than those offered to the shareholders.

254D Pre-emption for existing shareholders on issue of shares in proprietary company (replaceable rule—see section 135)

- (1) Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.
- (2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
 - (a) the number of shares offered; and
 - (b) the period for which it will remain open.

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- (3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.
 - (4) The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

254E Court validation of issue

- (1) On application by a company, a shareholder, a creditor or any other person whose interests have been or may be affected, the Court may make an order validating, or confirming the terms of, a purported issue of shares if:
 - (a) the issue is or may be invalid for any reason; or
 - (b) the terms of the issue are inconsistent with or not authorised by:
 - (i) this Law; or
 - (ii) another law of this jurisdiction; or
 - (iii) the company's constitution (if any).
- (2) On lodgment of a copy of the order with the ASC, the order has effect from the time of the purported issue.

254F Bearer shares and stock must not be issued

A company does not have the power to:

- (a) issue bearer shares; or
- (b) issue stock or convert shares into stock.

Note: Section 1432 contains transitional provisions for the conversion of existing stock into shares.

254G Conversion of shares

- (1) A company may:
 - (a) convert an ordinary share into a preference share; and
 - (b) convert a preference share into an ordinary share.
- Note: The variation of class rights provisions (sections 246B-246G) will apply to the conversion.
- (2) A company can convert ordinary shares into preference shares only if the holders' rights with respect to the following matters are set

out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:

- (a) repayment of capital
 - (b) participation in surplus assets and profits
 - (c) cumulative and non-cumulative dividends
 - (d) voting
 - (e) priority of payment of capital and dividends in relation to other shares or classes or preference shares.
- (3) A share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

254H Resolution to convert shares into larger or smaller number

- (1) By resolution passed in general meeting, a company may:
- (a) consolidate and divide all or any of its share capital into shares of larger nominal value than its existing shares; or
 - (b) subdivide all or any of its shares into shares of smaller nominal value.

A subdivision must not alter the proportion between the amount paid and the amount (if any) unpaid on the shares concerned.

Note 1: The variation of class rights provisions (sections 246B-246G) may apply to the conversion.

Note 2: An unlimited company converting to a company limited by shares can increase the nominal value of its shares under subsection 162(4).

- (2) The conversion takes effect on:
- (a) the day the resolution is passed; or
 - (b) a later date specified in the resolution.
- (3) If the nominal value of the shares converted is specified in the company's constitution, the resolution under subsection (1) may also amend the company's constitution to specify a new nominal value for the shares.
- (4) The company must lodge a copy of the resolution with the ASC within 1 month after it is passed.

Part 2H.2—Redemption of redeemable preference shares

254J Redemption must be in accordance with terms of issue

- (1) A company may redeem redeemable preference shares only on the terms on which they are on issue. On redemption, the shares are cancelled.

Note: For the power to issue redeemable preference shares see paragraph 254A(1)(b) and subsections 254A(2) and (3).

- (2) This section does not affect the terms on which redeemable preference shares may be cancelled under a reduction of capital or a share buy-back under Part 2J.1.

254K Other requirements about redemption

- (1) A company may only redeem redeemable preference shares if the shares are fully paid-up and may only redeem them:
 - (a) out of profits; or
 - (b) out of the proceeds of a new issue of shares made for the purpose of the redemption.

Note: This subsection deals with the redemption of the nominal value of the shares.

- (2) If the shares are not redeemed out of the proceeds of a fresh issue of shares, the company must transfer an amount equal to the nominal value of the shares out of profits and into its capital redemption reserve.

Note: Sections 256A-256D (reductions in share capital) apply to amounts in the capital redemption reserve as well as to amounts in the share capital account.

- (3) The premium (if any) payable on redemption must be paid out of profits or out of the share premium account.

Note: For a director's duty to prevent insolvent trading on redeeming redeemable preference shares, see section 588G.

- (4) The capital redemption reserve may be applied in paying up shares to be issued to members of the company as fully-paid bonus shares.

254L Consequences of contravening section 254J or 254K

- (1) If a company redeems shares in contravention of section 254J or 254K:

- (a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and
 - (b) the company is not guilty of an offence.
- (2) Any person who is involved in a company's contravention of section 254J or 254K contravenes this subsection.

Note: Subsection (2) is a civil penalty provision (see section 1317DA).

Part 2H.3—Partly-paid shares

254M Liability on partly-paid shares

General rule about shareholder's liability for calls

- (1) If shares in a company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue. This subsection does not apply to a no liability company

Note: The shareholder may also be liable as a contributory under sections 514-529 if the company is wound up.

No liability companies

- (2) The acceptance by a person of a share in a no liability company, whether by issue or transfer, does not constitute a contract by the person to pay:
- (a) calls in respect of the share; or
 - (b) any contribution to the debts and liabilities of the company.

254N Calls may be limited to when company is externally-administered

- (1) A limited company may provide by special resolution that the whole or a part of its unpaid share capital may be called up only if the company becomes an externally-administered body corporate.
- (2) The company must lodge with the ASC a copy of the special resolution within 14 days after it is passed.

254P No liability companies—calls on shares*Making calls*

- (1) A call on a share in a no liability company is not effective unless it is made payable at least 14 days after the call is made.

Notice of call

- (2) At least 7 days before a call on shares in a no liability company becomes payable, the company must give the holders of the shares notice of:
 - (a) the amount of the call;
 - (b) the day when it is payable; and
 - (c) the place for payment.

The notice must be sent by post. If the notice is not given, the call is not payable.

- (3) A call does not have any effect on a forfeited share that is held by or in trust for the company under subsection 254Q(6). However, when the share is re-issued or sold by the company, the share may be credited as paid up to the amount determined by the company in accordance with its constitution or by resolution.

254Q No liability companies—forfeiture and sale of shares for failure to meet call*Forfeiture and sale of shares*

- (1) A share in a no liability company is immediately forfeited if:
 - (a) a call is made on the share; and
 - (b) the call is unpaid at the end of 14 days after it became payable.

Note: The holder of the share may redeem it under section 254R.

- (2) The forfeited share must then be offered for sale by public auction within 6 weeks after the call became payable.

Advertisement of sale

- (3) At least 14 days, and not more than 21 days, before the day of the sale, the sale must be advertised in a daily newspaper circulating generally throughout Australia. The specific number of shares to be offered need not be specified in the advertisement and it is sufficient to give notice of the sale by advertising to the effect that all shares on which a call remains unpaid will be sold.

Postponement of sale

- (4) An intended sale of forfeited shares that has been duly advertised may be postponed for not more than 21 days from the advertised date of sale. The date to which the sale is postponed must be advertised in a daily newspaper circulating generally in Australia.
- (5) There may be more than 1 postponement but the sale cannot be postponed to a date more than 90 days from the first date fixed for the intended sale.

Shares may be offered as credited to a particular amount

- (6) The share may be sold credited as paid up to the sum of:
- (a) the amount paid upon the share at the time of forfeiture; and
 - (b) the amount of the call; and
 - (c) the amount of any other calls becoming payable on or before the day of the sale;
- if the company in accordance with its constitution or by ordinary resolution so determines.

Reserve price

- (7) The directors may fix a reserve price for the share that does not exceed the sum of:
- (a) the amount of the call due and unpaid on the share at the time of forfeiture; and
 - (b) the amount of any other calls that become payable on or before the date of the sale.

Withdrawal from sale

- (8) The share may be withdrawn from sale if no bid at least equal to the reserve price is made at the sale.

Disposal of shares withdrawn from sale

- (9) If:
- (a) no bid for the share is received at the sale; or
 - (b) the share is withdrawn from sale;
- the share must be held by the directors in trust for the company. It must be then disposed of in the manner determined by the company in accordance with its constitution or by resolution. Unless otherwise specifically provided by resolution, the share must first be offered to shareholders for a period of 14 days before being disposed of in any other manner.

Suspension of voting rights attached to share held in trust

- (10) At any meeting of the company, no person is entitled to any vote in respect of the shares held by the directors in trust under subsection (9).

Application of proceeds of sale

- (11) The proceeds of the sale under subsection (2) or the disposal under subsection (9) must be applied to pay:
- (a) first, the expenses of the sale; and
 - (b) then, any expenses necessarily incurred in respect of the forfeiture; and
 - (c) then, the calls on the share that are due and unpaid.

The balance (if any) must be paid to the member whose share has been sold. If there is a share certificate that relates to the share, the balance does not have to be paid until the member delivers the certificate to the company.

Validity of sale

- (12) If a sale is not held in time because of error or inadvertence, a late sale is not invalid if it is held as soon as practicable after the discovery of the error or inadvertence.

Failure to comply an offence

- (13) If there is failure to comply with subsection (2) or (3), the company and any officer of the company who is involved in the contravention are each guilty of an offence.

254R No liability companies—redemption of forfeited shares

- (1) Despite section 254Q, if a person's share has been forfeited, the person may redeem the share, at any time up to or on the last business day before the proposed sale, by paying the company:
- (a) all calls due on the share; and
 - (b) if the company so requires:
 - (i) a portion, calculated on a *pro rata* basis, of all expenses incurred by the company in respect of the forfeiture; and
 - (ii) a portion, calculated on a *pro rata* basis, of all costs and expenses of any proceeding that has been taken in respect of the forfeiture.

On payment, the person is entitled to the share as if the forfeiture had not occurred.

- (2) On the last business day before the proposed sale, the registered office of the company must be open during the hours for which it is by this Law required to be open and accessible to the public.

Part 2H.4—Capitalisation of profits

254S Capitalisation of profits (replaceable rule—see section 135)

A company may capitalise profits to:

- (a) pay up any amount unpaid on issued shares; or
- (b) pay up shares to be issued to members as fully-paid bonus shares.

The amount capitalised must be applied for the benefit of members in the proportions in which the members would have been entitled to dividends if the amount capitalised had been distributed as a dividend.

Part 2H.5—Dividends

254T Dividends to be paid out of profits

A dividend may only be paid:

- (a) out of profits of the company; or
- (b) out of the share premium account if the dividend is satisfied by the issue of shares to members of the company.

Note 1: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

Note 2: For the use of the share premium account to pay dividends, see paragraph 254CB(3)(c).

254U Other provisions about paying dividends (replaceable rule—see section 135)

- (1) The directors may determine that a dividend is payable and fix:
 - (a) the amount; and
 - (b) the time for payment; and
 - (c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

- (2) Interest is not payable on a dividend.

254V When does the company incur a debt?

- (1) A company does not incur a debt merely by fixing the amount or time for payment of a dividend. The debt arises only when the time fixed for payment arrives and the decision to pay the dividend may be revoked at any time before then.
- (2) However, if the company has a constitution and it provides for the declaration of dividends, the company incurs a debt when the dividend is declared.

254W Dividend rights

Shares in public companies

- (1) Each share in a class of shares in a public company has the same dividend rights unless:

- (a) the company has a constitution and it provides for the shares to have different dividend rights; or
- (b) different dividend rights are provided for by special resolution of the company.

Shares in proprietary companies (replaceable rule—see section 135)

- (2) Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

No liability companies

- (3) A person is not entitled to a dividend on a share in a no liability company if a call:
 - (a) has been made on the share; and
 - (b) is due and unpaid.
- (4) Dividends are payable to the shareholders in a no liability company in proportion to the number of shares held by them, irrespective of the amount paid up, or credited as paid up, on the shares. This subsection has effect subject to any provisions in the company's constitution relating to shares that are not ordinary shares.

Part 2H.6—Notice requirements

254X Notice to ASC of share issue

- (1) Within 1 month after issuing shares, a company must lodge with the ASC a notice in the prescribed form that sets out:
 - (a) the number of shares that were issued; and
 - (b) if the company has different classes of shares—the class to which each of those shares belongs; and
 - (c) the nominal value of the shares; and
 - (d) the amount (if any) paid, taken to be paid or due and payable on the issue of the shares; and
 - (e) if the company is a public company and the shares were issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares were issued

under a written contract and a copy of the contract is lodged with the notice.

Note: The company must lodge information when rights attached to the shares change, or when the shares are divided or converted into new classes (see section 246F).

- (2) If the shares were issued for non-cash consideration under a contract, the company must also lodge with the ASC a certificate stating that all stamp duty payable on the contract under any applicable law relating to stamp duty has been paid. This certificate must be lodged with the subsection (1) notice or at a later time permitted by the regulations or by the ASC.
- (3) The company does not have to lodge a subsection (1) notice about the issue of shares to a person on the registration of the company or on the company changing its type from a company limited by guarantee to a company limited by shares.

Note: Information about shares issued in these situations will come to the ASC under subsections 117(2), 163(3) and 601BC(2).

254Y Notice to ASC of share cancellation

Within 1 month after shares are cancelled, the company must lodge with the ASC a notice in the prescribed form that sets out:

- (a) the number, and nominal value, of shares cancelled; and
- (b) any amount paid by the company (in cash or otherwise) on the cancellation of the shares; and
- (c) if the shares are cancelled following a share buy-back—the amount paid by the company (in cash or otherwise) on the buy-back; and
- (d) if the company has different classes of shares—the class to which each cancelled share belonged.

Note: Provisions under which shares are cancelled include section 254J (redeemable preference shares), section 256B (capital reductions), subsection 257H(3) (shares a company has bought back), section 258D (forfeited shares), and subsection 1024E(7) (shares returned to a company).

Chapter 2J—Transactions affecting share capital

Part 2J.1—Share capital reductions and share buy-backs

Division 1—Reductions in share capital not otherwise authorised by law

256A Reductions in share capital

Requirement for special resolution and Court confirmation

- (1) A company must not reduce its share capital unless:
- (a) the reduction is authorised by law; or
 - (b) the reduction is:
 - (i) agreed to by a special resolution; and
 - (ii) confirmed by the Court under section 256B.

Note 1: Examples of share capital reductions are:

- extinguishing or reducing a person's liability on shares in respect of share capital not paid up
- cancelling paid-up share capital that is lost or is not represented by available assets
- paying off any paid-up share capital that is in excess of the company's needs.

Note 2: Sections 258A-258F deal with some of the other situations in which reductions of share capital are authorised.

Note 3: Subsection 256B(2) provides that the Court will generally not confirm a reduction in share capital unless a creditor protection test in section 256C is satisfied

Note 4: If the nominal value of shares affected by the reduction is specified in the company's constitution, the company may amend its constitution by special resolution to make any necessary adjustments to the nominal value of those shares.

- (2) Without limiting subsection (1), paying an amount out of the company's share premium account or capital redemption reserve is to be treated as a reduction in the company's paid up share capital.

Note: Certain payments out of the share premium account and capital redemption reserve are authorised under subsections 254CB(3) and 254K(2) and (4).

256B Court order confirming the reduction

- (1) The Court may confirm a reduction in share capital on the terms and conditions that it considers appropriate.
- (2) If the reduction involves:
 - (a) reducing a person's liability for unpaid share capital; or
 - (b) paying a shareholder:
 - (i) paid-up share capital; or
 - (ii) an amount out of the share premium account or capital redemption reserve;the Court may only confirm the reduction if:
 - (c) the reduction satisfies the creditor protection test in section 256C; or
 - (d) the Court is satisfied that the reduction does not need to satisfy the creditor protection test in section 256C because of the special circumstances of the case.
- (3) The Court may direct that a reduction that would not otherwise have to satisfy the creditor protection test in section 256C must satisfy that test.
- (4) The order confirming the reduction must specify:
 - (a) the nominal value of each share; and
 - (b) the amount (if any) that at the date of the order is taken to be paid up on each share.

256C The creditor protection test

Identifying the company's creditors

- (1) If a reduction in share capital has to satisfy the creditor protection test:
 - (a) the Court must fix the date for determining who the company's creditors are; and
 - (b) the company must prepare a list of the company's creditors as at that date that shows the nature and amount of their debts or claims and present it to the Court; and
 - (c) the Court must:
 - (i) settle the list of creditors; and

- (ii) ascertain (as far as possible) the nature and amount of their debts or claims.
- (2) To settle the list of creditors and ascertain the nature and amount of their debts, the Court:
 - (a) need not require an application from any creditor; and
 - (b) may publish notices fixing a day by which creditors whose names are not on the list may claim to be included on the list.
- (3) A person is a creditor of the company for the purposes of this section if they:
 - (a) are entitled to a debt or claim at the date fixed by the Court under paragraph (1)(a); and
 - (b) would be able to prove the debt or claim against the company if a winding up of the company commenced on that date.

A creditor is entitled to become a party to the proceedings for the Court's confirmation of the reduction.

Satisfying the creditor protection test

- (4) A reduction in share capital satisfies the creditor protection test if each creditor on the list settled by the Court:
 - (a) consents to the reduction; or
 - (b) has their debt discharged or their claim determined; or
 - (c) has their debt or claim secured; or
 - (d) has their debt or claim provided for under subsection (5).
- (5) A creditor's debt or claim is provided for under this subsection if the company appropriates an amount to cover the debt or claim in the manner approved by the Court. The amount appropriated must be:
 - (a) the full amount of the debt or claim if:
 - (i) the company admits that amount; or
 - (ii) the company does not admit that amount but is willing to provide for it; or
 - (b) the amount fixed by the Court if:
 - (i) the company does not admit, and is not willing to provide for, the full amount of the debt or claim; or
 - (ii) the amount of the debt or claim is contingent or not ascertained.

In fixing an amount under paragraph (b), the Court must make the inquiries and adjudicate on the matter as if the company were being wound up by the Court.

- (6) Having regard to any special circumstances of any case, the Court may direct that particular requirements of this section do not apply in respect of creditors included in a class of creditors.

Company officers not to conceal or misrepresent debts or claims

- (7) An officer of a company must not:
- (a) knowingly conceal from the company or the Court the name of a creditor of the company; or
 - (b) knowingly misrepresent to the company or the Court the nature or amount of the debt or claim of a creditor of the company.

256D Putting the capital reduction into effect

Lodgment of resolution and court order with the ASC

- (1) The company must lodge with the ASC copies of:
- (a) the special resolution; and
 - (b) the Court order confirming the reduction.

Implementation of capital reduction

- (2) A company must not act upon a resolution to reduce its share capital before the date on which the documents are lodged with the ASC under subsection (1). However, the resolution may specify as the date from which the reduction of capital is to have effect a date that is earlier than the lodgment date but not earlier than the date of the resolution.

256E Effect of reduction of share capital on members and former members

Effect of reduction on liability of members and former members for calls and contributions

- (1) The liability of a member or former member of a company for a call or contribution in respect of a share in the company is not to exceed the difference (if any) between:
 - (a) the amount of the share fixed by the confirming order under subsection 256B(4); and
 - (b) the amount paid, or the reduced amount (if any) that is taken to have been paid, on the share.

Liability of members and former members to unsatisfied creditors

- (2) A person who is a member of the company on the date on which the copy of the confirming order is lodged with the ASC under subsection 256D(1) is liable to contribute towards the payment of a creditor's debt or claim if:
 - (a) the creditor is a creditor of the company for the purposes of section 256C; and
 - (b) the creditor's name is not entered on the list of creditors settled under that section because they are not aware of:
 - (i) the proceedings for confirmation of the reduction; or
 - (ii) the nature of the proceedings and the effect of the proceedings on their claim; and
 - (c) after the reduction, the company is unable (within the meaning of the provisions of this Law with respect to winding up by the Court) to pay the debt or claim in full.

The amount the person is liable to contribute is not to exceed the amount that they would have been liable to contribute if the company had commenced to be wound up on the day before that date.

Liability as contributory on winding up

- (3) If:
 - (a) the company is wound up; and

- (b) the creditor referred to in subsection (2) applies to the Court; and
 - (c) the creditor proves that they were not aware of:
 - (i) the proceedings for confirmation of the reduction; or
 - (ii) the nature of the proceedings or effect of the proceedings on the debt or claim; and
 - (d) the Court considers it appropriate to do so;
- the Court may:
- (e) settle a list of the names of people liable to contribute under subsection (2); and
 - (f) make and enforce calls and orders on the contributories whose names are included in the list as if they were ordinary contributories in a winding up.
- Nothing in this subsection affects the rights of the contributories among themselves.

256F Consequences of failing to comply with section 256A

- (1) A company must not make a reduction in share capital unless it complies with subsection 256A(1).
- (2) If the company contravenes subsection (1):
 - (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
 - (b) the company is not guilty of an offence.
- (3) Any person who is involved in a company's contravention of subsection (1) contravenes this subsection.

Note: Subsection (3) is a civil penalty provision (see section 1317DA).

Division 2—Share buy-backs

257AA Purpose

The rules to be followed by a company for share buy-backs are designed to protect the interests of shareholders and creditors by:

- (a) addressing the risk of buy-backs leading to the company's insolvency

- (b) seeking to ensure fairness between the company's shareholders
- (c) requiring the company to disclose all material information.

257A The company's power to buy back its own shares

A company may buy back its own shares (other than redeemable preference shares) if:

- (a) the buy-back does not materially prejudice the company's ability to pay its creditors; and
- (b) the company follows the procedures laid down in this Division.

Note 1: If a company has a constitution, it may include provisions in the constitution that preclude the company buying back its own shares or impose restrictions on the exercise of the company's power to buy back its own shares.

Note 2: A company may buy-back redeemable preference shares and may do so on terms other than the terms on which they could be redeemed. For the redemption of redeemable preference shares, see sections 254J-254L.

257B Buy-back procedure—general

- (1) The following table specifies the steps required for, and the sections that apply to, the different types of buy-back.

Procedures [and sections applied]	minimum holding	employee share scheme		on-market		equal access scheme		selective buy-back
		within 10/12 limit	over 10/12 limit	within 10/12 limit	over 10/12 limit	within 10/12 limit	over 10/12 limit	
ordinary resolution [257C]	—	—	yes	—	yes	—	yes	—
special/unanimous resolution [257D]	—	—	—	—	—	—	—	yes
lodge offer documents with ASC [257E]	—	—	—	—	—	yes	yes	yes
14 days notice [257F]	—	yes	yes	yes	yes	yes	yes	yes
disclose relevant information when offer	—	—	—	—	—	yes	yes	yes

made [257G]								
cancel shares [257H]	yes	yes	yes	yes	yes	yes	yes	yes
notify cancellation to ASC [254Y]	yes	yes	yes	yes	yes	yes	yes	yes

Note: Subsections (2) and (3) of this section explain what an equal access scheme is. The 10/12 limit is the 10% in 12 months limit laid down in subsections (4) and (5). Subsections (6) and (7) of this section explain what an on-market buy-back is. See section 9 for definitions of *minimum holding buy-back*, *employee share scheme buy-back* and *selective buy-back*.

Equal access scheme

- (2) An equal access scheme is a scheme that satisfies all the following conditions:
 - (a) the offers under the scheme relate only to ordinary shares
 - (b) the offers are to be made to every person who holds ordinary shares to buy back the same percentage of their ordinary shares
 - (c) all of those persons have a reasonable opportunity to accept the offers made to them
 - (d) buy-back agreements are not entered into until a specified time for acceptances of offers has closed
 - (e) the terms of all the offers are the same.
- (3) In applying subsection (2), ignore:
 - (a) differences in consideration attributable to the fact that the offers relate to shares having different accrued dividend entitlements
 - (b) differences in consideration attributable to the fact that the offers relate to shares on which different amounts remain unpaid
 - (c) differences in the offers introduced solely to ensure that each shareholder is left with a whole number of shares.

10/12 limit

- (4) The 10/12 limit for a company proposing to make a buy-back is 10% of the smallest number, at any time during the last 12 months, of votes attaching to voting shares of the company.

Exceeding the 10/12 limit

- (5) A proposed buy-back would exceed the 10/12 limit if the number of votes attaching to:
- (a) all the voting shares in the company that have been bought back during the last 12 months; and
 - (b) the voting shares that will be bought back if the proposed buy-back is made;
- would exceed the 10/12 limit.

On-market buy-backs

- (6) A buy-back is an on-market buy-back if it results from an offer made by a listed corporation at an official meeting of a securities exchange in Australia in the ordinary course of trading on a stock market of that exchange.
- (7) A buy-back by a company (whether listed or not) is also an on-market buy-back if it results from an offer made in the ordinary course of trading on a stock market of a body corporate that:
- (a) operates a securities market outside Australia; and
 - (b) the ASC declares in writing to be an approved overseas securities exchange for the purposes of this subsection.
- A buy-back by a listed company is an on-market buy-back under this subsection only if an offer to buy-back those shares is also made on a stock market of a securities exchange in Australia at the same time.
- (8) A declaration under paragraph (7)(b) may be subject to conditions. Notice of the making of the declaration must be published in the *Gazette*.

257C Buy-back procedure—shareholder approval if the 10/12 limit exceeded

Ordinary resolution required

- (1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by a resolution passed at a general meeting of the company, or the agreement must be conditional on such an approval.

Information to accompany the notice of meeting

- (2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

Documents to be lodged with the ASC

- (3) Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:
 - (a) the notice of the meeting; and
 - (b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.

257D Buy-back procedure—special shareholder approval for selective buy-back

Selective buy-back requires special or unanimous resolution

- (1) If section 257B applies this section to a buy-back, the terms of the buy-back agreement must be approved before it is entered into by either:
 - (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person whose shares are proposed to be bought back or by their associates; or
 - (b) a resolution agreed to, at a general meeting, by all ordinary shareholders;or the agreement must be conditional on such an approval.

Information to accompany the notice of meeting

- (2) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

Documents to be lodged with the ASC

- (3) Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:
 - (a) the notice of the meeting; and
 - (b) any document relating to the buy-back that will accompany the notice of the meeting sent to shareholders.
- (4) The ASC may exempt a company from the operation of this section. The exemption:
 - (a) must be in writing; and
 - (b) must be granted before the buy-back agreement is entered into; and
 - (c) may be granted subject to conditions.

257E Buy-back procedure—lodgment of offer documents with the ASC

If section 257B applies this section to a buy-back, the company must lodge with the ASC, before the buy-back agreement is entered into, a copy of:

- (a) a document setting out the terms of the offer; and
- (b) any document that is to accompany the offer.

257F Notice of intended buy-back

- (1) If section 257B applies this section to a buy-back, the company must satisfy the lodgment requirement in subsection (2) at least 14 days before:
 - (a) if the buy-back agreement is conditional on the passing of a resolution under subsection 257C(1) or 257D(1)—the resolution is passed; or
 - (b) if it is not—the agreement is entered into.
- (2) The company satisfies the lodgment requirement when it lodges with the ASC:
 - (a) documents under subsection 257C(3) or 257D(3) or section 257E; or

(b) a notice that the company intends to carry out the buy-back.

Note 1: A company that has to lodge documents under section 257C, 257D or 257E needs to lodge a notice under paragraph (2)(b) of this section only if it wants for some reason to enter into the agreement or pass the resolution less than 14 days after lodging the section 257C, 257D or 257E documents.

Note 2: The company may specify a buy-back under paragraph (2)(b) in any way. It may, for instance, choose to lodge a notice covering buy-backs to be carried out:

- under a particular scheme; or
- as part of particular on-market buy-back activity.

257G Buy-back procedure—disclosure of relevant information when offer made

If section 257B applies this section to a buy-back, the company must include with the offer to buy back shares a statement setting out all information known to the company that is material to the decision whether to accept the offer.

257H Acceptance of offer and transfer of shares to the company

Effect of acceptance of the buy-back offer on share rights

- (1) Once a company has entered into an agreement to buy back shares, all rights attaching to the shares are suspended. The suspension is lifted if the agreement is terminated.

Shares transferred to the company and cancelled

- (2) A company must not deal in shares it buys back. An agreement entered into in contravention of this subsection is void.
- (3) Immediately after the registration of the transfer to the company of the shares bought back, the shares are cancelled.

Note: The ASC must be notified of the cancellation under section 254Y.

257J Signposts to other relevant provisions

The following table sets out other provisions of this Law that are relevant to buy-backs.

Other provisions relevant to buy-backs

	provision	comment
1	section 588G section 1317HA	liability of directors on insolvency The directors may have to compensate the company if the company is, or becomes, insolvent when the company enters into the buy-back agreement.
2	section 1324	injunctions to restrain contravention The Court may grant an injunction against conduct that constitutes, or would constitute, a contravention of this Law.
3	section 733	ASC intervention (application to the Panel) The ASC may apply to the Corporations and Securities Panel for a declaration if it appears to the ASC that unacceptable circumstances have, or may have, occurred in relation to a share buy-back. If the Panel makes a declaration it may exercise a range of powers under section 734.
4	section 42A section 632A	application of takeover provisions These sections deal with the application of Chapter 6 to buy-backs.
5	section 259A	consequences of failure to follow procedures—the company and the officers If a company fails to follow the procedure in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence.
6	section 256F	consequences of failure to follow procedures if reduction in share capital involved—the company and the officers If the buy-back involves a reduction in share capital and the company fails to follow the procedures in this Division, the company contravenes this section and the officers who are involved in the contravention are liable to a civil penalty under Part 9.4B and may commit an offence.
7	section 256F	consequences of failure to follow procedures if reduction in share capital involved—the transaction This section provides that a failure to follow the procedures for share capital reductions does not affect the validity of the buy-back transaction itself.

Other provisions relevant to buy-backs

	provision	comment
8	sections 1001A-1001D	continuous disclosure provisions A disclosing entity is required to disclose information about its securities that is material and not generally available.
9	Chapter 2E	benefits to related parties to be disclosed Under this Chapter, a financial benefit to a director or other related party may need to be approved at a general meeting before it is given.
10	section 125	provisions in constitution This section deals with the way in which a company's constitution may restrict the exercise of the company's powers and the consequences of a failure to observe these restrictions.
11	sections 246B-246G	variation of class rights These sections deal with the variation of rights attached to a class of shares. This variation may be governed by the provisions of a company's constitution.

Division 3—Other share capital reductions**258A Unlimited companies**

An unlimited company may reduce its share capital in any way.

258B Right to occupy or use real property

- (1) If a company has a constitution, under it the company may grant to a shareholder, as a shareholder, a right to occupy or use real property that the company owns or holds under lease, whether the right is a lease or licence or a contractual right.

Note: Before the introduction of strata or unit titles systems, rights to occupy real property were sometimes based on a holding of shares in a company.

- (2) A company may transfer to a person an interest in land in exchange for, or in satisfaction of, a right to occupy or use the land of the kind referred to in subsection (1).

Example: A person has a right to occupy an apartment in a block of units because they hold shares in a company. As part of converting the

block of units to strata title, the person surrenders the shares in return for a transfer of strata title over the apartment. The capital reduction involved in the transfer is authorised under this subsection.

258C Brokerage or commission

A company may pay brokerage or commission to a person in respect of that person or another person agreeing to take up shares in the company.

258D Cancellation of forfeited shares

A company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.

258E Other authorised reductions

- (1) This subsection authorises any reduction in share capital involved in:
 - (a) the redemption of redeemable preference shares out of the proceeds of a new issue of shares made for the purpose of the redemption (see section 254K); or
 - (b) a company's buying-back of its own shares under sections 257AA to 257J; or
 - (c) the cancellation of a share under subsection 254H(1), 667(3) or 1024E(7).
- (2) This subsection authorises any payment out of, or transfer from, a company's share premium account under:
 - (a) subsection 254CB(3) (permitted uses of the share premium account); or
 - (b) subsection 254K(2) (payment of premium payable on redemption of redeemable preference shares).
- (3) This subsection authorises any payment out of, or transfer from, a company's capital redemption reserve under subsection 254K(4) (paying up shares to be issued to members as fully-paid bonus shares).

258F Reductions because of lost capital

A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the company also cancels shares.

Part 2J.2—Self-acquisition and control of shares

259A Directly acquiring own shares

A company must not acquire shares (or units of shares) in itself except:

- (a) in buying back shares under section 257A; or
- (b) in acquiring an interest (other than a legal interest) in fully-paid shares in the company if no consideration is given for the acquisition by the company or an entity it controls; or
- (c) under a court order; or
- (d) in circumstances covered by subsection 259B(2) or (3).

259B Taking security over own shares or shares in holding company

- (1) A company must not take security over shares (or units of shares) in itself or in a company that controls it, except as permitted by subsection (2) or (3).
- (2) A company may take security over shares in itself under an employee share scheme that has been approved by:
 - (a) a resolution passed at a general meeting of the company; and
 - (b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general meeting of the listed domestic corporation; and
 - (c) if paragraph (b) does not apply but the company has a holding company that is a domestic corporation and that is not itself a subsidiary of a domestic corporation—a resolution passed at a general meeting of that holding company.

Special exemptions for financial institutions

- (3) A company's taking security over shares (or units of shares) in itself or in a company that controls it is exempted from subsection (1) if:
 - (a) the company's ordinary business includes providing finance; and
 - (b) the security is taken in the ordinary course of that business and on ordinary commercial terms.
- (4) If a company acquires shares (or units of shares) in itself because it exercises rights under a security permitted by subsection (2) or (3), then, within the following 12 months, the company must cease to hold those shares (or units of shares). The ASC may extend this period of 12 months if the company applies for the extension before the end of the period.
- (5) Any voting rights attached to the shares (or units of shares) cannot be exercised while the company continues to hold them.
- (6) If, at the end of the 12 months (or extended period), the company still holds any of the shares (or units of shares), the company commits an offence for each day while that situation continues.

259C Issuing or transferring shares to controlled entity

- (1) The issue or transfer of shares (or units of shares) of a company to an entity it controls is void unless:
 - (a) the issue or transfer is to the entity as a personal representative; or
 - (b) the issue or transfer is to the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
 - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and
 - (ii) that transaction was not entered into with an associate of the company or an entity it controls; or
 - (c) the issue to the entity is made as a result of an offer to all the members of the company who hold shares of the class being

issued and is made on a basis that does not discriminate unfairly, either directly or indirectly, in favour of the entity;
or

- (d) the transfer to the entity is by a wholly-owned subsidiary of a body corporate and the entity is also a wholly-owned subsidiary of that body corporate.
- (2) The ASC may exempt a company from the operation of this section. The exemption:
- (a) must be in writing; and
 - (b) may be granted subject to conditions.
- (3) If paragraph (1)(c) or (d) applies to an issue or transfer of shares (or units of shares), section 259D applies.

259D Company controlling entity that holds shares in it

- (1) If any of the following occur:
- (a) a company obtains control of an entity that holds shares (or units of shares) in the company
 - (b) a company's control over an entity that holds shares (or units of shares) in the company increases
 - (c) a company issues shares (or units of shares) to an entity it controls in the situation covered by paragraph 259C(1)(c)
 - (d) shares (or units of shares) in the company are transferred to an entity it controls in the situation covered by paragraph 259C(1)(d);

then, within 12 months after it occurs either:

- (e) the entity must cease to hold the shares (or units); or
- (f) the company must cease to control the entity.

The ASC may extend this period of 12 months if the company applies for the extension before the end of the period.

- (2) If this section applies to shares (or units of shares), it also applies to bonus shares issued in respect of those shares (or units of shares). Within the same period that applies to the shares themselves under subsection (1), either:
- (a) the entity must cease to hold the bonus shares; or
 - (b) the company must cease to control the entity.

- (3) Any voting rights attached to the shares (or units of shares) cannot be exercised while the company continues to control the entity.
- (4) If, at the end of the 12 months (or extended period), the company still controls the entity and the entity still holds the shares (or units of shares), the company commits an offence for each day while that situation continues.
- (5) This section does not apply to shares (or units of shares) if:
 - (a) they are held by the entity as a personal representative; or
 - (b) they are held by the entity as trustee and neither the company nor any entity it controls has a beneficial interest in the trust, other than a beneficial interest that satisfies these conditions:
 - (i) the interest arises from a security given for the purposes of a transaction entered into in the ordinary course of business in connection with providing finance; and
 - (ii) that transaction was not entered into with an associate of the company or an entity it controls.
- (6) A contravention of this section does not affect the validity of any transaction.

259E When a company controls an entity

- (1) For the purposes of this Part, a company controls an entity if the company has the capacity to determine the outcome of decisions about the entity's financial and operating policies.
- (2) In determining whether a company has this capacity:
 - (a) the practical influence the company can exert (rather than the rights it can enforce) is the issue to be addressed; and
 - (b) any practice or pattern of behaviour affecting the entity's financial or operating policies is to be taken into account (even if it involves a breach of an agreement or a breach of trust).
- (3) Merely because the company and an unrelated entity jointly have the capacity to determine the outcome of decisions about another entity's financial and operating policies, the company does not control the other entity.

- (4) A company is not to be taken to control an entity merely because of a capacity that it is under a legal obligation to exercise for the benefit of someone other than its shareholders.

Note: This situation could arise, for example, if the company holds shares as a trustee or is performing duties as a liquidator.

259F Consequences of failing to comply with section 259A or 259B

- (1) If a company contravenes section 259A or subsection 259B(1):
- (a) the contravention does not affect the validity of the acquisition or security or of any contract or transaction connected with it; and
 - (b) the company is not guilty of an offence.
- (2) Any person who is involved in a company's contravention of section 259A or subsection 259B(1) contravenes this subsection.

Note: Subsection (2) is a civil penalty provision (see section 1317DA).

Part 2J.3—Financial assistance

260A Financial assistance by a company for acquiring shares in the company or a holding company

- (1) A company may financially assist a person to acquire shares (or units of shares) in the company or a holding company of the company only if:
- (a) giving the assistance does not materially prejudice:
 - (i) the interests of the company or its shareholders; or
 - (ii) the company's ability to pay its creditors; or
 - (b) the assistance is approved by shareholders under section 260B (that section also requires advance notice to the ASC); or
 - (c) the assistance is exempted under section 260C.
- (2) Without limiting subsection (1), financial assistance may:
- (a) be given before or after the acquisition of shares (or units of shares); and
 - (b) take the form of paying a dividend.

- (3) Subsection (1) extends to the acquisition of shares (or units of shares) by:
- (a) issue; or
 - (b) transfer; or
 - (c) any other means.

260B Shareholder approval

Approval by company's own shareholders

- (1) Shareholder approval for financial assistance by a company must be given by:
- (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by the person acquiring the shares (or units of shares) or by their associates; or
 - (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.

Approval by shareholders of listed holding corporation

- (2) If the company will be a subsidiary of a listed domestic corporation immediately after the acquisition referred to in section 260A occurs, the financial assistance must also be approved by a special resolution passed at a general meeting of that corporation.

Approval by shareholders in ultimate Australian holding company

- (3) If, immediately after the acquisition, the company will have a holding company that:
- (a) is a domestic corporation but not listed; and
 - (b) is not itself a subsidiary of a domestic corporation;
- the financial assistance must also be approved by a special resolution passed at a general meeting of the body corporate that will be the holding company.

Information to accompany the notice of meeting

- (4) A company or other body that calls a meeting for the purpose of subsection (1), (2) or (3) must include with the notice of the meeting a statement setting out all the information known to the

company or body that is material to the decision on how to vote on the resolution. However, the company or body does not have to disclose information if it would be unreasonable to require the company or body to do so because the company or body had previously disclosed the information to its members.

Documents to be lodged with the ASC before notice of meeting is sent out

- (5) Before the notice of a meeting for the purpose of subsection (1), (2) or (3) is sent to members of a company or other body, the company or body must lodge with the ASC a copy of:
 - (a) the notice of the meeting; and
 - (b) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.
- (6) The company must lodge with the ASC, at least 14 days before giving the financial assistance, a notice in the prescribed form stating that the assistance has been approved under this section.

Lodgment of special resolutions

- (7) A special resolution passed for the purpose of subsection (1), (2) or (3) must be lodged with the ASC by the company, listed domestic corporation or holding company within 14 days after it is passed.

260C Exempted financial assistance

General exemptions based on ordinary course of commercial dealing

- (1) Financial assistance is exempted from section 260A if it is given in the ordinary course of commercial dealing and consists of:
 - (a) acquiring or creating a lien on partly-paid shares in the company for amounts payable to the company on the shares; or
 - (b) entering into an agreement with a person under which the person may make payments to the company on shares by instalments.

Special exemptions for financial institutions

- (2) Financial assistance is exempted from section 260A if:
- (a) the company's ordinary business includes providing finance; and
 - (b) the financial assistance is given in the ordinary course of that business and on ordinary commercial terms.

Special exemptions for subsidiaries of borrowing corporations

- (3) Financial assistance is exempted from section 260A if:
- (a) the company is a subsidiary of a borrowing corporation; and
 - (b) the financial assistance is a guarantee or other security given by the company for the repayment by the borrowing corporation of money that it is or will be liable to repay; and
 - (c) the borrowing corporation is a borrowing corporation because it is or will be liable to repay the money; and
 - (d) the guarantee or security is given by the company in the ordinary course of commercial dealing.

Special exemption for approved employee share schemes

- (4) Financial assistance is exempted from section 260A if it is given under an employee share scheme that has been approved by:
- (a) a resolution passed at a general meeting of the company; and
 - (b) if the company is a subsidiary of a listed domestic corporation—a resolution passed at a general meeting of the listed domestic corporation; and
 - (c) if paragraph (b) does not apply but the company has a holding company that is a domestic corporation and that is not itself a subsidiary of a domestic corporation—a resolution passed at a general meeting of that holding company.

Other exemptions

- (5) The following types of financial assistance are exempted from section 260A:
- (a) a reduction of share capital in accordance with Division 1 of Part 2J.1
 - (b) a share buy-back in accordance with Division 2 of Part 2J.1

- (c) assistance given under a court order
- (d) a discharge on ordinary commercial terms of a liability that the company incurred as a result of a transaction entered into on ordinary commercial terms.

260D Consequences of failing to comply with section 260A

- (1) If a company provides financial assistance in contravention of section 260A:
 - (a) the contravention does not affect the validity of the financial assistance or of any contract or transaction connected with it; and
 - (b) the company is not guilty of an offence.
- (2) Any person who is involved in a company's contravention of section 260A contravenes this subsection.

Note: Subsection (2) is a civil penalty provision (see section 1317DA).

Part 2J.4—Interaction with general directors' duties

260E General duties still apply

A director is not relieved from any of their duties under this Law (including section 232), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter.

5 Part 3.6

Repeal the Part, substitute:

Chapter 2M—Financial reports and audit

Part 2M.1—Overview

285 Overview of obligations under this Chapter

Obligations under this Chapter

- (1) Under this Chapter, all companies, registered schemes and disclosing entities must keep financial records (see sections 286-291)—and some must prepare financial reports (see sections 292-323D). All those that have to prepare financial reports have to prepare them annually; disclosing entities have to prepare half-year financial reports as well. The following table sets out what is involved in annual financial reporting:

Annual financial reporting		
steps	sections	comments
1 prepare financial report	s. 295	The financial report includes: <ul style="list-style-type: none"> • financial statements • disclosures and notes • directors' declaration.
2 prepare directors' report	s. 298	The report has both a general component (s. 299) and a specific component (s. 300).
3 have the financial report audited and obtain auditor's report	s. 301, 307, 308	A small proprietary company preparing a financial report in response to a shareholder direction under s. 293 only has to have an audit if the direction asks for it. Under s. 312, officers must assist the auditor in the conduct of the audit. The ASC may use its exemption powers under s. 340 and 341 to relieve large proprietary companies from the audit requirements in appropriate cases (s. 342(2) and (3)).

Annual financial reporting			
steps	sections	comments	
4	send the financial report, directors' report and auditor's report to members	s. 314	A concise financial report may be sent to members instead of the full financial statements (s. 314(1)-(2)). For deadline see s. 315(1)-(4).
5	lodge the financial report, directors' report and auditor's report with the ASC	s. 319	For deadline see s. 319(3). Companies that have the benefit of the grandfathering in s. 319(4) do not have to lodge.
6	[public companies only] lay financial report, directors' report and auditor's report before AGM	s. 317	For the AGM deadline see s. 250N.

Application to disclosing entities

- (2) This Chapter covers all disclosing entities incorporated or formed in this jurisdiction (whether or not they are companies or registered schemes).

Application to registered schemes

- (3) For the purposes of applying this Chapter to a registered scheme:
- (a) the scheme's responsible entity is responsible for the performance of obligations in respect of the scheme; and
 - (b) the directors and officers of the responsible entity are to be taken to be the directors and officers of the scheme; and
 - (c) the debts incurred in operating the scheme are to be taken to be the debts of the scheme.

Part 2M.2—Financial records

286 Obligation to keep financial records

- (1) A company, registered scheme or disclosing entity must keep written financial records that:
 - (a) correctly record and explain its transactions and financial position and performance; and
 - (b) would enable true and fair financial statements to be prepared and audited.

The obligation to keep financial records of transactions extends to transactions undertaken as trustee.

Note: Section 9 defines *financial records*.

Period for which records must be retained

- (2) The financial records must be retained for 7 years after the transactions covered by the records are completed.

287 Language requirements

- (1) The financial records may be kept in any language.
- (2) An English translation of financial records not kept in English must be made available within a reasonable time to a person who:
 - (a) is entitled to inspect the records; and
 - (b) asks for the English translation.

288 Physical format

If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

289 Place where records are kept

- (1) A company, registered scheme or disclosing entity may decide where to keep the financial records.

Records kept outside Australia

- (2) If financial records about particular matters are kept outside Australia, sufficient written information about those matters must

be kept in Australia to enable true and fair financial statements to be prepared. The company, registered scheme or disclosing entity must give the ASC written notice in the prescribed form of the place where the information is kept.

- (3) The ASC may direct a company, registered scheme or disclosing entity to produce specified financial records that are kept outside Australia.
- (4) The direction must:
 - (a) be in writing; and
 - (b) specify a place in Australia where the records are to be produced (the place must be reasonable in the circumstances); and
 - (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

290 Director access

Personal access

- (1) A director of a company, registered scheme or disclosing entity has a right of access to the financial records at all reasonable times.

Court order for inspection on director's behalf

- (2) On application by a director, the Court may authorise a person to inspect the financial records on the director's behalf.
- (3) A person authorised to inspect records may make copies of the records unless the Court orders otherwise.
- (4) The Court may make any other orders it consider appropriate, including either or both of the following:
 - (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection
 - (b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).

291 Signposts to other relevant provisions

The following table sets out other provisions that are relevant to access to financial records.

Other provisions relevant to access to financial records		
		members
1	section 247A	A member may apply to the Court for an order to inspect the records.
		auditor
2	section 310	The auditor has a right of access to the records.
		controllers
3	section 431	A controller of a corporation's property (for example, a receiver or receiver and manager) has a right of access to the records.
		ASC
4	sections 28 to 39 of the <i>Australian Securities Commission Act 1989</i>	The ASC has power to inspect the records. It also has power under subsection 289(3) of this Law to call for the production of financial records kept outside Australia.

Part 2M.3—Financial reporting

Division 1—Annual financial reports and directors' reports

292 Who has to prepare annual financial reports and directors' reports

- (1) A financial report and a directors' report must be prepared for each financial year by:
- (a) all disclosing entities; and
 - (b) all public companies; and
 - (c) all large proprietary companies; and
 - (d) all registered schemes.

Note: This Chapter only applies to disclosing entities incorporated or formed in Australia (see subsection 285(2)).

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- (2) A small proprietary company has to prepare the financial report and directors' report only if:
- (a) it is directed to do so under section 293 or 294; or
 - (b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with the ASC by:
 - (i) a registered foreign company; or
 - (ii) a company, registered scheme or disclosing entity.

The rest of this Part does not apply to any other small proprietary company.

293 Small proprietary company—shareholder direction

- (1) Shareholders with at least 5% of the votes in a small proprietary company may give the company a direction to:
- (a) prepare a financial report and directors' report for a financial year; and
 - (b) send them to all shareholders.
- (2) The direction must be:
- (a) signed by the shareholders giving the direction; and
 - (b) made no later than 12 months after the end of the financial year concerned.
- (3) The direction may specify all or any of the following:
- (a) that the financial report does not have to comply with some or all of the accounting standards
 - (b) that a directors' report or a part of that report need not be prepared
 - (c) that the financial report is to be audited.

294 Small proprietary company—ASC direction

- (1) The ASC may give a small proprietary company a direction to comply with requirements of this Division and Divisions 3, 4, 5 and 6 for a financial year.
- (2) The direction may be general or may specify the particular requirements that the company is to comply with.

- (3) The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.
- (4) The direction must:
 - (a) be made in writing; and
 - (b) specify the financial year concerned; and
 - (c) be made no later than 6 years after the end of that financial year.

295 Contents of annual financial report

Basic contents

- (1) The financial report for a financial year consists of:
 - (a) the financial statements for the year; and
 - (b) the notes to the financial statements; and
 - (c) the directors' declaration about the statements and notes.

Financial statements

- (2) The financial statements for the year are:
 - (a) a profit and loss statement for the year; and
 - (b) a balance sheet as at the end of the year; and
 - (c) a statement of cash flows for the year; and
 - (d) if required by the accounting standards—a consolidated profit and loss statement, balance sheet and statement of cash flows.

Notes to financial statements

- (3) The notes to the financial statements are:
 - (a) disclosures required by the regulations; and
 - (b) notes required by the accounting standards; and
 - (c) any other information necessary to give a true and fair view (see section 297).

Directors' declaration

- (4) The directors' declaration is a declaration by the directors:
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- (a) that the financial statements, and the notes referred to in paragraph (3)(b), comply with the accounting standards; and
 - (b) that the financial statements and notes give a true and fair view (see section 297); and
 - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the company, registered scheme or disclosing entity will be able to pay its debts as and when they become due and payable; and
 - (d) whether, in the directors' opinion, the financial statement and notes are in accordance with this law, including:
 - (i) section 296 (compliance with accounting standards); and
 - (ii) section 297 (true and fair view).

Note: See paragraph 285(3)(c) for the reference to the debts of a registered scheme.

- (5) The declaration must:
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the declaration is made; and
 - (c) be signed by a director.

296 Compliance with accounting standards and regulations

- (1) The financial report for a financial year must comply with the accounting standards. However, a small proprietary company's report does not have to comply with particular accounting standards if:
 - (a) the report is prepared in response to a shareholder direction under section 293; and
 - (b) the direction specifies that the report does not have to comply with those accounting standards.
- (2) The financial report must comply with any further requirements in the regulations.

297 True and fair view

The financial statements and notes for a financial year must give a true and fair view of:

- (a) the financial position and performance of the company, registered scheme or disclosing entity; and
- (b) if consolidated financial statements are required—the financial position and performance of the consolidated entity.

This section does not affect the obligation under section 296 for a financial report to comply with accounting standards.

Note: If the financial statements and notes prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph 295(3)(c).

298 Annual directors' report

- (1) The company, registered scheme or disclosing entity must prepare a directors' report for each financial year. The report must include:
 - (a) the general information required by section 299; and
 - (b) the specific information required by section 300.
- (2) The report must:
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the date on which the report is made; and
 - (c) be signed by a director.
- (3) A small proprietary company does not have to comply with subsection (1) for a financial year if:
 - (a) it is preparing financial statements for that year in response to a shareholder direction under section 293; and
 - (b) the direction specified that a directors' report need not be prepared.

299 Annual directors' report—general information

General information about operations and activities

- (1) The directors' report for a financial year must:
 - (a) contain a review of operations during the year of the entity reported on and the results of those operations; and
 - (b) give details of any significant changes in the entity's state of affairs during the year; and

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- (c) state the entity's principal activities during the year and any significant changes in the nature of those activities during the year; and
 - (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect:
 - (i) the entity's operations in future financial years; or
 - (ii) the results of those operations in future financial years; or
 - or
 - (iii) the entity's state of affairs in future financial years; and
 - (e) refer to likely developments in the entity's operations in future financial years and the expected results of those operations; and
 - (f) if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth or of a State or Territory—details of the entity's performance in relation to environmental regulation.
- (2) The entity reported on is:
- (a) the company, registered scheme or disclosing entity (if consolidated financial statements are not required); or
 - (b) the consolidated entity (if consolidated financial statements are required).

Prejudicial information need not be disclosed

- (3) The report may omit material that would otherwise be included under paragraph (1)(e) if it is likely to result in unreasonable prejudice to:
- (a) the company, registered scheme or disclosing entity; or
 - (b) if consolidated financial statements are required—the consolidated entity or any entity (including the company, registered scheme or disclosing entity) that is part of the consolidated entity.

If material is omitted, the report must say so.

300 Annual directors' report—specific information

- (1) The directors' report for a financial year must include details of:

- (a) dividends or distributions paid to members during the year; and
- (b) dividends or distributions recommended or declared for payment to members, but not paid, during the year; and
- (c) the name of each person who has been a director of the company, registered scheme or disclosing entity at any time during or since the end of the year and the period for which they were a director; and
- (d) options that are:
 - (i) granted over unissued shares or unissued interests during or since the end of the year; and
 - (ii) granted to any of the directors or any of the 5 most highly remunerated officers of the company; and
 - (iii) granted to them as part of their remuneration; (see subsections (3), (4) and (5)); and
- (e) unissued shares or interests under option as at the day the report is made (see subsections (3) and (6)); and
- (f) shares or interests issued during or since the end of the year as a result of the exercise of an option over unissued shares or interests (see subsections (3) and (7)); and
- (g) indemnities given and insurance premiums paid during or since the end of the year for a person who is or has been an officer or auditor (see subsections (8) and (9)).

Public companies, listed companies and registered schemes must include additional information under subsections (10), (11), (12) and (13).

- (2) Details do not have to be included in the directors' report under this section if they are included in the company's financial report for the financial year.
- (3) Paragraphs (1)(d), (e) and (f) cover:
 - (a) options over unissued shares and interests of the company, registered scheme or disclosing entity; and
 - (b) if consolidated financial statements are required—options over unissued shares and interests of any controlled entity that is a company, registered scheme or disclosing entity.

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- (4) For the purpose of paragraph (1)(d), remuneration includes anything that would be remuneration for the purposes of subsections 243K(4), (5), (6), (7) and (7B).

Note: The rules in subsections 243K(4) to (7B) deal with related party benefits such as fringe benefits, superannuation contributions, retirement benefits and indemnities.

Options details

- (5) The details of an option granted are:
- (a) the company, registered scheme or disclosing entity granting the option; and
 - (b) the name of the person to whom the option is granted; and
 - (c) the number and class of shares or interests over which the option is granted.
- (6) The details of unissued shares or interests under option are:
- (a) the company, registered scheme or disclosing entity that will issue shares or interests when the options are exercised; and
 - (b) the number and classes of those shares or interests; and
 - (c) the issue price, or the method of determining the issue price, of those shares or interests; and
 - (d) the expiry date of the options; and
 - (e) any rights that option holders have under the options to participate in any share issue or interest issue of the company, registered scheme or disclosing entity or of any other body corporate or registered scheme.

Shares or interests issued as a result of exercise of option

- (7) The details of shares or interests issued as a result of the exercise of an option are:
- (a) the company, registered scheme or disclosing entity issuing the shares or interests; and
 - (b) the number of shares or interests issued; and
 - (c) if the company, registered scheme or disclosing entity has different classes of shares or interests—the class to which each of those shares or interests belongs; and
 - (d) the amount unpaid on each of those shares or interests; and

- (e) the amount paid, or agreed to be considered as paid, on each of those shares or interests.

Indemnities and insurance premiums for officers or auditors

- (8) The report for a company must include details of:
 - (a) any indemnity that is given to a current or former officer or auditor against a liability and that is covered by subsection 241(2) or (3), or any relevant agreement under which an officer or auditor may be given an indemnity of that kind; and
 - (b) any premium that is paid, or agreed to be paid, for insurance against a current or former officer's or auditor's liability and that is covered by subsection 241A(3).

For the purposes of this subsection, *officer* has the same meaning as in section 241.

Note: Sections 241 and 241A contain general prohibitions against giving certain indemnities and paying certain insurance premiums. This subsection requires transactions that are exceptions to these prohibitions to be reported.

- (9) The details required under subsection (8) are:
 - (a) for an officer—their name or the class of officer to which they belong or belonged; and
 - (b) for an auditor—their name; and
 - (c) the nature of the liability; and
 - (d) for an indemnity given—the amount the company paid and any other action the company took to indemnify the officer or auditor; and
 - (e) for an agreement to indemnify—the amount that the relevant agreement requires the company to pay and any other action the relevant agreement requires the company to take to indemnify the officer or auditor; and
 - (f) for an insurance premium—the amount of the premium.

The report need not give details of the nature of the liability covered by, or the amount of the premium payable under, a contract of insurance to the extent that disclosure of those details is prohibited by the insurance contract.

Special rules for public companies

- (10) The report for a public company that is not a wholly-owned subsidiary of another company or of a recognised company must also include details of:
- (a) each director's qualifications, experience and special responsibilities; and
 - (b) the number of meetings of the board of directors held during the year and each director's attendance at those meetings; and
 - (c) the number of meetings of each board committee held during the year and each director's attendance at those meetings.

Special rules for listed companies

- (11) The report for a listed company must also include the following details for each director:
- (a) their relevant interests in shares of the company or a related body corporate
 - (b) their relevant interests in debentures of, or interests in a registered scheme made available by, the company or a related body corporate
 - (c) their rights or options over shares in, debentures of or interests in a registered scheme made available by, the company or a related body corporate
 - (d) contracts:
 - (i) to which the director is a party or under which the director is entitled to a benefit; and
 - (ii) that confer a right to call for or deliver shares in, or debentures of or interests in a registered scheme made available by the company or a related body corporate.

Note: Directors must also disclose interests of these kinds to the ASX under section 235 as they are acquired.

Special rules for listed registered schemes

- (12) The report for a registered scheme whose interests are quoted on a stock market of a securities exchange must also include the following details for each director of the company that is the responsible entity for the scheme:
- (a) their relevant interests in interests in the scheme

- (b) their rights or options over interests in the scheme
- (c) contracts to which the director is a party or under which the director is entitled to a benefit and that confer a right to call for or deliver interests in the scheme.

Special rules for registered schemes

- (13) The report for a registered scheme must also include details of:
 - (a) the fees paid to the responsible entity and its associates out of scheme property during the financial year; and
 - (b) the number of interests in the scheme held by the responsible entity or its associates as at the end of the financial year; and
 - (c) interests in the scheme issued during the financial year; and
 - (d) withdrawals from the scheme during the financial year; and
 - (e) the value of the scheme's assets as at the end of the financial year, and the basis for the valuation; and
 - (f) the number of interests in the scheme as at the end of the financial year.

300A Annual directors' report—specific information to be provided by listed companies

- (1) The directors' report for a financial year for a company must also include:
 - (a) discussion of broad policy for determining the nature and amount of emoluments of board members and senior executives of the company; and
 - (b) discussion of the relationship between such policy and the company's performance; and
 - (c) details of the nature and amount of each element of the emolument of each director and each of the 5 named officers of the company receiving the highest emolument.
- (2) This section applies only to a company that is:
 - (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (3) This section applies despite anything in the company's constitution.

301 Audit of annual financial report

- (1) A company, registered scheme or disclosing entity must have the financial report for a financial year audited in accordance with Division 3 and obtain an auditor's report.
- (2) A small proprietary company's financial report for a financial year does not have to be audited if:
 - (a) the report is prepared in response to a direction under section 293; and
 - (b) the direction did not ask for the financial report to be audited.

Division 2—Half-year financial report and directors' report**302 Disclosing entity must prepare half-year financial report and directors' report**

A disclosing entity must:

- (a) prepare a financial report and directors' report for each half-year; and
 - (b) have the financial report audited or reviewed in accordance with Division 3 and obtain an auditor's report; and
 - (c) lodge the financial report, the directors' report and the auditor's report on the financial report with the ASC;
- unless the entity is not a disclosing entity when lodgment is due.

Note 1: This Chapter only applies to disclosing entities incorporated or formed in Australia (see subsection 285(2)).

Note 2: See section 320 for the time for lodgment with the ASC.

Note 3: Subsection 318(4) requires disclosing entities that are borrowing corporations to also report to the trustee for debenture holders.

303 Contents of half-year financial report*Basic contents*

- (1) The financial report for a half-year consists of:
 - (a) the financial statements for the half-year; and
 - (b) the notes to the financial statements; and
 - (c) the directors' declaration about the statements and notes.
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Financial statements

- (2) The financial statements for the half-year are:
 - (a) except where paragraph (b) applies:
 - (i) a profit and loss statement for the half-year; and
 - (ii) a balance sheet as at the end of the half-year; and
 - (iii) a statement of cash flows for the half-year; and
 - (b) if required by the accounting standards—a consolidated profit and loss statement, balance sheet and statement of cash flows.

Notes to financial statements

- (3) The notes to the financial statements are:
 - (a) disclosures required by the regulations; and
 - (b) notes required by the accounting standards; and
 - (c) any other information necessary to give a true and fair view (see section 305).

Directors' declaration

- (4) The directors' declaration is a declaration by the directors:
 - (a) that the financial statements, and the notes referred to in paragraph (3)(b), comply with the accounting standards; and
 - (b) that the financial statements and notes give a true and fair view (see section 305); and
 - (c) whether, in the directors' opinion, there are reasonable grounds to believe that the disclosing entity will be able to pay its debts as and when they become due and payable.

Note: See paragraph 285(3)(c) for the reference to the debts of a disclosing entity that is a registered scheme.

- (5) The declaration must:
 - (a) be made in accordance with a resolution of the directors; and
 - (b) specify the day on which the declaration is made; and
 - (c) be signed by a director.

304 Compliance with accounting standards and regulations

The financial report for a half-year must comply with the accounting standards and any further requirements in the regulations.

305 True and fair view

The financial statements and notes for a half-year must give a true and fair view of:

- (a) the financial position and performance of the disclosing entity; or
- (b) if consolidated financial statements are required—the financial position and performance of the consolidated entity.

This section does not affect the obligation under section 304 for financial reports to comply with accounting standards.

Note: If the financial statements prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph 303(3)(c).

306 Half-year directors' report

The directors of the disclosing entity must prepare a directors' report for each half-year that consists of:

- (a) a review of the entity's operations during the half-year and the results of those operations; and
- (b) the name of each person who has been a director of the disclosing entity at any time during or since the end of the half-year and the period for which they were a director.

If consolidated financial statements are required, the review under paragraph (a) must cover the consolidated entity.

Division 3—Audit and auditor's report**307 Audit**

An auditor who conducts an audit of the financial report for a financial year or half-year must form an opinion about:

- (a) whether the financial report is in accordance with this Law, including:

- (i) section 296 or 304 (compliance with accounting standards); and
- (ii) section 297 or 305 (true and fair view); and
- (b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit; and
- (c) whether the company, registered scheme or disclosing entity has kept financial records sufficient to enable a financial report to be prepared and audited; and
- (d) whether the company, registered scheme or disclosing entity has kept other records and registers as required by this Law.

308 Auditor's report on annual financial report

- (1) An auditor who audits the financial report for a financial year must report to members on whether the auditor is of the opinion that the financial report is in accordance with this Law, including:
 - (a) section 296 (compliance with accounting standards); and
 - (b) section 297 (true and fair view).If not of that opinion, the auditor's report must say why.
- (2) If the auditor is of the opinion that the financial report does not comply with an accounting standard, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the report must say why.
- (3) The auditor's report must describe:
 - (a) any defect or irregularity in the financial report; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d).
- (4) The report must specify the date on which it is made.

309 Auditor's report on half-year financial report

Audit of financial report

- (1) An auditor who audits the financial report for a half-year must report to members on whether the auditor is of the opinion that the financial report is in accordance with this Law, including:
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- (a) section 304 (compliance with accounting standards); and
 - (b) section 305 (true and fair view).

If not of that opinion, the auditor's report must say why.

- (2) If the auditor is of the opinion that the financial report does not comply with an accounting standard, the auditor's report must, to the extent that it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the report must say why.
- (3) The auditor's report must describe:
 - (a) any defect or irregularity in the financial report; and
 - (b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(d), (e) or (f).

Review of financial report

- (4) An auditor who reviews the financial report for a half-year must report to members on whether the auditor became aware of any matter in the course of the review that makes the auditor believe that the financial report does not comply with Division 2.
- (5) A report under subsection (4) must:
 - (a) describe any matter referred to in subsection (4); and
 - (b) say why that matter makes the auditor believe that the financial report does not comply with Division 2.

Report to specify day made

- (6) A report under subsection (1) or (4) must specify the date on which it is made.

310 Auditor's power to obtain information

The auditor:

- (a) has a right of access at all reasonable times to the books of the company, registered scheme or disclosing entity; and
- (b) may require any officer to give the auditor information, explanations or other assistance for the purposes of the audit or review.

A request under paragraph (b) must be a reasonable one.

311 Reporting to ASC

The auditor conducting an audit or review must, as soon as possible, notify the ASC in writing if the auditor:

- (a) has reasonable grounds to suspect that a contravention of this Law has occurred; and
- (b) believes that the contravention has not been or will not be adequately dealt with by commenting on it in the auditor's report or bringing it to the attention of the directors.

Note: Section 1289 gives an auditor qualified privilege for a notification to the ASC under this section.

312 Assisting auditor

An officer of a company, registered scheme or disclosing entity must:

- (a) allow the auditor access to the books of the company, scheme or entity; and
- (b) give the auditor any information, explanation or assistance required under section 310.

Note: Books include registers and documents generally (not only the accounting "books"); see the definition of *books* in section 9.

313 Special provisions on audit of borrowing corporations and guarantor bodies

Auditor to give trustee for debenture holders copies of reports, certificates etc.

- (1) A borrowing corporation's auditor must give the trustee for debenture holders:
 - (a) a copy of any report, certificate or other document that the auditor must give the borrowing corporation or its members under this Law, the debentures or the trust deed; and
 - (b) a copy of any document that accompanies it.

The copies must be given within 7 days after the auditor gives the originals to the borrowing corporation or its members.

Auditor to report on matters prejudicial to debenture holders' interests

- (2) The auditor of a borrowing corporation or guarantor body must give the borrowing corporation or guarantor body a written report about any matter that:
- (a) the auditor became aware of in conducting the audit or review; and
 - (b) in the auditor's opinion, is or is likely to be prejudicial to the interests of debenture holders; and
 - (c) in the auditor's opinion, is relevant to the exercise of the powers of the trustee for debenture holders, or the performance of the trustee's duties, under this Law or the trust deed.

The auditor must give a copy of the report to the trustee for debenture holders. The report and the copy must be given within 7 days after the auditor becomes aware of the matter.

Division 4—Annual financial reporting to members**314 Annual financial reporting to members***Full or concise report to members*

- (1) A company, registered scheme or disclosing entity must report to members for a financial year by either:
- (a) sending members copies of:
 - (i) the financial report for the year; and
 - (ii) the directors' report for the year (see sections 298-300); and
 - (iii) the auditor's report on the financial report; or
 - (b) sending members a concise report for the year that complies with subsection (2).

Concise report

- (2) A concise report for a financial year consists of:
- (a) a concise financial report for the year drawn up in accordance with accounting standards made for the purposes of this paragraph; and

- (b) the directors' report for the year (see sections 298-300); and
- (c) a statement by the auditor:
 - (i) that the financial report has been audited; and
 - (ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards made for the purposes of paragraph (a); and
- (d) a copy of any qualification in, and of any statements included in the emphasis of matter section of, the auditor's report on the financial report; and
- (e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the member free of charge if the member asks for them.

315 Deadline for reporting to members

Public companies and disclosing entities that are not registered schemes

- (1) A public company, or a disclosing entity that is not a registered scheme, must report to members under section 314 by the earlier of:
 - (a) 21 days before the next AGM after the end of the financial year; or
 - (b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

Small proprietary companies (shareholder direction under section 293)

- (2) If a shareholder direction is given to a small proprietary company under section 293 after the end of the financial year, the company must report to members under section 314 by the later of:
 - (a) 2 months after the date on which the direction is given; and
 - (b) 4 months after the end of the financial year.

Registered schemes

- (3) A registered scheme must report to members under section 314 within 3 months after the end of the financial year.

Other proprietary companies

- (4) A proprietary company that is not covered by subsection (1) or (2) must report to members under section 314 within 4 months after the end of the financial year.

316 Member's choices for annual financial information

- (1) A member may request the company, registered scheme or disclosing entity:
- (a) not to send them the material required by section 314; or
 - (b) to send them a full financial report and the directors' report and auditor's report.

A request may be a standing request or for a particular financial year. The member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.

- (2) The time for complying with a request under paragraph (1)(b) is:
- (a) 7 days after the request is received; or
 - (b) the deadline for reporting under section 315;
- whichever is later.
- (3) A full financial report, directors' report and auditor's report are to be sent free of charge unless the member has already received a copy of them free of charge.

317 Consideration of reports at AGM

The directors of a public company that is required to hold an AGM must lay before the AGM:

- (a) the financial report; and
- (b) the directors' report; and
- (c) the auditor's report;

for the last financial year that ended before the AGM.

Note 1: If the company's first AGM is held before the end of its first financial year, there will be no reports to lay before the meeting.

Note 2: A public company that has only 1 member is not required to hold an AGM (see section 250N).

318 Additional reporting by debenture issuers

- (1) A company or disclosing entity that was a borrowing corporation at the end of a financial year must give a copy of the annual financial report, directors' report and auditor's report to the trustee for debenture holders by the deadline for the financial year set by section 315.
- (2) A debenture holder may ask the company or disclosing entity that issued the debenture for copies of:
 - (a) the last reports sent to members under section 314; or
 - (b) the full financial report and the directors' report and auditor's report for the last financial year.
- (3) The company or entity must give the debenture holder the copies as soon as practicable after the request and free of charge.
- (4) A disclosing entity that was a borrowing corporation at the end of a half-year must give a copy of the half-year financial report, directors' report and auditor's report to the trustee for debenture holders within 75 days after the end of the half-year.

Division 5—Lodging reports with the ASC

319 Lodgment of annual reports with the ASC

- (1) A company, registered scheme or disclosing entity that has to prepare or obtain a report for a financial year under Division 1 must lodge the report with the ASC. This obligation extends to a concise report sent to members under section 314.
- (2) Subsection (1) does not apply to a small proprietary company that prepares a report in response to a shareholder direction under section 293 or an ASC direction under section 294.
- (3) The time for lodgment is:
 - (a) within 3 months after the end of the financial year for a disclosing entity or registered scheme; and
 - (b) within 4 months after the end of the financial year for anyone else.

-
- (4) Subsection (1) does not apply to a large proprietary company that is not a disclosing entity if:
- (a) the company was an exempt proprietary company on 30 June 1994; and
 - (b) the company has continued to meet the definition of *exempt proprietary company* (as in force at 30 June 1994) at all times since that date; and
 - (c) the company was a large proprietary company at the end of the first financial year that ended after 9 December 1995; and
 - (d) the company's financial statements and financial reports for the financial year ending during 1993 and each later financial year have been audited before the deadline for reporting to members for that year; and
 - (e) within 4 months after the end of the first financial year that ended after 9 December 1995, the company lodged with the ASC a notice that the company wanted subsection 317B(3), as in force at that time, to apply to the company. (The ASC may extend this period.)

Note: 9 December 1995 is the day on which the *First Corporate Law Simplification Act 1995* commenced.

- (5) A company that has the benefit of subsection (4) must lodge with the ASC notice of any of the following events:
- (a) the resignation or retirement of the company's auditor
 - (b) the appointment of a new auditor (including details of the new auditor).
- The notice must be lodged within 14 days after the resignation, retirement or appointment.
- (6) For the purposes of paragraph (4)(d), the deadline for reporting to members is:
- (a) for a financial year to which this Part applies—the deadline for reporting to members under section 315; and
 - (b) for an earlier financial year—the deadline for that year within the meaning of this Law as in force immediately before the commencement of this Part.

320 Lodgment of half-year reports with the ASC

A disclosing entity that has to prepare or obtain a report for a half-year under Division 2 must lodge the report with the ASC within 75 days after the end of the half-year.

321 ASC power to require lodgment

- (1) The ASC may give a company, registered scheme or disclosing entity a direction to lodge with the ASC a copy of reports prepared or obtained by it under Division 1 or 2.
- (2) The direction must:
 - (a) be made in writing; and
 - (b) specify the period or periods concerned; and
 - (c) be made no later than 6 years after the end of the period or periods; and
 - (d) specify the date by which the documents have to be lodged.The date specified under paragraph (d) must be at least 14 days after the date on which the direction is given.

322 Relodgment if financial statements or directors' reports amended after lodgment

- (1) If a financial report or directors' report is amended after it is lodged with the ASC, the company, registered scheme or disclosing entity must:
 - (a) lodge the amended report with the ASC within 14 days after the amendment; and
 - (b) give a copy of the amended report free of charge to any member who asks for it.
- (2) If the amendment is a material one, the company, registered scheme or disclosing entity must also notify members as soon as practicable of:
 - (a) the nature of the amendment; and
 - (b) their right to obtain a copy of the amended report under subsection (1).

Division 6—Special provisions about consolidated financial statements**323 Directors and officers of controlled entity to give information**

If a company, registered scheme or disclosing entity has to prepare consolidated financial statements, a director or officer of a controlled entity must give the company, registered scheme or disclosing entity all information requested that is necessary to prepare the consolidated financial statements and the notes to those statements.

323A Auditor's power to obtain information from controlled entity

- (1) An auditor who audits or reviews a financial report that includes consolidated financial statements:
 - (a) has a right of access at all reasonable times to the books of any controlled entity; and
 - (b) may require any officer of the entity to give the auditor information, explanations or other assistance for the purposes of the audit or review.

A request under paragraph (b) must be a reasonable one.

- (2) The information, explanations or other assistance required under paragraph (1)(b) is to be given at the expense of the company, registered scheme or disclosing entity whose financial report is being audited or reviewed.

323B Controlled entity to assist auditor

If a company, registered scheme or disclosing entity has to prepare a financial report that includes consolidated financial statements, an officer or auditor of a controlled entity must:

- (a) allow the auditor for the company, scheme or entity access to the controlled entity's books; and
- (b) give the auditor any information, explanation or assistance required under section 323A.

323C Application of Division to entity that has ceased to be controlled

Sections 323, 323A and 323B apply to the preparation or audit of a financial report that covers a controlled entity even if the entity is no longer controlled by the company, registered scheme or disclosing entity whose financial report is being prepared or audited.

Division 7—Financial years and half-years

323D Financial years and half-years

First financial year

- (1) The first financial year for a company, registered scheme or disclosing entity starts on the day on which it is registered or incorporated. It lasts for 12 months or the period (not longer than 18 months) determined by the directors.

Financial years after first year

- (2) Subject to subsection (4), subsequent financial years must:
 - (a) start at the end of the previous financial year; and
 - (b) be 12 months long.

The directors may determine that the financial year is to be shorter or longer (but not by more than 7 days).

Synchronisation of financial years where consolidated financial statements are required

- (3) A company, registered scheme or disclosing entity that has to prepare consolidated financial statements must do whatever is necessary to ensure that the financial years of the consolidated entities are synchronised with its own financial years. It must achieve this synchronisation by the end of 12 months after the situation that calls for consolidation arises.
- (4) To facilitate this synchronisation, the financial year for a controlled entity may be extended or shortened. The extended financial year cannot be longer than 18 months.

Half-years

- (5) A half-year for a company, registered scheme or disclosing entity is the first 6 months of a financial year. The directors may determine that the half-year is to be shorter or longer (but not by more than 7 days).

Division 8—Disclosure by listed companies of information filed overseas

323DA Listed companies to disclose information filed overseas

- (1) A company that discloses information to, or as required by:
- (a) the Securities and Exchange Commission of the United States of America; or
 - (b) the New York Stock Exchange; or
 - (c) a prescribed securities exchange in a foreign country;
- must disclose that information in English to the Exchange on the next business day after doing so.
- (2) This section applies only to a company that is:
- (a) incorporated in Australia; and
 - (b) included in an official list of the Exchange.
- (3) This section applies despite anything in the company's constitution.

6 Divisions 2 and 3 of Part 3.7 and Part 3.8

Repeal the Divisions and Part, substitute:

Part 2M.5—Accounting standards

334 Accounting standards

AASB's power to make accounting standards

- (1) The AASB may make accounting standards for the purposes of this Law. The standards must be in writing and must not be inconsistent with this law or the Regulations.

- (2) Section 46A of the *Acts Interpretation Act 1901* of the Commonwealth applies to a standard made under subsection (1) as if it were a disallowable instrument for the purposes of that section.

Application of standards

- (3) Accounting standards may:
- (a) be of general or limited application (including a limitation to specified bodies or undertakings); and
 - (b) differ according to differences in time, place or circumstance.
- (4) An accounting standard applies to:
- (a) periods ending after the commencement of the standard; or
 - (b) periods ending on or after a later date specified in the standard.
- (5) A company, registered scheme or disclosing entity may elect to apply the accounting standard to an earlier period unless the standard says otherwise. The election must be made in writing by the directors.

335 Equity accounting

This Chapter (and, in particular, the provisions on consolidation of financial statements) does not prevent accounting standards from incorporating equity accounting principles.

336 Comparative amounts

The accounting standards for the preparation of financial reports for a period may require the inclusion in those reports of comparative amounts for earlier periods.

337 Interpretation of accounting standards

In interpreting an accounting standard, unless the contrary intention appears:

- (a) expressions used in the standard have the same meaning as they have in this Chapter; and
- (b) the provisions of Part 1.2 apply as if the standard's provisions were provisions of this Chapter.

338 Severing invalid provisions

If an accounting standard would otherwise have been interpreted as being inconsistent with this Law, the standard is nevertheless to be valid to the extent to which it is not inconsistent with this Law.

339 Evidence of text of accounting standard

- (1) This section applies to a document that purports to be published by or on behalf of the AASB or ASC and to set out the text of:
 - (a) a specified standard as in force at a specified time under section 334; or
 - (b) a specified provision of a standard of that kind.It also applies to a copy of a document of that kind.
- (2) In the absence of evidence to the contrary, a document to which this section applies is proof in proceedings under the Corporations Law of this jurisdiction that:
 - (a) the specified standard was in force at that time under that section; and
 - (b) the text set out in the document is the text of the standard referred to in paragraph (1)(a) or the provision referred to in paragraph (1)(b).

Part 2M.6—Exemptions and modifications**340 ASC's power to make specific exemption orders**

- (1) On an application made in accordance with subsection (3) in relation to a company, registered scheme or disclosing entity, the ASC may make an order in writing relieving any of the following from all or specified requirements of Parts 2M.2 and 2M.3:
 - (a) the directors
 - (b) the company, scheme or entity
 - (c) the auditor.

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

- (2) The order may:
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period.

- (3) The application must be:
 - (a) authorised by a resolution of the directors; and
 - (b) in writing and signed by a director; and
 - (c) lodged with the ASC.
- (4) The ASC must give the applicant written notice of the making, revocation or suspension of the order.

341 ASC's power to make class orders

- (1) The ASC may make an order in writing in respect of a specified class of companies, registered schemes or disclosing entities, relieving any of the following from all or specified requirements of Parts 2M.2 and 2M.3:
 - (a) directors
 - (b) the companies, registered schemes or disclosing entities themselves
 - (c) auditors of the companies, registered schemes or disclosing entities.

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

- (2) The order may:
 - (a) be expressed to be subject to conditions; and
 - (b) be indefinite or limited to a specified period.
- (3) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

342 Criteria for specific exemption orders and class orders

- (1) To make an order under section 340 or 341, the ASC must be satisfied that complying with the relevant requirements of Parts 2M.2 and 2M.3 would:
 - (a) make the financial report or other reports misleading; or
 - (b) be inappropriate in the circumstances; or
 - (c) impose unreasonable burdens.
- (2) In deciding for the purposes of subsection (1) whether the audit requirements for a proprietary company, or a class of proprietary

companies, would impose an unreasonable burden on the company or companies, the ASC is to have regard to:

- (a) the expected costs of complying with the audit requirements; and
 - (b) the expected benefits of having the company or companies comply with the audit requirements; and
 - (c) any practical difficulties that the company or companies face in complying effectively with the audit requirements (in particular, any difficulties that arise because a financial year is the first one for which the audit requirements apply or because the company or companies are likely to move frequently between the small and large proprietary company categories from one financial year to another); and
 - (d) any unusual aspects of the operation of the company or companies during the financial year concerned; and
 - (e) any other matters that the ASC considers relevant.
- (3) In assessing expected benefits under subsection (2), the ASC is to take account of:
- (a) the number of creditors and potential creditors; and
 - (b) the position of creditors and potential creditors (in particular, their ability to independently obtain financial information about the company or companies); and
 - (c) the nature and extent of the liabilities of the company or companies.

343 Modification by regulations

The regulations may modify the operation of this Chapter in relation to:

- (a) a specified company, registered scheme or disclosing entity; or
- (b) all companies, registered schemes or disclosing entities of a specified kind.

Part 2M.7—Sanctions for contraventions of Chapter

344 Contravention of Part 2M.2 or 2M.3

- (1) A director of a company, registered scheme or disclosing entity contravenes this section if they fail to take all reasonable steps to comply with, or to secure compliance with, Part 2M.2 or 2M.3.

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

- (2) Subsection (1) does not apply to section 310, 312, 323A or 323B.
- (3) This section does not affect the application of the provisions of Part 2M.2 or 2M.3 to a director as an officer.

Chapter 2N—Annual returns and lodgments with the ASC

Part 2N.1—Annual returns

345 Deadline for lodging annual return

Companies

- (1) A company must lodge an annual return with the ASC by 31 January each year, unless the ASC and the company agree to a different lodgment date (see subsection (3)).

Responsible entities of registered schemes

- (2) The responsible entity of a registered scheme must lodge an annual return for the scheme with the ASC. The return for a scheme must be lodged within 3 months after the end of the scheme's financial year unless the ASC and the responsible entity agree to a different lodgment date (see subsection (3)).

Agreed lodgment date

- (3) The ASC and the company or the ASC and the responsible entity may agree to a different lodgment date. The agreement must be in writing and may cover 1 or more years. The annual return must be lodged by the agreed date.

Company's obligation to lodge some notices ceases on lodgment of annual return

- (4) A company's obligation to lodge a notice under section 142, 146, 242 or 254X, ceases when:
- (a) the company lodges an annual return; and
 - (b) the annual return sets out the information required by the notice.

This subsection does not affect the company's liability for late lodgment fees incurred before the annual return is lodged or continuing offences committed before that time.

Note: The ASC has a practice of sending out partly completed annual returns. The partly completed return may be used to comply with the obligation to lodge an annual return by correcting any information in it that is not accurate, completing the rest and lodging it with the ASC.

346 Solvency resolution—companies

- (1) Within 1 month before the annual return is lodged, the directors of a company must resolve whether, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.
- (2) Subsection (1) does not apply to a company that has lodged a financial report of the company with the ASC under Chapter 2M within 12 months before the annual return is lodged.

347 Lodging annual return with ASC

An annual return may be lodged with the ASC:

- (a) in writing in the form approved by the ASC and signed in accordance with section 351; or
- (b) electronically in accordance with section 352.

348 Contents of annual return—companies

A company's annual return must contain the information set out in the following table, current as at the date when the annual return is signed or authenticated. It must also contain any other information required by the regulations.

Contents of annual return—companies		[operative table]
1	ACN	
2	name	
3	address of registered office	
4	address of principal place of business	
5	each director and company secretary	<ul style="list-style-type: none"> • name and address • date and place of birth. <p><i>The address must be the person's usual residential address. However, if the person is entitled to have an alternative address under subsection 242AA(2), the annual return may contain that address.</i></p>
6	issued shares	<p>The classes into which the shares are divided and for each class of share issued:</p> <ul style="list-style-type: none"> • the number and nominal value of shares in the class • the amount (if any) paid, taken to be paid or due and payable on each share in the class.
7	options granted	<p>The number of unissued shares in each class that are subject to options.</p> <ul style="list-style-type: none"> • the names and addresses of the members
8	<p>all members (if company has 20 or fewer members)</p> <p>OR</p> <p>the top 20 members in each class (if company has more than 20 members)</p> <p><i>The requirement to list the top 20 members does not apply to a company limited only by guarantee.</i></p>	<p>If the company has a share capital:</p> <ul style="list-style-type: none"> • the total number of shares in each class held by each of them • whether or not the shares are fully paid • unless the company is a listed corporation—whether or not the shares are beneficially owned. <p><i>If 2 or more members in the top 20 members in a class of shares each hold the same number of shares, the company must include the details set out above for each of them.</i></p>
9	<p>company solvency</p> <p><i>Not necessary if company lodged a financial report with ASC within last 12 months.</i></p>	<p>Statement whether the directors have resolved within the last month under section 346 that, in their opinion, there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.</p>

Contents of annual return—companies [operative table]

- | | | |
|----|--------------------------|---|
| 10 | ultimate holding company | <ul style="list-style-type: none"> • name either: <ul style="list-style-type: none"> • its ACN or ARBN if registered in Australia OR <ul style="list-style-type: none"> • the place at which it was incorporated or formed if not registered in Australia. |
|----|--------------------------|---|

Note: If the details referred to in items 3, 4, 5 and 6 change after the annual return is lodged, the company must notify the ASC of the change (see section 142 (registered office), section 146 (principal place of business), section 242 (director and company secretary) and section 254X (issued shares)).

349 Contents of annual return—registered schemes

An annual return for a registered scheme must contain the information set out in the following table, current as at the date when the annual return is signed or authenticated. It must also contain any other information required by the regulations.

Contents of annual return—registered schemes [operative table]

- | | | |
|---|---|---|
| 1 | registration number of scheme | |
| 2 | name of scheme | |
| 3 | name and ACN of the responsible entity | |
| 4 | issued interests in a managed investment scheme
<i>Only if the scheme is a unit trust.</i> | The classes into which the interests are divided and for each class of interest issued: <ul style="list-style-type: none"> • the number of interests in the class • the total amount paid up for the class • the total amount unpaid for the class. |
| 5 | issued interests in a managed investment scheme
<i>Only if 4 does not apply.</i> | <ul style="list-style-type: none"> • a description of the nature of the interests (for example, interest in a limited partnership, right to participate in a timesharing scheme) • the number of those interests • the total amount paid for those interests • the total amount unpaid for those interests. |

Contents of annual return—registered schemes		[operative table]
6	options granted	<ul style="list-style-type: none">• the number of unissued managed investment interests that are subject to options• for each of the classes of interests that is subject to options—the average exercise price.
7	all interest holders (if scheme has 20 or fewer interest holders) OR the top 20 interest holders in each class (if scheme has more than 20 interest holders)	<ul style="list-style-type: none">• the names and addresses of the interest holders• the total number of interests in each class held by each of them• whether or not the interests are fully paid. <p><i>If 2 or more interest holders in the top 20 interest holders in a class each hold the same number of interests, the responsible entity must include the details set out above for each of them.</i></p>

Part 2N.2—Lodgments with ASC

350 Forms for documents to be lodged with ASC

A document that this Law requires to be lodged with the ASC in a prescribed form must be:

- (a) if a form for the document is prescribed in the regulations—in the prescribed form; or
- (b) if a form for the document is not prescribed in regulations but the ASC has approved a form for the document—in the approved form.

351 Signing documents lodged with ASC

(1) A document lodged with the ASC in writing by, or on behalf of, a corporation or a registered scheme must be signed by a director or secretary of the corporation or of the responsible entity of the registered scheme. If the corporation is a foreign company, it may be signed by:

- (a) its local agent; or
- (b) if the local agent is a corporation—a director or secretary of the agent.

- (2) An individual who lodges a document with the ASC in writing must sign it.
- (3) The person's name must be printed next to the signature.

352 Documents lodged with ASIC electronically

- (1) A document may be lodged with ASIC electronically only if:
 - (a) ASIC and the person seeking to lodge it (either on their own behalf or as agent) have agreed, in writing, that it may be lodged electronically; or
 - (b) ASIC has approved, in writing, the electronic lodgment of documents of that kind.

The document is taken to be lodged with ASIC if it is lodged in accordance with the agreement or approval (including any requirements of the agreement or approval as to authentication).

- (2) Any agreement or approval must provide for a signed copy of the document to be held by the person lodging the document and for the person to make the signed copy of the document available to the ASIC if required.

7 Division 4 of Part 4.1

Repeal the Division.

8 Parts 4.2, 4.3, 4.4 and 4.5

Repeal the Parts.

9 After Chapter 5

Insert:

Chapter 5A—Deregistration of companies

601AA Deregistration—voluntary

Who may apply for deregistration

- (1) An application to deregister a company may be lodged with the ASC by:

- (a) the company; or
- (b) a director or member of the company; or
- (c) a liquidator of the company.

If the company lodges the application, it must nominate a person to be given notice of the deregistration.

Circumstances in which application can be made

- (2) A person may apply only if:
 - (a) all the members of the company agree to the deregistration; and
 - (b) the company is not carrying on business; and
 - (c) the company's assets are worth less than \$1,000; and
 - (d) the company has paid all fees and penalties payable under this Law; and
 - (e) the company has no outstanding liabilities; and
 - (f) the company is not a party to any legal proceedings.

ASC may ask for information about officers

- (3) The applicant must give the ASC any information that the ASC requests about the current and former officers of the company.

Deregistration procedure

- (4) If the ASC is not aware of any failure to comply with subsections (1) to (3), it must give notice of the proposed deregistration:
 - (a) on the ASC database; and
 - (b) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, the ASC may deregister the company.

- (5) The ASC must give notice of the deregistration to:
 - (a) the applicant; or
 - (b) the person nominated in the application to be given the notice.

601AB Deregistration—ASC initiated*Circumstances in which the ASC may deregister*

- (1) The ASC may decide to deregister a company if:
 - (a) the company's annual return is at least 6 months late; and
 - (b) the company has not lodged any other documents under this Law in the last 18 months; and
 - (c) the ASC has no reason to believe that the company is carrying on business.
- (2) The ASC may also decide to deregister a company if the company is being wound up and the ASC has reason to believe that:
 - (a) the liquidator is no longer acting; or
 - (b) the company's affairs have been fully wound up and a return that the liquidator should have lodged is at least 6 months late; or
 - (c) the company's affairs have been fully wound up under Part 5.4 and the company has no property or not enough property to cover the costs of obtaining a Court order for the company's deregistration.

Deregistration procedure

- (3) If the ASC decides to deregister a company under this section, it must give notice of the proposed deregistration:
 - (a) to the company; and
 - (b) to the company's liquidator (if any); and
 - (c) to the company's directors; and
 - (d) on the ASC database; and
 - (e) in the *Gazette*.

When 2 months have passed since the *Gazette* notice, the ASC may deregister the company.

- (4) The ASC does not have to give a person notice under subsection (3) if the ASC does not have the necessary information about the person's identity or address.
- (5) The ASC must give notice of the deregistration to everyone who was notified of the proposed deregistration under paragraph (3)(b) or (c).

601AC Deregistration—following amalgamation or winding up

- (1) The ASC must deregister a company if the Court orders the deregistration of the company under:
 - (a) paragraph 413(1)(d) (reconstruction and amalgamation of Part 5.1 bodies); or
 - (b) paragraph 481(5)(b) (release of liquidator); or
 - (c) subsection 509(6) (liquidator's return following winding up).
- (2) The ASC must deregister a company if:
 - (a) 3 months have passed since the company's liquidator lodged a return under section 509; and
 - (b) no order under subsection 509(6) has been made during that period.

601AD Effect of deregistration

Company ceases to exist

- (1) A company ceases to exist on deregistration.

Note: Despite the deregistration, officers of the company may still be liable for things done before the company was deregistered.

Company's property vests in ASC

- (2) On deregistration, all the company's property vests in the ASC. If company property is vested in a liquidator immediately before deregistration, that property vests in the ASC. This subsection extends to property situated outside this jurisdiction.
- (3) Under subsection (2), the ASC takes only the same property rights that the company itself held. If the company held particular property subject to a security or other interest or claim, the ASC takes the property subject to that interest or claim.

Note: See also subsection 601AE(3)—which deals with liabilities that a law imposes on the property (particularly liabilities such as rates, taxes and other charges).

- (4) The ASC has all the powers of an owner over property vested in it under subsection (2).

Note: Section 601AF confers additional powers on the ASC to fulfil outstanding obligations of the deregistered company.

Company books to be kept by former directors

- (5) The directors of the company immediately before deregistration must keep the company's books for 3 years after the deregistration. This does not apply to books that a liquidator has to keep under subsection 542(2).

601AE What the ASC does with the property

- (1) If property vested in the ASC under subsection 601AD(2) was held by the company on trust, the ASC may:
- (a) continue to act as trustee; or
 - (b) apply to a court for the appointment of a new trustee.

Note: Under paragraph (a), the ASC may be able to transfer the property to a new trustee chosen in accordance with the trust instrument.

- (2) If the company did not hold the property on trust, the ASC may:
- (a) dispose of or deal with the property as it sees fit; and
 - (b) apply any money it receives to:
 - (i) defray expenses incurred by the ASC in exercising its powers in relation to the company under this Chapter; and
 - (ii) make payments authorised by subsection (3).

The ASC must deal with the rest (if any) under Part 9.7.

Obligations attaching to property

- (3) The property remains subject to all liabilities imposed on the property under a law and does not have the benefit of any exemption that the property might otherwise have because it is vested in the ASC. These liabilities include a liability that:
- (a) is a charge or claim on the property; and
 - (b) arises under a law that imposes rates, taxes or other charges.
- (4) The ASC's obligation under subsection (3) is limited to satisfying the liabilities out of the company's property to the extent that the property is properly available to satisfy those liabilities.

Accounts

- (5) The ASC must keep:

- (a) a record of property that it knows is vested in it under this Chapter; and
- (b) a record of its dealings with that property; and
- (c) accounts of all money received from those dealings; and
- (d) all accounts, vouchers, receipts and papers relating to the property and that money.

601AF ASC's power to fulfil outstanding obligations of deregistered company

The ASC may do an act on behalf of the company or its liquidator if the ASC is satisfied that the company or liquidator would be bound to do the act if the company still existed.

Note: This power is a general one and is not limited to acts in relation to property vested in the ASC under subsection 601AD(2). The ASC has all the powers that automatically flow from the vesting of property in the ASC under that subsection (see subsection 601AD(4)) and may exercise *those* powers whether or not the company was bound to do so.

601AG Claims against insurers of deregistered company

A person may recover from the insurer of a company that is deregistered an amount that was payable to the company under the insurance contract if:

- (a) the company had a liability to the person; and
- (b) the insurance contract covered that liability immediately before deregistration.

601AH Reinstatement

Reinstatement by ASC

- (1) The ASC may reinstate the registration of a company if the ASC is satisfied that the company should not have been deregistered.

Reinstatement by Court

- (2) The Court may make an order that the ASC reinstate the registration of a company if:
 - (a) an application for reinstatement is made to the Court by:
 - (i) a person aggrieved by the deregistration; or

- (ii) a former liquidator of the company; and
 - (b) the Court is satisfied that it is just that the company's registration be reinstated.
- (3) If the Court makes an order under subsection (2), it may:
- (a) validate anything done between the deregistration of the company and its reinstatement; and
 - (b) make any other order it considers appropriate.

Note: For example, the Court may direct the ASC to transfer to another person property vested in the ASC under subsection 601AD(2).

ASC to give notice of reinstatement

- (4) The ASC must give notice of a reinstatement in the *Gazette*. If the ASC exercises its power under subsection (1) in response to an application by a person, the ASC must also give notice of the reinstatement to the applicant.

Effect of reinstatement

- (5) If a company is reinstated, the company is taken to have continued in existence as if it had not been deregistered. A person who was a director of the company immediately before deregistration becomes a director again as from the time when the ASC or the Court reinstates the company. Any property of the company that is still vested in the ASC reverts in the company. If the company held particular property subject to a security or other interest or claim, the company takes the property subject to that interest or claim.

Chapter 5B—Bodies corporate registered as companies, and registrable bodies

Part 05B.1—Registering a body corporate as a company

Division 1—Registration

601BA Bodies corporate may be registered as certain types of companies

- (1) A body corporate that is not a company, recognised company or corporation sole may be registered under this Law as a company of one of the following types:
 - (a) a proprietary company limited by shares
 - (b) an unlimited proprietary company with share capital
 - (c) a public company limited by shares
 - (d) a company limited by guarantee
 - (e) an unlimited public company with share capital
 - (f) a no liability company.

- (2) A body corporate may be registered as a no liability company only if:
 - (a) the body has a share capital; and
 - (b) the body's constitution states that its sole objects are mining purposes; and
 - (c) under the constitution the body has no contractual right to recover calls made on its shares from a member who fails to pay them.

Note: Section 9 defines *mining purposes* and *minerals*.

601BB Bodies registered as proprietary companies

- (1) The body must have no more than 50 non-employee shareholders if it is to be registered as a proprietary company under this Part.

- (2) In applying subsection (1):
 - (a) count joint holders of a particular parcel of shares as 1 person; and
 - (b) an employee shareholder is:
 - (i) a shareholder who is an employee of the body or of a subsidiary of the body; or
 - (ii) a shareholder who was an employee of the body, or of a subsidiary of the body, when they became a shareholder.

601BC Applying for registration under this Part

- (1) To register the body as a company under this Part, a person must lodge an application with the ASC.

Note 1: For the types of companies that can be registered under this Part, see section 601BA.

Note 2: A name may be reserved for a company to be registered under this Part before the application is lodged (see Part 2B.6).

- (2) The application must state the following:
- (a) the type of company that the body is proposed to be registered as under the Corporations Law of this jurisdiction
 - (b) the name of the body
 - (c) if the body is a registered body under the Corporations Law of any jurisdiction—its ARBN
 - (d) the proposed name under which the body is to be registered (unless the ACN is to be used)
 - (e) the name and address of each member of the body
 - (f) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a director
 - (g) the present given and family name, all former given and family names and the date and place of birth of each person who consents in writing to become a company secretary
 - (h) the address of each person who consents in writing to become a director or company secretary
 - (i) the address of the body's proposed registered office
 - (j) for a body proposed to be registered as a public company—the proposed opening hours of its registered office (if they are not the standard opening hours)
 - (k) the address of the body's proposed principal place of business (if it is not the address of the proposed registered office)
 - (l) for a body proposed to be registered as a company limited by shares or an unlimited company—the following:
 - (i) the number and class of shares each member already holds or has agreed, in writing, to take up
 - (ii) the amount each member has already paid or agreed, in writing, to pay for each share

- (iii) the amount unpaid on each share
 - (m) for a body proposed to be registered as a public company, if shares have been issued for non-cash consideration—the prescribed particulars about the issue of the shares, unless the shares were issued under a written contract and a copy of the contract is lodged with the application
 - (n) for a body proposed to be registered as a company limited by guarantee—the amount of the guarantee that each member has agreed to in writing.
- Note 1: Paragraph (h)—the address that must be stated is usually the residential address, although an alternative address can sometimes be stated instead (see section 242AA).
- Note 2: Paragraph (i)—if the body when it is registered under this Part is not to be the occupier of premises at the address of its registered office, the application must state that the occupier has consented to the address being specified in the application and has not withdrawn that consent (see section 100).
- (3) If the body is proposed to be registered as a public company, the application must be accompanied by a copy of each document (including an agreement or consent) or resolution that is necessary to ascertain the rights attached to issued or unissued shares of the body.
 - (4) The application must be in the prescribed form.
 - (5) An applicant must have the consents and agreements referred to in subsection (2) when the application is lodged. After the body is registered as a company, the applicant must give the consents and agreements to the company. The company must keep the consents and agreements.
 - (6) The following documents must be lodged with the application:
 - (a) a certified copy of a current certificate of the body's incorporation in its place of origin, or of a document that has a similar effect
 - (b) a certified printed copy of the body's constitution (if any)
 - (c) for a body that is not a registered body under the Corporations Law of any jurisdiction—the documents required by subsection 263(3)—in relation to existing charges on the property of the body
 - (d) any other documents that are prescribed
-

- (e) any other documents that the ASC requires by written notice given to the body.

A document need not be lodged if the ASC already has the document and agrees not to require its lodgment.

Note: Subsection 263(3) requires documents relating to charges on the property of the body to be lodged with the application.

- (7) The application must be accompanied by evidence that:
 - (a) the body is not an externally-administered body corporate; and
 - (b) no application to wind up the body has been made to a court (in Australia or elsewhere) that has not been dealt with; and
 - (c) no application to approve a compromise or arrangement between the body and another person has been made to a court (in Australia or elsewhere) that has not been dealt with.
 - (8) The application must be accompanied by evidence that under the law of the body's place of origin:
 - (a) the body's type is the same or substantially the same as the proposed type specified in the application; and
 - (b) if the members of the body have limited liability—the body's constitution defines how and to what extent that liability is limited; and
 - (c) if the body has a share capital and the members of the body have limited liability—its capital is of a fixed amount and it is divided into shares of a fixed amount; and
 - (d) the transfer of the body's incorporation is authorised; and
 - (e) the body has complied with the requirements (if any) of that law for the transfer of its incorporation; and
 - (f) if those requirements do not include consent to the transfer by the members of the body—the members:
 - (i) have consented to the transfer by a resolution that has been passed at a meeting by at least 75% of the votes cast by members entitled to vote on the resolution; and
 - (ii) were given at least 21 days notice of the meeting and the proposed resolution.
 - (9) The evidence lodged in accordance with subsections (7) and (8) must be satisfactory proof to the ASC of the matters referred to in those subsections.
-

Note: Section 1304 requires documents that are not in English to be translated into English.

601BD ASC gives body ACN, registers as company and issues certificate

Registration

- (1) If an application is lodged under section 601BC, the ASC may:
- (a) give the body an ACN; and
 - (b) register the body as a company of the proposed type specified in the application; and
 - (c) issue a certificate that states:
 - (i) the company's name; and
 - (ii) the company's ACN; and
 - (iii) the company's type; and
 - (iv) that the company is registered as a company under the Corporations Law of this jurisdiction; and
 - (v) the date of registration.

Note: For the evidentiary value of a certificate of registration, see subsection 1274(7A).

ASC must keep record of registration

- (2) The ASC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with the ASC.

601BE Registered office

The address specified in the application as the body's proposed registered office becomes the address of its registered office as a company on registration.

601BF Name

A company registered under this Part has a name on registration that is:

- (a) an available name; or
- (b) the expression "Australian Company Number" followed by the company's ACN.

The name must also include the words required by subsection 148(2) or 148(3).

601BG Constitution

- (1) The constitution on registration (if any) of a company registered under this Part is the constitution lodged with the application.
- (2) If any text in a constitution lodged with the application is not in English, the English translation of that text lodged with the application for registration is taken to be the relevant text in the constitution on registration.

601BH Modifications of constitution

- (1) A company registered under this Part must modify its constitution within 3 months after registration to give effect to this Part.
- (2) If the constitution specifies amounts of money expressed in foreign currency, the company must:
 - (a) fix a single rate of conversion by resolution; and
 - (b) modify its constitution by special resolution to convert those amounts into Australian currency using that rate.The modification must be made within 3 months after registration.
- (3) An amendment of a company's constitution under this section does not affect the number and class of shares held by each member.

601BJ ASC may direct company to apply for Court approval for modifications of constitution

- (1) The ASC may give the company a written direction to apply to the Court within a specified period for an order approving the modified constitution.
- (2) The Court may make an order:
 - (a) declaring that the company has complied with section 601BH; or
 - (b) declaring that the company will comply with section 601BH if it makes further modifications of its constitution as specified in the order.

- (3) The company must lodge a copy of the order with the ASC within 14 days after the order is made.

601BK Establishing registers and minute books

- (1) A company registered under this Part must, within 14 days after registration:
 - (a) set up the registers required by sections 168 and 271; and
 - (b) include in those registers the information that is required to be included in those registers and that is available to the company on registration; and
 - (c) set up the minute books required by section 251A.
- (2) During the 14 days the company need not comply with a person's request to inspect or obtain a copy of:
 - (a) information in a register; or
 - (b) a minute of a general meeting.

However, the period within which the company must comply with the request begins at the end of the 14 days.

601BL Registration of registered bodies

- (1) If a registered body becomes registered as a company under this Part or a corresponding law, it ceases to be a registered body. The ASC must remove the body's name from the appropriate register kept for the purposes of Division 1 or 2 of Part 5B.2.
- (2) The ASC may keep any of the documents relating to the company that were lodged because the company used to be a registered body.

Division 2—Operation of the Corporations Law

601BM Effect of registration under this Part

- (1) Registration under this Part does not:
 - (a) create a new legal entity; or
 - (b) affect the body's existing property, rights or obligations (except as against the members of the body in their capacity as members); or

- (c) render defective any legal proceedings by or against the body or its members.
- (2) This Part and sections 263, 266 and 276 set out special provisions for companies registered under this Part.

601BN Liability of members on winding up

A person who stopped being a member of the body before it was registered as a company under this Part is to be treated as a past member of the company in applying Division 2 of Part 5.6 to a winding up of the company. However, the person's liability to contribute to the company's property is further limited by this section to an amount sufficient for the following:

- (a) payment of debts and liabilities contracted by the company before the day on which the company was registered under this Part
- (b) payment of the costs, charges and expenses of winding up the company, so far as those costs, charges and expenses relate to those debts and liabilities
- (c) the adjustment of the rights between the contributories, so far as the adjustment relates to those debts and liabilities.

601BP Bearer shares

- (1) A bearer of a bearer share in a company registered under this Part may surrender the share to the company. The company must:
 - (a) cancel the share; and
 - (b) include the bearer's name in the company's register of members.
- (2) The company is liable to compensate anyone who suffers a loss because the company includes the bearer's name in the company's register of members despite the fact that:
 - (a) the share was not surrendered to the company; or
 - (b) the company failed to cancel the share.
- (3) Subject to this section, the constitution of a company registered under this Part may provide that the bearer of a bearer share in the company is taken to be a member of the company for all purposes or for specified purposes.

Note: A body must not issue bearer shares after it is registered as a company under this Part (see paragraph 254F(a)).

601BR First AGM

Despite subsection 250N(1), a public company registered under this Part must hold its first AGM after registration in the calendar year of its registration.

601BS Modification by regulations

The regulations may modify the operation of this Part in relation to a company registered under this Part.

Part 5B.3—Names of registrable Australian bodies and foreign companies

601DA Reserving a name

- (1) A person may lodge an application in the prescribed form with the ASC to reserve a name for a registrable Australian body or a foreign company. If the name is available, the ASC must reserve it.

Note: For available names, see section 601DC.

- (2) The reservation lasts for 2 months from the date when the application was lodged. An applicant may ask the ASC in writing for an extension of the reservation during a period that the name is reserved, and the ASC may extend the reservation for 2 months.
- (3) The ASC must cancel a reservation if the applicant asks the ASC in writing to do so.

601DB Acceptable abbreviations

- (1) The abbreviations set out in the following table may be used:
 - (a) instead of words that this Law requires to be part of a registrable Australian body's or foreign company's name or to be included in a document; and
 - (b) instead of words that are part of a registrable Australian body's or foreign company's name; and
 - (c) with or without full stops.

Acceptable abbreviations		[operative table]
Word	Abbreviation	
1	Company	Co or Coy
2	Proprietary	Pty
3	Limited	Ltd
4	Australian	Aust
5	Number	No
6	and	&
7	Australian Registered Body Number	ARBN
8	Registered	Regd

- (2) If a registrable Australian body's or foreign company's name includes any of these abbreviations, the word corresponding to the abbreviation may be used instead.

601DC When a name is available

Name is available unless identical or unacceptable

- (1) A name is available to a registrable Australian body or a foreign company unless the name is:
- (a) identical (under rules set out in the regulations) to a name that is reserved or registered under the Law for another body; or
 - (b) identical (under rules set out in the regulations) to a name that is included on the national business names register in respect of another individual or body who is not the person applying to have the name; or
 - (c) unacceptable for registration under the regulations.

Minister may consent to a name being available

- (2) The Minister may consent in writing to a name being available to a registrable Australian body or foreign company even if the name is:
- (a) identical to a name that is reserved or registered under this Law for another body; or

- (b) unacceptable for registration under the regulations.
- (3) The Minister's consent may be given subject to conditions.

Note: If the body or company breaches a condition, the ASC may direct it to change its name under section 601DJ.

601DD Registered Australian bodies and registered foreign companies can carry on business with some names only

A registered Australian body or registered foreign company must not carry on business under a name in this jurisdiction unless:

- (a) it is registered under that name under Part 5B.2 or a corresponding law; or
- (b) the name is registered for it under the law of this jurisdiction dealing with business names.

601DE Using a name and ARBN

Requirements for bodies that are not Australian banks

- (1) Subject to sections 601DF and 601DG, a registered Australian body or registered foreign company must set out the following on all its public documents and negotiable instruments published or signed in this jurisdiction:
 - (a) its name
 - (b) the expression "Australian Registered Body Number" followed by its ARBN
 - (c) its place of origin
 - (d) if the liability of its members is limited and this is not apparent from its name—notice of the limited liability of its members.

Paragraphs (c) and (d) do not apply to an Australian bank.

Where information to be set out

- (2) Subject to sections 601DF and 601DG, the information required by paragraph (1)(b) must be set out with the company's or body's name, or 1 of the references to its name in the document or instrument. If the name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

601DF Exception to requirement to have ARBN on receipts

A registered Australian body or a registered foreign company does not have to set out the expression “Australian Registered Body Number” followed by its ARBN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

601DG Regulations may exempt from requirement to set out information on documents

The regulations may exempt a specified registered Australian body or registered foreign company, or a class of those bodies or companies, from the requirement in paragraphs 601DE(1)(b), (c) and (d) to set out information on its public documents and negotiable instruments. The exemption may relate to specified documents or instruments, or a class of documents or instruments.

601DH Notice of name change must be given to the ASC

- (1) A registered Australian body or a registered foreign company must give the ASC written notice of a change to its name within 14 days after the date the change occurred.
- (2) If the proposed name is available, the ASC must alter the details of the body’s or foreign company’s registration to reflect the change. For the purposes of this Law (other than subsection (1)), the change of name takes effect when the ASC alters the details of the body’s or foreign company’s registration.

Note 1: For the reservation of names, see section 601DA.

Note 2: For available names, see section 601DC.

Note 3: The ASC must issue a new certificate reflecting the name change (see section 601CU).

601DJ ASC’s power to direct a registered name be changed

- (1) The ASC may direct a registered Australian body or registered foreign company in writing to change the name under which the body or company is registered within 2 months if:
 - (a) the name should not have been registered; or

- (b) the body or company has breached a condition under subsection 601DC(3) on the availability of the name.
- (2) The body or company must comply with the direction within 2 months after being given it by doing everything necessary to change its name for the purposes of this Law under section 601DH.
- (3) If the body or company does not comply with subsection (2), the ASC may change the body's or company's name to a name that includes its ARBN by altering the details of the body's or company's registration to reflect the change.
- (4) For the purposes of this Law, a change of name under subsection (3) takes effect when the ASC alters the details of the body's or foreign company's registration.

Note: The ASC must issue a new certificate reflecting the name change (see section 601CU).

10 After Part 9.10

Insert:

Chapter 10—National scheme provisions

1362A Recognition of companies from other jurisdictions

- (1) A company registered under the Corporations Law of another jurisdiction has in this jurisdiction the same legal personality, capacity, attributes, power and type as if it were a company registered under the Corporations Law of this jurisdiction. Its powers include the power to hold land in this jurisdiction.
- (2) Subsection (1) does not impose on the company an obligation that it would not have if that subsection had not been enacted.

1362B Transfer of registration

- (1) A company registered under the Corporations Law of another jurisdiction may transfer its registration to become registered as a company under the Corporations Law of this jurisdiction if:
 - (a) the transfer is in accordance with the regulations; and

- (b) both the Minister and the Minister for the jurisdiction in which the company is currently registered have consented to the transfer.
- (2) Registration under subsection (1) does not:
 - (a) create a new legal entity; or
 - (b) affect the company's existing property, rights or obligations; or
 - (c) render defective any legal proceedings by or against the company and its members.
- (3) If a company becomes registered under section 1362B of the Corporations Law of another jurisdiction, it ceases to be registered as a company under the Corporations Law of this jurisdiction.

1362BA Compensation for compulsory acquisition

- (1) If:
 - (a) apart from this section, the operation of this Law would result in the acquisition of property from a person otherwise than on just terms; and
 - (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;the person who acquires the property is liable to pay compensation of a reasonable amount to the person from whom the property is acquired in respect of the acquisition.
- (2) If the 2 people do not agree on the amount of the compensation, the person to whom compensation is payable may institute proceedings in the Court for the recovery of such reasonable amount as the court determines from the other person.
- (3) Any damages or compensation recovered or other remedy given in a proceeding that is commenced otherwise than under this section is to be taken into account in assessing compensation payable in a proceeding that is commenced under this section and that arises out of the same event or transaction.
- (4) In this section:
acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

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

Chapter 11—Application and transitional provisions

Part 11.1—Introduction of the Corporations Law

1362CA Existing company

This Part applies to a body corporate that was incorporated, immediately before Division 2 of Part 2.2 commenced (1 January 1991), under a previous law of this jurisdiction that corresponded to Chapter 2 (as in force immediately after that Division commenced).

1362CB Existing company taken to be registered under the Corporations Law

- (1) The body corporate was taken to have been registered as a company under Division 2 of Part 2.2 as from the commencement of that Division.
- (2) The company was taken to have been registered as the type of company that most nearly corresponded to the company's type under the corresponding previous law.
- (3) The company was taken to have been registered as:
 - (a) a proprietary company if it was a proprietary company under the corresponding previous law; or
 - (b) a public company in any other case.
- (4) A certificate issued under the corresponding previous law of any jurisdiction by the authority responsible for administering that law stating that the company was registered as a company under that law or another corresponding previous law is conclusive evidence that:
 - (a) all the requirements necessary for the registration of the company under that legislation have been complied with; and

- (b) all matters related to the registration of the company under that legislation have been complied with; and
- (c) the company was duly registered as a company under that legislation and was taken to be a company duly incorporated under that legislation on the date (if any) specified in the certificate.

1362CC Constitution of existing company

- (1) The provisions that formed part of the body corporate's memorandum immediately before the commencement of Division 2 of Part 2.2 were taken to become on the commencement of that Division:
 - (a) the company's memorandum if the company was a company limited by shares and was a proprietary company; or
 - (b) the company's registered memorandum in any other case.This had effect with any modifications that the circumstances required.
- (2) The provisions that formed part of the body corporate's articles immediately before the commencement of Division 2 of Part 2.2 were taken to become on the commencement of that Division:
 - (a) the company's articles if the company was a company limited by shares and was a proprietary company; or
 - (b) the company's registered articles;and to bind the company and its members accordingly. This had effect with any modifications that the circumstances required.

1362CD Application of Law to existing companies

- (1) Subject to this Law, a provision of this Law that applies to the body corporate as a company applies to the body corporate in relation to:
 - (a) the doing of an act or thing, an act or thing done, or a matter arising, before the commencement of Division 2 of Part 2.2; or
 - (b) acts, things or matters including such an act, thing or matter;unless:

- (c) before the commencement of that Division, an act was done for the purposes of complying with a previous law corresponding to that provision; and
 - (d) the act would, if the body corporate had been a company, and this Law had been in operation, when the act was done, have constituted compliance with that provision as so applying.
- (2) A provision applies as mentioned in subsection (1):
- (a) as if a reference in the provision to another provision of this Law included a reference to a previous law corresponding to that other provision; and
 - (b) with any other modifications that the circumstances require.

1362CE Acts preparatory to external administration of existing company

- (1) This section applies if an act or thing had been validly done before the commencement of Division 2 of Part 2.2 by or in relation to the body corporate under, or for the purposes of, a previous law corresponding to a provision of Chapter 5 (other than Part 5.2).
- (2) On and after the commencement of that Division, this Law (other than this Division) applies to the body corporate as if:
- (a) the body corporate had been a company, and this Law had been in operation, at the time when the act or thing was done; and
 - (b) the act or thing had been validly done at that time under or for the purposes of that provision of that Chapter.
- This has effect with any modifications that the circumstances require.
- (3) Nothing in this section makes a person guilty of a contravention of this Law in respect of an act or thing done, or an omission made, before the commencement of Division 2 of Part 2.2.

1362CF Appointments of receivers

Nothing in section 418 prevents a person from acting as a receiver of property of the body corporate under an appointment validly made before commencement.

1362CG Application of Division 2 of Part 5.6

Division 2 of Part 5.6 applies to the body corporate as if:

- (a) references in that Division to section 164 included references to a previous law corresponding to that section; and
- (b) references to becoming a limited company included a reference to becoming a limited company within the meaning of a previous law corresponding to section 164.

1362CH Reinstatement of companies deregistered before commencement

The ASC's powers under section 601AH extend to the reinstatement of the registration of a body corporate that:

- (a) was at some time before commencement incorporated or taken to be incorporated under a previous law of this jurisdiction corresponding to Chapter 2 of the old law; and
- (b) was deregistered before commencement.

Section 601AH applies to the reinstatement with any modifications that the circumstances require.

1362CJ Registrable Australian bodies and foreign companies

- (1) This section applies to each registrable body that was, immediately before commencement, registered under a previous law of this jurisdiction relating to foreign companies within the meaning of that law.
- (2) If the body was a registrable Australian body, the ASC was taken to have registered it under Division 1 of Part 4.1 at commencement.
- (3) If the body was a foreign company, the ASC was taken to have registered it under Division 2 of Part 4.1 at the commencement.
- (4) At commencement, the body's registered office for the purposes of section 359 was taken to be the place that, immediately before commencement, was taken by a previous law of this jurisdiction corresponding to subsection 601CX(2) to be the situation of the body's registered office for the purposes of a previous law of this jurisdiction corresponding to subsection 601CX(1).

- (5) Subsections 601CT(1) and (4) and 601CX(1) and (2) apply in relation to the body as if a reference in them to a provision of this Law included a reference to a previous law of this jurisdiction corresponding to that provision of this Law.
- (6) If the body is a registrable body under a law corresponding to Division 1 or 2 of Part 5B.2 but is not registered under that Division:
 - (a) subsection 601CX(2) does not apply to the body; and
 - (b) instead, each place that is taken by a law corresponding to subsection 601CX(2) to be the situation of the body's registered office for the purposes of a law corresponding to subsection 601CX(1) is taken to be the situation of a registered office of the body for the purposes of subsection 601CX(1).

11 After Division 9 of Part 9.11

Insert:

Division 10—Changes resulting from the Company Law Review Act 1998

1412 Meaning of commencement, new Law and old Law

In this Division:

commencement means the commencement of section 3 of the *Company Law Review Act 1998*.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before commencement.

1413 Registration—existing companies continue to be registered

A company that was registered or taken to be registered before commencement under Part 2.2 of the old Law continues to be registered as a company of whichever of the following types corresponds to its previous class and type:

- (a) a proprietary company limited by shares

- (b) an unlimited proprietary company
- (c) a proprietary company limited both by shares and by guarantee
- (d) a public company limited by shares
- (e) an unlimited public company
- (f) a company limited by guarantee
- (g) a public company limited both by shares and by guarantee
- (h) a no liability company.

1414 Registration—application orders under subsection 112(3) of the old Law

An application order in force immediately before commencement under subsection 112(3) of the old Law continues to have effect after commencement as if it were an application order under section 115 of the new Law.

1415 Basic features of a company—memorandum and articles are taken to be constitution

The memorandum and articles of a company immediately before commencement are taken together to make up the company's constitution after commencement.

Note: A company could have had some or all of its articles implied by the operation of section 175 of the old Law.

1416 Basic features of a company—companies limited both by shares and by guarantee

- (1) This Law applies to a company limited by shares and by guarantee as if the following provisions of the old Law had not been repealed or amended:
 - (a) paragraph 260(5)(a)
 - (b) sections 516, 517 and 518.
- (2) This Law applies to the company as if the definition of *limited company* in section 9 were amended by adding at the end “or a company limited by shares and by guarantee”.

- (3) The company may change to one of the following types of companies under Part 2B.7 of the new Law:
 - (a) a proprietary company limited by shares
 - (b) a public company limited by shares
 - (c) a company limited by guarantee.
- (4) Part 2B.7 of the new Law applies to the change with any modifications that are necessary.

1417 Basic features of a company—acts before external administration of existing company

- (1) This section applies to an act or thing done by or in relation to a company that section 132 of the old Law applied to.
- (2) The new Law applies in relation to the company as if:
 - (a) the company had been a company, and this Law had been in force, at the time when that action was taken; and
 - (b) that action had been validly taken under, or for the purposes of, Chapter 5.The new Law has effect with any modifications that are necessary.
- (3) Nothing in this section makes a person guilty of a contravention of this Law in respect of anything done or not done before 1 January 1991.

1418 Basic features of a company—registered office

The registered office of a company immediately before commencement continues to be the company's registered office after commencement.

1419 Basic features of a company—opening hours of registered office of public company

A notice lodged under subsection 218(2) or (4) of the old Law has effect after commencement as if it were lodged under subsection 145(3) of the new Law.

1420 Basic features of a company—name, reservation of name and ACN continues

- (1) The name of a company or body immediately before commencement continues to be the company's or body's name after commencement.
- (2) A name that was reserved in respect of a company or body immediately before commencement is taken after commencement to be reserved under section 152 or 601DA of the new Law, as applicable.
- (3) The registration number of a company registered before commencement is taken to be the company's ACN after commencement.

1421 Members' rights and remedies—applications for inspection orders under repealed provisions

An application made before commencement under section 317 of the old Law, but not decided, has effect as if it were an application for an order under section 247A of the new Law.

1422 Meetings—AGM before commencement

An AGM held before commencement can be taken into account for the purpose of deciding whether the requirements of section 250N of the new Law have been satisfied for a public company holding an AGM.

1423 Meetings—first AGM for companies incorporated before commencement

- (1) A company that was incorporated less than 18 months before commencement and that did not hold its first AGM by commencement must hold it within 18 months after its incorporation.
- (2) A company that was incorporated 18 months or more before commencement and that did not hold its first AGM by commencement must hold it within 7 days after commencement.

1424 Meetings—general transitional arrangements

The following table sets out how things that have been done before commencement under the old Law are to be dealt with after commencement—either under the old Law or the new Law.

Meetings—general transitional arrangements		[operative table]
	Thing done before commencement	How it is to be dealt with after commencement
1	Requisition made for a meeting under section 246.	The requisition is treated as if it were made under section 249D of the new Law.
2	Notice was validly given of a meeting called under section 246 or 251.	The notice is treated as if it were made under a corresponding section of the new Law (section 249D or 249F respectively). If the notice complied with the requirements of the old Law, the meeting can be held at the expiry of the period provided for in the old Law. The new Law will operate in respect of the holding of the meeting.
3	In calling a meeting under section 251, the Court stipulated requirements for holding the meeting.	The requirements stipulated by the Court are treated as if they were made under section 1319 of the new Law.
4	An authority was granted to a person to act as a body corporate's representative as provided for in subsection 249(3).	The authority is treated as if it were made under section 250D of the new Law.
5	A person had applied to the ASC for an extension of time for holding an AGM.	The application is treated as if it were made under section 250P of the new Law.
6	An application was made by a person under subsection 251(1) for the Court to convene a meeting.	The application is treated as if it were made under section 249G of the new Law.

Meetings—general transitional arrangements		[operative table]
	Thing done before commencement	How it is to be dealt with after commencement
7	Notice given under section 254 of an intention to move a resolution under section 227 or 329 or to replace a director removed under section 227 was received by the company.	Notice properly given under the old Law has effect as if it were given under subsection 227(3A) (directors) or 329(1A) (auditors). The time period for notice given under the old Law continues to run as if section 254 of the old Law had not been repealed.
8	A resolution, document or agreement of the kind referred to in section 256 has been passed or made.	The resolution, agreement or document must be lodged within 1 month after the passing of the resolution or the making of the agreement or document.
9	A request was made by a member under subsection 256(3) but not complied with before commencement.	The company must deal with the request as provided for in section 256 of the old Law.
10	A general meeting or a directors' meeting was held or a general meeting was deemed to be held because of subsection 255(1).	The obligations arising under section 258 of the old Law as to the entering of the minutes in the minute books within 1 month after the meeting is held and the signing of the minutes continue as if section 258 of the old Law was not repealed.
11	A request was made by a member for a copy of minutes under subsection 259(2).	The request is treated as if it were made under section 251B of the new Law.

1425 Nominal value

The nominal value of a share immediately after commencement is the nominal value it had immediately before commencement.

1426 Share capital—calls on partly-paid shares

A resolution to which subsection 188(2) applied immediately before commencement continues to have effect after commencement as if it were a special resolution under section 254N of the new Law.

1427 Share capital—provisions in constitution about amount of share capital and division into shares

- (1) Any provisions in a company's constitution stating the amount of the company's share capital, and dividing that share capital into shares of a fixed amount, are repealed on commencement.
- (2) If, before commencement (or within 3 months after commencement), a company receives a notice stating that this subsection is to apply to the company and that satisfies subsections (3) to (5), the following provision is inserted in the company's constitution on commencement (or when the notice is received if it is received after commencement) in place of the provision repealed by subsection (1):

“The company must not issue shares if the issue would make the total number of the company's issued shares in a particular class exceed the total number of shares of that class into which the company's authorised share capital was divided immediately before the commencement of Chapter 2H of the Corporations Law.”.

The provision has effect as a provision of the company's constitution and may be amended accordingly.
- (3) A notice for the purpose of subsection (2) must be:
 - (a) in writing; and
 - (b) signed by:
 - (i) members who hold shares carrying at least 5% of the votes that may be cast at a general meeting of the company; or
 - (ii) 100 members entitled to vote at a general meeting of the company.
- (4) The notice may consist of copies signed by different members provided each copy has identical wording.
- (5) The percentage of votes members hold is to be worked out as at the close of business on the day before the notice was given to the company.
- (6) If subsection (2) applies to insert the provision into a public company's constitution, within 14 days after the insertion of the

provision the company must lodge a notice with the ASC in the prescribed form that states that subsection (2) applies.

1428 Share capital—conversion of stock into shares

A company must convert stock in the company into shares within 5 months after the end of the first financial year to end after commencement. The conversion is to be by resolution passed in a general meeting. The company may disregard any stock that could only be converted into a fraction of a share. Until all the stock is converted, the register of members must continue to show the amount of stock, or the number of stock units, held by each member who holds stock and indicate any stock that a member does not hold beneficially.

1429 Share capital—previous Law continues to apply to capital reductions initiated before commencement

If a company has called a meeting before commencement for the purpose of section 195 of the old Law to consider a special resolution for a reduction of its share capital, the old Law continues to apply to the reduction of capital.

1430 Share capital—continued operation of other repealed provisions

The old Law continues to apply to:

- (a) a body corporate's obligation under section 185 of the old Law to dispose of shares and any related voting restrictions; and
- (b) an application for an order, or an order made, under section 194 of the old Law; and
- (c) an application for an order, or an order made, under section 202 of the old Law.

1431 Financial reports and audit—application of Chapter 2M to periods that end after commencement, and continued application of repealed provisions to past periods

- (1) Chapter 2M of the new Law, and the amendments made by Part 4 of Schedule 2 to the *Company Law Review Act 1998*, apply to financial years and half-years ending after commencement.
- (2) In relation to financial years and half-years that end on or before commencement, the provisions of Parts 3.6, 3.7, 4.4 and 4.5 of the old Law, and the provisions amended by Part 4 of Schedule 2 to the *Company Law Review Act 1998*, continue to apply as if they had not been repealed, relocated or amended.

1432 Financial reports and audit—lodgment of accounts by public companies that are not disclosing entities

- (1) This section applies to a public company that is not a disclosing entity at the end of the last financial year to which the old Law applies.
- (2) The company must lodge a copy of the following documents with the ASC for the last financial year to which the old Law applies:
 - (a) the company's financial statements (within the meaning of the old Law); and
 - (b) the statement or statements that Division 5 of Part 3.6 of the old Law required; and
 - (c) the report that Division 6 of Part 3.6 of the old Law required; and
 - (d) the report about the financial statements that section 331A of the old Law required from the company's auditor.

Note: For the transitional provisions for annual returns see sections 1435 and 1436.

- (3) The company must lodge the documents within 1 month after:
 - (a) the day on which the company's next AGM after commencement is held if it is held when it should be under sections 250N and 250P; or
 - (b) the last day on which the company should have held its next AGM after commencement under sections 250N and 250P.

1433 Financial reports and audit—continued operation of accounting standards

- (1) An accounting standard that was in force immediately before commencement (including under section 288 of the old Law):
 - (a) continues to have effect after commencement for the purposes of Parts 3.6 and 3.7 as they continue to apply under subsection 1431(2); and
 - (b) also has effect after commencement, with any necessary modifications, as if it were an accounting standard made for the purposes of Chapter 2M.
- (2) This section does not apply an accounting standard to a period to which it would not otherwise apply.

1434 Financial reports and audit—continued operation of exemption orders

- (1) An order in force immediately before commencement under section 290, 291, 313 or 314 continues to have effect after commencement, with any necessary modifications, in relation to financial years and half-years ending after commencement as if it were an order under:
 - (a) section 340 of the new Law; or
 - (b) if it relates to a class of companies—section 341 of the new Law.
- (2) An application made, but not decided, before the commencement under section 290 or 313, so far as it relates to financial years and half-years ending after commencement, has effect after commencement, with any necessary modifications, as if it were an application for an order under section 340 of the new Law.

1435 Annual returns—solvency resolution

The directors of a company are not required to make a resolution under subsection 346(1) of the new Law in relation to the company's first annual return lodged under subsection 345(1) of the new Law if the company has lodged accounts with the ASC under Chapter 3 of the old Law within 12 months before the annual return is lodged.

1436 Annual returns—application of annual return provisions

- (1) A public company does not have to lodge an annual return under section 335 of the old Law if the date for lodgment occurs after commencement.
- (2) A public company that lodges an annual return under section 335 of the old Law:
 - (a) before commencement; and
 - (b) within the 6 months before the first 31 January after commencement;does not have to lodge the annual return that it would otherwise have had to lodge by that 31 January.

1437 Deregistration—previous Law continues to apply to deregistrations initiated before commencement

If, before commencement, a person has started a procedure under Division 8 of Part 5.6 (including section 574A) to have a company deregistered, the old Law continues to apply in relation to the procedure.

1438 Deregistration—property vested in ASC under previous laws

- (1) If property vested in the ASC before commencement under Division 8 of Part 5.6, the ASC may deal with the property under Chapter 5A as if the property were vested in it under section 601AD.
- (2) If:
 - (a) property was vested in the ASC under section 254 of the ASC Law; and
 - (b) the property was previously vested in the NCSC:
 - (i) because of the previous law of this jurisdiction corresponding to section 576 of the old Law; and
 - (ii) not under section 43 of the *National Companies and Securities Commission Act 1979*;the ASC may deal with the property under Chapter 5A as if it were vested in it under section 601AD.

- (3) If property vested, or vests, in the ASC under section 601, the ASC may deal with the property under Chapter 5A as if the property were vested in it under section 601AD.
- (4) This section has effect despite section 601.

1439 Deregistration—reinstatement of registration where application under section 571 or subsection 574(3) made before commencement

An application made under section 571 or subsection 574(3) of the old Law that has not been determined by commencement has effect after commencement as if it were an application for an order for reinstatement of the registration of the company under section 601AH of the new Law.

1440 Deregistration—deregistration of companies dissolved under the State Bank (Corporatisation) Act 1994 of South Australia

ASC to deregister company on notice from South Australian Minister

- (1) The ASC must deregister a company if the Minister of the Crown of South Australia responsible for the administration of the *State Bank (Corporatisation) Act 1994* of South Australia notifies the ASC in writing that a company has been dissolved under section 23 of that Act.

ASC to give notice of deregistration

- (2) The ASC must give notice of the deregistration on the ASC database and in the *Gazette*.

Law applies as if deregistration were under section 601AB

- (3) Subject to subsection (4), this Law (other than section 601AB) applies to the deregistration of the company as if the deregistration were under section 601AB.
- (4) Subsection 601AD(2) only applies to property of the company to the extent (if any) that the property is not vested in the State Bank

of South Australia under subsection 23(2) of the *State Bank (Corporatisation) Act 1994* of South Australia.

1441 Accounting standards made under section 32 of the Corporations Act 1989

An accounting standard that is in force under section 32 of the Corporations Act 1989 immediately before the commencement of item 7 of Schedule 4 to the *Company Law Review Act 1998* continues in force after that commencement as if it were made under section 334 of this Law.

1442 References in State laws and other documents

- (1) A reference in any law of the Commonwealth or of a State or Territory, or in any document, to a provision of the old Law is to be read after commencement as a reference to the corresponding provision of the new Law except so far as the contrary intention appears in the law or document.
- (2) Without limiting subsection (1), the following table sets out provisions of the old Law that correspond to particular provisions of the new Law:

	Old Law provision	New Law provision
1	subsection 195(13)	section 258B
2	Division 3 Part 2.4	Part 2F.2
3	section 208	section 1096A
4	section 213	section 1091C
5	Part 2.5	Chapter 2C
6	Part 3.2	Chapter 2D
7	Part 3.2A	Chapter 2E
8	Part 3.4	Part 2F.1
9	section 260	section 246AA
10	Part 3.5	Chapter 2K
11	Part 3.6	Chapter 2M
12	Part 3.7	Chapter 2M
13	Part 4.1	Part 5B.2
14	Part 9.11	Part 11.2

Schedule 2—Consequential amendment of the Corporations Law

Part 1—Registering a company (new Chapter 2A) Basic features of a company (new Chapter 2B) Members’ rights and remedies (new Chapter 2F)

1 Section 9 (definition of abbreviation)

Repeal the definition.

2 Section 9

Insert:

ACN (short for “Australian Company Number”) is the number given by the ASC to a company on registration (see sections 118 and 601BD).

3 Section 9

Insert:

ARBN (short for “Australian Registered Body Number”) is the number given by the ASC to a registrable body on registration under Part 5B.2.

4 Section 9 (definition of articles)

Repeal the definition.

5 Section 9 (definition of available)

Repeal the definition.

6 Section 9 (definition of company)

Omit “incorporated” (first and second occurring), substitute “registered”.

7 Section 9 (paragraph (a) of the definition of company)

Omit “220”.

8 Section 9 (after paragraph (c) of the definition of company)

Insert:

- (ca) in Part 5B.1 includes an unincorporated registrable body; and

9 Section 9 (definition of company having a share capital)

Repeal the definition.

10 Section 9 (definition of company limited by guarantee)

Omit “by the memorandum”.

11 Section 9 (definition of company limited by shares)

Omit “by the memorandum”.

12 Section 9 (paragraph (a) of the definition of constitution)

Repeal the paragraph, substitute:

- (a) in the case of a company or a recognised company—the constitution referred to in section 136; or

13 Section 9 (paragraph (a) of the definition of contributory)

Repeal the paragraph, substitute:

- (a) in relation to a company (other than a no liability company):
- (i) a person liable as a member or past member to contribute to the property of the company if it is wound up; and
 - (ii) for a company with share capital—a holder of fully paid shares in the company; and
 - (iii) before the final determination of the persons who are contributories because of subparagraphs (i) and (ii)—a person alleged to be such a contributory; and

14 Section 9 (paragraph (c) of the definition of contributory)

Repeal the paragraph.

15 Section 9 (definition of Division 1 company)

Repeal the definition.

16 Section 9 (definition of Division 2 company)

Repeal the definition.

17 Section 9 (definition of Division 2 or 3 company)

Repeal the definition.

18 Section 9 (definition of Division 3 company)

Repeal the definition.

19 Section 9 (definition of Division 4 company)

Repeal the definition.

20 Section 9 (definition of eligible negotiable instrument)

Omit “eligible”.

21 Section 9 (definition of incorporate)

Repeal the definition.

22 Section 9 (definition of incorporated in Australia)

Repeal the definition, substitute:

incorporated in Australia, in relation to a body corporate, includes incorporated by or under a law of the Commonwealth, a State or the Capital Territory.

23 Section 9

Insert:

incorporation:

- (a) of a company or of a recognised company—means the company’s first registration under the Corporations Law of any jurisdiction; and
- (b) of any other incorporated body—means the body’s incorporation by or under a law (other than this law or a corresponding previous law).

24 Section 9 (definition of limited company)

Repeal the definition, substitute:

limited company means a company limited by shares or a company limited by guarantee but does not include a no liability company.

25 Section 9 (at the end of the definition of member)

Add:

; or (c) in relation to a company registered under the Corporations Law of any jurisdiction—a person who is a member under section 246A.

26 Section 9 (definition of memorandum)

Repeal the definition.

27 Section 9 (definition of mining company)

Repeal the definition.

28 Section 9 (definition of no liability company)

Repeal the definition, substitute:

no liability company means a company that is registered as, or converts to, a no liability company under this Law.

Note 1: A no liability company can be registered under section 118, 601BD or 1362B. A company can convert to a no liability company under Part 2B.7.

Note 2: A no liability company must have solely mining purposes and have no contractual right to recover unpaid calls (see subsection 112(2)).

29 Section 9 (definition of non-company)

Repeal the definition.

30 Section 9 (definition of open)

Repeal the definition.

31 Section 9 (definition of paid up)

Repeal the definition.

32 Section 9 (paragraph (c) of the definition of public company)

Repeal the paragraph, substitute:

(c) in Chapter 2E and section 1376 does not include a company that does not have “Limited” in its name because of section 150 or 151.

33 Section 9 (definition of register)

Repeal the definition, substitute:

register means register under this Law.

34 Section 9 (definition of registration application)

Repeal the definition.

35 Section 9 (definition of registration day)

Repeal the definition.

36 Section 9 (definition of registration number)

Repeal the definition.

37 Section 9 (definition of reserve)

Repeal the definition.

38 Section 9 (definition of sign)

Repeal the definition.

39 Section 9

Insert:

standard opening hours means 10 am to 12 noon and 2 pm to 4 pm each business day.

40 Section 9 (definition of Table A)

Repeal the definition.

41 Section 9 (definition of Table A proprietary company)

Repeal the definition.

42 Section 9 (definition of Table B)

Repeal the definition.

43 Section 9 (definition of unlimited company)

Repeal the definition, substitute:

unlimited company means a company whose members have no limit placed on their liability.

44 Subsection 45A(1)

Repeal the subsection, substitute:

(1) A proprietary company is a company that is registered as, or converts to, a proprietary company under this Law.

Note 1: A proprietary company can be registered under section 118, 601BD or 1362B. A company can convert to a proprietary company under Part 2B.7.

Note 2: A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require lodgment of a prospectus under Part 7.12 (except in limited circumstances).

(see section 113).

45 Section 76

Repeal the section.

46 Subsection 88A(1)

Omit “body corporate”, substitute “body”.

47 Subsection 88A(2)

Omit “body corporate”, substitute “body”.

48 Section 95

Repeal the section.

49 Section 99A

Repeal the section.

50 Subsection 100(1)

Omit “requires a notice to be lodged of”, substitute “requires a notice to be lodged of, or information in an application to specify”.

51 Paragraph 100(1)(d)

Omit “notice” (twice occurring), substitute “notice or application”.

52 Subsection 100(2)

Omit “notice”, substitute “notice or application”.

53 Paragraph 103(2)(a)

Repeal the paragraph, substitute:

- (a) a contravention of section 115, 232A, 232B, 243H, 243ZE, 601CA, 601CD or of Chapter 8; or

54 Section 104

Omit “a provision of this Law”, substitute “a provision of this Law other than the replaceable rules”.

55 Section 109X

Repeal the section, substitute:

109X Service of documents

- (1) For the purposes of any law, a document may be served on a company or recognised company by:
 - (a) leaving it at, or posting it to, the company’s registered office; or
 - (b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or
 - (c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator’s office in the most recent notice of that address lodged with the ASC; or
 - (d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with the ASC.
- (2) For the purposes of any law, a document may be served on a director or company secretary (in addition to the methods of service set out in subsection (4)) by leaving it at, or posting it to, the alternative address notified to the ASC under subsection 242(1)

or (3) or section 117 or 601BC. However, this only applies to service on the director or company secretary:

- (a) in their capacity as a director or company secretary; or
 - (b) for the purposes of a proceeding in respect of conduct they engaged in as a director or company secretary.
- (3) Subsections (1) and (2) do not apply to a process, order or document that may be served under section 9 of the *Service and Execution of Process Act 1992*.
- (4) For the purposes of this Law, a document may be served on an individual by:
- (a) delivering it to the person personally; or
 - (b) leaving it at, or posting it to, the residential or business address of the person last known to the person serving the document.
- (5) For the purposes of this Law, a document may be served on a body corporate other than a company, recognised company or registered body by leaving it at, or posting it to, the head office, a registered office or the principal place of business of the body corporate.
- (6) This section does not affect the operation of a law or the power of a court to authorise a document to be served in a different way.
- (7) This section applies to provisions of a law dealing with service whether it uses the expression “serve” or uses any other similar expression such as “give” or “send”.

56 Subsection 216E(1)

Repeal the subsection, substitute:

- (1) A register kept under this Chapter must be kept at:
- (a) the company’s registered office; or
 - (b) the company’s principal place of business in Australia; or
 - (c) a place in Australia (whether of the company or of someone else) where the work involved in maintaining the register is done; or
 - (d) another place in Australia approved by the ASC.

57 Paragraph 216E(2)(a)

Repeal the paragraph, substitute:

- (a) established at a place that is neither the company's registered office nor its principal place of business; or

58 Paragraph 216E(2)(b)

Omit "office", substitute "place".

59 Subsection 216E(2)

Omit "an office at".

60 Paragraph 216J(1)(c)

Repeal the paragraph, substitute:

- (c) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or

61 Section 222

Repeal the section.

62 Section 223

Repeal the section.

63 Paragraphs 224(1)(a) and (b)

Repeal the paragraphs.

64 At the end of subsection 224(1)

Add:

- ; or (i) cannot manage the company because of their mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it.

65 Subsection 224(2)

Repeal the subsection.

66 Subsection 224(7)

Repeal the subsection.

67 Subsection 224A(4)

Omit "articles of association", substitute "constitution".

68 After section 224A

Insert:

224B Single director/shareholder proprietary companies

Section applies to single director/shareholder proprietary companies

- (1) This section applies to a proprietary company while its only director is also its only shareholder.

Appointment of director

- (2) The director may appoint another director by recording the appointment and signing the record.

Powers and duties of director

- (3) The director may exercise all the powers of the company except any powers that this Law or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

Note: For example, the director may issue shares, borrow money and issue debentures.

Negotiable instruments

- (4) The director may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Director's remuneration

- (5) The director is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

224C Company may appoint a director (replaceable rule—see section 135)

A company may appoint a person as a director by resolution passed in general meeting.

224D Directors may appoint other directors (replaceable rule—see section 135)

Appointment by other directors

- (1) The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

Proprietary company—confirmation by meeting within 2 months

- (2) If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

Public company—confirmation by next AGM

- (3) If a person is appointed under this section as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

69 Subsection 225(5)

Omit "articles", substitute "constitution".

70 After section 226

Insert:

226A Powers of directors (replaceable rule—see section 135)

- (1) The business of a company is to be managed by or under the direction of the directors.

- (2) The directors may exercise all the powers of the company except any powers that this Law or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

226B Negotiable instruments (replaceable rule—see section 135)

- (1) Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (2) The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

226C Managing director (replaceable rule—see section 135)

- (1) The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.
- (2) A person ceases to be managing director if they cease to be a director.
- (3) The directors may confer on a managing director any of the powers that the directors can exercise.
- (4) The directors may revoke or vary:
 - (a) an appointment; or
 - (b) any of the powers conferred on the managing director.

226D Delegation to committees (replaceable rule—see section 135)

- (1) The directors may delegate any of their powers to a committee of directors.
- (2) A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the

committee exercising a power in this way is the same as if the directors exercised it.

Note: The delegation must be recorded in the company's minute book (see section 251A).

226E Removal by members—proprietary companies (replaceable rule—see section 135)

A proprietary company:

- (a) may by resolution remove a director from office; and
- (b) may by resolution appoint another person as a director instead.

71 Subsection 227(1)

Omit “articles”, substitute “constitution”.

72 Subsection 227(12)

Omit “articles”, substitute “company’s constitution”.

73 After section 227

Insert:

227A Director may resign by giving written notice to company (replaceable rule—see section 135)

A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

74 Paragraph 228(9)(a)

Omit “articles”, substitute “constitution”.

75 Paragraph 228(9)(a)

Omit “provide”, substitute “provides”.

76 Subsection 228(10)

Omit “articles”, substitute “constitution”.

77 Subsection 228(10)

Omit “provide”, substitute “provides”.

78 Subsection 228(12)

Omit “memorandum or articles”, substitute “constitution”.

79 Subsection 229(3)

Omit “this Part”, substitute “this Chapter”.

80 Subsection 229(8)

Omit “Part”, substitute “Chapter”.

81 Subsection 230(4)

Omit “Part”, substitute “Chapter”.

82 After subsection 231(1)

Insert:

*Director interested in contract with proprietary company
(replaceable rule—see section 135)*

- (1A) If a director of a proprietary company has an interest in a contract or proposed contract with the company (other than as a member) and the director discloses the nature and extent of the interest at a meeting of the directors:
- (a) the director may vote on whether the company enters into the contract; and
 - (b) the contract may be entered into; and
 - (c) the director may vote on matters involving the contract; and
 - (d) if the disclosure is made before the contract is entered into:
 - (i) the director may retain benefits under the contract even though the director has an interest in the contract; and
 - (ii) the company cannot avoid the contract merely because of the existence of the interest.

83 Subsection 231(4)

Omit “articles”, substitute “constitution”.

84 Subsection 231(9)

Omit “articles”, substitute “constitution”.

85 After section 236

Insert:

236A Remuneration of directors (replaceable rule—see section 135)

- (1) The directors of a company are to be paid the remuneration that the company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
- (a) in attending directors' meetings or any meetings of committees of directors; and
 - (b) in attending any general meetings of the company; and
 - (c) in connection with the company's business.

86 Subsection 238(1)

Omit "articles"(twice occurring), substitute "constitution".

87 Subsection 238(2)

Omit "articles" (twice occurring), substitute "constitution".

88 After subsection 240(4)

Insert:

Terms and conditions of office (replaceable rule—see section 135)

- (4A) A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

89 Subsection 240(5)

Omit "and accessible".

90 Subsection 240(7)

Omit "memorandum or articles", substitute "company's constitution".

91 Subsection 240(7A)

Omit “Subject to subsection (7B), subsection (7)”, substitute “Subsection (7)”.

92 Subsection 240(7B)

Repeal the subsection.

93 Subsection 241(1A)

Omit “memorandum, articles”, substitute “constitution”.

94 Section 242

Repeal the section, substitute:

242 Notice of name and address of directors and secretaries to ASC

New directors or secretaries

- (1) A company must lodge with the ASC a notice of the personal details of a director or secretary within 14 days after they are appointed. The notice must be in the prescribed form.

Note: If a person becomes a director under subsection 120(1) there is no appointment and no notice is required under this subsection.

Personal details

- (2) The personal details of a director or secretary are:
- (a) their given and family names; and
 - (b) all of their former given and family names; and
 - (c) their date and place of birth; and
 - (d) their address.

Note: For *address* see section 242AA.

Changes in details

- (3) The company must lodge with the ASC notice of any change in the personal details of a director or secretary within 14 days after the change. The notice must be in the prescribed form.

Notice required if person stops being a director or secretary

- (4) If a person stops being a director or secretary of the company, the company must lodge with the ASC notice of the fact within 14 days. The notice must be in the prescribed form.

242AA Address for officers

Address is normally residential address

- (1) A person's address for the purposes of a notice or application under subsection 143(2), 242(1) or 242(3) or section 117 or 601BC must be their usual residential address unless they are entitled to have an alternative address substituted for their usual residential address under subsection (2).

Entitlement to have alternative address

- (2) The person is entitled to have an alternative address substituted for their usual residential address if:
- (a) their name, but not their residential address, is on an electoral roll under the *Commonwealth Electoral Act 1918* because of section 104 of that Act; or
 - (b) their name is not on an electoral roll under that Act and the ASC determines, in writing, that including their residential address in the notice or application would put at risk their personal safety or the personal safety of members of their family.

This alternative address must be in Australia and be one at which documents can be served on the person. At any particular time, a person is entitled to have only 1 alternative address under this section.

Note: See subsection 109X(2) on the status of the alternative address as an address for service.

- (3) A person who takes advantage of subsection (2) must:
- (a) before or at the same time as the alternative address is first included in a notice or application, lodge with the ASC notice of the person's usual residential address; and
 - (b) lodge with the ASC notice of any change in the person's usual residential address within 14 days after the change.

A notice under this subsection must be in the prescribed form.

- (4) If a court gives a judgment for payment of a sum of money against a person who is taking advantage of subsection (2), the ASC may give details of the person's usual residential address to an officer of the court for the purposes of enforcing the judgment debt.

95 Paragraph 260(5)(a)

Omit “, or a company limited both by shares and by guarantee”.

96 Paragraph 341(h)

Omit “a registration number distinct from the registration number”, substitute “an ARBN distinct from the ARBN or ACN”.

97 Paragraph 341(h)

Omit “under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part”, substitute “as a company or registered body under the Corporations Law of any jurisdiction”.

98 Paragraph 344(j)

Omit “a registration number distinct from the registration number”, substitute “an ARBN distinct from the ARBN or ACN”.

99 Paragraph 344(j)

Omit “under Part 2.2, this Part or a law corresponding to Part 2.2 or to this Part”, substitute “as a company or registered body under the Corporations Law of any jurisdiction”.

100 Section 358

Repeal the section.

101 Paragraph 359(1)(b)

Repeal the paragraph, substitute:

- (b) otherwise—each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm;

102 Paragraph 361(1)(a)

Repeal the paragraph.

103 Subsections 362(1A), (2), (3), (3A), (4), (4A), (5), (6), (7) and (8)

Repeal the subsections.

Note: The heading to section 362 of the Corporations Law is replaced by the heading: “Body’s name etc. must be displayed at office and place of business”.

104 Subsection 411(10)

Omit “, notwithstanding subsection 171(8)”.

105 Subsection 411(11)

Omit “memorandum” (first occurring), substitute “constitution”.

106 Subsection 411(11)

Omit all the words after “been made”.

107 Subsection 418(4)

Repeal the subsection, substitute:

Note: See section 1362CF for appointments made before the introduction of the Corporations Law.

108 Subsection 428(1)

Omit “eligible”.

109 Subsection 428(2)

Omit “eligible”.

110 Subsection 436A(1)

Omit “under its common seal”.

111 Subsection 442F(1)

Omit “164 and 166”, substitute “128 and 129”.

112 Paragraph 442F(1)(b)

Omit “subsection 164(3)”, substitute “section 129”.

113 Subsection 442F(2)

Omit “164 and 166” (twice occurring), substitute “128 and 129”.

114 Subsection 450E(1)

Omit “eligible”.

115 Subsection 450E(2)

Omit “eligible”.

116 Paragraph 461(d)

Repeal the paragraph, substitute:

(d) the company has no members;

117 At the end of paragraphs 462(2)(a), (b), (c) and (d)

Add “or”.

118 After paragraph 462(2)(e)

Insert:

(f) the Commission (in the circumstances set out in subsection (2A)); or

119 After subsection 462(2)

Insert:

(2A) The Commission may apply for an order to wind up a company under paragraph (2)(f) only if:

- (a) the company has no members; and
- (b) the Commission has given the company at least 1 month’s written notice of its intention to apply for the order.

120 Paragraph 477(2)(d)

Omit “the company’s common or official seal”, substitute “a seal of the company”.

121 At the end of section 477

Add:

- (7) This section does not apply to calls on shares in a no liability company.

122 At the end of section 478

Add:

- (5) Paragraph (1)(b) and subsections (1A), (1B), (3) and (4) do not apply to a no liability company.

123 After subsection 483(3)

Insert:

- (3A) Subsection (3) does not apply to a no liability company.

124 Subsection 493(1)

Omit “articles”, substitute “constitution”.

125 Subsection 495(4)

Omit “articles”, substitute “company’s constitution”.

126 Section 501

Omit “articles”, substitute “company’s constitution”.

127 Section 501

Omit “provide”, substitute “provides”.

128 At the end of section 514

Add:

- (2) This Division does not apply to the winding up of a no liability company.

129 Section 516

Omit “sections 518 and 519”, substitute “section 519”.

130 Section 517

Omit “sections 518 and 519”, substitute “section 519”.

131 Section 518

Repeal the section.

132 Section 519

Omit “, 517 and 518”, substitute “and 517”.

133 Section 519

Omit “under paragraph 167(1)(a)”.

134 Section 523

Omit all the words from and including “If the company” to and including “change of status is liable”, substitute “If an unlimited company changes to a limited company under section 164, a past member who was a member at the time of the change is liable”.

135 Section 524

Repeal the section, substitute:

524 Past member of former limited company

If a limited company changes to an unlimited company under section 164, a person who, at the time when the company applied for the change, was a past member and did not again become a member after that time need not contribute more than they would have been liable to contribute if the company had not changed type.

136 Section 530

Repeal the section.

137 Section 541

Omit “eligible”.

138 After subsection 544(1)

Insert:

- (1A) If a liquidator has, or has control of, the money of a company that has no members, the liquidator must pay it to the ASC as soon as practicable for it to be dealt with under Part 9.7.

139 Subsection 544(3)

After “(1)” insert “or (1A)”.

140 Subsection 547(3)

Omit “articles”, substitute “company’s constitution”.

141 At the end of subsection 696(3)

Add “to the public”.

142 Subsection 1017A(1) (paragraph (d) of the definition of exempt recipient)

Repeal the paragraph.

143 Subsection 1047(4)

Omit “articles”, substitute “constitution”.

144 Paragraph 1051(1)(a)

Omit “articles”, substitute “company’s constitution”.

145 Subsection 1064(7)

Omit “under the common or official seal of the corporation”.

146 Paragraphs 1085(1)(b) and (c)

Omit “articles”, substitute “company’s constitution”.

147 Subsection 1087(1)

Repeal the subsection, substitute:

- (1) A certificate issued after the commencement of Schedule 2 to the *Company Law Review Act 1998* specifying shares held by a member of a company must state:
 - (a) the name of the company and its jurisdiction of registration;
and
 - (b) the class of the shares; and
 - (c) the nominal value of the shares and the extent to which the shares are paid up.

148 Section 1088

Repeal the section.

149 Subsection 1091(1)

Omit “articles”, substitute “constitution”.

150 Paragraph 1091(1A)(b)

Omit “incorporation”, substitute “registration”.

151 Subsection 1091(7)

Omit “articles”, substitute “constitution”.

152 Subsection 1110(4)

Omit “memorandum, articles”, substitute “constitution”.

153 Subsection 1111(3)

Omit “memorandum, articles”, substitute “constitution”.

154 At the end of subsection 1274(7)

Add:

; and (c) a certificate by the Commission that, during a period specified in the certificate, a particular company was registered, or taken to be registered, under this Law is to be received as prima facie evidence that, during that period, that company was registered under this Law.

155 After subsection 1274(7)

Insert:

(7A) A certificate issued by the ASC stating that a company has been registered under the Corporations Law of any jurisdiction is conclusive evidence that:

- (a) all requirements of that Law for its registration have been complied with; and
- (b) the company was duly registered as a company under that Law on the date specified in the certificate.

156 At the end of subsections 1300(1) and (2)

Add “to the public”.

157 After subsection 1300(2)

Insert:

- (2A) If a person asks a proprietary company in writing to inspect a particular book of the company that the person has a right to inspect, the company must make it available within 7 days, for inspection by the person at the place where it is required to be kept.

158 Section 1347

Repeal the section.

159 Schedule 1

Repeal the Schedule.

160 Schedule 3

Repeal the items relating to subsection 116(2), sections 170 and 216A, subsection 216C(3), sections 216E, 216F, 216G, 216J, 219, 260, 362 and 369, subsection 383C(8), section 408 and subsection 1308(3). Insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Subsection 113(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both

Subsection 113(3)

Penalty: 5 penalty units.

Section 115

Penalty: 5 penalty units.

Subsection 117(5)

Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Subsection 123(3)

Penalty: 10 penalty units, or imprisonment for 3 months, or both.

Subsection 136(5)

Penalty: 5 penalty units.

Section 139

Penalty: 5 penalty units.

Subsections 142(1) and (2)

Penalty: 5 penalty units.

Subsection 143(1)

Penalty: 5 penalty units.

Section 144

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 145(1) and (3)

Penalty: 5 penalty units.

Section 146

Penalty: 5 penalty units.

Subsections 148(2), (3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 150(2)

Penalty: 5 penalty units.

Subsection 151(2)

Penalty: 5 penalty units.

Subsections 153(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 156

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 157(2)

Penalty: 5 penalty units.

Subsection 158(2)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 162(3)

Penalty: 5 penalty units.

Subsection 163(5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 165(2)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Section 168

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 170(3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 172

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 173

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 174

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 177

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 242(1), (3) and (4)

Penalty: 5 penalty units.

Subsection 242AA(3)

Penalty: 5 penalty units.

Section 246AA

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsection 246B(3)

Penalty: 5 penalty units.

Subsection 246D(6)

Penalty: 5 penalty units.

Subsections 246F(1) and (3)

Penalty: 5 penalty units.

Subsection 246G(1)

Penalty: 5 penalty units.

Section 247C

Penalty: 5 penalty units.

Subsection 601BC(5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 601BH(1) and (2)

Penalty: 5 penalty units.

Subsection 601BJ(3)

Penalty: 5 penalty units.

Subsection 601BK(1)

Penalty: 5 penalty units.

Subsection 601BP(1)

Penalty: 5 penalty units.

Section 601BR

Penalty: 5 penalty units.

Section 601CW

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 601DD

Penalty: 5 penalty units.

Section 601DE

Penalty: 10 penalty units or imprisonment for 3 months, or both

Subsection 601DH(1)

Penalty: 5 penalty units.

Subsection 1300(2A)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Part 2—Meetings (new Chapter 2G)

161 Section 9

Insert:

AGM means an annual general meeting of a company that section 250N requires to be held.

162 Section 9 (definition of annual general meeting)

Repeal the definition.

163 Section 9

Insert:

ASX means Australian Stock Exchange Limited.

164 Section 9

Insert:

extraordinary resolution, in relation to a registered scheme, means a resolution:

- (a) of which notice as set out in paragraph 252J(c) has been given; and
- (b) that has been passed by at least 50% of the total votes that may be cast by members entitled to vote on the resolution (including members who are not present in person or by proxy).

165 Section 9 (definition of resolution)

Repeal the definition, substitute:

resolution, in relation to creditors or contributories, means a resolution passed at a meeting of the creditors or contributories.

166 Section 9 (definition of special resolution)

Repeal the definition, substitute:

special resolution means:

- (a) in relation to a company, a resolution:
 - (i) of which notice as set out in paragraph 249L(c) has been given; and
 - (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or
- (b) in relation to a registered scheme, a resolution:
 - (i) of which notice as set out in paragraph 252J(c) has been given; and

- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

167 Section 9 (definition of statutory meeting)

Repeal the definition.

168 Section 9 (definition of statutory report)

Repeal the definition.

169 After section 52

Insert:

52A Signing

Without affecting the law on agency, if this Law requires that something be signed, it can be signed by an individual using a power of attorney from the person required to sign.

170 Section 53

Omit “paragraph 461(e)”, substitute “paragraph 461(1)(e)”.

171 After section 225

Insert:

225A Alternate directors (replaceable rule—see section 135)

- (1) With the other directors’ approval, a director may appoint an alternate to exercise some or all of the director’s powers for a specified period.
- (2) If the appointing director requests the company to give the alternate notice of directors’ meetings, the company must do so.
- (3) When an alternate exercises the director’s powers, the exercise of the power is just as effective as if the powers were exercised by the director.
- (4) The appointing director may terminate the alternate’s appointment at any time.

- (5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: The ASC must be given notice of the appointment and termination of appointment of an alternate (see section 242).

172 After subsection 227(3)

Insert:

- (3A) Notice of the intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

173 Subsection 228(3A) (note)

Omit “annual general meetings (see subsection 245(2A))”, substitute “an AGM (see subsection 250N(1))”.

174 Subsection 228(7)

Omit “stating the age of that person, being a resolution”.

175 Paragraph 228(7)(a)

Repeal the paragraph, substitute:

- (a) stating that the person is a candidate for election who has attained the age of 72 years and stating the person’s age; and

176 At the end of subsection 228(7)

Add:

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

177 Subparagraph 228(8)(b)(i)

Repeal the subparagraph, substitute:

- (i) stating that the person is a candidate for election who has attained the age of 72 years and stating the person’s age; and

178 At the end of subsection 228(8)

Add:

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

179 After subsection 238(1)

Insert:

(1A) The company must lodge with the ASC a copy of the special resolution required under subsection (1) within 14 days after the resolution is passed.

180 Subsection 243ZB(4)

Omit “authorised under subsection 249(3)”, substitute “appointed under section 250D”.

181 After subsection 329(1)

Insert:

(1A) Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(4)).

182 After subsection 439A(1)

Insert:

Note: For body corporate representatives’ powers at a meeting of the company’s creditors, see section 250D.

183 Paragraph 461(b)

Repeal the paragraph.

184 At the end of section 461

Add:

- (2) A company must lodge a copy of a special resolution referred to in paragraph (1)(a) with the ASC within 14 days after the resolution is passed.

185 Subsection 467(6)

Repeal the subsection.

186 After subsection 506(1A)

Insert:

- (1B) The company must lodge a copy of a special resolution referred to in paragraph (1A)(b) with the ASC within 14 days after the resolution is passed.

187 At the end of section 507

Add:

- (11) The company must lodge a copy of a special resolution referred to in subsection (2) or (5) with the ASC within 14 days after the resolution is passed.

188 After subsection 510(1)

Insert:

- (1A) The company must lodge a copy of a special resolution referred to in paragraph (1)(a) with the ASC within 14 days after the resolution is passed.

189 Section 1038

Repeal the section.

190 Subparagraph 1322(1)(b)(i)

Omit “or at a joint meeting of creditors and members of a corporation”, substitute “, at a joint meeting of creditors and members of a corporation or at a meeting of members of a registered scheme”.

191 After subsection 1322(3)

Insert:

- (3A) If a member does not have a reasonable opportunity to participate in a meeting of members, or part of a meeting of members, held at 2 or more venues, the meeting will only be invalid on that ground if:
- (a) the Court is of the opinion that:
 - (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the Court; and
 - (b) the Court declares the meeting or proceeding (or that part of it) invalid.

192 Schedule 3

Repeal the items relating to sections 245 and 258 and insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Subsections 249E(3) and (4)

Penalty: 5 penalty units.

Section 249K

Penalty: 5 penalty units.

Section 249Z

Penalty: 5 penalty units.

Subsection 250A(5)

Penalty: 5 penalty units.

Subsections 250N(1) and (2)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 250P(3) and (4)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 250S

Penalty: 5 penalty units.

Section 250T

Penalty: 5 penalty units.

Subsections 251A(1) to (5)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 251B(1), (3) and (4)

Penalty: 5 penalty units.

Subsections 252C(3) and (4)

Penalty: 5 penalty units.

Section 252H

Penalty: 5 penalty units.

Section 252X

Penalty: 5 penalty units.

Subsection 252Y(5)

Penalty: 5 penalty units.

Subsections 253M(1), (2) and (3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 253N(1), (3) and (4)

Penalty: 5 penalty units.

Subsections 1423(1) and (2)

Penalty: 5 penalty units.

Part 3—Shares (new Chapter 2H)

Transactions affecting share capital (new Chapter 2J)

193 Section 9 (definition of approving holding company)

Repeal the definition.

194 Section 9

Insert:

domestic corporation means a corporation that is incorporated or formed in Australia or an external Territory.

195 Section 9

Insert:

employee share scheme for a company means a scheme under which shares (or units in shares) in the company or a holding company may be acquired:

- (a) by, or for the benefit of:
 - (i) employees of the company, or of a related body corporate; or
 - (ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; or
- (b) by a corporation all of whose members are:
 - (i) employees of the company, or of a related body corporate; or
 - (ii) directors of the company, or of a related body corporate, who hold a salaried employment or office in the company or in a related body corporate.

196 Section 9 (definition of employee share scheme buy-back)

Repeal the definition, substitute:

employee share scheme buy-back means a buy-back under a scheme that:

- (a) has as its purpose the acquisition of shares in a company by, or on behalf of:
 - (i) employees of the company, or of a related body corporate; or
 - (ii) directors of the company, or a related body corporate, who hold a salaried employment or office in the company or in a related body corporate; and
- (b) has been approved by the company in general meeting.

197 Section 9 (definition of equal access scheme)

Omit “206C”, substitute “257B”.

198 Section 9

Insert:

fully paid share means a share on which no amount remains unpaid.

199 Section 9 (definition of marketable parcel)

Repeal the definition.

200 Section 9

Insert:

minimum holding buy-back means a buy-back of all of a holder's shares in a listed corporation if the shares are less than a marketable parcel within the meaning of the rules of the relevant securities exchange.

201 Section 9 (definition of odd-lot buy-back)

Repeal the definition.

202 Section 9 (definition of on-market buy-back)

Repeal the definition, substitute:

on-market buy-back has the meaning given by subsections 257B(6) to (8).

203 Section 9 (definition of participating employee)

Repeal the definition.

204 Section 9

Insert:

providing finance means

- (a) lending money; or
- (b) giving guarantees or security for loans made by someone else; or
- (c) drawing, accepting, indorsing, negotiating or discounting a bill of exchange, cheque, payment order or promissory note so that someone can obtain funds.

205 Section 9 (paragraph (a) of the definition of selective buy-back)

Omit "206C", substitute "257B".

206 Section 9 (paragraph (b) of the definition of selective buy-back)

Omit “an odd lot”, substitute “a minimum holding”.

207 Section 42A (note)

Omit “206I(3)”, substitute “257H(3)”.

208 Paragraph 216B(3)(f)

Repeal the paragraph, substitute:

(f) the amount unpaid on the shares (if any).

209 Subsection 216B(3) (note 1)

Omit “213”, substitute “1091C”.

210 Subsection 216B(4)

Repeal the subsection, substitute:

(4) The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:

- (a) all of the company’s shares were issued before Schedule 2 of the *Company Law Review Act 1997* commenced; and
- (b) the register continues to show the par values of the shares as they were immediately before that commencement.

211 Subsection 216B(5)

Omit “or stock”.

212 Subsection 216B(5) (note)

Omit “208”, substitute “1096A”.

213 Subsection 216B(5) (note)

Omit “208(9)”, substitute “1096A(9)”.

214 Subsection 216B(6)

Omit “208”, substitute “1096A”.

215 Paragraph 239(b)

Repeal the paragraph, substitute:

- (b) members who hold shares carrying at least 5% of the votes attached to voting shares in the company;

216 Paragraphs 262(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) a charge on uncalled share capital;
- (c) a charge on a call on shares made but not paid;

217 Subparagraph 411(4)(a)(ii)

Repeal the subparagraph, substitute:

- (ii) in the case of a compromise or arrangement between a body and its members or a class of members—a resolution in favour of the compromise or arrangement is:
 - (A) passed by a majority in number of the members, or members in that class, present and voting (either in person or by proxy); and
 - (B) if the body has a share capital—passed by 75% of the votes cast on the resolution; and

218 Subsection 414(2)

Omit “the holders of at least nine-tenths in nominal value of the shares included in that class of shares”, substitute “members holding shares in that class carrying at least 90% of the votes attached to shares in that class”.

219 Subsection 414(5)

Repeal the subsection, substitute:

- (5) Despite subsections (3) and (4), if the number of votes attached to the excluded shares is more than 10% of the votes attached to the excluded shares and the shares (other than excluded shares) to be transferred under the scheme or contract, those subsections do not apply unless:
 - (a) the transferee offers the same terms to all holders of the shares (other than excluded shares) to be transferred under the scheme or contract; and
 - (b) the holders who approve the scheme or contract hold shares to which are attached at least 90% of the votes attached to the

shares (other than excluded shares) to be transferred under the scheme or contract and are also at least 75% in number of the holders of those shares.

220 Subsection 414(9)

Omit “comprise or include nine-tenths in nominal value of the shares”, substitute “have attached to them at least 90% of the votes attached to the shares”.

221 Paragraph 420(2)(s)

Repeal the paragraph, substitute:

- (s) if the receiver was appointed under an instrument that created a charge on uncalled share capital of the corporation:
 - (i) to make a call in the name of the corporation for the payment of money unpaid on the corporation’s shares; or
 - (ii) on giving a proper indemnity to a liquidator of the corporation—to make a call in the liquidator’s name for the payment of money unpaid on the corporation’s shares;

222 Subsection 588G(1A)

Repeal the subsection, substitute:

- (1A) For the purposes of this section, if a company takes action set out in column 2 of the following table, it incurs a debt at the time set out in column 3.

When debts are incurred		[operative table]
Action of company	When debt is incurred	
1 paying a dividend	when the dividend is paid or, if the company has a constitution that provides for the declaration of dividends, when the dividend is declared	

When debts are incurred		[operative table]
Action of company	When debt is incurred	
2	making a reduction of share capital to which Division 1 of Part 2J.1 applies (other than a reduction that consists only of the cancellation of a share or shares for no consideration)	when the reduction takes effect
3	buying back shares (even if the consideration is not a sum certain in money)	when the buy-back agreement is entered into
4	redeeming redeemable preference shares that are redeemable at its option	when the company exercises the option
5	issuing redeemable preference shares that are redeemable otherwise than at its option	when the shares are issued
6	financially assisting a person to acquire shares (or units of shares) in itself or a holding company	when the agreement to provide the assistance is entered into or, if there is no agreement, when the assistance is provided

223 Section 603 (paragraph (a) of the definition of prescribed occurrence)

Repeal the paragraph, substitute:

- (a) the company converting all or any of its shares into a larger or smaller number of shares (see section 254H);

224 Paragraph 636(1)(b)

Omit “(whether by way of capital or premium)”.

225 Paragraph 636(1)(b)

Omit “paid up”, substitute “unpaid”.

226 At the end of subsection 732(1)

Add:

- ; or (f) a company reduces its share capital, or proposes to reduce its share capital, in a way that is unreasonable having regard to

its effect on the control of that company or another company;
or

- (g) a company acquires, or proposes to acquire, a relevant interest in at least 5% of its voting shares and the acquisition is unreasonable having regard to its effect on the control of that company or another company.

227 Subparagraph 740(5)(b)(iii)

Repeal the subparagraph, substitute:

- (iii) members who together hold shares carrying at least 10% of the votes attached to voting shares in the body corporate or in a related body corporate;

228 Subsection 954A(1) (subparagraph (b)(ii) of the definition of security benefit)

Omit “reduction of share capital”, substitute “reduction in share capital”.

229 Subsection 1024E(7)

Omit “If the securities are shares, their cancellation is not a reduction of share capital within the meaning of this Law.”.

230 Subsections 1035(3)

Repeal the subsection, substitute:

- (3) In working out for the purposes of subsection (1) whether the minimum subscription has been subscribed for an allotment of shares, ignore any amounts payable otherwise than in cash.

231 Subsection 1035(4)

Repeal the subsection

232 Subsection 1037(1)

Omit “allotment”, substitute “issue”.

Note: The heading to section 1037 of the Corporations Law is altered by omitting “Allotment” and substituting “Issue”.

233 Subsection 1037(2)

Repeal the subsection, substitute:

- (2) An option referred to in subsection (1)—is exercisable by written notice given to the company within 1 month after the date of the issue.

234 After section 1091

Insert:

1091AA Transmission of shares on death (replaceable rule—see section 135)

If shares not held jointly

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:
- (a) the personal representative may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
 - (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.
- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.
- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased

shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

1091AB Transmission of shares on bankruptcy (replaceable rule—see section 135)

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
 - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the company, transfer the shares to another person.
- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.
- (3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (4) This section has effect subject to the *Bankruptcy Act 1966*.

235 After section 1091A

Insert:

1091B Transmission of shares on mental incapacity (replaceable rule—see section 135)

- (1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
 - (a) the person may:
 - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
 - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and

- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.
- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.
- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

236 After section 1091C

Insert:

1091D Registration of transfers (replaceable rule—see section 135)

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- (2) The directors are not required to register a transfer of shares in the company unless:
 - (a) the transfer and any share certificate have been lodged at the company's registered office; and
 - (b) any fee payable on registration of the transfer has been paid; and
 - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- (3) The directors may refuse to register a transfer of shares in the company if:
 - (a) the shares are not fully-paid; or
 - (b) the company has a lien on the shares.
- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

1091E Additional general discretion for directors of proprietary companies to refuse to register transfers (replaceable rule—see section 135)

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

237 Subsection 1308(1)

Repeal the subsection, substitute:

- (1) A corporation must not advertise or publish:
 - (a) a statement of the amount of its capital that is misleading; or
 - (b) a statement in which the total of all amounts paid and unpaid on shares in the company is stated but the amount of paid up capital or the amount of any charge on uncalled capital is not stated.

238 Section 1317DA

Before “Section 588G”, insert:

Subsection 254L(2);
Subsection 256F(3);
Subsection 259F(2);
Subsection 260D(2);

239 Before subsection 1322(4)

Insert:

- (3B) If voting rights are exercised in contravention of subsection 259D(3) (company controlling entity that holds shares in it), the meeting or the resolution on which the voting rights were exercised will only be invalid on that ground if:
 - (a) the court is of the opinion that:
 - (i) a substantial injustice has been caused or may be caused; and
 - (ii) the injustice cannot be remedied by any order of the court; and
 - (b) the court declares the meeting or resolution invalid.

240 Subsection 1324(1A)

Repeal the subsection, substitute:

(1A) For the purposes of subsection (1):

- (a) a contravention of this Law affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and
- (b) a company's contravention of:
 - (i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or
 - (ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors);affects the interests of a creditor or member of the company.

This subsection does not limit subsection (1) in any way.

(1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:

- (a) a contravention of section 257A or paragraph 260A(1)(a); or
- (b) a contravention of a provision of this Law involving the insolvency of the company because of:
 - (i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or
 - (ii) the company buying back its shares; or
 - (iii) the company giving financial assistance to which Part 2J.3 applies;

the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

241 Schedule 3

Repeal the items relating to sections 190, 195, 201, 203, 205, 206 and 208 and insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Subsection 254H(4)

Penalty: 5 penalty units.

Subsection 254Q(13)

Penalty: 5 penalty units.

Subsection 254N(2)

Penalty: 5 penalty units.

Section 254T

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsections 254X(1) and (2)

Penalty: 5 penalty units.

Section 254Y

Penalty: 5 penalty units.

Subsection 256C(7)

Penalty: 100 penalty units or imprisonment for 2 years, or both.

Subsection 259B(6)

Penalty: 5 penalty units.

Subsection 259D(4)

Penalty: 5 penalty units.

Subsection 308(1)

Penalty: 50 penalty units or imprisonment for 1 year, or both.

Subsections 1096A(1), (3), (4), (5) and (6)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 1431(6)

Penalty: 5 penalty units.

Section 1432

Penalty: 5 penalty units.

Part 4—Financial reports and audit (new Chapter 2M)

242 Section 9

Insert:

AASB means the Australian Accounting Standards Board.

243 Section 9 (definition of accounting period)

Repeal the definition.

244 Section 9 (definition of accounting records)

Repeal the definition.

245 Section 9 (definition of accounting standard)

Omit “except in section 288,”.

246 Section 9 (paragraph (a) of the definition of accounting standard)

Omit all the words from and including “section 32” to and including “jurisdiction”, substitute “section 334”.

247 Section 9 (definition of accounts)

Repeal the definition.

248 Section 9 (definition of administration)

Omit “, or an entity within the meaning of Parts 3.6 and 3.7”.

249 Section 9 (definition of administrator)

Omit “, or an entity within the meaning of Parts 3.6 and 3.7,”.

250 Section 9 (definition of administrator)

Omit “or entity”.

251 Section 9 (definition of applicable accounting standard)

Repeal the definition.

252 Section 9 (definition of audited or reviewed in accordance with this Law)

Repeal the definition.

253 Section 9 (paragraph (a) of the definition of Board)

Repeal the paragraph.

254 Section 9 (paragraph (c) of the definition of books)

Omit “accounts or accounting records”, substitute “financial reports or financial records”.

255 Section 9 (definition of chief entity)

Repeal the definition.

256 Section 9 (subparagraph (b)(ii) of the definition of commencement)

Omit “Parts 3.6 and 3.7”, substitute “Chapter 2M”.

257 Section 9 (definition of commodity)

Omit “, except in Part 4.4,”.

258 Section 9 (definition of consolidated accounts)

Repeal the definition.

259 Section 9

Insert:

consolidated entity means a company, registered managed investment scheme or disclosing entity together with all the entities it is required by the accounting standards to include in consolidated financial statements.

260 Section 9 (definition of control)

Repeal the definition, substitute:

control of an entity:

- (a) when used in Chapter 2E—has the meaning given by section 243E; and
- (b) when used in Chapter 2M—means control of the entity within the meaning of the accounting standards made for the purposes of paragraph 295(2)(d).

261 Section 9 (definition of deadline)

Repeal the definition.

262 Section 9 (definition of dormant)

Repeal the definition.

263 Section 9 (definition of economic entity)

Repeal the definition.

264 Section 9 (paragraph (b) of the definition of entity)

Repeal the paragraph.

265 Section 9 (definition of executive officer)

Repeal the definition, substitute:

executive officer of a body corporate means a person who is concerned in, or takes part in, the management of the body (regardless of the person's designation and whether or not the person is a director of the body).

266 Section 9

Insert:

financial records includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are made up; and
 - (ii) adjustments to be made in preparing financial statements.

267 Section 9

Insert:

financial statements means annual financial statements under section 295 or half-year statements under section 303.

268 Section 9 (definition of financial year)

Omit "70A", substitute "323D".

269 Section 9 (definition of half-year)

Omit "50A(5)", substitute "323D(5)".

270 Section 9 (definition of holding company)

Repeal the definition, substitute:

holding company, in relation to a body corporate, means a body corporate of which the first body corporate is a subsidiary.

271 Section 9 (definition of parent entity)

Repeal the definition, substitute:

parent entity has the meaning given by subsection 243D(1).

272 Section 9 (definition of profit and loss account)

Repeal the definition.

273 Section 9 (definition of profit or loss)

Repeal the definition.

274 Section 9 (definition of reporting entity)

Repeal the definition.

275 Subsection 45A(2) (note)

Omit “section 283C”, substitute “subsection 292(2)”.

276 Subsection 45A(4)

Repeal the subsection, substitute:

When a company controls an entity

- (4) For the purposes of this section, the question whether a proprietary company controls an entity is to be decided in accordance with the accounting standards made for the purposes of paragraph 295(2)(d) (even if the standards do not otherwise apply to the company).

277 Section 50A

Repeal the section.

278 Sections 53AAA, 58C and 62

Repeal the sections.

279 Section 64A

Omit “Parts 3.2A, 3.6 and 3.7”, substitute “Chapter 2E”.

280 Section 70A

Repeal the section.

281 Paragraph 82A(1)(b) and subsection 82A(2)

Omit “within the meaning of Parts 3.6 and 3.7”.

282 Paragraph 83(2)(c)

Omit “subsection 317A(1)”, substitute “section 319”.

283 Section 111AO

Repeal the section, substitute:

111AO Accounting requirements

A disclosing entity has to prepare financial statements and reports for half-years as well as full financial years. These requirements are set out in Chapter 2M.

284 Paragraphs 111AR(1)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) Chapter 2M as it applies to disclosing entities;

285 Section 111AX

Omit “313”, substitute “340, 341”.

286 Subsections 111AZA(1) and 111AZD(1)

Omit “, or an entity within the meaning of Part 3.6,” substitute “or entity”.

287 Paragraph 243E(a)

Omit “statements”, substitute “reports”.

288 Subsection 324(3)

Repeal the subsection, substitute:

- (3) For the purposes of paragraphs (1)(e) and (2)(f), disregard a debt owed by a natural person to a body corporate or entity if:
 - (a) the body corporate or entity is:

- (i) an Australian bank; or
- (ii) a body corporate registered under the *Life Insurance Act 1995*; and
- (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
- (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

289 Subsection 324(12)

Omit “accounts”, substitute “financial reports”.

290 Subsection 324(13)

Omit “accounts and consolidated accounts”, substitute “financial reports”.

291 Section 325

Repeal the section, substitute:

325 Appointment of auditor by proprietary company

The directors of a proprietary company may appoint an auditor for the company if an auditor has not been appointed by the company in general meeting.

292 Before subsection 327(1)

Insert:

- (1A) Only subsections (6) to (10) of this section apply to a proprietary company.

293 Paragraph 327(5)(a)

Omit “or” (last occurring).

294 Paragraph 327(5)(b)

Repeal the paragraph.

295 Paragraph 327(12)(b)

Repeal the paragraph.

296 Subsection 349(1)

After “up to the end of its last financial year,”, insert “a copy of its cash flow statement for its last financial year”.

297 Subsection 349(1)

Omit “account”, substitute “statement”.

298 Subsection 349(2)

Omit “account”, substitute “statement, cash flow statement”.

299 Subsection 349(3)

After “balance sheet,”, insert “cash flow statement,”.

300 Subsection 349(3)

Omit “account” (wherever occurring), substitute “statement”.

301 After paragraph 349(3)(b)

Insert:

- (ba) require the company to lodge a cash flow statement;
- (bb) require the company to lodge an audited cash flow statement;

302 After subsection 349(5)

Insert:

- (5A) If a registered foreign company is not required by the law of the place of its incorporation or formation to prepare a cash flow statement, the company must prepare and lodge a cash flow statement, or, if the Commission so requires, an audited cash flow statement, within the period, in the form, containing the particulars and including the documents that the company would have been required to prepare if the company were a public company registered under this Law.

303 Subsection 349(6)

Omit “account” (wherever occurring), substitute “statement”.

304 Paragraph 421(1)(d)

Omit “accounting”, substitute “financial”.

Note: The heading to section 421 of the Corporations Law is altered by omitting “accounting” and substituting “financial”.

305 Subsection 448C(2)

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(a), disregard a debt owed by a natural person to a body corporate if:
 - (a) the body corporate is:
 - (i) an Australian bank; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

306 Subsection 532(3)

Repeal the subsection, substitute:

- (3) For the purposes of paragraph (2)(a), disregard a debt owed by a natural person to a body corporate if:
 - (a) the body corporate is:
 - (i) an Australian bank; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

307 Paragraph 556(1)(dc)

Omit “Part 3.7”, substitute “Part 2M.4”.

308 Subsection 588E(4)

Repeal the subsection, substitute:

- (4) Subject to subsections (5) to (7), if it is proved that the company:
- (a) has failed to keep financial records in relation to a period as required by subsection 286(1); or
 - (b) has failed to retain financial records in relation to a period for the 7 years required by subsection 286(2);
- the company is to be presumed to have been insolvent throughout the period.

309 Subsection 588E(5)

Omit “289(1)”, substitute “286(1)”.

310 Subsection 588E(6)

Omit “289(2)”, substitute “286(2)”.

311 Subsection 588E(6)

Omit “accounting” (wherever occurring), substitute “financial”.

312 Section 591

Repeal the section.

313 Subsection 702(10)

Omit “accounting”, substitute “financial”.

314 Section 750 (clause 12 of Part B)

Omit “the company in general meeting or sent to shareholders in accordance with section 315”, substitute “the AGM of the company under section 317 or sent to members under section 314”.

315 Section 750 (clause 11 of Part D)

Omit “the company in general meeting or sent to shareholders in accordance with section 315”, substitute “the AGM of the company under section 317 or sent to members under section 314”.

316 Paragraph 792(1)(a)

Omit “account”, substitute “statement”.

317 Heading to Part 7.5

Repeal the heading, substitute:

Part 7.5—Dealers’ financial statements and audit

318 Subsection 855(2)

Omit “Parts 3.6 and 3.7”, substitute “Chapter 2M”.

319 Paragraph 856(2)(a)

Omit “accounting”, substitute “financial”.

Note: The heading to section 856 of the Corporations Law is altered by omitting “accounting” and substituting “financial”.

320 Subsections 856(3) and (4)

Omit “accounts”, substitute “statements”.

321 Subsection 856(12)

Omit “accounting”, substitute “financial”.

322 Paragraph 856(14)(a)

Omit “accounts”, substitute “statements”.

323 Subsection 857(1)

Omit “accounts”, substitute “financial statements”.

324 Subsection 857(4)

Repeal the subsection, substitute:

(4) For the purposes of paragraphs (2)(b) and (3)(c), disregard a debt owed by a natural person to a body corporate if:

(a) the body corporate is:

(i) an Australian bank; or

(ii) a body corporate registered under the *Life Insurance Act 1995*; and

(b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and

- (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

325 Subsection 860(2)

Omit “account”, substitute “statement”.

326 Paragraph 1022AA(4)(a)

Omit “statements”, substitute “report”.

327 Paragraph 1022AA(4)(b)

Omit “statements” (wherever occurring), substitute “report”.

328 Subparagraph 1022AA(1)(c)(ii)

Add at the end “; and”.

329 Subparagraph 1022AA(1)(c)(iii)

Repeal the subparagraph.

330 Paragraphs 1022AA(8)(a) and (b)

Repeal the paragraphs, substitute:

- (a) the provisions of Chapter 2M;

331 Paragraph 1054(3)(b)

Omit “accounting” (wherever occurring), substitute “financial”.

332 Subparagraph 1054(3)(c)(i)

Omit “accounts and balance sheet”, substitute “financial statements”.

333 Paragraph 1054(4)(b)

Omit “accounting” (wherever occurring), substitute “financial”.

334 Subsection 1058(5)

Omit “account” (wherever occurring), substitute “statement”.

335 Subsection 1058(6)

Omit “accounts”, (wherever occurring), substitute “financial statements”.

336 Subsections 1058(14) and (15)

Repeal the subsections, substitute:

- (14) The provisions of Chapter 2M (other than subsections 300(4) to (13)) apply, with any necessary modifications, to every profit and loss statement and balance sheet made out and lodged under subsection (6) of this section by directors of the borrowing corporation as if:
 - (a) the profit and loss statement and balance sheet were a profit and loss statement and balance sheet referred to in those provisions; and
 - (b) references in those provisions to consolidated financial statements were references to the consolidated financial statements referred to in subsection (6) of this section.
- (15) The provisions of Chapter 2M (other than subsections 300(4) to (13) and except so far as they relate to consolidated financial statements) apply, with any necessary modifications, to every profit and loss statement and balance sheet made out and lodged under subsection (5) of this section by the directors of a relevant guarantor body as if the profit and loss statement and balance sheet were a profit and loss statement and balance sheet referred to in those provisions.

337 Subsection 1058(16)

Omit “account” (wherever occurring), substitute “statement”.

338 Paragraph 1058(17)(b)

Omit “317A(2)”, substitute “318(1) or (4)”.

339 Subsection 1058(20)

Omit “accounts”, substitute “statements”.

340 Subsection 1058(20)

Omit “account”, substitute “statement”.

341 Subsection 1058(21)

Omit “account” (wherever occurring), substitute “statement”.

342 Subsection 1116(1)

Omit “accounting”, substitute “financial record”.

343 Paragraph 1116(2)(a)

Omit “an accounting”, substitute “a financial”.

344 Paragraph 1116(2)(b)

Repeal the paragraph, substitute:

(b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.

345 Subparagraphs 1126(2)(c)(viii) and 1132(2)(d)(viii)

Omit “accounting”, substitute “financial”.

346 Paragraph 1158(1)(a)

Omit “account”, substitute “statement”.

347 Subsections 1209(11) and (13)

Omit “accounting” (wherever occurring), substitute “financial”.

348 Heading to Part 8.5

Repeal the heading, substitute:

Part 8.5—Financial statements and audit

349 Subsection 1212(2)

Omit “Parts 3.6 and 3.7”, substitute “Chapter 2M”.

350 Subsection 1213(1)

Omit “accounting” (wherever occurring), substitute “financial”.

351 Subsection 1213(1)

Omit “accounts” (wherever occurring), substitute “statements”.

352 Subsection 1213(5)

Omit “accounting”, substitute “financial”.

353 Subsection 1213(8)

Omit “accounting”, substitute “financial records”.

354 Subsection 1213(8)

Omit “accounts”, substitute “statements”.

355 Subsection 1213(9)

Omit “accounting”, substitute “financial”.

356 Subsection 1215(1)

Omit “accounts”, substitute “financial statements”.

357 Subsection 1215(4)

Repeal the subsection, substitute:

- (4) For the purposes of paragraphs (2)(e) and (3)(f), disregard a debt owed by a natural person to a body corporate if:
- (a) the body corporate is:
 - (i) an Australian bank; or
 - (ii) a body corporate registered under the *Life Insurance Act 1995*; and
 - (b) the debt arose because of a loan that the body corporate or entity made to the person in the ordinary course of its ordinary business; and
 - (c) the person used the amount of the loan to pay the whole or part of the purchase price of premises that the person uses as their principal place of residence.

358 Subsection 1218(2)

Omit “account”, substitute “statement”.

359 Subsections 1219(1) and (2)

Omit “accounting”, substitute “financial”.

360 Paragraph 1223(a)

Omit “accounts” (wherever occurring), substitute “financial statements”.

361 Subsection 1270(1)

Omit “any accounting”, substitute “a financial”.

362 Paragraph 1270(2)(a)

Omit “an accounting”, substitute “a financial”.

363 Paragraph 1270(2)(b)

Repeal the paragraph, substitute:

(b) in relation to a financial record, the 7 years after the transactions covered by the record are completed.

364 Paragraph 1289(1)(b)

Omit “report of the directors under section 304”, substitute “directors’ report under section 298 or 306”.

365 Paragraph 1289(1)(c)

Repeal the paragraph, substitute:

(c) notifying the ASC of a matter under section 311.

366 Paragraph 1308(7)(c)

Omit “315”, substitute “314”.

367 Paragraphs 1309(1)(b) and (2)(b)

Omit “Parts 3.6 and 3.7”, substitute “Chapter 2M”.

368 Section 1317DA

Omit “318”, substitute “344”.

369 Paragraph 1381(d)

Omit “within the meaning of Parts 3.6 and 3.7”.

370 Schedule 3

Repeal the items relating to sections 289, 315, 317, 333, 408 and 591 and insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Section 286

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 287

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 288

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 289(2)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 294

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 311

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 312

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 313

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 314(1)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 316

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 317

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsections 318(1), (3) and (4)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsections 319(1) and (5)

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 320

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 321

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 322

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Section 323

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Section 323B

Penalty: 25 penalty units or imprisonment for 6 months, or both.

Subsection 323D(3)

Penalty: 10 penalty units or imprisonment for 3 months, or both.

Subsection 1436(2)

Penalty: 5 penalty units.

Part 5—Annual returns and ASC lodgments (new Chapter 2N)

371 Section 9 (definition of annual return)

Repeal the section, substitute:

annual return:

- (a) of a company—means the return that subsection 345(1) requires the company to lodge with the ASC; and
- (b) of a registered managed investment scheme—means the return that subsection 345(2) requires the responsible entity of the scheme to lodge with the ASC.

372 Paragraph 83(2)(b)

Omit “335”, substitute “345”.

373 Section 102

Add at the end:

Note: For electronic lodgment of documents with the ASC, see section 352.

374 Section 1071

Repeal the section.

375 Section 1353

Repeal the section.

376 Section 1355

Repeal the section, substitute:

1355 Doing act without payment of fee

If a fee is payable under section 1351 for a matter involving the doing of an act by the Minister or ASIC, the Minister or ASIC may refuse to do that act until:

- (a) the fee is paid; or
- (b) if a deposit on account of the fee is required under section 1357—the deposit is paid.

377 Schedule 3

Insert each of the following items in their appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Subsections 345(1), (2) and (3)

Penalty: 5 penalty units.

Subsection 346(1)

Penalty: 5 penalty units.

Part 6—Deregistration of companies (new Chapter 5A)

378 Section 9

Insert:

ASC database means so much of the national companies database kept by the ASC as consists of:

- (a) some or all of a register kept by the ASC under this Law; or
 - (b) information set out in a document lodged under this Law;
- but does not include the ASC's document imaging system.

379 Section 9 (definition of body corporate)

After “dissolved”, insert “or deregistered”.

380 Section 9

Insert:

deregistered means:

- (a) in relation to a company—deregistered under Chapter 5A;
and
- (b) in relation to any other body corporate—deregistered in a way that results in the body corporate ceasing to exist.

381 Section 9 (definition of outstanding property)

After “dissolved” (wherever occurring), insert “or deregistered”.

382 Section 9 (subparagraph (a)(iii) of the definition of relevant body)

After “dissolved”, insert “or deregistered”.

383 Subsections 342(13), 350(2) and 350(14)

After “dissolved”, insert “or deregistered”.

384 Paragraph 413(1)(d)

Omit “the dissolution”, substitute “the deregistration by the ASC”.

385 Paragraph 480(d)

Omit “the company be dissolved”, substitute “the ASC deregister the company”.

Note: The heading to section 480 is altered by omitting “**dissolution**” and substituting “**deregistration**”.

386 Subsection 481(5)

Omit “the company be dissolved”, substitute “the ASC deregister the company”.

Note: The heading to section 481 is altered by omitting “**dissolution**” and substituting “**deregistration**”.

387 Subsection 481(6)

Repeal the subsection.

388 Subsection 493(1)

Omit “dissolved”, substitute “deregistered”.

389 Section 504

Omit “dissolution”, substitute “deregistration”.

390 Subsection 507(5)

Omit “dissolved”, substitute “deregistered”.

391 Subsections 509(5) and (6)

Repeal the subsections, substitute:

ASC must deregister at the end of 3 month period

- (5) The ASC must deregister the company at the end of the 3 month period after the return was lodged.

ASC must deregister on a day specified by the Court

- (6) On application by the liquidator or any other interested party, the Court may make an order that the ASC deregister the company on a specified day. The Court must make the order before the end of the 3 month period after the return was lodged.

Note: The heading to section 509 is altered by omitting “**dissolution**” and substituting “**deregistration**”.

392 Subsections 542(2) and (3)

Omit “dissolution”, substitute “deregistration”.

393 Division 8 of Part 5.6

Repeal the Division.

394 Subsection 582(3)

After “dissolved”, insert “, deregistered”.

395 Subparagraph 583(c)(i)

After “dissolved”, insert “or deregistered”.

396 Paragraph 586(1)(b)

After “dissolved”, insert “or deregistered”.

397 Paragraph 586(1)(b)

After “dissolution”, insert “or deregistration”.

398 Subsection 588(1)

After “dissolution”, insert “or deregistration”.

399 Subsections 588(4) and (5)

Repeal the subsections, substitute:

- (4) Section 601AE applies to property that vests in the ASC under this section as if the property were vested in the ASC under subsection 601AD(2).

400 Section 588C

After “dissolution” (wherever occurring), insert “or deregistration”.

401 Subsection 589(3)

Repeal the subsection, substitute:

- (3) For the purposes of this Part, a company is taken to have ceased to carry on business only if:
 - (a) the ASC has published in the *Gazette* a notice of the proposed deregistration of the company under subsection 601AA(4) or 601AB(3); and
 - (b) if the notice was published under subsection 601AA(4) or under subsection 601AB(3) because of a decision under subsection 601AB(1)—2 months have passed since the notice was published and the ASC has not been informed that the company is carrying on business.

402 Subsection 589(5) (paragraph (f) of the definition of relevant day)

Repeal the paragraph, substitute:

- (f) in relation to a company that has ceased to carry on business—a notice was first published in relation to the company under subsection 601AA(4) or 601AB(3);

403 Paragraphs 744(9)(b) and (c)

Repeal the paragraphs, substitute:

; and (b) section 601AE (other than paragraph 601AE(2)(a)) applies in relation to the share or interest as if:

- (i) the share or interest were vested in the ASC under subsection 601AD(2); and
- (ii) a sale, disposal or dealing with the share or interest under paragraph (a) of this subsection were a disposal or dealing under paragraph 601AE(2)(a).

404 Subparagraph 1062(2)(b)(ii)

After “dissolution”, insert “or deregistration”.

405 Paragraph 1274(10)(b)

Repeal the paragraph, substitute:

- (b) in relation to a body corporate that has been dissolved or deregistered for 15 years or more—any document lodged or registered; or

406 Subsection 1274B(1) (definition of national database)

Repeal the definition.

407 Paragraph 1282(9)(c)

Repeal the paragraph, substitute:

- (c) the body corporate is dissolved or deregistered.

408 Paragraphs 1317C(d) and (e)

Omit “Division 8 of Part 5.6”, substitute “Chapter 5A”.

409 Schedule 3

Insert the following item in its appropriate place according to the order that the provision referred to in the item appears in the *Corporations Law*:

Subsection 601AD(5)

Penalty: 5 penalty units.

Schedule 3—Amendment of the Corporations Law to relocate provisions and make other structural changes

1 Subsection 6(4)

Omit “9.11”, substitute “11.2”.

2 Paragraph 8(5)(c)

Repeal the paragraph, substitute:

- (c) neither subsection (2) nor (3) applies to a reference in:
 - (i) this section; or
 - (ii) section 8A, 58, 58A or 58B; or
 - (iii) Division 9, 10 or 11 of this Part; or
 - (iv) Part 1.3; or
 - (v) Chapter 2A (except subsection 113(3)); or
 - (vi) Chapter 2E (except subsection 243L(2)); or
 - (vii) Chapter 2K (except section 273); or
 - (viii) Part 5B.1 or Part 5B.2 (except section 601CX); or
 - (ix) Part 5.7; or
 - (x) Division 2 of Part 7.3; or
 - (xi) section 1039; or
 - (xii) Division 3 or 4 of Part 7.11; or
 - (xiii) Division 5 of Part 7.12; or
 - (xiv) Division 2 of Part 8.3; or
 - (xv) Part 9.10 or 11.1.

3 Section 9 (definition of Australian register)

Omit “351”, substitute “601CM”.

4 Section 9 (definition of child entity)

Omit “Part 3.2A”, substitute “Chapter 2E”.

5 Section 9 (paragraph (b) of the definition of company)

Omit “Part 3.5”, substitute “Chapter 2K”.

6 Section 9 (paragraph (b) of the definition of company)

Omit “Part 4.1”, substitute “Part 5B.2”.

7 Section 9 (paragraph (a) of the definition of entity)

Omit “Part 3.2A”, substitute “Chapter 2E”.

8 Section 9 (definition of exempt foreign company)

Omit “349(8)”, substitute “601CK(8)”.

9 Section 9 (definition of exempt foreign company)

Omit “Division 2 of Part 4.1”, substitute “Division 2 of Part 5B.2”.

10 Section 9 (definition of financial benefit)

Omit “Part 3.2A”, substitute “Chapter 2E”.

11 Section 9 (definition of local agent)

Omit “346(5)”, substitute “601CG(5)”.

12 Section 9 (paragraph (b) of the definition of Part 5.1 body)

Omit “4.1”, substitute “5B.2”.

13 Section 9 (subparagraph (a)(i) of the definition of Part 5.7 body)

Omit “Part 4.1”, substitute “Part 5B.2”.

14 Section 9 (paragraph (b) of the definition of public company)

Omit “Part 3.2A”, substitute “Chapter 2E”.

15 Section 9 (paragraph (a) of the definition of registered Australian body)

Omit “Division 1 of Part 4.1”, substitute “Division 1 of Part 5B.2”.

16 Section 9 (paragraph (b) of the definition of registered Australian body)

Omit “Division 1 of Part 4.1”, substitute “Division 1 of Part 5B.2”.

17 Section 9 (paragraph (a) of the definition of registered body)

Omit “, subsection 358(2) or section 363 or 364”, substitute “or section 601CX or 601CY”.

18 Section 9 (paragraph (b) of the definition of registered body)

Omit “Part 4.1”, substitute “Part 5B.2”.

19 Section 9 (paragraph (a) of the definition of registered foreign company)

Omit “363”, substitute “601CX”.

20 Section 9 (paragraph (a) of the definition of registered foreign company)

Omit “Part 4.1”, substitute “Part 5B.2”.

21 Section 9 (paragraph (b) of the definition of registered foreign company)

Omit “Part 4.1”, substitute “Part 5B.2”.

22 Section 9 (definition of registered office)

Omit “217 or 359”, substitute “142 or 601CT”.

23 Section 9 (definition of related party)

Omit “Part 3.2A”, substitute “Chapter 2E”.

24 Section 9 (definition of sibling entity)

Omit “Part 3.2A”, substitute “Chapter 2E”.

25 Section 53

Omit “260”, substitute “246AA”.

26 Paragraph 83(2)(a)

Omit “section 217”, substitute “subsection 142(1), 145(1) or 145(2)”.

27 Subsection 102A(3)

Omit “341 or 344, subsection 383C(1) or section”, substitute “601CB, 601CE,”.

28 Paragraph 111AH(1)(a)

Omit “216B, 216C, 216D”, substitute “169, 170, 171”.

29 Section 208

Move to Division 2 of Part 7.13 immediately after section 1096 and renumber as section 1096A.

30 Section 213

Move to immediately after section 1091A and renumber as section 1091C.

31 Part 2.5 (heading)

Repeal the heading, substitute:

Chapter 2C—Registers

32 Sections 216A to 216K

Renumber as sections 168 to 178.

The following table sets out how the renumbering affects individual section numbers:

<i>Old</i>	216A	216B	216C	216D	216E	216F	216G	216H	216I
<i>New</i>	168	169	170	171	172	173	174	175	176
<i>Old</i>	216J	216K							
<i>New</i>	177	178							

33 Paragraph 216A(1)(a)

Omit “216B”, substitute “169”.

34 Paragraph 216A(1)(b)

Omit “216C”, substitute “170”.

35 Paragraph 216A(1)(c)

Omit “216D”, substitute “171”.

36 Subsection 216A(2)

Omit “Part”, substitute “Chapter”.

37 Subsection 216D(1) (note)

Omit “216A(2)”, substitute “168(2)”.

38 Subsection 216F(1)

Omit “Part”, substitute “Chapter”.

39 Subsection 216F(2)

Omit “Part”, substitute “Chapter”.

40 Subsection 216F(4)

Omit “216C(3)”, substitute “170(3)”.

41 Section 216G

Omit “Part” (wherever occurring), substitute “Chapter”.

42 Subsection 216H(1)

Omit “Part”, substitute “Chapter”.

43 Section 216I

Omit “Part” (twice occurring), substitute “Chapter”.

44 Paragraph 216J(1)(a)

Omit “Part”, substitute “Chapter”.

45 Paragraph 216K(2)(a)

Omit “216B”, substitute “169”.

46 Chapter 3 (heading)

Repeal the heading.

47 Part 3.2 (heading)

Repeal the heading, substitute:

Chapter 2D—Officers

48 Part 3.2A (heading)

Repeal the heading, substitute:

Chapter 2E—Financial benefits to related parties

49 Division 1 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.1—Object and outline of Part

50 Section 243A

Omit “Part”, substitute “Chapter”.

51 Subsection 243B(1)

Omit “Division 2”, substitute “Part 2E.2”.

52 Subsection 243B(1)

Omit “Part”, substitute “Chapter”.

53 Subsection 243B(2)

Omit “Division 3”, substitute “Part 2E.3”.

54 Subsection 243B(2)

Omit “Part”, substitute “Chapter”.

55 Subsection 243B(3)

Omit “Division 4”, substitute “Part 2E.4”.

56 Subsection 243B(3)

Omit “Part”, substitute “Chapter”.

57 Subsection 243B(4)

Omit “Division 5”, substitute “Part 2E.5”.

58 Subsection 243B(5)

Omit “Division 6”, substitute “Part 2E.6”.

59 Subsection 243B(5)

Omit “Part”, substitute “Chapter”.

60 Division 2 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.2—The meaning of expressions

61 Division 3 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.3—The prohibitions

62 Subsection 243H(1)

Omit “Division 4 or 5”, substitute “Part 2E.4 or 2E.5”.

63 Subsection 243H(2)

Omit “Division 4 or 5”, substitute “Part 2E.4 or 2E.5”.

64 Division 4 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.4—General exceptions

65 Subsection 243L(2)

Omit “this Division”, substitute “this Part”.

66 Subsection 243L(2)

Omit “Division 5”, substitute “Part 2E.5”.

67 Division 5 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.5—Financial benefits approved by general meeting of public company

68 Subdivision A of Division 5 of Part 3.2A (heading)

Repeal the heading, substitute:

Division 1—Exceptions from the prohibitions

69 Paragraph 243Q(c)

Omit “Subdivision B”, substitute “Division 2”.

70 Paragraph 243R(1)(c)

Omit “Subdivision B”, substitute “Division 2”.

71 Subsection 243R(2)

Omit “Division”, substitute “Part”.

72 Section 243S

Omit “Division”, substitute “Part”.

73 Subsection 243T(1)

Omit “Division”, substitute “Part”.

74 Subsection 243T(2)

Omit “this Division” (wherever occurring), substitute “this Part”.

75 Section 243T (example)

Omit “Division 4”, substitute “Part 2E.4”.

76 Subdivision B of Division 5 of Part 3.2A (heading)

Repeal the heading, substitute:

Division 2—Conditions to be satisfied

77 Subsection 243ZD(1)

Omit “Subdivision”, substitute “Division”.

78 Division 6 of Part 3.2A (heading)

Repeal the heading, substitute:

Part 2E.6—Enforcement

79 Subsection 243ZF(1)

Omit “Division 5”, substitute “Part 2E.5”.

Note: The heading to section 243ZF of the Corporations Law is altered by omitting “**Division 5**” and substituting “**Part 2E.5**”.

80 Section 243ZH

Omit “Division 5”, substitute “Part 2E.5”.

81 Paragraph 243ZI(2)(a)

Omit “Part”, substitute “Chapter”.

Note: The heading to section 243ZI of the Corporations Law is altered by omitting “**Part**” and substituting “**Chapter**”.

82 Subsection 243ZI(3)

Omit “Part”, substitute “Chapter”.

83 Subsection 243ZI(4)

Omit “Part” (twice occurring), substitute “Chapter”.

84 Part 3.4 (heading)

Repeal the heading.

85 Section 260

Move to Part 2F.1 and renumber as section 246AA.

86 Part 3.5 (heading)

Repeal the heading, substitute:

Chapter 2K—Charges

87 Division 1 of Part 3.5 (heading)

Repeal the heading, substitute:

Part 2K.1—Preliminary

88 Subsection 261(1)

Omit “In this Part”, substitute “In this Chapter”.

89 Subsection 261(1) (definition of registrable charge)

Omit “Part”, substitute “Chapter”.

90 Subsection 261(2)

Omit “Part”, substitute “Chapter”.

91 Subsection 261(4)

Omit “Part”, substitute “Chapter”.

92 Division 2 of Part 3.5 (heading)

Repeal the heading, substitute:

Part 2K.2—Registration

93 Subsection 262(1)

Omit “Part”, substitute “Chapter”.

94 Subsection 262(2)

Omit “Part”, substitute “Chapter”.

95 Subsection 262(8)

Omit “Part”, substitute “Chapter”.

96 Subsection 262(9)

Omit “Part”, substitute “Chapter”.

97 Subsection 262(10)

Omit “Part”, substitute “Chapter”.

98 Subsection 262(11)

Omit “Division”, substitute “Part”.

99 Subsection 263(3)

Omit “Division 3 of Part 2.2”, substitute “Part 5B.1”.

100 Subsection 263(3)

Omit “Part 4.1”, substitute “Part 5B.2”.

101 Subsection 263(3)

Omit “this Division if the body were a Division 3 company, or a body”, substitute “this Part if the body were already registered under Part 5B.1, or Part 5B.2”.

102 Subsection 265(11)

Omit “Division”, substitute “Part”.

103 Subsection 265(12)

Omit “Division”, substitute “Part”.

104 Subsection 265(13)

Omit “Division”, substitute “Part”.

105 Paragraph 266(1)(e)

Omit “Division 3 of Part 2.2”, substitute “Part 5B.1”.

106 Paragraph 266(1)(e)

Omit “Part 4.1”, substitute “Part 5B.2”.

107 Paragraph 266(2)(b)

Omit “Division 3 of Part 2.2”, substitute “Part 5B.1”.

108 Paragraph 266(2)(b)

Omit “Part 4.1”, substitute “Part 5B.2”.

109 Subsection 266(4)

Omit “Division”, substitute “Part”.

110 Subsection 266(5)

Omit “Division”, substitute “Part”.

111 Subsection 269(1)

Omit “Division”, substitute “Part”.

112 Subsection 270(4)

Omit “Division”, substitute “Part”.

113 Subsection 271(1)

Omit “Division” (twice occurring), substitute “Part”.

114 Subsection 272(1)

Omit “Division”, substitute “Part”.

115 Subsection 272(3)

Omit “Division” (twice occurring), substitute “Part”.

116 Subsection 272(4)

Omit “Division 2 of Part 3.5 of that Law”, substitute “Part 2K.2 of that Law”.

117 Subsection 273(1)

Omit “Division”, substitute “Part”.

118 Paragraph 273(2)(b)

Omit “Division”, substitute “Part”.

119 Paragraph 273(2)(c)

Omit “Division”, substitute “Part”.

120 Paragraph 273(3)(b)

Omit “Division”, substitute “Part”.

121 Paragraph 273(3)(c)

Omit “Division”, substitute “Part”.

122 Subsection 273(4)

Omit “Part”, substitute “Chapter”.

123 Subsection 273(4)

Omit “Division”, substitute “Part”.

124 Subsection 275(1)

Omit “under Division 2 of Part 2.2”, substitute “according to section 1362CB”.

Note: The heading to section 275 of the Corporations Law is altered by omitting “**Division 2 company**” and substituting “**company existing before 1 January 1991**”.

125 Subsection 275(2)

Omit “the company’s registration day, this Part”, substitute “1 January 1991, this Chapter”.

126 Paragraph 275(2)(c)

Omit “Part”, substitute “Chapter”.

127 Paragraph 275(2)(d)

Omit “Part”, substitute “Chapter”.

128 Subsection 275(4)

Omit “the company’s registration day”, substitute “1 January 1991”.

129 Subsection 275(4)

Omit “Division”, substitute “Part”.

130 Subsection 275(5)

Omit “At the commencement of the company’s registration day”, substitute “At the beginning of 1 January 1991”.

131 Subsection 275A(1)

Repeal the subsection, substitute:

- (1) This section applies if a registrable body is taken to have been registered according to section 1362CJ.

Note: The heading to section 275A of the Corporations Law is altered by omitting “**365B**” and substituting “**1362CJ**”.

132 Subsection 275A(2)

Omit “This Part”, substitute “This Chapter”.

133 Paragraph 275A(2)(c)

Omit “Part”, substitute “Chapter”.

134 Paragraph 275A(2)(d)

Omit “Part”, substitute “Chapter”.

135 Subsection 275A(4)

Omit “Division”, substitute “Part”.

136 Section 276

Omit “Where, immediately before a Division 3 company’s registration day”, substitute “If, immediately before the day on which a body corporate was registered as a company under Part 5B.1, or a previous law of this jurisdiction corresponding to a provision of that Part”.

Note: The heading to section 276 of the Corporations Law is altered by omitting “**Division 3 company**” and substituting “**body corporate registered as a company**”.

137 Section 276

Omit “this Division”, (twice occurring), substitute “this Part”.

138 Section 276AA

Omit “Where, immediately before a Division 4 company’s registration day:”, substitute “If, immediately before the day on which a recognised company was registered as a company under section 1362B or a previous law of this jurisdiction corresponding to that section:”.

139 Paragraph 276AA(b)

Omit “Division 2 of Part 3.5 of that Law and was not also registered under this Division”, substitute “Part 2K.2 of that Law and was not also registered under this Part”.

140 Section 276AA

Omit “the charge under Division 2 of Part 3.5”, substitute “the charge under Part 2K.2”.

Note: The heading to section 276AA of the Corporations Law is altered by omitting “**Division 4 company**” and substituting “**company transferring jurisdiction**”.

141 Section 276A

Omit “Part 3.5”, substitute “Chapter 2K”.

142 Section 276A

Omit “purposes of that Part”, substitute “purposes of that Chapter”.

143 Paragraph 276A(a)

Omit “Part”, substitute “Chapter”.

144 Paragraph 276A(b)

Omit “Division 2 of Part 4.1”, substitute “Division 2 of Part 5B.2”.

145 Division 3 of Part 3.5 (heading)

Repeal the heading, substitute:

Part 2K.3—Order of priority

146 Subsection 278(1)

Omit “this Division”, substitute “this Part”.

147 Subsection 278(1)

Omit “Division 2” (wherever occurring), substitute “Part 2K.2”.

148 Subsection 278(2)

Omit “Division”, substitute “Part”.

149 Subsection 278(3)

Omit “Division”, substitute “Part”.

150 Subsection 282(1)

Omit “Division”, substitute “Part”.

151 Subsection 282(2)

Omit “Division”, substitute “Part”.

152 Subsection 282(3)

Omit “Division”, substitute “Part”.

153 Paragraph 282(4)(c)

Omit “Division”, substitute “Part”.

154 Paragraph 282(4)(d)

Omit “Division”, substitute “Part”.

155 Part 3.7 (heading)

Repeal the heading.

156 Division 1 of Part 3.7 (heading)

Repeal the heading, substitute:

Part 2M.4—Auditor

157 Chapter 4 (heading)

Repeal the heading.

158 Part 4.1

- (1) Move to after Part 5B.1.
- (2) Renumber the sections of the Part as sections 601CA-601CY.
The following table shows how the renumbering affects individual section numbers:

<i>Old</i>	340	341	342	343	344	345	346
<i>New</i>	601CA	601CB	601CC	601CD	601CE	601CF	601CG
<i>Old</i>	347	348	349	350	351	353	354
<i>New</i>	601CH	601CI	601CK	601CL	601CM	601CN	601CP
<i>Old</i>	355	356	357	359	360	361	362
<i>New</i>	601CQ	601CR	601CS	601CT	601CU	601CV	601CW
<i>Old</i>	363	364					
<i>New</i>	601CX	601CY					

- (3) Repeal the Part heading, substitute:

Part 5B.2—Registrable bodies

159 Paragraph 341(c)

Omit “242(3)”, substitute “242(2)”.

160 Paragraph 341(d)

Omit “Part 3.5”, substitute “Chapter 2K”.

161 Paragraph 341(f)

Omit “359”, substitute “601CT”.

162 Paragraph 344(e)

Omit “Part 3.5”, substitute “Chapter 2K”.

163 Paragraph 344(g)

Omit “359”, substitute “601CT”.

164 Subsection 345(2)

Omit “346”, substitute “601CG”.

165 Paragraph 346(5)(a)

Omit “347”, substitute “601CH”.

166 Subsection 353(1)

Omit “351”, substitute “601CM”.

Note: The heading to section 353 of the Corporations Law is altered by omitting “351” and substituting “601CM”.

167 Paragraph 354(a)

Omit “351”, substitute “601CM”.

Note: The heading to section 354 of the Corporations Law is altered by omitting “351” and substituting “601CM”.

168 Paragraph 354(c)

Omit “351”, substitute “601CM”.

169 Paragraph 355(b)

Omit “351”, substitute “601CM”.

170 Section 355

Omit “351, 353 and 354”, substitute “601CM, 601CN and 601CP”.

171 Section 356

Omit “Subsection 216B(2) and sections 216F, 216G and 216J”, substitute “Subsection 169(2) and sections 173, 174 and 177”.

172 Section 356

Omit “351”, substitute “601CM”.

173 Section 357

Omit “351”, substitute “601CM”.

174 Subsection 360(1)

Omit “subsection 358(3)”, substitute “section 601DH or 601DJ”.

175 Subparagraph 363(1)(b)(i)

Omit “346(1)”, substitute “601CG(1)”.

176 Subparagraph 363(1)(b)(ii)

Omit “subsection 361(1)”, substitute “subsection 601CV(1)”.

177 Paragraph 363(2)(a)

Omit “341(e) or 344(g)”, substitute “601CB(e) or 601CE(g)”.

178 Paragraph 363(2)(b)

Omit “359(3)”, substitute “601CT(3)”.

179 Paragraph 363(2)(c)

Omit “359(3)”, substitute “601CT(3)”.

180 Subsection 363(2)

Omit “notice under subsection 359(3)”, substitute “notice under subsection 601CT(3)”.

181 Section 417

Omit “9.11”, substitute “11.2”.

182 Section 459B

Omit “260”, substitute “246AA”.

Note: The heading to section 459B of the Corporations Law is altered by omitting “260” and substituting “246AA”.

183 Paragraph 459C(1)(a)

Omit “260”, substitute “246AA”.

184 Section 467B

Omit “260”, substitute “246AA”.

185 Section 513A

Omit “260”, substitute “246AA”.

186 Paragraph 513D(a)

Omit “260”, substitute “246AA”.

187 Subsection 582(1)

Omit “342 and 350”, substitute “601CC and 601CL”.

Note 1: The heading to section 600B is replaced by the heading “**Review by Court of resolution of creditors passed on casting vote of person presiding at meeting**”.

Note 2: The heading to section 600C is replaced by the heading “**Court’s powers where proposed resolution of creditors lost as casting vote of person presiding at meeting**”.

188 Subsection 766D (note)

Omit “216B”, substitute “169”.

189 Paragraph 1056(1)(c)

Omit “Part 3.5”, substitute “Chapter 2K”.

190 Subsection 1070(2)

Omit “The provisions of Part 2.5 (other than sections 216E and 216K)”, substitute “The provisions of Chapter 2C (other than sections 172 and 178)”.

191 Subsection 1083(2) (definition of prescribed provision)

Omit “216A(1)(c)”, substitute “168(1)(c)”.

192 Paragraph 1085(3)(a)

Omit “216B”, substitute “169”.

193 Paragraph 1085(3)(b)

Omit “216K”, substitute “178”.

194 Subparagraph 1274(2)(a)(iaa)

Omit “242(6)”, substitute “242AA(3)”.

195 After subsection 1311(1)

Insert:

(1A) Paragraphs (1)(a), (b) and (c) only apply to a provision in the following list if a penalty, pecuniary or otherwise, is set out in Schedule 3 immediately under a heading referring to that provision, or to a provision or provisions in which that provision is included:

- (a) Chapters 2A, 2B and 2C
- (b) Parts 2F.2 and 2F.3
- (c) Chapters 2G, 2H, 2J, 2M (other than Part 2M.4), 2N and 5A
- (d) Parts 5B.1 and 5B.3
- (e) Chapter 10
- (f) Part 11.1.

196 Subsection 1311(3A)

Omit “9.11”, substitute “11.2”.

197 Paragraphs 1317C(d) and (e)

Omit “342 or 350” (wherever occurring), substitute “601CC or 601CL”.

198 Heading to Part 9.11

Repeal the heading, substitute:

**Part 11.2—Commencement and application of
certain changes to this Law**

199 Section 1362A

Renumber as section 1362D.

Schedule 4—Consequential amendment of other legislation

Australian Securities and Investments Commission Act 1989

1 Subsection 5(1) (definition of affairs)

Omit “260”, substitute “246AA”.

2 Subsection 5(1) (paragraph (b) of the definition of books)

Omit “accounts or accounting records”, substitute “financial reports or financial records”.

3 Paragraph 81(a)

Omit “paragraph 461(h)”, substitute “paragraph 461(1)(h)”.

4 Section 86

Omit “subparagraph 1(a)(ii) or subsection (3)”, substitute “subsection (2) or paragraph (3)(b)”.

5 Subsection 226(5) (definition of national scheme law)

Repeal the definition.

Corporations Act 1989

6 Paragraph 22(q)

Omit “accounts”, substitute “statements”.

7 Part 6

Repeal.

8 Subsection 68(1)

Omit “161”, substitute “124”.

9 Subsection 68(2)

Omit “162”, substitute “125”.

Foreign Acquisitions and Takeovers Act 1975

10 Subsection 5(1) (definition of constituent document)

Omit “memorandum and articles of association”, substitute “constitution”.

Insurance Act 1973

11 Paragraph 22(3)(a)

Omit “, memorandum of association”.

12 Paragraph 22(3)(b)

Omit “articles of association”, substitute “constitution”.

Life Insurance Act 1995

13 Paragraph 60(1)(a)

Omit “articles of association”, substitute “constitution”.

14 Paragraph 60(1)(c)

Omit “articles of association”, substitute “constitution”.

15 Paragraph 60(1)(d)

Omit “articles of association of the company require”, substitute “constitution of the company requires”.

16 Paragraph 60(2)(a)

Omit “articles of association”, substitute “constitution”.

17 Paragraph 60(2)(c)

Omit “articles of association”, substitute “constitution”.

18 Paragraph 60(2)(d)

Omit “articles of association of the company require”, substitute “constitution of the company requires”.

19 Subsection 84(4)

Omit “articles of association”, substitute “constitution”.

20 Paragraph 176(3)(b)

Omit “articles of association of the company”, substitute “constitution”.

21 Paragraph 195(b)

Omit “articles of association”, substitute “constitution”.

22 Subsection 200(4)

Omit “articles of association of the company”, substitute “company’s constitution”.

23 Subparagraph 242(2)(a)(ii)

Omit “articles of association”, substitute “constitution”.

24 Schedule (definition of articles of association)

Repeal the definition.

25 Schedule

Insert:

constitution, in relation to a company, includes:

- (a) the documents under which the company is constituted; and
- (b) any other document governing activities or conduct of the company or its members.

Pooled Development Funds Act 1992

26 Subsection 4(1) (definition of PDF articles requirements)

Repeal the definition, substitute:

PDF constitution requirements has the meaning given by subsection (3).

27 Subsection 4(1) (paragraph (b) of the definition of relevant officer)

Repeal the paragraph.

28 Subsection 4(3)

Omit “articles of association satisfy the PDF articles requirements if, and only if, they”, substitute “constitution satisfies the PDF constitution requirements if, and only if, it”.

29 Paragraphs 4(3)(a), (b) and (c)

Omit “prohibit” (wherever occurring), substitute “prohibits”.

30 Paragraph 4(3)(c)

Omit “issue; and”, substitute “issue.”

31 Paragraphs 4(3)(d) and (e)

Repeal the paragraphs.

32 Subsection 11(4)

Omit “memorandum and articles of association”, substitute “constitution”.

33 Paragraph 14(1)(h)

Repeal the paragraph, substitute:

- (h) the applicant’s constitution satisfies the PDF constitution requirements; and

34 Paragraph 18(b)

Repeal the paragraph, substitute:

- (b) a condition that the PDF’s constitution:
 - (i) satisfies the PDF constitution requirements; and
 - (ii) be complied with in so far as it prohibits as mentioned in subsection 4(3);

35 Paragraph 41(1)(g)

Repeal the paragraph, substitute:

- (g) the PDF’s issued share capital and paid-up share capital;

36 Paragraph 42(2)(j)

Repeal the paragraph, substitute:

- (j) a change in the PDF’s issued or paid-up share capital;

37 Paragraph 42(2)(l)

Repeal the paragraph, substitute:

- (l) a change in the PDF's constitution so that it no longer satisfied the PDF constitution requirement.

38 Paragraphs 47(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the Board is no longer satisfied that the PDF's constitution satisfies the PDF constitution requirements; or
- (c) the Board is satisfied that a provision of the PDF's constitution that prohibits as mentioned in subsection 4(3) has been contravened; or

Service and Execution of Process Act 1992

39 Subsection 3(1) (definition of company)

Repeal the definition, substitute:

company means a company incorporated, or taken to be incorporated, under the Corporations Law.

40 Subsection 3(1) (definition of registered body)

Omit "363", substitute "601CX".

41 Subsection 9(2)

Omit "each of 2 directors of the company who reside in Australia", substitute "a director of the company who resides in Australia".

42 Subsection 9(3)

Omit "the last address of the office of the liquidator notice of which has been lodged under the Corporations Law", substitute "the address of the liquidator's office in the most recent notice of that address lodged under the Corporations Law".

43 After subsection 9(4)

Insert:

- (4A) If an administrator of a company has been appointed, a process, order or document may be served on the company by leaving it at, or by sending it by post to, the address of the administrator in the

most recent notice of that address lodged under the Corporations Law.

44 Subsection 9(9)

Omit “Sections 220 and 363”, substitute “Subsections 109X(1) and (2) and section 601CX”.

45 Paragraph 9(10)(a)

Omit “in the way provided in subsection 220(2)”, substitute “according to Part 2B.5”.

46 Paragraph 9(10)(b)

Omit “in the way provided in subsection 363(2)”, substitute “according to subsection 601CX(2)”.

47 Subsection 9(11) (definition of registered foreign company)

Omit “363”, substitute “601CX”.

48 Paragraph 10(3)(a)

Omit “body corporate’s principal office or principal place of business”, substitute “head office, a registered office or the principal place of business of the body corporate”.

49 Paragraph 10(3)(b)

Omit “principal” (twice occurring).

Schedule 5—Amendments in relation to nominal value and share capital reductions

Corporations Law

1 Paragraph 117(2)(k)

Repeal the paragraph, substitute:

(k) for a company limited by shares or an unlimited company—the following:

- (i) the number and class of shares each member agrees in writing to take up
- (ii) the amount (if any) each member agrees in writing to pay for each share
- (iii) if that amount is not to be paid in full on registration—the amount (if any) each member agrees in writing to be unpaid on each share

2 Subsection 120(2)

Omit “The shares have the nominal value specified for them in the application.”.

3 Table in section 141

Omit item 41.

4 Subsection 162(4)

Repeal the subsection, substitute:

- (4) A special resolution to change an unlimited company that has share capital to a company limited by shares may also provide that a specified portion of its uncalled share capital may only be called up if the company becomes an externally-administered body corporate.

5 Paragraphs 163(3)(a), (b) and (c)

Repeal the paragraphs, substitute:

- (a) that the company has prepared a list that sets out the following details about each person to whom the shares will be issued:
 - (i) name and address
 - (ii) the number and class of shares the person will take up
 - (iii) the amount (if any) the person will pay for the shares
 - (iv) the amount (if any) that will be unpaid on the shares;
and
- (b) the number and class of shares those persons will take up;
and
- (c) the amount (if any) those persons will pay for the shares; and
- (ca) the amount (if any) that will be unpaid on the shares; and

6 After subsection 169(4)

Add:

- (5) The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:
- (a) all of the company's shares were issued before Schedule 5 of the *Company Law Review Act 1998* commenced; and
 - (b) the register continues to show amount of unpaid par value for the shares as they were immediately before that commencement.

7 Section 254AA

Repeal the section.

8 At the end of subsection 254A(1)

Add:

- Note 3: On the issue of a bonus share there need not be any increase in the company's share capital.

9 At the end of subsection 254B(1)

Add:

- Note 4: The company cannot issue par value shares (see section 254C) or bearer shares (see section 254F).

10 Sections 254CA, 254CB and 254CC

Repeal the sections, substitute:

254C No par value shares

Shares of a company have no par value.

- Note: Sections 1444-1449 contain application and transitional provisions that deal with the introduction of no par value shares. See also subsection 169(4).

11 Section 254H

Repeal the section, substitute:

254H Resolution to convert shares into larger or smaller number

- (1) A company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

Note: The variation of class rights provisions (sections 246B-246G) may apply to the conversion.

- (2) The conversion takes effect on:
 - (a) the day the resolution is passed; or
 - (b) a later date specified in the resolution.
- (3) Any amount unpaid on shares being converted is to be divided equally among the replacement shares.
- (4) The company must lodge a copy of the resolution with the ASC within 1 month after it is passed.

12 Section 254K

Repeal the section, substitute:

254K Other requirements about redemption

A company may only redeem redeemable preference shares:

- (a) if the shares are fully paid-up; and
- (b) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

Note: For a director's duty to prevent insolvent trading on redeeming redeemable preference shares, see section 588G.

13 Section 254S

Repeal the section, substitute:

254S Capitalisation of profits

A company may capitalise profits. The capitalisation need not be accompanied by the issue of shares.

14 Section 254T

Repeal the section, substitute:

254T Dividends to be paid out of profits

A dividend may only be paid out of profits of the company.

Note: For a director's duty to prevent insolvent trading on payment of dividends, see section 588G.

15 Paragraphs 254X(1)(c) and (d)

Repeal the paragraphs, substitute:

- (c) the amount (if any) paid, or agreed to be considered as paid, on each of those shares; and
- (d) the amount unpaid (if any) on each of those shares; and

16 Paragraph 254Y(a)

Omit “, and nominal value,”.

17 After the heading to Part 2J.1 and before Division 1 of that Part

Insert:

256A Purpose

This Part states the rules to be followed by a company for reductions in share capital and for share buy-backs. The rules are designed to protect the interests of shareholders and creditors by:

- (a) addressing the risk of these transactions leading to the company's insolvency
- (b) seeking to ensure fairness between the company's shareholders
- (c) requiring the company to disclose all material information.

18 Sections 256A to 256F (inclusive)

Repeal the sections, substitute:

256B Company may make reduction not otherwise authorised

- (1) A company may reduce its share capital in a way that is not otherwise authorised by law if the reduction:
 - (a) is fair and reasonable to the company's shareholders as a whole; and

- (b) does not materially prejudice the company's ability to pay its creditors; and
- (c) is approved by shareholders under section 256C.

A cancellation of a share for no consideration is a reduction of share capital, but paragraph (b) does not apply to this kind of reduction.

Note 1: One of the ways in which a company might reduce its share capital is cancelling uncalled capital.

Note 2: Sections 258A-258F deal with some of the other situations in which reductions of share capital are authorised. Subsection 254K(2) authorises capital reductions involved in the redemption of redeemable preference shares and subsection 257A(2) authorises reductions involved in share buy-backs.

Note 3: For a director's duty to prevent insolvent trading on reductions of share capital, see section 588G.

- (2) The reduction is either an equal reduction or a selective reduction. The reduction is an *equal reduction* if:
 - (a) it relates only to ordinary shares; and
 - (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
 - (c) the terms of the reduction are the same for each holder of ordinary shares.

Otherwise, the reduction is a *selective reduction*.

- (3) In applying subsection (2), ignore differences in the terms of the reduction that are:
 - (a) attributable to the fact that shares have different accrued dividend entitlements; or
 - (b) attributable to the fact that shares have different amounts unpaid on them; or
 - (c) introduced solely to ensure that each shareholder is left with a whole number of shares.

256C Shareholder approval

Ordinary resolution required for equal reduction

- (1) If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.

Special shareholder approval for selective reduction

- (2) If the reduction is a selective reduction, it must be approved by either:
- (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
 - (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.

If the reduction involves the cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares are to be cancelled.

- (3) The company must lodge with the ASC a copy of any resolution under subsection (2) within 14 days after it is passed. The company must not make the reduction until 14 days after lodgment.

Information to accompany the notice of meeting

- (4) The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

Documents to be lodged with the ASC

- (5) Before the notice of the meeting is sent to shareholders, the company must lodge with the ASC a copy of:
- (a) the notice of the meeting; and
 - (b) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

256D Consequences of failing to comply with section 256B

- (1) The company must not make the reduction unless it complies with subsection 256B(1).
- (2) If the company contravenes subsection (1):
-

- (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
- (b) the company is not guilty of an offence.
- (3) Any person who is involved in a company's contravention of subsection (1) contravenes this subsection.

Note: Subsection (3) is a civil penalty provision (see section 1317DA).

256E Signposts to other relevant provisions

The following table lists other provisions of this Law that are relevant to reductions in share capital.

Other provisions relevant to reductions in share capital		
1	section 588G section 1317H A	liability of directors on insolvency Under the combined operation of these sections the directors may have to compensate the company if the company is, or becomes, insolvent when the company reduces its share capital.
2	section 1324	injunctions to restrain contravention Under this section the Court may grant an injunction against conduct that constitutes or would constitute a contravention of this Law.
3	section 733	ASC intervention (application to the Panel) Under this section the ASC may apply to the Corporations and Securities Panel for a declaration if it appears to the ASC that unacceptable circumstances have, or may have, occurred in relation to a reduction in share capital. If the Panel makes a declaration it may exercise a range of powers under section 734.
4	sections 1001A-1001D	continuous disclosure provisions Under these sections a disclosing entity is required to disclose information about its securities that is material and not generally available.
5	Chapter 2E	benefits to related parties to be disclosed Under this Chapter a financial benefit to a director or other related party that could adversely affect the interests of members of a public company, or diminish or endanger its resources, must be approved at a general meeting before it can be given.

Other provisions relevant to reductions in share capital

- | | | |
|---|--------------------|---|
| 6 | section 125 | provisions in constitution
This section deals with the way in which a company's constitution may restrict the exercise of the company's powers and the consequences of a failure to observe these restrictions. |
| 7 | sections 246B-246G | variation of class rights
These sections deal with the variation of rights attached to a class of shares. This variation may be governed by the provisions of the company's constitution. |
-

19 Section 257AA

Repeal the section.

20 Section 257A

Omit "(other than redeemable preference shares)".

21 Items 6 and 7 in table in section 257J

Omit "256F", substitute "256D".

22 Sections 258E and 258F

Repeal the sections, substitute:

258E Other share cancellations

Any reduction in share capital involved in:

- (a) the redemption of redeemable preference shares out of the proceeds of a new issue of shares made for the purpose of the redemption (see section 254K); or
- (b) a company's buying-back of its own shares under sections 257A to 257J if the shares are paid for out of share capital; or
- (c) the cancellation of a share under subsection 667(3) or 1024E(7);

is authorised by this section.

258F Reductions because of lost capital

A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the company also cancels shares.

23 Item 6 in the table in section 348

Repeal the item, substitute:

6	issued shares	The classes into which the shares are divided and for each class of share issued: <ul style="list-style-type: none">• the number of shares in the class• the total amount paid up for the class• the total amount unpaid for the class.
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24 Paragraph 601BC(8)(c)

Repeal the paragraph.

25 After section 601BP

Insert:

601BQ References in pre-registration contracts and other documents to par value in existing contracts and documents

- (1) This section applies in relation to a company registered under this Part for the purpose of interpreting and applying after registration:
 - (a) a contract entered into before the registration; or
 - (b) a trust deed or other document executed before the registration.
- (2) A reference to the par value of a share is taken to be a reference to the par value of the share immediately before the registration, or the par value that the share would have had if it had been issued then.
- (3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid before the registration in respect of the share's par value, or the par value that the share would have had if it had been issued then.

- (4) A reference to the aggregate par value of the company's issued share capital is taken to be a reference to that aggregate as it existed immediately before the registration.

26 Subsection 1087(1)

Repeal the subsection, substitute:

- (1) A certificate issued after the commencement of Schedule 5 to the *Company Law Review Act 1998* specifying shares held by a member of a company must state:
- (a) the name of the company and its jurisdiction of registration; and
 - (b) the class of the shares; and
 - (c) the unpaid on the shares.

27 Section 1317DA

Omit "Subsection 256F(3)", substitute "Subsection 256D(3)".

28 After paragraph 1324(1A)(b)

Insert:

- ; and (c) a company's contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.

29 Before subparagraph 1324(1A)(b)(i)

Insert:

- (ia) paragraph 256B(1)(b) (share capital reduction not to prejudice ability to pay creditors); or

30 Paragraph 1324(1B)(a)

After "contravention of", insert "paragraph 256B(1)(a) or (b),".

31 After Division 10 of Part 11.2

Insert:

**Division 11—Changes resulting from Schedule 5 to the
Company Law Review Act 1998**

1443 Meaning of commencement, new Law and old Law

In this Division:

commencement means the commencement of Schedule 5 to the *Company Law Review Act 1998*.

new Law means this Law as in force after commencement.

old Law means this Law as in force immediately before commencement.

1444 Share capital—application of new no par value rule to shares issued before commencement

Section 254C of the new Law applies to shares issued before commencement as well as shares issued after commencement.

1445 Share capital—references to amount paid on shares issued before commencement

For the purposes of the operation of this Law after commencement in relation to a share issued before commencement:

- (a) the amount paid on the share is the sum of all amounts paid to the company at any time for the share (but not including any premium); and
- (b) the amount unpaid on the share is the difference between the issue price of the share (but not including any premium) and the amount paid on the share (see paragraph (a)).

1446 Share capital—transfer of money in share premium account and capital redemption reserve into the share capital account

Immediately after commencement, any amount standing to the credit of the company's share premium account and capital redemption reserve becomes part of the company's share capital.

1447 Share capital—use of amount standing to credit of share premium account

A company may use the amount standing to the credit of its share premium account immediately before commencement to:

- (a) provide for the premium payable on redemption of debentures or redeemable preference shares issued before commencement; or
- (b) write off:
 - (i) the preliminary expenses of the company incurred before commencement; or
 - (ii) expenses incurred, payments made, or discounts allowed, on or before commencement, in respect of any issue of shares in, or debentures of, the company.

Note: After commencement, a company will be able to issue bonus shares without transferring an amount to the share capital account (see section 254A).

1448 Share capital—calls on partly-paid shares

The liability of a shareholder for calls in respect of money unpaid on shares issued before commencement (whether on account of the par value of the shares or by way of premium) is not affected by the share ceasing to have a par value.

1449 Share capital—references in pre-commencement contracts and other documents to par value

- (1) This section applies for the purpose of interpreting and applying after commencement:
 - (a) a contract entered into before commencement (including a company's constitution); or
 - (b) a trust deed or other document executed before commencement.
- (2) A reference to the par value of a share is taken to be a reference to:
 - (a) if the share is issued before commencement—the par value of the share immediately before commencement; or
 - (b) if the share is issued after commencement but shares of the same class were on issue immediately before

commencement—the par value that the share would have had if it had been issued then; or

- (c) if the share is issued after commencement and shares of the same class were not on issue immediately before commencement—the par value determined by the directors.

A reference to share premium is taken to be a reference to any residual share capital in relation to the share.

- (3) A reference to a right to a return of capital on a share is taken to be a reference to a right to a return of capital of a value equal to the amount paid in respect of the share's par value.
- (4) A reference to the aggregate par value of the company's issued share capital is taken to be a reference to that aggregate as it existed immediately before commencement and:
- (a) increased to take account of the par value of any shares issued after commencement; and
- (b) reduced to take account of the par value of any shares cancelled after commencement.

1450 Share capital—previous Law continues to apply to capital reductions initiated before commencement

If a company has called a meeting before commencement for the purpose of section 256A of the old Law to consider a special resolution for a reduction of its share capital, the old Law continues to apply to the reduction of capital.

32 Schedule 3

Repeal the item relating to subsection 256C(7).

Insurance Act 1973

33 Paragraph 22(2)(j)

Repeal, substitute:

- (j) if the body corporate has a share capital—the body's issued share capital and paid-up share capital;

Life Insurance Act 1995

34 Subsection 23(2)

Repeal the subsection, substitute:

- (2) The reference in subsection (1) to the adjusted paid-up share capital of a life company is a reference to the amount of the company's paid-up share capital represented by ordinary shares and irredeemable preference shares.

35 After section 233

Insert:

233A Transfer by life insurance company to statutory fund

This section authorises any share capital reduction that occurs because a life company appropriates or transfers an amount to a statutory fund established and maintained under this Act.

Note: Section 256B of the *Corporations Law* permits share capital reductions authorised by law to be carried out without shareholder approval.

36 Schedule (definition of share premium account)

Repeal the definition.

Pooled Development Funds Act 1992

37 Subsection 4(1) (paragraphs (a), (b) and (c) of the definition of shareholders' funds)

Repeal the paragraphs, substitute:

- (a) the amount of the company's share capital; and

38 Paragraph 11(2)(c)

Repeal, substitute:

- (c) the applicant's issued share capital and paid-up share capital;

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Amendments in relation to nominal value and share capital reductions

Schedule 5

Section 3
